2–3–97
Vol. 62 No. 22
Pages 4895–5138

federal register

Monday
February 3, 1997

Briefings on how to use the Federal Register
For information on briefings in Washington, DC, see announcement on the inside cover of this issue

Now Available Online

Code of Federal Regulations

via

GPO Access

(Selected Volumes)

Free, easy, online access to selected *Code of Federal Regulations (CFR)* volumes is now available via *GPO Access*, a service of the United States Government Printing Office (GPO). *CFR* titles will be added to *GPO Access* incrementally throughout calendar years 1996 and 1997 until a complete set is available. GPO is taking steps so that the online and printed versions of the *CFR* will be released concurrently.

The *CFR* and *Federal Register* on *GPO Access*, are the official online editions authorized by the Administrative Committee of the Federal Register.

New titles and/or volumes will be added to this online service as they become available.

http://www.access.gpo.gov/nara/cfr

For additional information on ***GPO Access*** products, services and access methods, see page II or contact the *GPO Access* User Support Team via:

★ Phone: toll-free: 1-888-293-6498

★ Email: gpoaccess@gpo.gov

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The Federal Register provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the Federal Register as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the Federal Register shall be judicially noticed.

The Federal Register is published in paper, 24x microfiche and as an online database through *GPO Access*, a service of the U.S. Government Printing Office. The online edition of the Federal Register on *GPO Access* is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions. The online database is updated by 6 a.m. each day the Federal Register is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su__docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest, (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required). For general information about *GPO Access*, contact the *GPO Access* User Support Team by sending Internet e-mail to gpoaccess@gpo.gov; by faxing to (202) 512–1262; or by calling toll free 1–888–293–6498 or (202) 512–1530 between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except for Federal holidays.

The annual subscription price for the Federal Register paper edition is $555, or $607 for a combined Federal Register, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the Federal Register including the Federal Register Index and LSA is $220. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $8.00 for each issue, or $8.00 for each group of pages as actually bound; or $1.50 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the Federal Register.

How To Cite This Publication: Use the volume number and the page number. Example: 60 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	202–512–1800
Assistance with public subscriptions	512–1806
General online information	202–512–1530 1–888–293–6498
Single copies/back copies:	
Paper or fiche	512–1800
Assistance with public single copies	512–1803
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	523–5243
Assistance with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

NOW AVAILABLE ONLINE

The January 1997 Office of the Federal Register Document Drafting Handbook

Free, easy, online access to the newly revised January 1997 Office of the Federal Register Document Drafting Handbook (DDH) is now available at:

http://www.nara.gov/nara/fedreg/ddh/ddhout.html

This handbook helps Federal agencies to prepare documents for publication in the Federal Register.

For additional information on access, contact the Office of the Federal Register's Technical Support Staff.

Phone: 202–523–3447

E-mail: info@fedreg.nara.gov

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

WASHINGTON, DC

WHEN: February 18, 1997 at 9:00 am

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

RESERVATIONS: 202–523–4538

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register
Vol. 62, No. 22
Monday, February 3, 1997

Agency for International Development
NOTICES
Housing guaranty program:
Panama, 5036–5037

Agriculture Department
See Forest Service
See Grain Inspection, Packers and Stockyards Administration
NOTICES
Edward R. Madigan United States agricultural export excellence award program; establishment and nominations, 4977

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Vail Resorts, Inc., et al., 5037–5046

Bonneville Power Administration
NOTICES
Records of decision:
Firm non-requirements products and services contracts, 4991–4992

Centers for Disease Control and Prevention
NOTICES
Meetings:
HIV prevention case management; guidelines consultation, 5010
Records and Statistics Public Health Conference and Data Users Conference, 5010–5011

Commerce Department
See Export Administration Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
New York Cotton Exchange—
U.S. dollar-Singapore dollar, etc., 4985–4986

Congressional Budget Office
NOTICES
Balanced Budget and Emergency Deficit Control Reaffirmation Act (Gramm-Rudman-Hollings):
Sequestration preview report for 1998 FY; transmittal to Congress and OMB, 4986

Consumer Product Safety Commission
RULES
Hazardous substances:
Fireworks devices; fuse burn time; effective date, 4910–4911
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 4986

Copyright Office, Library of Congress
NOTICES
Digital phonorecord delivery rate adjustment proceeding; precontroversy discovery schedule vacated and meeting, 5057–5058

Corporation for National and Community Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Learn and Serve America—
School and community-based programs; correction, 4986

Defense Department
PROPOSED RULES
DOD newspapers, magazines, and civilian enterprise publications, 4947–4959
NOTICES
Agency information collection activities:
Proposed collection; comment request; correction, 4987
Submission for OMB review; comment request, 4987
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Submission for OMB review; comment request, 4987

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Individuals with disabilities—
Partnership training, 4988
Rehabilitation continuing education programs, 4988–4989

Employment and Training Administration
NOTICES
Adjustment assistance and NAFTA transitional adjustment assistance:
Ozark Quilt Supply et al., 5049–5050

Energy Department
See Bonneville Power Administration
See Federal Energy Regulatory Commission
PROPOSED RULES
Nuclear waste repositories; site recommendations; general guidelines, 4941
NOTICES
Environmental statements; availability, etc.:
Waste Isolation Pilot Plant, Carlsbad, NM; transuranic (TRU) radioactive waste disposal, 4989
Floodplain and wetlands protection; environmental review determinations; availability, etc.:
Fernald, OH—
Operable Unit 5 remedial action, 4989–4990
Meetings:
National Coal Council et al., 4990
Secretary of Energy Advisory Board, 4990–4991

Environmental Protection Agency
RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Carboxin, 4911–4915

PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Flexible polyurethane foam production
Correction, 5074
NOTICES
Label Review Manual; availability, 5001
Meetings:
Common Sense Initiative Council—
Metal finishing and printing sectors, 5001–5002
Pesticide registration, cancellation, etc.:
Black Magic Rat Killer with Pivalyl, etc., 5002–5003

Export Administration Bureau
RULES
Export licensing:
Entities ineligible to receive specified items without license; list establishment, 4910

Executive Office of the President
(*See* Presidential Documents)

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 4904–4906
McDonnell Douglas, 4906–4908
Pilatus Britten-Norman Ltd., 4908–4910
Pratt & Whitney, 4900–4904
Rolls Royce plc, 4899–4900
PROPOSED RULES
Air craft and air traffic operating and flight rules, etc.:
Domestic, flag, supplemental commuter, and on-demand operations-
Editorial corrections, 5076–5091
Airworthiness directives:
Bombardier, 4941–4944
Fokker, 4944–4946
Class D and Class E airspace; correction, 5074

Federal Communications Commission
RULES
Common carrier services:
In-region, interstate, domestic interLATA services by Bell Operating companies; non-accounting safeguards; reporting and recordkeeping requirements
Correction, 5074
Practice and procedure:
Forfeiture proceedings; civil monetary penalties; inflation adjustments, 4917–4920
Radio services, special:
Directional fixed service microwave antennas; flexible standards, 4920–4925
PROPOSED RULES
Common carrier services:
Telecommunications Act of 1996; implementation—
Exemption from Section 214 requirements; definition of phrase ''for extension of any line'', 4965–4976
Telecommunications Act of 1996; implementation:
Common carrier services—
Video programming; mandatory closed captioning, 4959–4965
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 5003–5004

Federal Deposit Insurance Corporation
RULES
Practice and procedure:
Forms, instructions, and reports, 4895–4899

Federal Emergency Management Agency
RULES
Flood insurance; communities eligible for sale:
Connecticut et al., 4915–4917
NOTICES
Disaster and emergency areas:
Minnesota, 5004–5005
Nevada, 5005

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Washington Water Power Co. et al., 4999–5000
Environmental statements; availability, etc.:
International Paper Co. et al., 5000
Applications, hearings, determinations, etc.:
Crossroads Pipeline Co., 4992
Long Sault, Inc., et al., 4994–4999
Northeast Utilities Service Co., 4992
Panhandle Eastern Pipe Line Co., 4993
ProLiance Energy, LLC, 4993
San Diego Gas & Electric Co. et al., 4993
U-T Offshore System, 4994

Federal Housing Finance Board
NOTICES
Meetings; Sunshine Act, 5005

Federal Maritime Commission
NOTICES
Complaints filed:
A/S Ivarans Rederi, 5005–5007

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 5007
Formations, acquisitions, and mergers, 5007–5008
Permissible nonbanking activities, 5008

Federal Trade Commission
NOTICES
Prohibited trade practices:
AAF-McQuay, Inc., 5008
Class Rings, Inc., et al., 5008–5009
Filtration Manufacturing, Inc., et al., 5009
Wesley-Jessen Corp., 5009

Fish and Wildlife Service
RULES
Endangered and threatened species:
San Diego fairy shrimp, 4925–4939
NOTICES
Endangered and threatened species permit applications, 5030–5032
Environmental statements; availability, etc.:
Incidental take permits—
Monroe County, AL; Red Hills salamander, 5032–5033

Food and Drug Administration
NOTICES
Food additive petitions:
Ashland Chemical Co., 5011

Food for human consumption:
Infant formulas for preterm infants; nutrient requirements review; public meeting, 5011–5012

Forest Service
NOTICES
Meetings:
Willamette Provincial Interagency Executive Committee Advisory Committee, 4977

General Services Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Submission for OMB review; comment request, 4987

Grain Inspection, Packers and Stockyards Administration
NOTICES
Agency designation actions:
Illinois et al., 4977–4978

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
NOTICES
Organization, functions, and authority delegations:
Intergovernmental Affairs Office et al., 5009–5010
Program Support Center, 5010

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Ryan White Title IV human immunodeficiency virus (HIV) program—
Children, youth, women, and families; coordinated services and access to research, 5012–5015
Meetings:
Childhood Vaccines Advisory Commission, 5015

Housing and Urban Development Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5015–5028
Submission for OMB review; comment request, 5028–5029
Organization, functions, and authority delegations:
Director, Housing Office, Atlanta, GA, et al.; authority redelegation, 5029–5030

Indian Affairs Bureau
NOTICES
Tribal-State Compacts approval; Class III (casino) gambling:
Citizen Band Potawatomi Indian Tribe, OK, 5033

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service

International Development Cooperation Agency
See Agency for International Development

International Trade Administration
NOTICES
Antidumping:
Porcelain-on-steel cooking ware from—
China, 4979–4982
Antidumping and countervailing duties:
Administrative review requests, 4978–4979

Justice Department
See Antitrust Division

Labor Department
See Employment and Training Administration
See Pension and Welfare Benefits Administration
NOTICES
Organization, functions, and authority delegations:
Chief Financial Officer Office, 5047–5049

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Imperial Project gold mining operation, Imperial County, CA, 5033–5034
Organization, functions, and authority delegations:
Farmington District Office et al., NM; mailing address changes, 5034
Recreation management plans, etc.:
Folsom Resource Area, CA; recreational suction dredging on public lands; supplementary rules, 5034
Resource management plans, etc.:
Pony Express Resource Area, UT, 5034–5035

Library of Congress
See Copyright Office, Library of Congress

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Submission for OMB review; comment request, 4987

National Communications System
NOTICES
Meetings:
Telecommunications Service Priority System Oversight Committee, 5058

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 5058–5059

National Highway Traffic Safety Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5066–5067
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 5067–5068

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council, 4982–4983
Mid-Atlantic Fishery Management Council, 4983
Pacific Fishery Management Council, 4983–4984
South Atlantic Fishery Management Council, 4984–4985
Western Pacific Fishery Management Council, 4985

National Park Service
NOTICES
Meetings:
Maine Acadian Culture Preservation Commission, 5035–5036

Nuclear Regulatory Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 5059
Applications, hearings, determinations, etc.:
Nelson, James C., 5059–5061
Wisconsin Electric Power Co., 5061–5062

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; class exemptions:
Foreign exchange transactions executed pursuant to standing instructions, 5051–5057

Personnel Management Office
PROPOSED RULES
Intergovernmental Personnel Act programs:
Personnel administration; merit system standards, 4940–4941
NOTICES
Meetings:
Federal Prevailing Rate Advisory Committee, 5062–5063
National Partnership Council, 5063

Presidential Documents
EXECUTIVE ORDERS
Committees; establishment, renewal, termination, etc.;
Presidential Advisory Committee on Gulf War Veterans' Illnesses; extension (EO 13034), 5137–5138

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Cincinnati Stock Exchange, 5063–5064
Philadelphia Stock Exchange, Inc.; correction, 5074
Applications, hearings, determinations, etc.:
Gundle/SLT Environmental, Inc., 5063

Social Security Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5064–5065

Surface Transportation Board
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 5068–5069

Thrift Supervision Office
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 5069

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board
PROPOSED RULES
Procedural regulations:
Proceedings; practice rules; Federal regulatory review, 5094–5134
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5065
Submission for OMB review; comment request, 5066
Meetings:
Partnership Council, 5066

Treasury Department
See Thrift Supervision Office

United States Information Agency
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 5069–5070

Veterans Affairs Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 5070
Submission for OMB review; comment request, 5070–5073

Separate Parts In This Issue

Part II
Department of Transportation, Federal Aviation Administration, 5076–5091

Part III
Department of Transportation, 5094–5134

Part IV
The President, 5137–5138

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Executive Order:

13034.....5137

5 CFR

Proposed Rules:

900.....4940

10 CFR

Proposed Rules:

960.....4941

12 CFR

304.....4895

14 CFR

39 (6 documents) 4899, 4900, 4902, 4904, 4906, 4908

Proposed Rules:

21.....5076
25.....5076
39 (2 documents) 4941, 4944
71.....5074
91.....5076
119.....5076
121.....5076
125.....5076
135.....5076
300.....5094
302.....5094

15 CFR

744.....4910

16 CFR

1507.....4910

32 CFR

Proposed Rules:

247.....4947

40 CFR

180.....4911

Proposed Rules:

63.....5074

44 CFR

64.....4915

47 CFR

1.....4917
53.....5074
74.....4920
78.....4920
101.....4920

Proposed Rules:

25.....4959
26.....4959
63.....4965
73.....4959
76.....4959
100.....4959

50 CFR

17.....4925

Rules and Regulations

Federal Register
Vol. 62, No. 22
Monday, February 3, 1997

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

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

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 304

RIN 3064–AB89

Forms, Instructions and Reports

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: As part of the FDIC's systematic review of its regulations and written policies under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), the FDIC is revising its regulations relating to forms, instructions and reports. The regulation was created in 1948 to satisfy the requirement found in the Administrative Procedure Act (APA) to ''publish in the Federal Register * * * rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations.'' A portion of the regulation was added in 1992 to implement the mandate found at section 122 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), which requires the FDIC to adopt a regulation which requires the collection of information on small farm and small business lending from insured depository institutions. In addition, section 37 of the Federal Deposit Insurance Act (FDI Act), as added by FDICIA, requires that the FDIC adopt regulations mandating the inclusion of ''off balance sheet'' items in all assets and liabilities (including contingent assets and liabilities) reflected on any balance sheet, financial statement, report of condition, or other report that insured depository institutions file with a federal banking agency. The additional requirement to include contingent assets and liabilities is being incorporated into a section of the regulation. In an effort to streamline its regulations and provide the public with information about its forms, instructions and reports (including specific dates by which such reports must be filed), the FDIC is revising this regulation, by removing unneeded language while retaining the listing of forms and other required information to satisfy the public information requirements found in FOIA, section 122 of FDICIA, and section 37 of the FDI Act.

EFFECTIVE DATE: February 3, 1997.

FOR FURTHER INFORMATION CONTACT: Steven F. Hanft, Assistant Executive Secretary (Regulatory Analysis), (202) 898–3907, Office of the Executive Secretary; Karen Main, Senior Attorney, (202) 898–8838, Legal Division; FDIC, 550 17th Street, NW, Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. Discussion

The FDIC is conducting a systematic review of its regulations and written policies. Section 303(a) of CDRI, 12 U.S.C. 4803(a), requires each federal banking agency to streamline and modify its regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwanted constraints on credit availability. Section 303(a) also requires each federal banking regulatory agency to remove inconsistent, outmoded, or duplicative requirements from its regulations and written policies.

As part of this review, the FDIC has determined that certain provisions of part 304 contain outmoded and unnecessary language that needs to be revised or removed. By so doing, the FDIC's regulation concerning forms, instructions and reports will be updated and streamlined to provide accurate information.

The FDIC published the current version of the regulation on October 15, 1986 in the Federal Register (51 FR 36684) in accordance with the APA (U.S.C. 551 *et seq.*). Section 304.4 was later modified to implement Section 122 of FDICIA (12 U.S.C. 1817 note) on June 5, 1992 (57 FR 23932). Sections 304.4 and 304.5 are being revised to incorporate the reporting requirement set forth in Section 37(a)(3)(c) of the FDI Act. 12 U.S.C. 1831n(a)(3)(C). This statutory provision requires that the Corporation develop a regulation which requires that ''all assets and liabilities, including contingent assets and liabilities'' be reported in an insured depository institution's Call Reports. This reporting requirement, which was enacted as Section 121 of FDICIA in 1991, was initially implemented by revising the Call Reports in 1992. The proposed change was published for comment in connection with the FDIC's Notice of Information Collection submitted to the Office of Management and Budget. See 57 FR 54235 (Nov. 17, 1992). Section 304.4 is being further revised to add information which is currently found in the instructions to the Call Reports regarding the timely filing of the Call Reports. This requirement was initially issued for notice and comment under the auspices of the Federal Financial Institutions Examination Council, and adopted in final in 1988. See, 53 FR 11558 (Apr. 7, 1988) and 53 FR 32104 (Aug. 23, 1988).

Part 304 provides the public with the information about the forms and reports that insured financial institutions are to submit to the FDIC. With the exception of the provisions relating to lending to small farms and small business and the reporting of ''off balance sheet'' items, there is no statutory requirement to provide all of the information contained in Part 304 by regulation. Thus, through the proposed changes, the statutory requirements will be retained, FOIA's publication requirements at 5 U.S.C. 552(a)(1)(C) will continue to be fulfilled, and the regulatory framework will be streamlined.

II. Public Comment Waiver and Effective Date

This regulation is being issued as a final rule. The APA requires general notice of proposed rulemaking in the Federal Register; however, this regulation is exempt from the Federal Register publication requirement pursuant to 5 U.S.C. 553(b). This section of the APA exempts ''rules of agency organization, procedure, or practice''. 5 U.S.C. 553(b)(A). Notwithstanding the fact that part 304 is a procedural rule, some of the proposed language that will be added to various sections appears to impose new reporting requirements or time constraints on affected financial institutions. The Call Report filing deadlines, as well as the requirement to report the contingent assets and

liabilities on the Call Report have previously been issued for notice and comment before being adopted in final form. These requirements have been in place and insured depository institutions have been complying with them for a number of years. These pre-existing supervisory requirements are now being codified in part 304. Moreover, several other revisions are minor and technical in nature. Therefore, the Board finds that there is good cause for not providing a notice and comment period before adopting part 304 in final form. Under the circumstances described above, notice and comment would be unnecessary and contrary to the public interest. 5 U.S.C. 553(b)(B).

In addition, the APA provides that a substantive rule shall be published in the Federal Register not less than 30 days before its effective date. However, this APA requirement does not apply to Part 304 since it is a rule of agency procedure. 5 U.S.C. 553(d). Alternatively, the amendments are of such a nature that the public does not need a delayed period of time in which to conform or adjust to the amendments. Thus, the Board finds that there exists good cause for not delaying the effective date of these amendments. 5 U.S.C. 553(d)(3).

III. Matters of Regulatory Procedure

Regulatory Flexibility Act

Part 304 is a rule relating to agency organization, procedure, or practice, and is therefore not subject to the provisions of the Regulatory Flexibility Act. Further, because the revisions to part 304 will be published in final form without a notice of proposed rulemaking, no regulatory flexibility analysis is required.

Paperwork Reduction Act

No further collection of information is required as a result of the regulatory amendments. Therefore, no material will be submitted to the OMB for review pursuant to the Paperwork Reduction Act. 44 U.S. 3501 *et seq.*

Contract With America/SBREFA Analysis

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Title II of the Contract with America Advancement Act of 1996 (Pub. L. 104–121), provides generally for Congressional review of final agency rules. When required by SBREFA, the FDIC reports rules to Congress. The reporting requirement is triggered in instances where the FDIC issues a final rule as defined by the APA at 5 U.S.C. 551. The FDIC will file the appropriate report pursuant to the statute.

The Office of Management and Budget has determined that this final revision to part 304 does not constitute a ''major'' rule as defined by the statute.

List of Subjects in 12 CFR Part 304

Bank deposit insurance, Bank, banking, Freedom of information, Reporting and recordkeeping requirements.

For the reasons set forth above, 12 CFR part 304 is amended as set forth below:

PART 304—FORMS, INSTRUCTIONS AND REPORTS

1. The authority citation for part 304 continues to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 1817, 1818, 1819, 1820; Public Law 102–242, 105 Stat. 2251 (12 U.S.C. 1817 note).

§ 304.1 [Amended]

2. Section 304.1 is amended by removing the word ''all'' from the last sentence.

3. Section 304.2 is revised to read as follows:

§ 304.2 Forms and instructions—general.

Necessary forms with their related instructions to be used in connection with applications, reports, and other submittals can be obtained from FDIC regional offices—Division of Supervision. The FDIC regional offices are listed in the directory of the FDIC Law, Regulations and Related Acts looseleaf service, published by the FDIC. A listing of FDIC forms can also be obtained by writing to the FDIC, Division of Supervision, 550 17th Street, NW, Washington, D.C. 20429. The forms are also available in the FDIC Public Information Center at 801 17th Street, NW, Washington, D.C. 20429.

4. Section 304.3 is revised to read as follows:

§ 304.3 Certified statements.

The certified statements required to be filed by insured institutions under the provisions of section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817), as amended, shall be filed in accordance with part 327 of this chapter. The applicable forms are Form 6420/07A—Form 6420/07H which show the computation of the semiannual assessment due to the Corporation from an insured depository institution. As provided for in part 327 of this chapter, the forms will be furnished to insured depository institutions by the Corporation twice each calendar year and the completed statement must be returned to the Corporation by each institution.

5. Section 304.4 is revised to read as follows:

§ 304.4 Reports of condition and income.

(a) *Description.* Forms FFIEC 031, 032, 033, and 034, Consolidated Reports of Condition and Income, are quarterly reports for insured state nonmember banks (except District banks) of different asset sizes or with foreign offices, as appropriate, that are required to be prepared as of the close of business on the following report dates: March 31, June 30, September 30, and December 31. These reports are also known as the ''Call Report.'' The Call Report includes a balance sheet, an income statement, and a statement of changes in equity capital of the reporting bank. Supporting schedules request additional detail with respect to charge-offs and recoveries, income from international operations, specific asset and liability accounts, off-balance sheet items, past due and nonaccrual assets, information for assessment purposes, and regulatory capital. All assets and liabilities, including contingent assets and liabilities, must be reported in, or otherwise taken into account in the preparation of, the Call Report. Reporting banks must also submit annually such information on small business and small farm lending as the FDIC may need to assess the availability of credit to these sectors of the economy. Call Reports must be prepared in accordance with the appropriate instructions contained in the Federal Financial Institutions Examination Council booklet entitled ''Instructions—Consolidated Reports of Condition and Income''. The report forms, the instructions for completing the reports, and the accompanying materials will be furnished to all insured state nonmember banks (except District banks) by, or may be obtained upon request from, the Call Reports Analysis Unit, Division of Supervision, FDIC, Washington, D.C. 20429.

(b) *Submission of reports.* All insured state nonmember banks (except District banks) shall file their completed reports by the method and with the appropriate collection agent for the FDIC as designated in the materials accompanying the report forms each quarter. Completed reports must be received no more than 30 calendar days after the report date, subject to the timely filing provisions set forth in the ''Instructions—Consolidated Reports of Condition and Income'' and in the materials accompanying the report forms each quarter. Any bank which has or has had more than one foreign office,

other than a shell branch or an International Banking Facility, may take an additional 15 calendar days to submit its Call Reports. A bank using any of these additional 15 calendar days to complete its reports is required to submit its reports electronically.

6. Section 304.5 is revised to read as follows:

§ 304.5 Other forms.

The forms described in this section have been prepared for the use of banks.

(a) *Form 8020/05: Summary of Deposits.* Form 8020/05 is a report on the amount of deposits for each authorized office of an insured bank with branches; unit banks do not report. Reports as of June 30 of each year must be submitted no later than the immediately succeeding July 31. The report is filed with the appropriate collection agent for the FDIC as designated in the materials accompanying the survey forms each year. The report forms and the instructions for completing the reports will be furnished to all such banks by, or may be obtained upon request from the Trust and Survey Group, Division of Supervision, FDIC, 550 17th Street, NW, Washington, D.C. 20429.

(b) *Form 6120/06: Notification of Performance of Bank Services.* Form 6120/06 may be used to satisfy the notice requirement for bank service arrangements that is contained in section 7 of the Bank Service Corporation Act (12 U.S.C. 1867), as amended. In lieu of the form, a bank may satisfy the requirement by submitting a letter stating: The name of the servicer; the address at which the service is performed; the service being performed; and the date the service commenced. Either the form or the letter containing the notice information must be submitted to the regional director—Division of Supervision of the region in which the bank's main office is located within 30 days of the making of the bank service contract or the performance of the bank service, whichever occurs first.

(c) *Form FFIEC 001: Annual Report of Trust Assets.* This report must be filed by all insured state nonmember commercial and savings banks operating trust departments or banks granted consent by the Corporation to exercise trust powers, and their trust subsidiaries. The report must be filed no later than February 15th of each year. When circumstances necessitate, additional information may be required about certain operations of the trust department. The report must be prepared and submitted in accordance with the appropriate instructions. The report is filed with the appropriate collection agent for the FDIC as designated in the report form and instructions. The report forms and instructions for completing the report will be furnished automatically to all such banks by, or may be obtained upon request from the Trust and Survey Group, Division of Supervision, FDIC, 550 17th Street, NW, Washington, D.C. 20429.

(d) *Form FFIEC 002: Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks.* Form FFIEC 002 is a report in the form of a statement of the assets and liabilities of U.S. branches and agencies of foreign banks together with supporting schedules that request additional detail with respect to selected assets and liabilities, off-balance sheet items, and, in the case of insured branches, information for assessment purposes. All assets and liabilities, including contingent assets and liabilities, must be reported in, or otherwise taken into account in the preparation of, this report. Insured branches must also submit annually such information on small business and small farm lending as the FDIC may need to assess the availability of credit to these sectors of the economy. The report must be prepared in accordance with the instructions contained in the instruction booklet for the report, copies of which are furnished to all U.S. branches and agencies of foreign banks by the Federal Reserve System. The Board of Governors of the Federal Reserve System collects and processes the report on behalf of FDIC-supervised branches. The report is submitted quarterly to the appropriate Federal Reserve district bank.

(e) *Form FFIEC 004: Report on Indebtedness of Executive Officers and Principal Shareholders and their Related Interests to Correspondent Banks.* Form FFIEC 004 is a recommended form that may be used by the executive officers and principal shareholders of an insured state nonmember bank to report to the board of directors of their bank on their indebtedness (and that of their related interests) to correspondent banks, as required by part 349 of this chapter. The reports or any form containing identical information must be submitted to the bank's board of directors by January 31 of each year and cover indebtedness to correspondent banks during the preceding calendar year. Form FFIEC 004 is mailed annually by the FDIC to each insured state nonmember bank.

7. Appendix A to part 304 is revised to read as follows:

Appendix A to Part 304—List of Forms

[Note: See footnotes at end of table.]

Form	Title	Section of FDICs regulations (12 CFR chapter III) where the form is referenced	OMB No.
FDIC 6112/01	Initial Statement of Beneficial Ownership of Equity Securities (Form F–7).	335.413	3064–0030
FDIC 6112/02	Statement of Changes in Beneficial Ownership of Equity Securities (Form F–8).	335.414	3064–0030
FDIC 6120/06	Notification of Bank Services	304.5(b)	3064–0029
FDIC 6200/05	Application for Federal Deposit Insurance (Commercial Banks).	303.1	3064–0001
FDIC 6200/06	Financial Report	(1)	3064–0006
FDIC 6200/07	Application for Federal Deposit Insurance for Operating Non-insured Institutions.	303.1	3064–0069
FDIC 6200/09	Application for Consent to Exercise Trust Powers	(2)	3064–0025
FDIC 6220/01	Application for a Merger or Other Transaction Pursuant to Section 19(c) of the Federal Deposit Insurance Act.	303.3	3064–0016
FDIC 6220/07	Application for a Merger or Other Transaction Pursuant to Section 18(c) of the Federal Deposit Insurance Act (Phantom or Corporate Reorganization).	303.7(b)(1) and 303.3	3064–0015
FDIC 6342/12	Request for Deregistration Registered Transfer Agent	341.5	3064–0027
FDIC 6420/07	Certified Statement	304.3(a)	3064–0057
FDIC 6440/12	Loan/Application Register	338.8(3)	7100–0247

Form	Title	Section of FDICs regulations (12 CFR chapter III) where the form is referenced	OMB No.
FDIC 6710/06	Suspicious Activity Report	353.1	3064–0077
FDIC 6710/07	Application Pursuant to Section 19 of the Federal Deposit Insurance Act.	([4])	3064–0018
FDIC 6810/01	Notification of Addition of a Director or Employment of a Senior Executive Officer.	333.2	3064–0097
FDIC 6822/01	Notice of Acquisition of Control	303.4(b)	3064–0019
FDIC 8020/05	Summary of Deposits	304.5(a)	3064–0061
FFIEC 001	Annual Report of Trust Assets	304.5(c)	3064–0024
FFIEC 002	Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks.	304.5(d)	7100–0032
FFIEC 004	Report on Indebtedness of Executive Officers and Principal Shareholders and their Related Interests to Correspondent Banks.	304.5(e)	3064–0023
FFIEC 009	Country Exposure Report	351.3(b)	3064–0017
FFIEC 009a	Country Exposure Information Report	351.3	3064–0017
FFIEC 019	Country Exposure Report for U.S. Branches and Agencies of Foreign Banks.	([5])	3064–0017
FFIEC 030	Foreign Branch Report of Condition	347.6(b)	3064–0011
FFIEC 031	Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices.	304.4	3064–0052
FFIEC 032	Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only and Total Assets of $300 Million or More.	304.4	3064–0052
FFIEC 033	Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only and Total Assets of $100 Million or More But Less Than $300 Million.	304.4	3064–0052
FFIEC 034	Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only and Total Assets of Less than $100 Million.	304.4	3064–0052
FFIEC 035	Monthly Consolidated Foreign Currency Report of Banks in the United States.	([6])	1557–0156
GFIN	Notice of Government Securities Broker or Government Securities Dealer Activities to be Filed by a Financial Institution Under Section 15C(a)(1)(B).	([7])	1535–0089
GFIN–W	Notice by Financial Institutions of Termination of Activities as a Government Securities Broker or Government Securities Dealer.	([7])	7100–0224
GFIN–4	Disclosure Form for Person Associated With a Financial Institution Government Securities Broker or Dealer.	([7])	1535–0089
GFIN–5	Uniform Termination Notice for Person Associated With a Financial Institution Government Securities Broker or Dealer.	([7])	1535–0089
MSD 4	Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated With a Bank Municipal Securities Dealer.	343.3	3064–0022
MSD 5	Uniform Termination for Municipal Securities Principal or Municipal Securities Representative Associated With a Bank Municipal Securities Dealer.	343.3	3064–0022
TA–1	Transfer Agent Registration and Amendment Form	341.6	3064–0026

Notes:

[1] Not referenced in 12 CFR chapter III. The report form is submitted by each individual director or officer of a proposed or operating bank applying to the FDIC for federal deposit insurance as a state nonmember bank, or by a person proposing to acquire ownership or control of an insured state nonmember bank.

[2] The report form can be obtained from the HMDA Assistance line by telephoning (202) 452–2016.

[3] Not referenced in 12 CFR chapter III. The application form is submitted by insured state nonmember banks applying for FDIC consent to exercise trust powers.

[4] Not referenced in 12 CFR chapter III. The application form is submitted by FDIC-insured banks applying for FDIC consent to employ persons who have been convicted of crimes involving dishonesty or breach of trust.

[5] Not referenced in 12 CFR chapter III. The report form is submitted by state chartered and federally-licensed branches and agencies of foreign banks in the U.S. with $30 million or more in total direct claims on foreign residents. The Federal Reserve Board collects and processes the report on behalf of FDIC-supervised branches. The report is submitted quarterly to the appropriate Federal Reserve district bank.

[6] Not referenced in 12 CFR chapter III. The report form is submitted by banks (other than savings banks) and bank holding companies with a dollar equivalent of $100 million or more in assets, liabilities, foreign exchange contracts bought and foreign exchange contracts sold in any six specific foreign currencies as of the end of a month. The Office of the Comptroller of the Currency collects and processes this monthly report on behalf of insured state nonmember banks.

[7] Not referenced in 12 CFR chapter III. The report form is submitted by banks or persons associated with banks required to file under section 15C of the Securities and Exchange Act of 1934.

Appendix B to Part 304—[Removed]

8. Appendix B to part 304 is removed.

By Order of the Board of Directors.

Dated at Washington, D.C., this 21st day of January, 1997.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 97–2530 Filed 1–31–97; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–ANE–09; Amendment 39–9897; AD 97–02–12]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211–535E4 and –535E4–B Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Rolls-Royce plc RB211–535E4 and –535E4–B series turbofan engines, that requires installation of an improved fuel flow governor that incorporates revised minimum compressor discharge P4 stop settings. This amendment is prompted by reports of engine rundowns during low idle descent during icing conditions. The actions specified by this AD are intended to prevent compressor stall and subsequent engine rundown on one or both engines.

DATES: Effective April 4, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 4, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Rolls-Royce plc, P.O. Box 31, Moor Lane, Derby, DE248BJ, United Kingdom; telephone 1332–249428, fax 1332–249423. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Daniel Kerman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7130, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Rolls-Royce plc (R–R) RB211–535 series turbofan engines was published in the Federal Register on June 12, 1996 (61 FR 29697). That action proposed to require installation of an improved Fuel Flow Governor (FFG) that incorporate revised minimum compressor discharge P4 stop settings. This revised setting will raise the steady state low idle schedule above the idle conditions experienced during any of the prior engine rundown events. This schedule increase will result in a substantial increase in Intermediate Pressure Compressor (IPC) stall margin, a moderate increase in High Pressure Compressor (HPC) stall margin, as well as provide the additional benefit of increased ice accretion tolerance due to increased compressor airflow and increased rotor speed. This action must be accomplished within 9 calendar months after the effective date of this AD. The FAA has determined the calendar end-date based on the time interval required for fleet modification. The actions would be required to be accomplished in accordance with R–R Mandatory (SB) No. RB.211–73–B869, Revision 1, dated May 24, 1996.

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

One commenter states that the proposed AD should be modified to eliminate the shop visit requirement and to impose a calendar end-date for compliance with the proposed FFG modification. The FAA concurs, and has revised this final rule to delete the shop visit requirement. The FAA has determined that the shop visit requirement is not necessary and that a calendar end-date will assure an adequate level of safety.

One commenter states that the compliance period for the proposed AD should be extended from 9 months to one year. The commenter bases this request on the fact that there are limited facilities available to modify the FFG. The FAA does not concur. The manufacturer has established sufficient inventory and facility capability to implement the modification program within 9 months after the effective date of the final rule AD. The FAA also notes that the burden on the current inventory and facilities will be minimized because a large population of operators have already voluntarily complied with the proposed FFG modification.

One commenter states that the modification of the FFG, as required by the proposed AD, on one engine for each aircraft, should be sufficient for terminating action to AD 96–04–11, which required selecting anti-ice prior to initiating descent. The FAA does not concur. The FAA is concerned that under the circumstances in which a rundown occurs, there could be excessive crew workload, and that this increased workload could lead to potentially inappropriate actions by the flight crew. The FAA has determined that the interests of the flying public are best served by requiring the proposed FFG modification on both engines to preclude this excessive crew workload.

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

There are approximately 770 engines of the affected design in the worldwide fleet. The FAA estimates that 381 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. The affected FFGs will be modified to incorporate the changes required by this AD on a free-of-charge basis per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $68,580.

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 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

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

97–02–12 Rolls-Royce plc: Amendment 39–9897. Docket 96–ANE–09.

Applicability: Rolls-Royce plc. (R–R) Models RB211–535E4 and –535E4–B turbofan engines installed on Boeing 757–200 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine 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 engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent compressor stall and subsequent engine rundown on one or both engines, accomplish the following:

(a) No later than 9 calendar months after the effective date of this AD, install a fuel flow governor (FFG) that incorporates a revised minimum compressor discharge P4 stop setting, in accordance with R-R Mandatory Service Bulletin (SB) No. RB.211–73–B869, Revision 1, dated May 24, 1996.

(b) Installation of improved FFGs on both engines for each Boeing 757 aircraft in accordance with paragraph (a) of this AD constitutes terminating action to the requirements of AD 96–04–11.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

(e) The actions required by this AD shall be done in accordance with the following R-R Mandatory SB:

Document No.	Pages	Revision	Date
RB.211–73–B869.	1–4	1	May 24, 1996.
	5–9	Original	February 12, 1996.
Supplement ...	1	Original	February 12, 1996.

Total Pages: 10.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce plc, P.O. Box 31, Moor Lane, Derby, DE248BJ, United Kingdom; telephone 1332–249428, fax 1332–249423. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC.

(f) This amendment becomes effective on April 4, 1997.

Issued in Burlington, Massachusetts, on January 13, 1997.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–1701 Filed 1–31–97; 8:45 am]

BILLING CODE 4910–13–U

---

14 CFR Part 39

[Docket No. 94–ANE–49; Amendment 39–9898; AD 97–02–13]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JFTD12A Series and T73 Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Pratt & Whitney JFTD12A series and T73 series turboshaft engines, that requires initial and repetitive fluorescent penetrant inspections (FPI) of compressor hubs, disks, spacers, and bolted on (rotating) airseals for cracks, and replacement, if necessary, with serviceable parts. This amendment is prompted by reports of extensive compressor rotor part cracking. The actions specified by this AD are intended to prevent disk rupture, an uncontained engine failure, and possible damage to the aircraft.

DATES: Effective April 4, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 4, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, Publications Department, Supervisor Technical Publications Distribution, M/S 132–30, 400 Main St., East Hartford, CT 06108; telephone (860) 565–7700, fax (860) 565–4503. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Barbara Caufield, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7146, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) JFTD12A series and T73 series turboshaft engines was published in the Federal Register on October 20, 1995 (60 FR 54203). That action proposed to require initial and repetitive fluorescent penetrant inspections (FPI) of compressor hubs, disks, spacers, and bolted on (rotating) airseals for cracks, and replacement, if necessary, with serviceable parts, in accordance with PW Alert Service Bulletin (ASB) No. 5856, Revision 1, dated December 13, 1991.

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

One commenter states specific part numbers (P/N's) for all parts affected by the AD should be added to the compliance section, in order to eliminate the need to revise the AD if future part modifications occur that negate the necessity for inspection. The FAA does not concur. As written, the AD applies to all JFTD12A–4A, –5A, T73–P–1, and –P–700 engines regardless of the hardware installed. The note following the applicability paragraph clarifies that if a future part modification occurs, the operator must request an alternative method of compliance in order to comply with the AD. The operator cannot make the determination to not comply with the AD independently. There may not be a need to revise or supersede the AD since an alternative method of compliance may be available.

The commenter also states that a specific inspection of the third stage disk tiebolt holes utilizing eddy current techniques in accordance with a Pratt & Whitney approved procedure must be accomplished in addition to FPI. Cracks have only occurred in the third stage disk tiebolt holes and the second stage disk blade pin holes. The commenter takes specific exception to the use of FPI to detect these cracks as they have significant experience that the utilization of the highest sensitivity penetrant required by Pratt & Whitney does not consistently identify cracked disks. The FAA does not concur. The risk analysis used to determine the AD compliance interval takes into account the reliability of the FPI, including the probability that an FPI inspection will not identify all cracks. The FAA has determined that FPI is adequate for detecting cracks in the third stage disk tiebolt holes and second stage disk blade pin holes.

The commenter also states that the AD should only address second and third stage disks and allow all the other parts to remain at the overhaul inspection interval of 3,000 hours time in service (TIS). Cracks have been found only in the third stage disk tiebolt holes and the second stage disk blade pin holes. There has never been a crack found in first stage or fourth through ninth stage disks. Therefore, continued inspection of all other parts at 1,500 hour TIS intervals is unnecessary and an economic burden, especially due to the complexity of deblading all nine stages of compressor disks. The FAA concurs in part. The FAA agrees that the inspection of the first stage disk and fourth through ninth stage disks may be accomplished at a 3,000 hour TIS overhaul interval; this final rule has been revised accordingly. However, inspection of all other parts, including second and third stage disks, hubs, spacers and bolted on (rotating) airseals, must still be accomplished at 1,500 hour TIS intervals. The FAA has revised the AD accordingly.

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

There are approximately 120 engines of the affected design in the worldwide fleet. The FAA estimates that 47 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 140 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $40,670 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,306,290.

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 adding the following new airworthiness directive:

97–02–13 Pratt & Whitney: Amendment 39–9898. Docket 94–ANE–49.

Applicability: Pratt & Whitney Models JFTD12A–4A and –5A, and T73–P–1 and –P–700 turboshaft engines, installed on but not limited to Sikorsky S–64 series and CH–54 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine 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 engines 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 (e) 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 disk rupture, an uncontained engine failure, and possible damage to the aircraft, accomplish the following:

(a) Perform a fluorescent penetrant inspection (FPI) of compressor hubs, second stage and third stage disks, spacers, and bolted on (rotating) airseals for cracks in accordance with PW Alert Service Bulletin (ASB) No. 5856, Revision 1, dated December 13, 1991, as follows:

(1) Prior to further flight, for engines that equal or exceed 2,200 hours time in service (TIS) since last FPI of affected parts on the effective date of this airworthiness directive (AD).

(2) At or before 2,200 hours TIS since last FPI of affected parts on the effective date of this AD, for engines that equal or exceed 1,500 hours TIS but have less than 2,200 hours TIS since last FPI of affected parts on the effective date of this AD.

(3) At or before 1,500 hours TIS since last FPI of affected parts on the effective date of this AD, for engines that have less than 1,500 hours TIS since last FPI of affected parts on the effective date of this AD.

(4) Prior to further flight, remove cracked compressor hubs, second and third stage disks, spacers, and bolted on (rotating) airseals, and replace with serviceable parts.

(b) Thereafter, except for engines described in paragraphs (c) and (d) of this AD, perform repetitive FPI of affected parts for cracks at

intervals not to exceed 1,500 hours TIS since last FPI in accordance with PW ASB No. 5856, Revision 1, dated December 13, 1991.

(c) Perform FPI of compressor first stage and fourth through ninth stage disks for cracks, in accordance with PW ASB No. 5856, Revision 1, dated December 13, 1991, as follows:

(1) At or before 3,000 hours TIS since last FPI of affected parts on the effective date of this AD.

(2) Thereafter, perform repetitive FPI of affected parts for cracks at intervals not to exceed 3,000 hours TIS since last FPI, in accordance with PW ASB No. 5856, Revision 1, dated December 13, 1991.

(3) Prior to further flight, remove cracked compressor first stage and fourth through ninth stage disks, and replace with serviceable parts.

(d) For all engines inspected in accordance with paragraphs (a) or (b) of this AD that have zero time second and third stage compressor disks installed after the effective date of this AD, perform the next FPI of affected parts at or before 3,000 hours TIS since the last FPI performed in accordance with paragraph (a) or (b) of this AD, and thereafter perform repetitive FPI of affected parts for cracks at intervals not to exceed 1,500 hours TIS since the last FPI, in accordance with PW ASB No. 5856, Revision 1, dated December 13, 1991. Prior to further flight, remove cracked compressor disks, and replace with serviceable parts.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

(g) The actions required by this AD shall be done in accordance with the following PW ASB:

Document No.	Pages	Revision	Date
No. 5856	1–3	1	December 13, 1991.
	4	Original.	June 16, 1989.
	5–7	1	December 13, 1991.

Total pages: 7.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, Publications Department, Supervisor Technical Publications Distribution, M/S 132–30, 400 Main St., East Hartford, CT 06108; telephone (860) 565–7700. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC.

(h) This amendment becomes effective on April 4, 1997.

Issued in Burlington, Massachusetts, on January 13, 1997.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–1700 Filed 1–31– 97; 8:45 am]

BILLING CODE 4910–13–P

---

14 CFR Part 39

[Docket No. 96–ANE–33; Amendment 39–9896; AD 97–02–11]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–200 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Pratt & Whitney (PW) JT8D–200 series turbofan engines, that requires, for front compressor front hubs (fan hubs), cleaning; initial and repetitive eddy current (ECI) and fluorescent penetrant inspections (FPI) of tierod and counterweight holes for cracks; removal of bushings; the cleaning and ECI and FPI of bushed holes for cracks; and, if necessary, replacement with serviceable parts. In addition, this AD requires reporting the findings of cracked fan hubs. This amendment is prompted by a report of an uncontained failure of a fan hub. The actions specified by this AD are intended to prevent fan hub failure due to tierod, counterweight, or bushed hole cracking, which could result in an uncontained engine failure and damage to the aircraft.

DATES: Effective March 5, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 5, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7134, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) JT8D–200 series turbofan engines was published in the Federal Register on October 4, 1996 (61 FR 51847). That action proposed to require cleaning, initial and repetitive eddy current inspections (ECI) and fluorescent penetrant inspections (FPI) for cracks of tierod and counterweight holes; removing bushings; initial and repetitive ECI and FPI of bushed holes for cracks; and, if necessary, replacing with serviceable parts. The compliance requirements allow selection of inspection schedules depending on fan hub S/Ns listed in PW Alert Service Bulletin (ASB) No. A6272, dated September 24, 1996, and includes an inspection schedule for those fan hubs whose S/Ns are not listed in the ASB. In addition, the proposed AD requires reporting the number of initial inspections and the findings of cracked fan hubs.

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

One commenter states that the Notice of Proposed Rulemaking (NPRM) as written was confusing and subject to interpretation, and offered a number of editorial suggestions. The FAA reviewed the suggestions and concurs in part with the changes.

The commenter states that the applicability should be expressed to the lowest practical level by including the phrase ''front compressor front hub (fan hub)'' and its corresponding part number in the applicability statement. The FAA concurs. The applicability section in this final has been revised to read ''* * * engines with front compressor front hub (fan hub) Part Number 5000501–01 installed''.

The commenter states that a stronger statement regarding the initial inspections for fan hubs with less than 4,000 cycles since new (CSN) was

needed. The commenter suggests adding the intent of the first note on page 8 of PW ASB No. A6272, dated September 24, 1996, which requires inspection after the fan hub has accumulated more than 4,000 cycles in service. This change would eliminate the need for paragraph (a) of the proposed rule. The FAA concurs. The structure of the compliance section in this final rule has been modified to include the initial 4,000 CSN inspection requirement in the beginning of each of two compliance paragraphs. Paragraph (a) of this final rule will cover coolant channel drilled (CCD) fan hubs identified by S/N in the SB, and paragraph (b) for inspection of all other affected fan hubs. For each population of hubs, the initial inspection must not be completed until the fan hub has accumulated more than 4,000 CSN.

The commenter states that paragraph (c) of the NPRM is vague and should specify what is to be reported. The FAA concurs and has added the requirement of reporting in accordance with Accomplishment Instructions, Paragraph F, of Attachment 1 to PW ASB No. A6272, dated September 24, 1996, to this final rule.

The commenter states that paragraph (a) and Table 1 of the NPRM do not clearly indicate that the operator is to choose one of the three options in Table 1 and stick with the corresponding reinspection interval. The commenter suggests adding ''or'' after options 1 and 2 in Table 1 and adding a note to require that the operator follow the initial and repetitive requirements of the option chosen. The FAA concurs in part. The ''or'' has been added as suggested. The original proposal contained such a requirement in proposed paragraph (b)(1)(i), which has been carried over into new paragraph (a)(2). Operators must follow the repetitive inspection interval corresponding to the selected initial inspection time.

The commenter states that the time limit for reporting in paragraph (c) of the NPRM is unreasonable because its administrative personnel do not work on weekends and during holiday periods. The commenter recommends a 10 day limit for reporting. The FAA does not concur. A 48 hour period should be adequate and is a standard reporting requirement time limit in ADs. The AD does not require that only administrative personnel submit the report to the FAA.

Two commenters, including the National Transportation Safety Board, state that they agree with the NPRM's proposed initial and repetitive inspection program on the population of hubs that were produced using the CCD procedure, based on the investigation that indicates that these hubs may have a higher risk of abusive machining damage. However, since the commenters do not agree that CCD hubs are the only suspect fan hubs, the commenters do not agree with the proposed inspection program for the remaining hub population. The NPRM proposed to inspect the remaining population (those hubs not CCD) when the hub assembly is stripped to the piece part level. The commenters are concerned that this proposal may allow hubs to be initially inspected as late as 10,000 cycles in service (CIS) after the effective date of this AD. The commenters believe that these hubs are of nearly equal concern as the fan hubs produced by CCD and the proposed interval is too long to detect all potential cracks before they may be expected to propagate to failure. The commenters propose that inspection/reinspection occur at the next shop visit for all of those hubs that have between 10,000 and 15,000 CIS since new regardless of the type of drill used during manufacture.

The FAA does not concur at this time. The FAA's analysis of this problem indicates that hubs manufactured using coolant-channel drills are more susceptible to work hardened areas in the tierod and counterweight holes that could serve as a crack origin. The FAA concludes, therefore, that it is logical to treat these two distinct populations of compressor hubs differently in terms of when operators must perform the required inspections. Requiring all hubs to be inspected according to the CCD schedule is not supported by the available data. The investigation, however, continues and should any additional data become available, the FAA may initiate further rulemaking as required.

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

There are approximately 2,624 engines of the affected design in the worldwide fleet. The FAA estimates that 1,279 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 20 work hours per engine for 360 engines to disassemble, remove, inspect, and reassemble engines, and 4 work hours per engine for 919 engines to inspect at piece-part exposure, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $862,560.

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 adding the following new airworthiness directive:

97–02–11 Pratt & Whitney: Amendment 39–9896. Docket 96–ANE–33.

Applicability: Pratt & Whitney JT8D–209, –217, –217C, and –219 series turbofan engines with front compressor front hub (fan hub), Part Number (P/N) 5000501–01, installed. These engines are installed on but not limited to McDonnell Douglas MD–80 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine 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 engines 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 (e) 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 front compressor front hub (fan hub) failure due to tierod, counterweight, or bushed hole cracking, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

(a) For fan hubs identified by serial numbers (S/Ns) in Appendix A of PW Alert Service Bulletin (ASB) No. A6272, dated September 24, 1996, after the fan hub has accumulated more than 4,000 cycles in service since new (CSN), accomplish the following:

(1) Select an initial inspection interval from Table 1 of this AD and inspect for cracks in accordance with the Accomplishment Instructions, Paragraph A, Part 1, and, if applicable, Paragraph B, of PW ASB No. A6272, dated September 24, 1996.

(2) Reinspect at the interval in Table 1 of this AD that corresponds to the selected initial inspection interval, and in accordance with the Accomplishment Instructions, Paragraph A, Part 1, and, if applicable, Paragraph B, of PW ASB No. A6272, dated September 24, 1996.

TABLE 1

Initial inspection	Reinspection
1. Within 1,050 cycles in service (CIS) after the effective date of this AD, or prior to accumulating 5,050 CSN, whichever occurs later.	After accumulating 2,500 CIS since last inspection, but not to exceed 6,000 CIS since last inspection.
OR	
2. Within 990 CIS after the effective date of this AD, or prior to accumulating 4,990 CSN, whichever occurs later.	After accumulating 2,500 CIS since last inspection, but not to exceed 8,000 CIS since last inspection.
OR	
3. Within 965 CIS after the effective date of this AD, or prior to accumulating 4,965 CSN, whichever occurs later.	After accumulating 2,500 CIS since last inspection, but not to exceed 10,000 CIS since last inspection.

(b) For fan hubs with S/Ns not listed in Appendix A of PW ASB No. A6272, dated September 24, 1996, after the fan hub has accumulated more than 4,000 CSN, inspect at the next time the fan hub is in the shop at piece-part level, but not to exceed 10,000 CIS after effective date of this AD in accordance with the Accomplishment Instructions, Paragraph A, Part 2, and, if applicable, Paragraph B, of PW ASB No. A6272, dated September 24, 1996.

(c) Remove from service fan hubs found cracked or fan hubs that exceed the bushed hole acceptance criteria in accordance with PW ASB No. A6272, dated September 24, 1996, and replace with serviceable parts.

(d) Report findings of cracked fan hubs in accordance with Accomplishment Instructions, Paragraph F, of Attachment 1 to PW ASB No. A6272, dated September 24, 1996, within 48 hours after inspection to Robert Guyotte, Manager, Engine Certification Branch, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7142, fax (617) 238–7199; Internet: Robert.Guyotte@faa.dot.gov. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

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

(g) The actions required by this AD shall be done in accordance with the following PW ASB:

Document No.	Pages	Revision	Date
A6272	1–21	Original	September 24, 1996.
NDIP–892 ..	1–30	A	September 15, 1996.
Attachment I.	AI–1–AI–4	A	September 15, 1996.

Total pages: 55.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., Suite 700, Washington, DC.

(h) This amendment becomes effective on March 5, 1997.

Issued in Burlington, Massachusetts, on January 13, 1997.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–1703 Filed 1–31–97; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 95–NM–106–AD; Amendment 39–9910; AD 97–03–04]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 and 737 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 727 and 737 series airplanes, that requires replacing the fuel cap assembly with a new assembly on the inlet fitting at the inside top of the Boeing-designed auxiliary fuel tank(s). This amendment also requires installing certain new placards once the replacement action is accomplished. This amendment is prompted by reports that the fuel cap assembly, due to its design, became loose and allowed fuel to enter the deactivated auxiliary fuel tanks on in-service airplanes. The actions specified by this AD are intended to prevent unwanted fuel transferring to the deactivated auxiliary fuel tanks, due to the problems associated with a loose fuel cap assembly.

DATES: Effective March 10, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director

of the Federal Register as of March 10, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2686; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 727 and 737 series airplanes was published in the Federal Register on June 19, 1996 (61 FR 31061). That action proposed to require replacing the fuel cap assembly with a new assembly on the inlet fitting at the inside top of the auxiliary fuel tank. That action also proposed to require the replacement of currently-installed ''INOP'' placards with new placards.

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

Support for the Proposed Rule

One commenter supports the proposal.

Request To Clarify Applicability of the Proposed Rule

One commenter requests clarification as to what airplanes would be subject to the proposed AD. The commenter points out that, although the applicability statement of the proposal indicates that it is applicable to all Boeing Model 737 series airplanes, the referenced Boeing Alert Service Bulletin 737–28A1032 applies only to Model 737–200 series airplanes. The commenter questions whether the proposed rule would be applicable to all other types of Model 737's that are equipped with forward an/or aft auxiliary fuel tanks.

The FAA concurs that clarification is needed with respect to the applicability of this AD. First, this AD addresses problems associated only with certain Boeing-designed auxiliary fuel tanks. Those fuel tanks are installed only on airplanes specified in the effectivity listing of Boeing Alert Service Bulletin 727–28A0062, Revision 5, dated May 4, 1995 (for Model 727 series airplanes), and Boeing Alert Service Bulletin 737–28A1032, Revision 2, dated May 4, 1995 (for Model 737–200 series airplanes). The final rule has been revised to specify that:

1. the airplanes subject to the AD are the ones specified in those Boeing alert service bulletins, and
2. the subject auxiliary fuel tanks are designed by Boeing.

Request for Clarification Regarding Future Applicability of Proposed Rule

One commenter requests clarification as to whether airplanes whose auxiliary fuel tanks are not currently deactivated, would be subject to the requirements of the proposed rule if their auxiliary fuel tanks were to be deactivated at some time in the future.

The FAA concurs that clarification is necessary regarding this point. The applicability statement clearly specifies that the AD is applicable to airplanes with deactivated auxiliary fuel tanks. Therefore, the AD is applicable to any airplane whenever its auxiliary fuel tank is deactivated—now or at any time in the future. The FAA has added a NOTE to the final rule to specify that the requirements of the AD become applicable whenever an auxiliary fuel tank is deactivated on the subject airplanes.

Conclusion

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

Cost Impact

There are approximately 211 Boeing Model 727 series airplanes and 36 Boeing Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 134 Boeing Model 727 series airplanes and 25 Boeing Model 737 series airplanes of U.S. registry will be affected by this AD.

For Boeing Model 727 series airplanes, the required modification will take approximately 53 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 AD on U.S. operators of Model 727 series airplanes is estimated to be $426,120, or $3,180 per airplane.

For Boeing Model 737 series airplanes, the required modification will take approximately 18 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 AD on U.S. operators of Model 737 series airplanes is estimated to be $27,000, or $1,080 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 adding the following new airworthiness directive:

97–03–04—Boeing: Amendment 39–9910. Docket 95–NM–106–AD.

Applicability: Model 727 and 737 airplanes; as listed in Boeing Alert Service Bulletin 727–28A0062, Revision 5, dated May 4, 1995 (for Model 727 series airplanes) and Boeing Alert Service Bulletin 737–28A1032, Revision 2, dated May 4, 1995 (for Model 737 series airplanes); equipped with forward and/or aft Boeing-designed auxiliary fuel tanks that have been deactivated; certificated in any category.

Note 1: If the forward and/or aft Boeing-designed auxiliary fuel tank(s) on any of the airplanes specified in the applicability provision is currently activated, the requirements of this AD become applicable whenever that auxiliary fuel tank is deactivated.

Note 2: 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 (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the nut of the fuel cap assembly from backing off and the cap from loosening, and subsequently, unwanted fuel transferring to the auxiliary fuel tanks, accomplish the following:

(a) Within 6 months after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD, in accordance with Part IV of the Accomplishment Instructions of Boeing Alert Service Bulletin 727–28A0062, Revision 5, dated May 4, 1995 (for Model 727 series airplanes); or Boeing Alert Service Bulletin 737–28A1032, Revision 2, dated May 4, 1995 (for Model 737 series airplanes); as applicable.

(1) Replace the fuel cap assembly having part number (P/N) AN929A24 with a new fuel cap assembly having P/N AN929L24 on the inlet fitting at the inside top of the auxiliary fuel tank, in accordance with the applicable service bulletin. And

(2) Replace the INOP placards with new placards, in accordance with the applicable service bulletin.

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

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

(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) The actions shall be done in accordance with Boeing Alert Service Bulletin 727–28A0062, Revision 5, dated May 4, 1995 (for Model 727 series airplanes); or Boeing Alert Service Bulletin 737–28A1032, Revision 2, dated May 4, 1995 (for Model 737 series airplanes); as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on March 10, 1997.

Issued in Renton, Washington, on January 23, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–2223 Filed 1–31–97; 8:45 am]

BILLING CODE 4910–13–U

---

14 CFR Part 39

[Docket No. 96–NM–235–AD; Amendment 39–9911; AD 97–03–05]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas DC–9 series airplanes, that currently requires repetitive visual inspections to detect corrosion and cracking of the fuselage upper skin and frames in the area of the loop antenna assemblies of the automatic direction finder (ADF), and repair, if necessary. This amendment adds a requirement to perform a visual and an eddy current inspection of the fuselage forward upper skin under the antennas, followed by the reinstallation of the ADF antennas using an improved procedure. This amendment is prompted by the development of a modification of the ADF antenna installation that constitutes terminating action for the required repetitive visual inspections. The actions specified by this AD are intended to prevent rapid decompression of the fuselage, significant structural damage, and subsequent reduced structural integrity of the airplane, due to problems associated with corrosion and fatigue cracking in the subject area.

DATES: Effective March 10, 1997.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin DC9–53A282, dated March 20, 1996, listed in the regulations, 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 April 15, 1996 (61 FR 15882, April 10, 1996).

The incorporation by reference of McDonnell Douglas Service Bulletin DC9–53–284, dated August 20, 1996, listed in the regulations, is approved by the Director of the Federal Register as of March 10, 1997.

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

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627–5324; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96–07–51, amendment 39–9562 (61 FR 15882, April 10, 1996), which is applicable to certain McDonnell Douglas DC–9 series airplanes, was published in the Federal Register on October 23, 1996 (61 FR 54969). That action proposed to continue to require repetitive internal

visual inspections to detect corrosion and cracking of the fuselage forward upper skin and to detect cracking of the fuselage frame in the area of the forward and aft loop antenna assemblies of the automatic direction finder (ADF), as is currently required by AD 97–07–01. However, it also proposed to add a requirement to perform a visual and an eddy current inspection of the fuselage forward upper skin under the antennas, followed by the reinstallation of the ADF antennas using an improved procedure. Accomplishment of these actions would constitute terminating action for the required repetitive inspections.

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

Support for the Proposal

Five commenters support the proposed AD.

Request To Extend Compliance Time for Certain Airplanes

One commenter supports the intent of the proposal, but requests that the compliance time for accomplishing the terminating action be extended from the proposed 24 months to 48 months for those airplanes on which the antenna has been reinstalled within the past 4 years. The commenter notes that the compliance schedule for the terminating action does not address the condition where the ADF antenna was previously removed and the fuselage skin inspection and repaired, i.e., in accordance with the previously issued AD 96–07–51. The commenter considers that, for the repaired airplanes, a higher level of safety has been achieved than if no such repair had been performed. Considering the number of airplanes that are affected by this AD (approximately 403), allowing an extension of the time for installing the final fix on the previously repaired airplanes also will minimize the operational impact of the AD on operators.

The FAA concurs with the commenter's request. The FAA acknowledges that AD 96–07–51 (as well as this new AD) requires that, if any cracking or corrosion is found and it is within certain limits, the area must be repaired in accordance with either the Structural Repair Manual (SRM) or a manner approved by the FAA. In consideration of the increased structural integrity of the area that is provided by such repairs, the FAA finds that the risk of additional cracking is reduced and accomplishment of the terminating action may be extended for an additional 2 years (for a total of 4 years) without adversely affecting safety. Paragraph (b) of the final rule has been revised accordingly.

Conclusion

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

Cost Impact

There are approximately 569 McDonnell Douglas Model DC–9 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 403 airplanes of U.S. registry will be affected by this proposed AD.

The inspections that were previously required by AD 96–07–51 and retained in this new AD take approximately 5 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 $120,900, or $300 per airplane, per inspection.

The terminating action that is required by this new AD will take approximately 16 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 new requirements of this AD on U.S. operators is estimated to be $386,880, or $960 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 39–9562 (61 FR 15882, April 10, 1996), and by adding a new airworthiness directive (AD), amendment 39–9911, to read as follows:

97–03–05 McDonnell Douglas: Amendment 39–9911. Docket 96–NM–235–AD. Supersedes AD 96–07–51, Amendment 39–9562.

Applicability: Model DC–9 series airplanes having fuselage numbers 001 through 631 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 otherwise 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)(1) 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 rapid decompression of the fuselage, significant structural damage, and subsequent reduced structural integrity of the airplane, due to problems associated with

corrosion and fatigue cracking, accomplish the following:

(a) Within 15 days after April 15, 1996 (the effective date of AD 96–07–51, amendment 39–9562): Perform an internal visual inspection to detect corrosion and cracking of the fuselage forward upper skin and to detect cracking of the fuselage frame in the area of the forward and aft loop antenna assemblies of the automatic direction finder (ADF), in accordance with McDonnell Douglas Alert Service Bulletin DC9–53A282, dated March 20, 1996.

(1) If no corrosion or cracking is detected: Repeat the visual inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 6 months.

(2) If any corrosion or cracking is detected that is within the limits specified in Chapter 53–04, Figure 29, of the DC–9 Structural Repair Manual (SRM): Prior to further flight, repair in accordance with Chapter 53–04, Figure 29, of the SRM. Thereafter, repeat the visual inspection required by paragraph (a) of this AD at intervals not to exceed 6 months.

(3) If any corrosion or cracking is detected in the fuselage forward upper skin, or if any cracking is detected in the fuselage frame, and that corrosion or cracking is outside the limits specified in Chapter 53–04, Figure 29, of the SRM: Prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(b) At the applicable time specified in paragraph (b)(1) of (b)(2) of this AD, remove the ADF antennas and perform both a visual inspection and a high frequency eddy current inspection to detect corrosion and cracking of the fuselage forward upper skin under the antennas, in accordance with McDonnell Douglas Service Bulletin DC9–53–284, dated August 20, 1996.

(1) For airplanes on which the ADF antenna has not been previously removed and the fuselage skin has not been previously inspected for evidence of corrosion, within the last 4 years prior to the effective date of this AD: Accomplish the inspections within 2 years after the effective date of this AD.

(2) For airplanes on which the ADF antenna has been previously removed and the fuselage skin has been previously inspected for evidence of corrosion and/or repaired within the last 4 years prior to the effective date of this AD: Accomplish the inspections within 4 years after the effective date of this AD.

(c) As a result of the inspections required by paragraph (b) of this AD, accomplish the applicable action specified in paragraph (c)(1), (c)(2), or (c)(3) of this AD. Accomplishment of the actions specified in paragraph (c)(1) or (c)(2) constitutes terminating action for the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) If no cracking or corrosion is detected: Prior to further flight, reinstall the ADF antennas using the improved installation procedure in accordance with McDonnell Douglas Service Bulletin DC9–53–284, dated August 20, 1996. Thereafter, no further action is required by this AD.

(2) If any cracking or corrosion is detected that is within the limits specified in Chapter 53–04 of the DC–9 Structural Repair Manual (SRM): Prior to further flight, repair in accordance with Chapter 53–04 of the DC–9 SRM, and reinstall the ADF antennas using the improved installation procedure in accordance with McDonnell Douglas Service Bulletin DC9–53–284, dated August 20, 1996. Thereafter, no further action is required by this AD.

(3) If any cracking or corrosion is detected that is outside the limits specified in Chapter 53–04 of the SRM: Prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Certification Office (ACO), FAA, Transport Airport Directorate.

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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

(2) Alternative methods of compliance, approved in accordance with AD 96–07–71, amendment 39–9562, are approved as alternative methods of compliance with this AD.

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

(f) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC9–53A282, dated March 20, 1996; and McDonnell Douglas Service Bulletin DC9–53–284, dated August 20, 1996. The incorporation by reference of the former service bulletin 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 April 15, 1996 (61 FR 15882, April 10, 1996). The incorporation by reference of the latter service bulletin was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1-L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on March 10, 1997.

Issued in Renton, Washington, on January 23, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–2222 Filed 1–31–97; 8:45 am]

BILLING CODE 4910–13–U

---

14 CFR Part 39

[Docket No. 96–CE–33–AD; Amendment 39–9909; AD 97–03–03]

RIN 2120–AA64

Airworthiness Directives; Pilatus Britten-Norman Ltd. BN–2, BN–2A, and BN–2B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Pilatus Britten-Norman BN–2, BN–2A, and BN–2B series airplanes that do not have generator terminal diodes installed with Modification NB/M/1571. This action requires removing the terminal diodes that have a 70 amp direct current (DC) Generation System, which is referred to as Modification NB/M/1148, and installing Modification NB/M/1571, which consists of new terminal diodes with a higher amp rating. Reports from operators that one or both diodes were failing prompted this action. The actions specified by this AD are intended to prevent loss of electrical power to the navigation, communications, and light systems, which could impair the pilot's ability to maintain control of the airplane.

DATES: Effective March 23, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 23, 1997.

ADDRESSES: Service information that applies to this AD may be obtained from Pilatus Britten-Norman, Ltd., Bembridge, Isle of Wight, United Kingdom, PO35 5PR. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96-CE–33–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Rodriguez, Program Manager, Brussels Aircraft Certification Division, FAA, Europe, Africa and the Middle

East Office, c/o American Embassy, b-1000, Brussels, Belgium; telephone (322) 508.2715, facsimile (322) 230.6899 or Mr. S. M. Nagarajan, Project Officer, Small Airplane Directorate, 1201 Walnut, Suite 900, Kansas City, Missouri, 64106; telephone (816) 426–6932, facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of this AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Pilatus Britten-Norman BN–2, BN–2A, and BN–2B series airplanes that do not have generator terminal diodes with Modification NB/M/1571 installed was published in the Federal Register on August 22, 1996 (61 FR 43319). The action proposed to require removing the diodes (type 10B1 or 10D1) installed on the terminals of the STBD (RIGHT) GEN and PORT (LEFT) GEN switches (SW2 and SW3), and installing new approved diodes that are type 60S6. Accomplishment of the proposed action would be in accordance with Pilatus Britten-Norman Aircraft Manufacturers Service Bulletin (SB) BN–2/SB.228, Issue 2, dated January 17, 1996.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that one airplane in the U.S. registry will be affected by this AD, that it will take approximately one workhour per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $40 per airplane. Based on these figures, the total cost impact of this AD on the U.S. operator is estimated to be $100. The FAA has no way of determining whether the owner/operator of this airplane has accomplished this action.

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 copy of the final 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, 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 adding a new airworthiness directive (AD) to read as follows:

97–03–03 Pilatus Britten-Norman Ltd.: Amendment 39–9909; Docket No. 96–CE–33–AD.

Applicability: BN–2, BN–2A, and BN–2B series airplanes (all serial numbers) that do not have Modification NB/M/1571 installed, 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 within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent loss of electrical power to the navigation, communications and light systems, which could impair the pilot's ability to maintain control of the airplane, accomplish the following:

(a) Remove the diodes (quantity 2, part number (P/N) 340502014, type 10B1 or 10D1) installed on the terminals of the STBD (RIGHT) GEN and PORT (LEFT) GEN switches (SW2 and SW3), and install new approved diodes (quantity 2, P/N NB–81–5873, type 60S6) in accordance with the Accomplishment Instructions section in Pilatus Britten-Norman Aircraft Manufacturers Service Bulletin (SB) BN–2/SB.228, Issue 2, dated January 17, 1996.

(b) Accomplishment of paragraph (a) of this AD is considered accomplishment of Modification NB/M/1571.

(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 compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Division, FAA, Europe, Africa and the Middle East Office, c/o American Embassy, b-1000, Brussels, Belgium or the Manager, Small Airplane Directorate, 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, Brussels Aircraft Certification Division or the Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels Aircraft Certification Division or the Small Airplane Directorate.

(e) The modification required by this AD shall be done in accordance with Pilatus Britten-Norman Aircraft Manufacturers Service Bulletin BN–2/SB.228, Issue 2, dated January 17, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pilatus Britten-Norman, Ltd., Bembridge, Isle of Wight, United Kingdom, PO35 5PR . Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(f) This amendment (39–9909) becomes effective on March 23, 1997.

Issued in Kansas City, Missouri, on January 22, 1997.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–2216 Filed 1–31–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 744

[Docket No. 961205341–6341–01]

RIN 0694–AB24

Entity List

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Export Administration Regulations (EAR) provide that the Bureau of Export Administration (BXA) may inform exporters, individually or through amendment to the EAR, that a license is required for exports or reexports to certain entities. To provide notice informing the public of an entity subject to this rule, this rule establishes a list of entities that are ineligible to receive specified items without a license.

EFFECTIVE DATE: This rule is effective February 3, 1997.

FOR FURTHER INFORMATION CONTACT: James A. Lewis, Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, Telephone: (202) 482–0092.

SUPPLEMENTARY INFORMATION:

Background

General Prohibition Five (§ 736.2(b)(5) of the EAR) prohibits exports to certain end-users or end-uses without a license. This final rule amends § 744.1 to refer exporters to the newly added Supplement No. 4 to part 744 of the EAR, the Entity List, which informs exporters that a license is required for shipments to Ben Gurion University, Israel, of computers with a CTP between 2,000 and 7,000 Mtops.

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

Rulemaking Requirements

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

2. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control number 0694–0088.

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Hillary Hess, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 744

Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended, as follows:

PART 744—[AMENDED]

1. The authority citation for 15 CFR part 744 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026 (November 15, 1996, 61 FR 58767); Notice of August 15, 1995 (60 FR 42767, August 17, 1995); and Notice of August 14, 1996 (61 FR 42527).

2. Section 744.1 is amended by adding paragraph (c) to read as follows:

§ 744.1 General provisions.

* * * * *

(c) A list of entities is included in Supplement No. 4 to this part 744 of the EAR (Entity List). Exporters are hereby informed that these entities are ineligible to receive any items subject to the EAR without a license to the extent specified in the supplement. License applications will be reviewed under the license review standards set forth in this part 744.

3. A new Supplement No. 4 is added to part 744 to read as follows:

Supplement No. 4 to Part 744—Entity List

This Supplement lists certain entities subject to license requirements for specified items under this part 744 of the EAR. This list of entities is revised and updated on a periodic basis in this Supplement by adding new or amended notifications and deleting notifications no longer in effect.

Ben Gurion University, Israel for computers between 2,000 and 7,000 Mtops

Dated: January 28, 1997.

Sue E. Eckert,

Assistant Secretary for Export Administration.

[FR Doc. 97–2503 Filed 1–31–97; 8:45 am]

BILLING CODE 3510–33–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1507

Fireworks Devices; Fuse Burn Time; Final Rule

AGENCY: Consumer Product Safety Commission.

ACTION: Affirmation of final rule and announcement of effective date.

SUMMARY: The Commission announces that it has received no objections to its final rule amending its fireworks regulations under the Federal Hazardous Substances Act that was published on December 20, 1996. 61 FR 67197. This final rule changes the allowable fuse burn times of fireworks devices (except firecrackers) from the previously required range of 3 to 6 seconds to the range of 3 to 9 seconds.

EFFECTIVE DATE: The rule becomes effective on February 3, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Poth, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207–0001; telephone (301) 504–0400, ext. 1375.

SUPPLEMENTARY INFORMATION: On December 20, 1996, the Commission

issued a final rule amending its fireworks regulations under the Federal Hazardous Substances Act. 61 FR 67197. This final rule changes the allowable fuse burn times of fireworks devices (except firecrackers) from the previously required range of 3 to 6 seconds to the range of 3 to 9 seconds. Increasing the range will improve safety by allowing manufacturers to more consistently produce fireworks that do not have dangerously short fuse burn times of below 3 seconds. Further, the increase in the maximum allowable fuse burn time to 9 seconds will not create any additional risk of injury to consumers.

The procedures established under section 701(e) of the Food, Drug, and Cosmetic Act (''FDCA'') apply to this rulemaking. 15 U.S.C. 1261(q)(2). These procedures provide that, once the Commission issues a final rule, persons who would be adversely affected by the rule have 30 days in which to file objections with the Commission stating the grounds therefor, and to request a public hearing on those objections. 21 U.S.C. 371(e). Here, this 30-day period for objections expired on January 21, 1996.

The Commission is required to publish a notice in the Federal Register specifying any parts of the regulation that have been stayed by the filing of proper objections or, if no objections have been filed, stating that fact. By this notice, the Commission states that no objections to the final rule were filed in this proceeding. Accordingly, the rule will go into effect on February 3, 1997, the date this notice is published in the Federal Register.

Dated: January 28, 1997.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 97–2488 Filed 1–31–97; 8:45 am]

BILLING CODE 6355–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300450; FRL–5584–5]

RIN 2070–AB78

Carboxin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for combined residues of the fungicide carboxin in or on the raw agricultural commodity onion seed in connection with EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of carboxin on onion seed in California and New Jersey. This regulation establishes a maximum permissible level for residues of carboxin in this food pursuant to section 408(l)(6) of the Federal Food, Drug and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. This tolerance will expire and be revoked automatically without further action by EPA on January 17, 1998.

DATES: This regulation becomes effective February 3, 1997. This regulation expires and is revoked automatically without further action by EPA on January 17, 1998. Objections and requests for hearings must be received by EPA on April 4, 1997.

ADDRESSES: Written objections and hearing requests, identified by the docket number, [OPP–300450], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket number, [OPP–300450], should be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen Schaible, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8337, e-mail: schaible.stephen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the fungicide carboxin, 5,6-dihydro-2-methyl-1,4-oxathiin-3-carboxanilide in or on onions (dry bulb) at 0.2 part per million (ppm). This tolerance will expire and be revoked automatically without further action by EPA on January 17, 1998.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq., and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities were discussed in detail in the final rule establishing a tolerance for an emergency exemption for use of propiconazole on sorghum (61 FR 58135, Nov. 13, 1996).

New section 408(b)(2)(A)(i) allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....'' Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of

FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Section 408(l)(6) also requires EPA to promulgate regulations by August 3, 1997, governing the establishment of tolerances and exemptions under section 408(l)(6) and requires that the regulations be consistent with section 408(b)(2) and (c)(2) and FIFRA section 18.

Section 408(l)(6) allows EPA to establish tolerances or exemptions from the requirement for a tolerance, in connection with EPA's granting of FIFRA section 18 emergency exemptions, without providing notice or a period for public comment. Thus, consistent with the need to act expeditiously on requests for emergency exemptions under FIFRA, EPA can establish such tolerances or exemptions under the authority of section 408(e) and (l)(6) without notice and comment rulemaking.

In establishing section 18-related tolerances and exemptions during this interim period before EPA issues the section 408(l)(6) procedural regulation and before EPA makes its broad policy decisions concerning the interpretation and implementation of the new section 408, EPA does not intend to set precedents for the application of section 408 and the new safety standard to other tolerances and exemptions. Rather, these early section 18 tolerance and exemption decisions will be made on a case-by-case basis and will not bind EPA as it proceeds with further rulemaking and policy development. EPA intends to act on section 18-related tolerances and exemptions that clearly qualify under the new law.

II. Emergency Exemption for Carboxin on Onion Seed and FFDCA Tolerances

The California Department of Pesticide Regulations and the New Jersey Department of Environmental Protection requested specific exemptions for use of carboxin on onion seed to control onion smut. The loss of Arasan 50 Red, the fungicide historically used to control onion smut, has resulted in an urgent, non-routine situation for growers. In the past, onion smut was controlled with thiram 50 percent wettable powder (Arasan 50 Red) seed treatments. However, the DuPont Company ceased manufacture of this product in 1985, and growers have since exhausted existing stocks of Arasan 50 Red. According to the Applicants, there are no other registered pesticides or alternative practices available that will control this disease. There are other thiram products registered for use as onion seed treatments, but the maximum label rates are too low to control onion smut.

As part of its assessment of this application for an emergency exemption, EPA assessed the potential risks presented by residues of carboxin on onion seed. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided to grant the section 18 exemption only after concluding that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. This tolerance for carboxin will permit the marketing of onion seed treated in accordance with the provisions of the section 18 emergency exemptions. Consistent with the need to move quickly on the emergency exemptions and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e) as provided in section 408(l)(6). Although this tolerance will expire and be revoked automatically without further action by EPA on December 31, 1997, under FFDCA section 408(l)(5), residues of carboxin not in excess of the amount specified in the tolerance remaining in or on onion seeds after that date will not be unlawful, provided the pesticide is applied during the term of, and in accordance with all the conditions of, the emergency exemptions. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

EPA has not made any decisions about whether carboxin meets the requirements for registration under FIFRA section 3 for use on onion seeds or whether a permanent tolerance for carboxin for onion seeds would be appropriate. This action by EPA does not serve as a basis for registration of carboxin by a State for special local needs under FIFRA section 24(c). Nor does this action serve as the basis for any States other than California to use this product on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemptions for carboxin, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. For many of these studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the ''no-observed effect level'' or ''NOEL'').

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered by EPA to pose no appreciable risk.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose

extrapolations or margin of exposure calculation based on the appropriate NOEL) may be carried out based on the nature of the carcinogenic response and the Agency's knowledge of its mode of action.

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, and other non-occupational exposures, such as where residues leach into groundwater or surface water that is consumed as drinking water. Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100 percent of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. Carboxin is not registered for residential use. Uniroyal Chemical Company has submitted a petition tolerance for the use of carboxin on onion (dry bulb) to the Agency; however, it is pending review. Based on the information submitted to the Agency, EPA has sufficient data to assess the hazards of carboxin and to make a determination on aggregate exposure, consistent with section 408(b)(2), for the time-limited tolerances for residues of carboxin on onion seed at 0.2 ppm. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

1. *Chronic toxicity.* Based on the available chronic toxicity data, the Office of Pesticide Programs (OPP) has established the RfD for carboxin at 0.1 milligrams(mg)/ kilogram(kg)/day. The RfD for carboxin is based on a 2–year feeding study in rats with a NOEL of 10 mg/kg/day and an uncertainty factor of 100. Decreased body weight gain, increased mortality and decreased organ weight (heart, kidney, and spleen) was the effect observed at the Lowest Effect Level (LEL) of 15 mg/kg/day.

2. *Acute toxicity.* Based on available acute toxicity data, OPP has determined that the NOEL of 75 mg/kg/day from the developmental toxicity study in rabbits should be used to assess risk from acute toxicity. The maternal/developmental effects observed at the LEL of 375 mg/kg/day were abortions. The relationship between abortions produced by direct maternal toxicity (i.e. stress) and those effects mediated by reproductive/developmental mechanisms can not be clearly differentiated at this time. The population subgroup of concern for this risk assessment is females 13 years of age and older. This subgroup is representative for both maternal and fetal effects.

3. *Carcinogenicity.* Carboxin's carcinogenicity has not been classified by the Reference Dose (RfD) Committee. However, when last reviewed in 1986, there was no evidence of carcinogenicity in rats or mice.

B. Aggregate Exposure

Tolerances for residues of carboxin in or on food/feed commodities are currently expressed in terms of the combined residues (free and bound) of the fungicide carboxin (5,6-dihydro-2-methyl-1,4-oxathiin-3-carboxanilide) and its sulfoxide metabolite (5,6-dihydro-3-carboxanilide-2-methyl-1,4-oxathiin-4-oxide), expressed in or on certain raw agricultural commodities ranging from 0.01 ppm in eggs to 0.5 ppm in beans, hay, barley and wheat (see 40 CFR 180.301). For the purpose of assessing chronic dietary exposure from carboxin, EPA assumed tolerance level residues and 100 percent of crop treated refinements to estimate the TMRC from all established food uses for carboxin as well as the proposed use on onion seed. There are no livestock feed items associated with this section 18 request, so no additional livestock dietary burden will result from this section 18 registration. Therefore, existing meat/milk/poultry tolerances are adequate.

Other potential sources of exposure of the general population to residues of pesticides are residues in drinking water and exposure from non-occupational (non-dietary) sources. Based on the available studies used in EPA's assessment of environmental risk, carboxin is persistent and leaches into groundwater. There are no established Maximum Concentration Levels (MCLs) for residues of carboxin in drinking water. Health Advisory (HA) Levels for carboxin in drinking water for adults are 4 and 0.7 mg/L (longer term and life time HA levels respectively) and 1 day, 10 day, and longer term HA levels are all 1 mg/L for children.

The Agency does not have available data to perform a quantitative drinking water risk assessment for carboxin at this time. However, previous experience with persistent and mobile pesticides for which there have been available data to perform quantitative risk assessments have demonstrated that drinking water exposure is typically a small percentage of the total exposure when compared to the total dietary exposure. This observation holds even for pesticides detected in wells and drinking water at levels nearing or exceeding established MCLs. Based on this experience and OPP's best scientific judgement, and considering the low percent of the RfD occupied by dietary exposure estimates including onion seed (1.0 percent RfD for U.S. population), EPA does not anticipate that combined exposure from drinking water and dietary exposure would result in a TMRC that exceeds 100 percent of the RfD. Therefore, the EPA concludes that potential carboxin residues in drinking water are not likely to pose a human health concern.

Carboxin is not registered for residential use. Non-occupational exposure to the general population is therefore not expected and not considered in aggregate exposure estimates.

At this time, the Agency has not made a determination that carboxin and other substances that may have a common mode of toxicity would have cumulative effects. Given the time limited nature of this request, the need to make emergency exemption decisions quickly, and the significant scientific uncertainty at this time about how to define common mode of toxicity, the Agency will make its safety determination for this tolerance based on those factors which it can reasonably integrate into a risk assessment. For purposes of this tolerance only, the Agency is considering only the potential risks of carboxin in its aggregate exposure.

C. Safety Determinations For U.S. Population

EPA has concluded that dietary exposure to carboxin will utilize 1.0 percent of the RfD for the U.S. population. As mentioned before, EPA does not expect that chronic exposure from drinking water would result in an aggregate exposure which would exceed 100 percent of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to carboxin residues. For the population subgroup of concern, females 13+ and older (accounts for both maternal and fetal exposure), the calculated Margin of Exposure (MOE) value is 25,000. MOE values over 100 do not exceed the Agency's level of concern for acute dietary exposure. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to carboxin residues.

D. Determination of Safety for Infants and Children

In assessing the potential for additional sensitivity of infants and children to residues of carboxin, EPA considered pre- and post-natal toxicity studies in rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity study in rats does not meet current guideline requirements due to the lack of maternal or developmental effects. In the maternal/developmental toxicity study in the rat the NOEL was >40 mg/kg/day highest dose tested and the NOEL in rabbits was 75 mg/kg/day with a LEL of 375 mg/kg/day based on abortions. In addition, the acute dietary MOE for pregnant women 13+ years old is 25,000. This large MOE supports the conclusion that there are no developmental (prenatal) concerns for both females 13+ years and the pre-natal development of infants from aggregate residues of carboxin.

In the 2-generation reproductive toxicity study in the rat, the reproductive/developmental toxicity NOEL of 10 mg/kg/day was greater than the parental (systemic) toxicity NOEL of 1 mg/kg/day which demonstrates that pup toxicity occurred in the presence of maternal toxicity. This finding suggests that post-natal development in pups is not more sensitive and that infants and children may not be more sensitive to carboxin than adult animals. This information, together with the uncertainty factor of 100 utilized to calculate the RfD for carboxin, is considered adequate protection for infants and children with respect to prenatal and postnatal development against dietary exposure to carboxin residues.

EPA has concluded that the percent of the RfD that will be utilized by chronic dietary exposure to residues of carboxin ranges from 0.7 percent for females 13+ to 2.4 percent for non-nursing infants (<1 year old). The calculated acute MOE for the population subgroup of concern, females 13+ and older, value is 25,000. Both chronic and acute dietary exposure risk assessments assume 100 percent crop treated and use tolerance level residues for all commodities (TMRC estimates). Refinement of the dietary risk assessment by using percent crop treated and anticipated residue (ARC) data would reduce dietary exposure. Therefore, both of these risk assessments are also an over-estimate of dietary risk. Consideration of ARC and percent crop treated would likely result in an ARC which would occupy a percent of the RfD that is likely to be significantly lower than the currently calculated TMRC value. Additionally, the acute dietary MOE would be greater than the current MOE. The addition of potential exposure from carboxin residues in drinking water is not expected to result in an exposure which would exceed the RfD. EPA therefore concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to carboxin residues.

FFDCA section 408 provides that EPA shall apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base unless EPA concludes, based on reliable data, that said additional safety factor is unnecessary. Should an additional uncertainty factor be deemed appropriate, when considered in conjunction with a refine exposure estimate, it is unlikely that the dietary risk will exceed 100 percent of the RfD. Therefore, EPA concludes that this tolerance will not pose an unacceptable risk to infants and children.

V. Other Considerations

The metabolism of carboxin in plants and animals is adequately understood for the purposes of this tolerance. There are no Codex maximum residue levels established for residues of carboxin on onion seed. Adequate methods for purposes of data collection and enforcement of tolerance for carboxin residues are available. Methods for enforcement of tolerances in/on various plant and animal commodities are listed in the Pesticide Analytical Manual (PAM) Vol. II as Method I and Method II.

VI. Conclusion

Therefore, a tolerance in connection with the FIFRA section 18 emergency exemptions is established for residues of carboxin on onion seed at 0.2 ppm. This tolerance will expire and be automatically revoked without further action by EPA on January 17, 1998.

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by April 4, 1997, file written objections to any aspect of this regulation (including the automatic revocation provision) and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Information submitted in connection with an objection or hearing request

may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

EPA has established a record for this rulemaking under docket number [OPP–300450] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above, is kept in paper form. Accordingly, in the event there are objections and hearing requests, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record. The official rulemaking record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

IX. Regulatory Assessment Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, since this action does not impose any information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because FFDCA section 408(l)(6) permits establishment of this regulation without a notice of proposed rulemaking, the regulatory flexibility analysis requirements of the Regulatory Flexibility Act, 5 U.S.C. 604(a), do not apply.

Under 5 U.S.C. 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II of Pub. L. 104–121, 110 Stat. 847), 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) of the APA as amended.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 21, 1997.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.301, by designated the existing text as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 180.301 Carboxin; tolerances for residues.

* * * * *

(b) A time-limited tolerance is established for residues of the combined residues (free and bound) of the fungicide carboxin [5,6-dihydro-2-methyl-1,4-oxathiin-3-carboxanilide) and its sulfoxide metabolite (5,6-dihydro-3-carboxanilide-2-methyl-1,4-oxathiin-4-oxide), each expressed as the parent compound in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerance is specified in the following table. The tolerance expires and is automatically revoked on the date specified in the table without further action by EPA.

Commodity	Parts per million	Expiration/Revocation Date
Onion Seed	0.2	January 17, 1998

[FR Doc. 97–2500 Filed 1–31–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7658]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATES: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street,

SW., Room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Executive Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Executive Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region I				
Connecticut: East Granby, town of, Hartford County.	090025	April 9, 1974, Emerg; Jan. 6, 1982, Reg; Feb. 5, 1997, Susp.	Feb. 5, 1997 ...	Feb. 5, 1997.
Region V				
Wisconsin: Shell Lake, city of, Washburn County.	550469	Nov. 8, 1974, Emerg; Sept. 16, 1988, Reg; Feb. 5, 1997, Susp.	Do	Do.
Region VI				
Arkansas: Searcy, city of, White County	050229	May 6, 1975, Emerg; Feb. 4, 1981, Reg; Feb. 5, 1997, Susp.	Do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region IX				
California: Tehama County, unincorporated areas.	065064	April 23, 1971, Emerg; June 1, 1982, Reg; Feb. 5, 1997, Susp.	Do	Do.
Region I				
Maine: Lyman, town of, York County	230195	July 23, 1975, Emerg; May 15, 1991, Reg; Feb. 19, 1997, Susp.	May 15, 1991	Feb. 19, 1997.
Vermont:				
Londonderry, town of, Windham County ..	500132	July 24, 1975, Emerg; April 1, 1992, Reg; Feb. 19, 1997, Susp.	Jan. 3, 1997 ...	Do.
Rutland, city of, Rutland County	500101	Aug. 30, 1973, Emerg; April 17, 1978, Reg; Feb. 19, 1997, Susp.	April 17, 1978	Do.
Region II				
New York: Trenton, town of, Oneida County ...	360556	April 21, 1975, Emerg; May 1, 1985, Reg; Feb. 19, 1997, Susp.	Jan. 3, 1997 ...	Feb. 19, 1997.
Region III				
Pennsylvania:				
Ambler, borough of, Montgomery County	420947	Dec. 6, 1973, Emerg; Nov. 2, 1977, Reg; Feb. 19, 1997, Susp.	Dec. 19, 1996	Do.
Collegeville, borough of, Montgomery County.	421900	Oct. 29, 1974, Emerg; Feb. 15, 1980, Reg; Feb. 19, 1997, Susp.	Do	Do.
Schwenksville, borough of, Montgomery County.	421905	July 11, 1975, Emerg; Sept. 30, 1981, Reg; Feb. 19, 1997, Susp.	Do	Do.
Springfield, township of, Montgomery County.	425388	March 26, 1971, Emerg; July 7, 1972, Reg; Feb. 19, 1997, Susp.	Do	Do.
Towamencin, township of, Montgomery County.	422236	June 21, 1974, Emerg; July 2, 1980, Reg; Feb. 19, 1997, Susp.	Do	Do.
Upper Frederick, township of, Montgomery County.	421916	Nov. 15, 1974, Emerg; Aug. 17, 1981, Reg; Feb. 19, 1997, Susp.	Dec. 19, 1996	Do.
Upper Merion, township of, Montgomery County.	420957	Dec. 17, 1973, Emerg; Nov. 16, 1977, Reg; Feb. 19, 1997, Susp.	Do	Do.
York Springs, borough of, Adams County	421239	May 30, 1974, Emerg; June 1, 1979, Reg; Feb. 19, 1997, Susp.	Feb. 19, 1997	Do.
West Virginia: Martinsburg, city of, Berkeley County.	540006	Nov. 14, 1974, Emerg; Dec. 18, 1979, Reg; Feb. 19, 1997, Susp.	Jan. 3, 1997 ...	Do.
Region V				
Ohio: Oxford, city of, Butler County	390731	June 20, 1975, Emerg; Feb. 16, 1979, Reg; Feb. 19, 1997, Susp.	Jan. 3, 1997 ...	Do.
Region VII				
Missouri:				
Butler County, unincorporated areas	290044	April 26, 1984, Emerg; April 3, 1985, Feg; Feb. 19, 1997, Susp.	Feb. 19, 1997	Do.
Poplar Bluff, city of, Butler County	290047	July 29, 1975, Emerg; Feb. 4, 1981, Reg; Feb. 19, 1997, Susp.	Do	Do.
Region X				
Idaho: Madison County, unincorporated areas	160217	Feb. 2, 1979, Emerg; June 3, 1991, Reg; Feb. 19, 1997, Susp.	Jan. 3, 1997 ...	Do.

Code for reading third column: Emerg.-Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Issued: January 28, 1997.

Richard W. Krimm,

Executive Associate Director Mitigation Directorate.

[FR Doc. 97–2566 Filed 1–31–97; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 97–2]

Forfeiture Proceedings

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In accordance with the Federal Civil Monetary Penalty Inflation Act of 1990, as amended by the Debt Collection Improvement Act of 1996, this order amends the Commission's rules regarding forfeiture proceedings to implement inflation adjustments to monetary forfeiture penalties that may be assessed by the Commission.

EFFECTIVE DATE: March 5, 1997.

FOR FURTHER INFORMATION CONTACT: Douglas Cooper, Compliance and Information Bureau, (202) 418–1160.

SUPPLEMENTARY INFORMATION:

Adopted: January 3, 1997

Released: January 15, 1997

1. The Debt Collection Improvement Act of 1996 (Public Law 104–134, Sec. 31001, 110 Stat. 1321, 1321–358), enacted on April 26, 1996, amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101–410, 104 Stat. 890, 28 U.S.C. 2461 note), to require all federal departments and agencies to adjust civil monetary penalties,[1] or forfeitures, for inflation no later than 180 days after the date of the amendment of the Debt Collection Improvement Act, and at least once every four years thereafter. This Order implements this requirement by increasing the statutory maximum amounts for monetary forfeiture penalties.

2. Specifically, this Order amends section 1.80 of the Commission's rules, 47 CFR § 1.80, by adding a new paragraph (b)(5) to incorporate the inflation adjustments prescribed in the Debt Collection Improvement Act. Pursuant to the statutory change, this first adjustment is determined by dividing the June 1995 Consumer Price Index (CPI) by the CPI for June of the year the particular forfeiture was set or last adjusted.[2] The result is the cost of living adjustment, also referred to as the inflation factor. The Debt Collection Improvement Act provisions then prescribe that the inflation factor be multiplied by the statutory maximum amount for a monetary forfeiture penalty and the product be rounded according to specified rounding rules.[3] The resulting amount is then added to the statutory maximum amount. The Debt Collection Improvement Act prescribes, however, that the adjustments due to inflation apply only to the violations that occur after the effective date of the Act (October 23, 1996), and that the inflation adjustment cannot exceed 10 percent of the statutory maximum amount.

3. The new section 1.80 (b)(5) applies the inflation adjustment to the statutory maximum amounts that may be assessed by the Commission under the forfeiture authority provisions in the Communications Act, as follows: sections 202(c), 203(e), 205(b), 214(d), 219(b), 220(d), 223(b), 362(a), 362(b), 386(a), 386(b), 503(b), 506, and 634; 47 U.S.C. §§ 202(c), 203(e), 205(b), 214(d), 219(b), 220(d), 223(b), 362(a), 362(b), 386(a), 386(b), 503(b), 506, and 554.[4] In addition, this Order adjusts for inflation the monetary forfeiture penalties set forth in section 1.80 (b)(1), (b)(2), and (b)(3) of the Commission's Rules, which implement the monetary forfeiture penalties in section 503(b) of the Act.

4. Sections 202(c), 203(e), 205(b), 214(d), 219(b), 220(d), 223(b), 362(a), 362(b), 386(a), 386(b), and 503(b) of the Act were set or last adjusted in 1989. Therefore, the June 1989 CPI is used for determining the inflation factor for these sections. Section 506 forfeitures were set or last adjusted in 1954. Section 634 forfeitures were set in 1992. Thus, the June CPI index for 1954 and 1992, respectively, is used to calculate the inflation factors for these forfeitures.

5. We are taking this opportunity to update the statutory citations included in section 1.80(a)(4) of the rules by adding a reference to Section 634 of the Communications Act, which prescribes a forfeiture penalty for violating the equal employment opportunity requirements applicable to cable systems and multichannel video programming distributors, and to include section references to citations to the Communications Act in section 1.80(a)(4) of the rules.

6. The addition of section 1.80(b)(5) and amendments to sections 1.80(b)(1), (b)(2), and (b)(3) of our rules adopted herein implement the statutory requirement of the Debt Collection Improvement Act and the amendments to section 1.80(a)(4) simply update the list of statutory forfeiture provisions. Therefore, the Commission for good cause finds that compliance with the notice and comment provisions of the Administrative Procedure Act (APA) is unnecessary. *See* 5 U.S.C. 553(b)(B).

7. Accordingly, pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and the Debt Collection Improvement Act of 1996, Public Law 104–134, Sec. 31001, 110 Stat. 1321, 1321–358, it is ordered that 47 CFR 1.80(a)(4), 1.80(b)(1), 1.80(b)(2), and 1.80(b)(3) are amended and that 47 CFR 1.80(b)(5) is added as set forth below, effective March 5, 1997.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Claims, Penalties.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Title 47 of the Code of Federal Regulations, Part 1, is amended as follows:

PART 1—[AMENDED]

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

Authority: 15 U.S.C. 79 *et seq.*, and 47 U.S.C. 151, 154(i), 154(j), and 303(r).

2. Section 1.80 is amended by revising the introductory text of paragraph (a) and paragraph (a)(4), the concluding text of paragraph (a), and paragraphs (b)(1), (b)(2) and (b)(3), and by adding new paragraph (b)(5) to read as follows:

§ 1.80 Forfeiture proceedings.

(a) *Persons against whom and violations for which a forfeiture may be assessed.* A forfeiture penalty may be assessed against any person found to have:

* * * * *

(4) Violated any provision of section 1304, 1343, or 1464 of Title 18, United States Code.

A forfeiture penalty assessed under this section is in addition to any other penalty provided for by the Communications Act, except that the penalties provided for in paragraphs (b)(1), (b)(2) and (b)(3) of this section shall not apply to conduct which is subject to a forfeiture penalty under sections 202(c), 203(e), 205(b), 214(d), 219(b), 220(d), 223(b), 362(a), 362(b),

[1] The Federal Civil Penalties Inflation Adjustment Act of 1990 defines a civil monetary penalty as any such penalty, fine or other such sanction that, inter alia, has a maximum amount provided for by Federal Law; and is assessed or enforced by an agency pursuant to federal law and is assessed or enforced pursuant to an administrative proceeding (Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note). This definition includes forfeitures that may be assessed or enforced by the Commission.

[2] The CPI index can be found through the Department of Labor.

Call the Bureau of Labor Statistics, faxdat service:

(404) 347–3702 (automated menu for CPI years no earlier than 1976)

(404) 347–4416 (for assistance, and for CPI all years) Or, to find the CPI through the Internet:

(1) Go to the Consumer Price Index Home Page at: http://stats.bls.gov/cpihome.htm

(2) Select *Most Requested Series.*

(3) Select *Consumer Price Index—All Urban Consumers.*

(4) Select ''US ALL ITEMS–1967=100–CUUR0000AA0.''

(5) Scroll down and select the year that you are looking for.

(6) Scroll down and select ''Retrieve Data.''

[3] The rounding rules are as follows:

(1) Round increase to the nearest multiple of $10 if the penalty is from $0 to $100.

(2) Round increase to the nearest multiple of $100 if the penalty is from $101 to $1,000.

(3) Round increase to the nearest multiple of $1,000 if the penalty is from $1,001 to $10,000.

(4) Round increase to the nearest multiple of $5,000 if the penalty is from $10,001 to $100,000.

(5) Round increase to the nearest multiple of $10,000 if the penalty is from $100,001 to $200,000.

(6) Round increase to the nearest multiple of $25,000 if the penalty is over $200,001.

See Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, 104 Stat. 890, 28 U.S.C. 2461 note, Sec. 5.

[4] The inflation adjustments prescribed by the Debt Collection Improvement Act will increase a monetary forfeiture penalty to an amount greater than the statutory maximum monetary forfeiture penalty amount. The adjusted forfeiture amounts are reprinted below.

386(a), 386(b), 503(b), 506, and 634 of the Communications Act. The remaining provisions of this section are applicable to such conduct.

(b) *Limits on the amount of forfeiture assessed.* (1) If the violator is a broadcast station licensee or permittee, a cable television operator, or an applicant for any broadcast or cable television operator license, permit, certificate, or other instrument of authorization issued by the Commission, except as otherwise noted in this paragraph, the forfeiture penalty under this section shall not exceed $27,500 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $275,000 for any single act or failure to act described in paragraph (a) of this section. There is no limit on forfeiture assessments for EEO violations by cable operators that occur after notification by the Commission of a potential violation. See section 634(f)(2) of the Communications Act.

(2) If the violator is a common carrier subject to the provisions of the Communications Act or an applicant for any common carrier license, permit, certificate, or other instrument of authorization issued by the Commission, the amount of any forfeiture penalty determined under this section shall not exceed $110,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $1,100,000 for any single act or failure to act described in paragraph (a) of this section.

(3) In any case not covered in paragraphs (b)(1) or (b)(2) of this section, the amount of any forfeiture penalty determined under this section shall not exceed $11,000 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of $82,500 for any single act or failure to act described in paragraph (a) of this section.

* * * * *

(5) *Inflation adjustments to the maximum forfeiture amount.* (i) Pursuant to the Debt Collection Improvement Act of 1996, Public Law 104–134 (110 Stat. 1321–358), which amends the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, Public Law 101–410 (104 Stat. 890; 28 U.S.C. 2461 note), the statutory maximum amount of a forfeiture penalty assessed under this section shall be adjusted for inflation at least once every four years using the following formula. First, obtain the inflation factor by dividing the CPI for June of the preceding year by the CPI for June of the year the forfeiture was last set or adjusted. Then, multiply the inflation factor by the statutory maximum amount. Round off this result using the rules in paragraph (b)(5)(ii) of this section. Add the rounded result to the statutory maximum forfeiture penalty amount. The sum is the statutory maximum amount, adjusted for inflation.

(ii) The rounding rules are as follows:

(A) Round increase to the nearest multiple of $10 if the penalty is from $0 to $100;

(B) Round increase to the nearest multiple of $100 if the penalty is from $101 to $1,000;

(C) Round increase to the nearest multiple of $1,000 if the penalty is from $1,001 to $10,000;

(D) Round increase to the nearest multiple of $5,000 if the penalty is from $10,001 to $100,000;

(E) Round increase to the nearest multiple of $10,000 if the penalty is from $100,001 to $200,000; or

(F) Round increase to the nearest multiple of $25,000 if the penalty is over $200,001.

(iii) The first application of the inflation adjustments required by Public Law 104–134 results in the following adjustments to the statutory forfeitures currently authorized by the Communications Act:

U.S. Code citation	Current statutory maximum penalty	Maximum penalty after Public Law 104–134 adjustment
47 USC 202(c)	$6,000	$6,600
	300	330
47 USC 203(e)	6,000	6,600
	300	330
47 USC 205(b)	12,000	13,200
47 USC 214(d)	1,200	1,200
47 USC 219(b)	1,200	1,200
47 USC 220(d)	6,000	6,600
47 USC 223(b)	50,000	55,000
47 USC 362(a)	5,000	5,500
47 USC 362(b)	1,000	1,100
47 USC 386(a)	5,000	5,500
47 USC 386(b)	1,000	1,100
47 USC 503(b)(2)(A)	25,000	27,500
	250,000	275,000
47 USC 503(b)(2)(B)	100,000	110,000
	1,000,000	1,100,000
47 USC 503(b)(2)(C)	10,000	11,000
	75,000	82,500
47 USC 506(a)	500	550
47 USC 506(b)	100	110
47 USC 554	500	500

Note: Pursuant to Public Law 104–134, the first inflation adjustment cannot exceed 10 percent of the statutory maximum amount.

* * * * *

[FR Doc. 97–2080 Filed 1–31–97; 8:45 am]

BILLING CODE 6712–01–P

47 CFR Parts 74, 78, and 101

[ET Docket No. 96–35; FCC 97–1]

Flexible Standards for Directional Microwave Antennas

ACTION: Final rule.

SUMMARY: This action amends the performance standards for directional microwave antennas of the Commission's Rules in order to permit the use of new antenna technology. Specifically, the rule amendments will allow licensees to show compliance with the Commission's Rules for antenna standards using either minimum antenna gain or maximum radiation beamwidth. This action removes an implicit prohibition in the Commission's Rules against new types of antennas which have narrow beamwidths, but insufficient gains. This action also will encourage innovation in antenna technology and will give licensees more options in the types of antennas they may employ, without decreasing spectrum efficiency or increasing interference.

EFFECTIVE DATE: March 5, 1997.

FOR FURTHER INFORMATION CONTACT: Michael J. Marcus, 418–2470 or Tom Mooring, 418–2450, Office of Engineering and Technology.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* ET Docket 96–35, FCC 97–1, adopted January 2, 1997, and released January 17, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Summary of the Report and Order

1. By this action, the Commission amends its fixed service microwave rules to make them more compatible with certain emerging technologies for directional antennas. Specifically, we will permit alternative showings that antennas comply with maximum beamwidth requirements rather than requirements for minimum antenna gains. The Commission believes that this action will preserve the intent of the rules to maximize spectrum efficiency and minimize interference. At the same time, such changes will provide Commission licensees with additional flexibility to use directional antennas employing emerging technologies for which, in contrast to conventional antennas, maximum antenna beamwidth is not correlated directly with minimum antenna gain. Finally, the Commission believes that these amendments promote the national policy goals set forth in Section 257 of the Communications Act by enabling entrepreneurs and other small businesses to market new and innovative antenna technology to providers of telecommunications services and information services.

2. On February 29, 1996, we adopted a *Notice of Proposed Rule Making* (''NPRM'') in this proceeding, 61 FR 11798, March 22, 1996. In the NPRM, we proposed to permit licensees to make a showing that the antennas employed under Parts 74, 78, and 101 meet minimum antenna performance standards through the use of maximum beamwidth requirements as an alternative to minimum antenna gain requirements. In addition, we proposed to treat all antennas as if they had the mainlobe shape and gain of a conventional parabolic dish antenna.

3. The parties generally support the basic proposal in the NPRM, that is, to allow users to show compliance with the minimum antenna performance standards using either maximum beamwidth or minimum gain. For example, Comsearch states that spectrum efficiency depends upon antenna radiation pattern performance (beamwidth, sidelobe suppression, and front-to-back ratio), not upon antenna gain, and that thus, there is no need for a minimum antenna gain requirement as long as the maximum beamwidth and minimum radiation suppression requirements are met. Endgate Corporation (''Endgate'') agrees that the adoption of this proposal would remove a regulatory impediment to the use of new antenna technology and further states that such action would provide manufacturers with the flexibility to develop antennas with specific performance properties that are appropriate for the application, rather than performance limited by pre-existing regulations.

4. We agree with Comsearch that spectrum efficiency is dependent upon antenna radiation pattern performance, that is, the beamwidth, sidelobe suppression, and the front-to-back ratio, and not upon antenna gain per se. Thus, we find that a showing of maximum beamwidth as an alternative to a minimum antenna gain showing can be permitted with no impact on spectrum efficiency. Moreover, we believe that such a change serves the public interest because it allows a greater choice of technologies for licensees. Accordingly, we amend Sections 74.536, 74.641, 78.105, and 101.115 of the Commission's Rules to permit licensees to demonstrate compliance using either minimum gain or maximum beamwidth. The table below summarizes these amendments:

Minimum gain	Maximum beamwidth (degrees)	Rule section	Band (GHz)
34 dBi ...	3.5	101.115 (c)	10.55–10.68
36 dBi ...	2.7	101.115 (c)	3.7–4.2
38 dBi ...	2.2	101.115 (c)	5.925–6.425
	.....		6.525–6.875
	.....		10.55–10.68
	.....		10.63–10.68
	.....		10.7–11.7
	.....		17.70–18.82
	.....	74.536(c)	17.7–19.7
	.....	74.641(a)(1)	17.7–19.7
	.....	78.105(a)(1)	17.7–19.7
	.....	101.115 (c)	18.92–19.70
	.....		21.2–23.6
	.....		Above 31.3
	.....	78.105(a)(1)	38.6–40.0

5. In the NPRM, we observed that even with the sidelobe suppression required by the existing rules, new types of antennas, such as planar array antennas, may differ somewhat from conventional dish and horn antennas in the exact shape of the mainlobe. We stated that we do not believe that these differences in the shape of the mainlobe would have a significant impact on spectrum efficiency and, therefore, we proposed to treat all antennas as if they had the mainlobe shape and total gain of a conventional parabolic dish antenna.

6. We agree with Alcatel Network Systems, Inc. (''Alcatel''), Comsearch, and National Spectrum Managers Association (''NSMA'') that the present requirement that fixed microwave applicants under Part 101 provide antenna measurement data for coordination should be retained without modification because the use of actual

patterns will maximize spectrum efficiency. Therefore, we are not amending the rules in this respect. We also agree with Andrew Corporation (''Andrew'') that compliance with the maximum beamwidth requirements should be met in both the azimuth and elevation planes. Accordingly, we are amending the antenna standards tables in Parts 74, 78, and 101 by adding a footnote, which states that if a licensee chooses to show compliance using maximum beamwidth to 3 dB points, the beamwidth limit shall apply in both the azimuth and the elevation planes. However, we decline to change the radiation suppression limitations because these issues are outside the scope of this proceeding.

7. The Society of Broadcast Engineers (''SBE'') requests that the Commission apply the proposed flexible minimum antenna standards to receiving antennas as well as transmitting antennas. SBE states that a receiving antenna with an unnecessarily broad radiation pattern envelope can have just as great a preclusive effect on spectrum efficiency as a transmitting antenna with an overly broad pattern.

8. We observe that under the aural broadcasting auxiliary station and fixed microwave service rules, the new flexible minimum antenna standards apply to both transmitting and receiving antennas.[1] However, under the television broadcast auxiliary station and cable television relay service rules, the choice of receiving antennas is left to the discretion of the licensee. Further, the licensee is not protected from interference that results from the use of antennas with poorer performance than identified in the pertinent antenna standards table.[2]

Final Regulatory Flexibility Analysis

9. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603 (''RFA''), an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated into the NPRM in this proceeding. The Commission sought written public comments on the proposals in the NPRM, including the IRFA. The Commission's Final Regulatory Flexibility Analysis (''FRFA'') in this Report and Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (''CWAAA''), Public Law 104–121, 110 Stat. 847 (1996).[3]

10. *Need for and Objectives of the Rules.* The rule amendments are needed in order to allow licensees to make an alternative showing of compliance with the Commission's Rules for antenna standards. The objective of the rule amendments is to permit the use of new antenna technologies.

11. *Summary of Significant Issues Raised by the Public Comments in Response to the IRFA.* No comments were submitted in direct response to the IRFA. Nonetheless, we have considered the significant economic impact of the proposals on small entities.

12. *Description and Estimate of the Number of Small Entities to Which Rule Will Apply.* The RFA generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632. Based on the statutory provision, we will consider a small business concern 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 Small Business Administration (''SBA''). The RFA SBREFA provisions also apply to nonprofit organizations and to governmental organizations.

13. These rule amendments pertain to licensees providing point-to-point microwave services. The Commission has not developed a definition of small entities applicable to these services. Therefore, we will utilize the SBA definition applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons.[4] Census Bureau data indicates that there are 1,164 radiotelephone companies with fewer than 1,500 employees, that might qualify as small entities if they are independently owned are operated.[5] Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission was unable to request information regarding the number of small businesses that would be affected by this action. It is unknown how many small entities may be affected. We believe that all entities affected by the rule amendments will benefit from this action which allows licensees more flexibility in making a showing that their antennas meet minimum antenna performance standards.

14. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.* No new requirements are involved. Licensees will be afforded the option of complying with a standard for maximum antenna beamwidth as an alternative to complying with the existing requirement for minimum antenna gain. Thus, the types of professional skills necessary to comply with the rule amendments already exist within the effected companies.

15. *Significant Alternatives and Steps Taken by Agency to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives.* We have considered and rejected several significant alternatives. The NPRM raised the question of whether new types of antennas should be presumed to be conventional for coordination purposes. All the commenting parties opposed such a change and stated that the present requirement that licensees provide antenna measurement data for coordination should be retained. We agree and are keeping all such existing requirements without modification. In comments Endgate Corporation proposes that the Commission adopt a maximum radiated power envelope in place of the existing rules which specify both the maximum transmitter power and the relative sidelobe radiation suppression values. This would allow wide antenna beams and higher sidelobe levels for licensees that use less than the maximum radiated power. Both Comsearch and NSMA oppose Endgate's proposal in reply comments. Comsearch points out that since most terrestrial microwave systems are licensed below the maximum EIRP limits, this proposal would increase the amount of allowed radiated power at angles off the main beam which increases interference potential and constrains frequency reuse for terrestrial systems. NSMA raised similar concerns. Thus we decline to make this change as suggested by Endgate as we find that the risk of decreased spectrum efficiency outweighs the benefits for microwave licensees, including small entities.

16. Andrew interprets the existing and proposed rules on beamwidth to limit only horizontal beamwidth and asks that the rules clearly state that both horizontal and vertical beamwidth and radiation suppression be limited. We agree that for antennas to show compliance with requirements by meeting a maximum beamwidth that beamwidth must apply in both planes. However, we decline to apply this requirement to antennas that show compliance with the existing minimum gain requirement. If a high gain requirement is met by the antenna, physical principals limit the amount of

[1] See 47 CFR 74.536(b), 101.115(c) (1995).

[2] See 47 CFR 74.641(a)(3), 78.105(a)(3) (1995).

[3] Subtitle II of the CWAAA is ''The Small Business Regulatory Enforcement Fairness Act of 1996'' (''SBREFA''), codified at 5 U.S.C. 601 *et seq.*

[4] 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812.

[5] U.S. Dept. of Commerce, 1992 Census of Transportation, Communications and Utilities: Establishment and Firm Size 10123 (May 1995).

trade off between vertical and horizontal beamwidth that is possible. Also, we clearly stated in the NPRM that we did not intend to modify requirements for existing antennas which met our minimum gain requirement.

17. SBE requests that the Commission apply the proposed flexible minimum antenna standards to receiving antennas as well as to transmitting antennas. Since the NPRM addressed explicitly the alternative minimum gain requirement only, we will not consider SBE's request in this proceeding. SBE also requests that the Commission issue an updated list of ''frequency congested areas'' in which Category A antennas would be required. However, SBE submitted no data indicating which areas should be so designated. Since we have no record to base a decision on, we decline to act at this time.

18. Alcatel proposes that antenna standards for the 10 GHz band be relaxed to allow continued use of 2 foot antennas after 1997 as opposed to the 4 foot antennas required by present rules. Alcatel was supported in reply comments by TIA. Similarly, INNOVA proposes that requirements for 37–40 GHz antennas be relaxed. These two proposals were outside the scope of the original notice and we feel that there is insufficient record to adopt them at this time.

19. *Report to Congress:* The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 (a)(1)(A).

List of Subjects

47 CFR Part 74

Radio, Television.

47 CFR Part 78

Cable television, Communications equipment, Radio.

47 CFR Part 101

Communications common carriers, Communications equipment, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Parts 74, 78, and 101 of the Code of Federal Regulations are amended as follows:

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

1. The authority citation for Part 74 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303, 554.

2. In Section 74.536, paragraphs (b) and (c) are revised to read as follows:

§ 74.536 Directional antenna required.

* * * * *

(b) An aural broadcast STL or intercity relay station operating in the 17.7–19.7 GHz band shall employ an antenna that meets the performance standards for Category A, except that in areas not subject to frequency congestion, antennas meeting standards for Category B may be employed. However, the Commission may require the replacement, at the licensee's expense, of any antenna or periscope antenna system of a permanent fixed station that does not meet performance Standard A, which is specified in the table in paragraph (c) of this section, upon a showing that said antenna causes or is likely to cause interference to (or receive interference from) any other authorized or proposed station; provided that an antenna meeting performance Standard A is unlikely to involve such interference.

(c) Licensees shall comply with the antenna standards table shown in this paragraph in the following manner:

(1) With either the maximum beamwidth to 3 dB points requirement or with the minimum antenna gain requirement; and

(2) With the minimum radiation suppression to angle requirement.

ANTENNA STANDARDS

Frequency (GHz)	Category	Maximum beamwidth to 3 dB points [1] (included angle in degrees)	Minimum antenna gain (dbi)	Minimum radiation suppression to angle in degrees from center-line of main beam in decibels						
				5° to 10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
17.7 to 19.7	A	2.2	38	25	29	33	36	42	55	55
	B	2.2	38	20	24	28	32	35	36	36
31.0 to 31.3 [2]	n/a	[3] 4.0	38	n/a	n/a	n/a	n/a	n/a	n/a	n/a

[1] If a licensee chooses to show compliance using maximum beamwidth to 3 dB points, the beamwidth limit shall apply in both the azimuth and the elevation planes.
[2] Mobile, except aeronautical mobile, stations need not comply with these standards.
[3] The minimum front-to-back ratio shall be 38 dBi.

3. In Section 74.641, paragraph (a)(1) is revised to read as follows:

§ 74.641 Antenna systems.

(a) * * *

(1) Fixed TV broadcast auxiliary stations shall use directional antennas that meet the performance standards indicated in the following table. Upon adequate showing of need to serve a larger sector, or more than a single sector, greater beamwidth or multiple antennas may be authorized. Applicants shall request, and authorization for stations in this service will specify, the polarization of each transmitted signal. Booster station antennas having narrower beamwidths and reduced sidelobe radiation may be required in congested areas, or to resolve interference problems.

(i) Stations must employ an antenna that meets the performance standards for Category B. In areas subject to frequency congestion, where proposed facilities would be precluded by continued use of a Category B antenna, a Category A antenna must be employed. The Commission may require the use of a high performance antenna where interference problems can be resolved by the use of such antennas.

(ii) Licensees shall comply with the antenna standards table shown in this paragraph in the following manner:

(A) With either the maximum beamwith to 3 dB points requirement or with the minimum antenna gain requirement; and

(B) With the minimum radiation suppression to angle requirement.

ANTENNA STANDARDS

Frequency (MHz)	Category	Maximum beamwidth to 3 dB points [1] (included angle in degrees)	Minimum antenna gain (dbi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels						
				5° to 10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
1,990 to 2,110	A	5.0	n/a	12	18	22	25	29	33	39
	B	8.0	n/a	5	18	20	20	25	28	36
6,875 to 7,125	A	1.5	n/a	26	29	32	34	38	41	49
	B	2.0	n/a	21	25	29	32	35	39	45
12,700 to 13,250	A	1.0	n/a	23	28	35	39	41	42	50
	B	2.0	n/a	20	25	28	30	32	37	47
17,700 to 19,700	A	2.2	38	25	29	33	36	42	55	55
	B	2.2	38	20	24	28	32	35	36	36
31,000 to 31,300 [2]	n/a	[3] 4.0	38	n/a	n/a	n/a	n/a	n/a	n/a	n/a

[1] If a licensee chooses to show compliance using maximum beamwith to 3 dB points, the beamwidth limit shall apply in both the azimuth and the elevation planes.
[2] Mobile, except aeronautical mobile, stations need not comply with these standards.
[3] The minimum front-to-back ratio shall be 38 dBi.

* * * * *

PART 78—CABLE TELEVISION RELAY SERVICE

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

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

2. In Section 78.105, paragraph (a)(1) is revised to read as follows:

§ 78.105 Antenna systems.

(a) * * *

(1) Fixed CARS stations shall use directional antennas that meet the performance standards indicated in the following table.

(i) Stations must employ an antenna that meets the performance standards for Category B. In areas subject to frequency congestion, where proposed facilities would be precluded by continued use of a Category B antenna, a Category A antenna must be employed. The Commission may require the use of a high performance antenna where interference problems can be resolved by the use of such antennas.

(ii) Upon adequate showing of need to serve a larger sector, or more than a single sector, greater beamwidth or multiple antennas may be authorized. Applicants shall request and authorization for stations in this service will specify the polarization of each transmitted signal.

(iii) Licensees shall comply with the antenna standards table shown in this paragraph in the following manner:

(A) With either the maximum beamwidth to 3 dB points requirement or with the minimum antenna gain requirement; and

(B) With the minimum radiation suppression to angle requirement.

ANTENNA STANDARDS

Frequency (MHz)	Category	Maximum beamwidith to 3 dB points [1] (included angle in degrees)	Minimum antenna gain (dbi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels						
				5° to 10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
12,700 to 13,250	A	1.0	n/a	23	28	35	39	41	42	50
	B	2.0	n/a	20	25	28	30	32	37	47
17,700 to 19,700	A	2.2	38	25	29	33	36	42	55	55
	B	2.2	38	20	24	28	32	35	36	36
31,000 to 31,300 [2]	n/a	[3] 4.0	38	n/a	n/a	n/a	n/a	n/a	n/a	n/a

ANTENNA STANDARDS—Continued

Frequency (MHz)	Category	Maximum beamwidth to 3 dB points [1] (included angle in degrees)	Minimum antenna gain (dbi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels						
				5° to 10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
38,600 to 40,000	A	2.2	38	25	29	33	36	42	55	55
	B	2.2	38	20	24	28	32	35	36	36

[1] If a licensee chooses to show compliance using maximum beamwidth to 3 dB points, the beamwidth limit shall apply in both the azimuth and the elevation planes.
[2] Mobile, except aeronautical, mobile, stations need not comply with these standards.
[3] The minimum front-to-back ratio shall be 38 dBi.

PART 101—FIXED MICROWAVE SERVICES

1. The authority citation for Part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

2. In Section 101.115, paragraph (c) is revised to read as follows:

§ 101.115 Directional antennas.

* * * * *

(c) Fixed stations (other than temporary fixed stations and DEMS nodal stations) operating at 932.5 MHz or higher must employ transmitting and receiving antennas (excluding second receiving antennas for operations such as space diversity) meeting the appropriate performance Standard A indicated below, except that in areas not subject to frequency congestion, antennas meeting performance Standard B may be used, subject to the requirements set forth in paragraph (d) of this section. Licensees shall comply with the antenna standards table shown in this paragraph in the following manner:

(1) With either the maximum beamwidth to 3 dB points requirement or with the minimum antenna gain requirement; and

(2) With the minimum radiation suppression to angle requirement.

ANTENNA STANDARDS

Frequency (MHz)	Category	Maximum beamwidth to 3 dB points [1] (included angle in degrees)	Minimum antenna gain (dbi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels						
				5° to10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
932.5 to 935	A	14.0	n/a	n/a	6	11	14	17	20	24
	B	20.0	n/a	n/a	n/a	6	10	13	15	20
941.5 to 944	A	14.0	n/a	n/a	6	11	14	17	20	24
	B	20.0	n/a	n/a	n/a	6	10	13	15	20
952 to 960 [2, 3]	A	14.0	n/a	n/a	6	11	14	17	20	24
	B	20.0	n/a	n/a	n/a	6	10	13	15	20
1,850 to 2,500 [4]	A	5.0	n/a	12	18	22	25	29	33	39
	B	8.0	n/a	5	18	20	20	25	28	36
3,700 to 4,200	A	2.7	36	23	29	33	36	42	55	55
	B	2.7	36	20	24	28	32	32	32	32
5,925 to 6,425 [5]	A	2.2	38	25	29	33	36	42	55	55
	B	2.2	38	21	25	29	32	35	39	45
5,925 to 6,425 [6]	A	2.2	38	25	29	33	36	42	55	55
	B	2.2	38	20	24	28	32	35	36	36
6,525 to 6,875 [5]	A	2.2	38	25	29	33	36	42	55	55
	B	2.2	38	21	25	29	32	35	39	45
6,525 to 6,875 [6]	A	1.5	n/a	26	29	32	34	38	41	49
	B	2.0	n/a	21	25	29	32	35	39	45
10,550 to 10,680 [5, 7]	A	2.2	38	25	29	33	36	42	55	55
	B	2.2	38	20	24	28	32	35	35	39
10,550 to 10,680 [6]	A	3.4	34	20	24	28	32	35	55	55
	B	3.4	34	20	24	28	32	35	35	39
10,565 to 10,615	n/a	360	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
10,630 to 10,680 [8]	n/a	3.5	34	20	24	28	32	35	36	36
10,700 to 11,700 [5]	A	2.2	38	25	29	33	36	42	55	55
	B	2.2	38	20	24	28	32	35	36	36
12,200 to 13,250 [9]	A	1.0	n/a	23	28	35	39	41	42	50
	B	2.0	n/a	20	25	28	30	32	37	47
17,700 to 18,820	A	2.2	38	25	29	33	36	42	55	55
	B	2.2	38	20	24	28	32	35	36	36
18,920 to 19,700 [10]	A	2.2	38	25	29	33	36	42	55	55
	B	2.2	38	20	24	28	32	35	36	36
21,200 to 23,600 [11]	A	2.2	38	25	29	33	36	42	55	55
	B	2.2	38	20	24	28	32	35	36	36
31,000 to 31,300 [12, 13]	n/a	4.0	38	n/a	n/a	n/a	n/a	n/a	n/a	n/a

ANTENNA STANDARDS—Continued

Frequency (MHz)	Category	Maximum beamwidth to 3 dB points [1] (included angle in degrees)	Minimum antenna gain (dbi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels						
				5° to10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
Above 31,300	A	2.2	38	25	29	33	36	42	55	55
	B	2.2	38	20	24	28	32	35	36	36

[1] If a licensee chooses to show compliance using maximum beamwidth to 3 dB points, the beamwidth limit shall apply in both the azimuth and the elevation planes.
[2] Except for Multiple Address System frequencies listed in §§ 101.147(b)(1) through (b)(4), where omnidirectional antennas may be used.
[3] Antennas used at outlying stations as part of a central protection alarm system need conform to only the following 2 standards:
(i) The minimum on-beam forward gain must be at least 10 dBi, and
(ii) The minimum front-to-back ratio must be at least 20 dB.
[4] Omnidirectional antennas may be authorized in the band 2150–2160 MHz.
[5] These antenna standards apply to all point-to-point stations authorized after June 1, 1997. Existing licensees and pending applicants on that date are grandfathered and need not comply with these standards.
[6] These antenna standards apply to all point-to-point stations authorized on or before June 1, 1997.
[7] Except for antennas between 140° and 180° authorized or pending on January 1, 1989, in the band 10,550 to 10,565 MHz for which minimum radiation suppression to angle (in degrees) from centerline of main beam is 36 decibels.
[8] These antenna standards apply only to DEMS User Stations licensed, in operation, or applied for prior to July 15, 1993.
[9] Except for temporary-fixed operations in the band 13200–13250 MHz with output powers less than 250 mW and as provided in § 101.147(q).
[10] DEMS User Station antennas in this band must meet performance Standard B and have a minimum antenna gain of 34 dBi. The maximum beamwidth requirement does not apply to DEMS User Stations. DEMS Nodal Stations need not comply with these standards.
[11] Except as provided in § 101.147(t).
Note to footnote 11: Stations must employ an antenna that meets the performance standards for Category A, except that in areas not subject to frequency congestion, antennas meeting standards for Category B may be employed. Note, however, that the Commission may require the use of high performance antennas where interference problems can be resolved by the use of such antennas.
[12] The minimum front-to-back ratio shall be 38 dBi.
[13] Mobile, except aeronautical mobile, stations need not comply with these standards.

* * * * *

[FR Doc. 97–2083 Filed 1–31–97; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC83

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the San Diego Fairy Shrimp

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for the San Diego fairy shrimp (*Branchinecta sandiegonensis*). This animal is restricted to vernal pools in southwestern coastal California and extreme northwestern Baja California, Mexico. Less than 81 hectares (ha) (200 acres (ac)) of habitat likely remains. This species is imperiled by a variety of factors including: habitat destruction and fragmentation from urban development and agricultural conversion, alterations of vernal pool hydrology, off-road vehicle (ORV) activity, and livestock overgrazing. This rule implements Federal protection and recovery provisions afforded by the Act.

EFFECTIVE DATE: February 3, 1997.

ADDRESSES: The complete file for this final rule is available for public inspection, by appointment, during normal business hours at the Carlsbad Field Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008.

FOR FURTHER INFORMATION CONTACT: Chris Nagano or Susan Wynn at the above address (telephone 619/431–9440).

SUPPLEMENTARY INFORMATION:

Background

The San Diego fairy shrimp is a member of the aquatic crustacean order Anostraca. The species was first collected in Poway and Ramona, San Diego County, in 1962 by J. E. Lynch (Fugate 1993). Michael Fugate (1993) described *Branchinecta sandiegonensis* based on collections that he and Marie Simovich made at Del Mar Mesa in San Diego County. The species is restricted to vernal pools in coastal southern California south to extreme northwestern Baja California, Mexico. No individuals have been found in riverine waters, marine waters, or other permanent bodies of water. All known localities are below 700 meters (m) (2,300 feet (ft)) and within 65 kilometers (km) (40 miles (mi)) of the Pacific Ocean, from Santa Barbara County south to northwestern Baja California. The majority of the vernal pools in this region, including many which likely served as habitat for the species, were destroyed prior to 1990. Between 1979 and 1986, approximately 68 percent of the privately owned vernal pools under the City of San Diego's jurisdiction were destroyed (Wier and Bauder 1991).

Adult male San Diego fairy shrimp range in length from 9 to 16 mm (0.4 to 0.6 inches (in.)) and the females are 8 to 14 mm (0.4 to 0.5 in.) long. Mature individuals have a delicate elongate body, large stalked compound eyes, no carapace (shell covering the back), and 11 pairs of swimming legs. They swim or glide gracefully upside down by means of complex beating movements of the legs that pass in a wave-like front-to-back direction. Nearly all species of fairy shrimp feed on algae, bacteria, protozoa, rotifers, and bits of organic matter (Eng *et al.* 1990, Pennak 1989). The second pair of antennae in adult female San Diego fairy shrimp are cylindrical and elongate, but in the males they are greatly enlarged and specialized for clasping the females during copulation. The females carry their eggs in an oval or elongate ventral brood sac.

Five other species of branchinectid fairy shrimp occur in southern California (Simovich and Fugate 1992). The only other branchinectids in southern California that are similar in

appearance to the San Diego fairy shrimp are Lindahl's fairy shrimp (*Branchinecta lindalhi*) and the threatened vernal pool fairy shrimp (*B. lynchi*), which occurs in southwestern Riverside County. Male San Diego fairy shrimp can be distinguished from males of other *Branchinecta* species by the shape of the second antenna. Female San Diego fairy shrimp are distinguishable from other members of the genus by the shape and length of the brood sac and by the presence of paired dorsolateral spines on five of the abdominal segments (Fugate 1993).

The San Diego fairy shrimp is a habitat specialist found in small, shallow vernal pools, which range in depth from 5 to 30 centimeters (cm) (2 to 12 in.) and in water temperature from 10 to 20 degrees Celsius (C) (50 to 68 degrees Fahrenheit (F)) (Fugate and Simovich 1992, Hathaway and Simovich undated). Water chemistry is one of the most important factors in determining the distribution of fairy shrimp (Belk 1977, Branchiopod Research Group 1996). The San Diego fairy shrimp appears to be sensitive to high water temperatures (Branchiopod Research Group 1996). Hathaway and Simovich (undated) presented data indicating that pools located in the inland mountain and desert regions may be too cool (below 5 degrees C (41 degrees F)) or too warm (above 30 degrees C (86 degrees F)) for this species.

Adult San Diego fairy shrimp are usually observed from January to March; however, in years with early or late rainfall, the hatching period may be extended. The species hatches and matures within 7 days to 2 weeks depending on water temperature (Hathaway and Simovich undated, Simovich and Hathaway undated). The San Diego fairy shrimp disappear after about a month, but animals will continue to hatch if subsequent rains result in additional water or refilling of the vernal pools (Branchiopod Research Group 1996). The eggs are either dropped to the pool bottom or remain in the brood sac until the female dies and sinks. The ''resting'' or ''summer'' eggs are capable of withstanding heat, cold, and prolonged drying. When the pools refill in the same or subsequent rainy seasons, some but not all of the eggs may hatch. Fairy shrimp egg banks in the soil may be comprised of the eggs from several years of breeding (Donald 1983).

The genetic characteristics of the San Diego fairy shrimp, as well as ecological conditions such as watershed contiguity, indicate that populations of these animals are defined by pool complexes rather than by individual vernal pools (Fugate 1992). Individual vernal pools occupied by the San Diego fairy shrimp are most appropriately referred to as subpopulations.

Vernal pools have a discontinuous occurrence in several regions of California (Keeler-Wolf *et al.* 1995). Vernal pools form in regions with Mediterranean climates where shallow depressions fill with water during fall and winter rains and then evaporate in the spring (Collie and Lathrop 1976; Holland 1976, 1988; Holland and Jain 1977, 1988; Simovich and Hathaway undated; Thorne 1984; Zedler 1987). Overbank flooding from intermittent streams may augment the amount of water in some vernal pools (Hanes *et al.* 1990). Downward percolation is prevented by the presence of an impervious subsurface layer, such as a claypan, hardpan, or volcanic stratum (Holland 1976, 1988). Due to local topography and geology, the pools are usually clustered into pool complexes (Bauder 1986, Holland and Jain 1988). Pools within a complex are typically separated by distances on the order of meters and may form dense, interconnected mosaics of small pools or a more sparse scattering of larger pools.

Temporary inundation makes vernal pools too wet during the wet period of the year for adjacent upland plant species adapted to drier soil conditions, while rapid drying during late spring makes pool basins unsuitable for typical marsh or aquatic species that require a more permanent source of water. However, a number of indigenous plant and aquatic invertebrate species have evolved to occupy the extreme environmental conditions found in vernal pool habitats (Alexander 1976, Barclay and Knight 1984, Baskin 1994, Zedler 1987). Fairy shrimp play an important role in the community ecology of many ephemeral water bodies. They are fed upon by waterfowl (Krapu 1974, Swanson *et al.* 1974) and other vertebrates, such as western spadefoot toad (*Scaphiopus hammondi*) tadpoles (Branchiopod Research Group 1996).

Urban and water development, flood control, highway and utility projects, as well as conversion of wildlands to agricultural use, have eliminated vernal pools in southern California (Jones and Stokes Associates 1987). Changes in hydrological pattern, overgrazing, and ORV use also imperil this aquatic habitat and the San Diego fairy shrimp. Human activities that impact the watershed of vernal pools indirectly affect this animal. The flora and fauna in vernal pools or swales can change if the hydrological regime is altered (Bauder 1986, 1987). Human-caused activities that reduce the extent of the watershed or that alter runoff patterns (i.e., amounts and seasonal distribution) may eliminate the animals, reduce their population sizes or reproductive success, or shift the location of sites inhabited by the animals. The vernal pool habitat type has been ranked in the California Department of Fish and Game's Natural Diversity Data Base in priority class G1–S1, which denotes communities in the State of California that occur over less than 800 ha (2,000 ac) globally.

The largest number of vernal pools in California, including those inhabited by the San Diego fairy shrimp, are located in San Diego County. However, the cumulative loss of vernal pool habitat in San Diego County is estimated at 90 to 97 percent (Bauder 1986, Oberbauer and Vanderweir 1991, Keeler-Wolf *et al.* 1995). Based on a composite of available information, the Service estimates that less than 81 ha (200 ac) of occupied vernal pool habitat likely remains. Weir and Bauder (1991) estimate that 70 percent of remaining vernal pool habitat occurs on military lands. Keeler-Wolf *et al.* (1995) concluded that the greatest recent losses of vernal pool habitat in San Diego County have occurred in Mira Mesa, Penasquitos, and Kearney Mesa, which accounted for 73 percent of all the pools destroyed in the region during the 7-year period between 1979 and 1986. Other substantial losses have occurred in the Otay Mesa area, where over 40 percent of the vernal pools were destroyed during the 11-year period between 1979 and 1990. Vernal pools in southern coastal Santa Barbara County are imperiled by development (Ferren and Pritchett 1988, Keeler-Wolf *et al.* 1995). Vernal pool habitat was once extensive on the coastal plain of Los Angeles County (R. Mattoni and T. Longcore, in litt., 1996). The loss of vernal pool habitat is now nearly total in Los Angeles and Orange counties (Keeler-Wolf *et al.* 1995, Ferren and Pritchett 1988).

Previous Federal Action

On March 24, 1992, the Service received a petition dated March 16, 1992, from David Hogan, formerly of the San Diego Biodiversity Project in Julian, California, and Dr. Denton Belk of the Lady of Our Lake University in San Antonio, Texas, to list the San Diego fairy shrimp as an endangered species. On August 4, 1994, the Service published a proposed rule in the Federal Register (59 FR 39874) to list the San Diego fairy shrimp as an endangered species. The proposed rule

was the first Federal action on the San Diego fairy shrimp and also constituted the 12-month warranted finding that the petitioned action was warranted, as required by section 4(b)(3)(B) of the Act.

The processing of this final rule follows the Service's fiscal year 1997 listing priority guidance published in the Federal Register on December 5, 1996 (61 FR 64475). The guidance clarifies the order in which the Service will process rulemaking following two related events: (1) the lifting on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104–6), and (2) the restoration of significant funding for listing through passage of the Omnibus Budget Reconciliation Act passed on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings. This final rule falls under Tier 2. At this time there are no pending Tier 1 actions. This rule has been updated to reflect any changes in distribution, status and threats since the effective date of the listing moratorium. This additional information was not of a nature to alter the Service's decision to list the species.

Summary of Comments and Recommendations

In the August 4, 1994, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might assist the Service in determining whether listing is warranted for this species. Appropriate State agencies, county governments (including affected planning departments), Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Notices of the proposed rule were published in the *San Diego Union Tribune, Orange County Register,* and the *Riverside County Press-Enterprise.*

In compliance with Service policy on information standards under the Act (59 FR 34270; July 1, 1994), the Service solicited the expert opinions of three appropriate and independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population models, and supportive biological and ecological information for the San Diego fairy shrimp. Comments received from these reviewers were supportive of the proposed listing action and included corrections to the range of the species, the spelling of its scientific name, and additional information on co-occurrence with other listed vernal pool species. These revisions have been incorporated into this final rule.

On August 18, 1994, the Service received a written request for a public hearing from the late Dr. William Hazeltine of Oroville, California. Several other requests for a public hearing also were received. As a result, on September 26, 1994, the Service published a notice in the Federal Register (59 FR 49045) announcing the public hearing and extending the comment period until October 31, 1994. The Service conducted a public hearing on October 19, 1994, at the Radisson Hotel in Rancho Bernardo, California. Testimony was taken from 6 p.m. to 8 p.m. Twenty-one individuals presented testimony on the San Diego fairy shrimp. During the comment periods, the Service received 63 comments (letters and oral testimony), from 1 Federal agency, 1 local agency, and 61 individuals or groups. Several individuals submitted more than one comment. Twenty-six comments supported the proposed listing, 30 opposed it, and 7 were neutral.

The Service has reviewed all of the written and oral comments received during the comment period. Several comments dealt with matters of opinion or legal history, which are not relevant to the listing decision. Comments updating the data presented in the ''Background'' or ''Summary of Factors Affecting the Species'' are incorporated into those sections of this final rule. Opposing comments and other substantive comments concerning the rule have been organized into specific issues. These issues and the Service's response to each are summarized as follows.

Issue 1

A number of commenters stated that a single public hearing was inadequate to obtain full public input on the proposal. They requested that public hearings be held in more than one location.

Service Response

The Service is obligated to hold at least one public hearing on a listing proposal if requested to do so within 45 days of publication of the proposal (50 CFR 424.16(c)(3)). Considering the limited geographic distribution of the species, the Service judged that holding a single public hearing did not cause undue inconvenience to those wishing to attend.

Issue 2

Several respondents stated that the Service's notification to the public on the proposal was inadequate.

Service Response

The Service went through an extensive notification process to make the public aware of the proposal, including Federal Register notifications, letters to specific concerned parties, and notifications in local newspapers. This process satisfied the requirements of the Act and was described at the beginning of this section.

Issue 3

Some respondents believed that listing the San Diego fairy shrimp would result in adverse economic impacts to hundreds of acres of land and questioned the value of these animals to society. Two commenters requested that an analysis of the economic impact of listing the species be completed. Other commenters claimed the San Diego fairy shrimp is an ''insignificant'' species and that listing would interfere with the natural evolutionary process of extinction. Conversely, a number of respondents asserted that opposition to the listing of the species was based solely on economic interests. They cited the ecological and educational value of vernal pool plants and animals. Four crustacean biologists noted that the species is of great scientific value to the study of biological evolution, systematics, and ecology.

Service Response

Under section 4(b)(1)(A) of the Act, a listing determination must be based solely on the best scientific and commercial data available. The legislative history of this provision clearly states the intent of Congress to ''ensure'' that listing decisions are ''based solely on biological criteria and to prevent non-biological criteria from affecting such decisions'' (H.R. Rep. No. 97–835, 97th Cong. 2d Sess. 19 (1982)). As further stated in the congressional report, ''economic considerations have no relevance to determinations regarding the status of species.'' Because the Service is specifically precluded from considering economic impacts in a final decision on a proposed listing, the Service does not consider the possible economic consequences of listing the San Diego fairy shrimp. Although a variety of opinions likely exist as to a particular species' contribution to society, including its aesthetic, scientific, or other significance, this issue is not among the five factors upon which a listing determination is based.

Issue 4

One commenter stated that the listing of the San Diego fairy shrimp will result in a ''taking'' of their private property in clear violation of their constitutional rights.

Service Response

Listing under the Act does not imply that private land would be confiscated or taken without just compensation. The San Diego fairy shrimp will be protected under section 9 of the Act, which prohibits the take of this animal. Recovery planning for the species may include recommendations for land acquisition or easements involving private landowners. These efforts would only be undertaken with the cooperation of the landowner. In the majority of cases, private landowners are not precluded from using their land in the manner originally intended.

Executive Order 12630, Government Actions and Interference with Constitutionally Protected Property Rights, requires that a Takings Implications Assessment (TIA) be conducted ''as a part of any final rulemaking to evaluate the risk of and strategies for avoidance of the taking of private property.'' However, the Attorney General has issued guidelines to the Department of the Interior (Department) regarding TIAs. The Attorney General's guidelines state that TIAs used to analyze the potential for Fifth Amendment ''taking claims'' are to be prepared after, rather than before, an agency makes a restricted discretionary decision. In enacting the Act, Congress required the Department to list a species based solely upon scientific and commercial data indicating whether or not the species is in danger of extinction. The Service may not withhold a listing based upon economic concerns. Therefore, even though a TIA may be required, a TIA for a listing action is finalized only after the final determination is made regarding whether to list the species.

Issue 5

Three respondents stated that critical habitat should be designated for the San Diego fairy shrimp.

Service Response

The Service believes that the risk posed by designating critical habitat at this time outweighs the potential benefits. As discussed in Factors ''A'' and ''E'' under the ''Summary of Factors Affecting the Species'' section below, the San Diego fairy shrimp could be adversely affected by acts of vandalism. The Service is aware of vernal pools apparently containing suitable habitat for this animal that were destroyed to escape regulatory requirements. Designation of critical habitat for the San Diego fairy shrimp is not prudent and would increase the degree of threat facing the species. Further discussion is contained in the ''Critical Habitat'' section below.

Issue 6

One commenter claimed that the petition was not valid because, pursuant to 50 CFR 424.14(b)(2)(I), the document was submitted prior to the publication of the scientific paper naming the species.

Service Response

Pursuant to 50 CFR 424.14(b)(2)(I), a petition must contain the scientific and common name of the species. The petition for the listing of the San Diego fairy shrimp contained this information. Although the document was received prior to publication of the formal description of the animal, the petition included sufficient information, including a pre-publication copy of the paper, to adequately identify the species.

Issue 7

Two commenters stated that development of areas containing the San Diego fairy shrimp should be allowed to proceed because this is the only way to provide an economic incentive for private landowners to protect the habitat of this animal.

Service Response

The Service recognizes that while some populations of the San Diego fairy shrimp located on private lands are protected by their owners, significant privately owned areas containing the animal and its habitat are not secure against adverse impacts. Between 1979 and 1986, approximately 68 percent of the privately owned vernal pools under the City of San Diego's jurisdiction were destroyed (Weir and Bauder 1991). Please refer to Factor ''A'' below for an expanded discussion on landownership patterns and protection for the species.

Issue 8

Two commenters stated that the San Diego fairy shrimp should not be listed under the Act because the animal is indirectly protected by other taxa inhabiting vernal pools that have been designated as endangered or threatened species. Another commenter said that only the protection of ecosystems rather than species-by-species listing will protect the San Diego fairy shrimp and its vernal pool habitat.

Service Response

The other vernal pool taxa that have been listed under the Act have a more restricted range, inhabit different geographic areas, or different vernal pool habitats (e.g., deeper pools) than the San Diego fairy shrimp. In addition, although one purpose of the Act is to conserve ecosystems upon which endangered and threatened species depend, species rather than ecosystems are listed under the Act. Please see Factor ''D'' below for further discussion.

Issue 9

Two commenters stated that the Service had not obtained the review of the proposed listing by three experts. One of these commenters, in his discussion of the motives of one petitioner and two of his scientific colleagues, questioned whether the Service had ''accounted for the bias on the part of the listing proponents.''

Service Response

In accordance with the Service's policy on peer review, the proposed rule for the San Diego fairy shrimp was reviewed by at least four vernal pool specialists, including three experts other than the individuals referred to by the commenter, as well as by all interested reviewers during the public comment period on the proposed rule. Although the Service acknowledges the concern of the commenter regarding the parties expressing contrary views, the final decision to list the San Diego fairy shrimp is based on the best scientific and commercial information available, which includes peer review by acknowledged authorities.

Issue 10

Three commenters requested that the Service delay or not list the San Diego fairy shrimp because they felt that there is insufficient information on the distribution and abundance of the animal. Some of these parties contended that the data are lacking because the species was not formally described until 1993. One commenter stated that the status of the species in Ventura, Los Angeles, and Orange counties is not clear. Expressing a contrary view, a recognized crustacean biologist stated that the fairy shrimp fauna of southern California is well known. Two biologists noted that misidentification of the species may have caused confusion regarding the distribution of the San Diego fairy shrimp. Four biologists commented that the species has specific ecological and biological requirements and the animal has a restricted geographic range.

Service Response

The Service concludes, as detailed in the ''Background'' and ''Summary of Factors'' sections, that sufficient biological data exist to warrant listing of the San Diego fairy shrimp under the Act. Sampling conducted at various locations and intensities between 1962 and 1993 by biologists familiar with fairy shrimp and their habitats provided adequate information on the distribution, habitat requirements, and, most importantly, threats to the San Diego fairy shrimp to warrant the present action. Fugate's formal description of the species (Fugate 1993) contains records of the San Diego fairy shrimp that were collected in 1962. The species has not been found in the few extant vernal pools in Ventura and Los Angeles counties, and it has an extremely limited distribution in Santa Barbara and Orange counties, in part based on the prevailing lack of suitable habitat. The majority of the extant populations of the San Diego fairy shrimp are found in San Diego County. The listing process includes an opportunity for the public to comment and provide information that is evaluated and considered by the Service before making a final decision. The additional data provided by respondents during the comment period, the report by the Branchiopod Research Group (1996), and other appropriate information available to the Service have been incorporated into this final rule. None of these sources provide evidence indicating that this taxon is not endangered. These materials represent the best available scientific and commercial information upon which to base a listing decision.

Issue 11

Several commenters stated that the San Diego fairy shrimp does not warrant listing because of its ''widespread'' distribution.

Service Response

After reviewing all available data, the Service concludes the San Diego fairy shrimp is found in less than 81 ha (200 ac) of vernal pool habitat and is not a widespread species. The animal is restricted to vernal pools in coastal southern California and extreme northwestern Baja California, Mexico. As described elsewhere in this final rule, the San Diego fairy shrimp is imperiled by habitat loss from construction activities (urban development, highway construction, etc.) and degradation (conversion of land to agricultural use, ORV use, and changes in hydrological patterns in areas it inhabits).

Issue 12

Two commenters claimed that the data on the San Diego fairy shrimp do not demonstrate a historic and consistent decline in population levels.

Service Response

Relatively little information is available to reconstruct the distribution of the San Diego fairy shrimp prior to the loss of its vernal pool habitat that began in the 1800's. However, the Service is required to evaluate species based on current and likely future threats to their status. In all likelihood, the species'' status over time probably paralleled the region-wide trend in vernal pool losses. As discussed in this final rule, 97 percent of its vernal pool habitat has been destroyed, and all extant populations of this endemic vernal pool species face severe, imminent threats that could result in substantial habitat losses and extirpations in the future.

Issue 13

Several commenters noted that the proposed rule incorrectly stated that the San Diego fairy shrimp is found in more than 70 vernal pools located in 11 vernal pool complexes.

Service Response

After reviewing all available information, the Service has determined that the San Diego fairy shrimp inhabits a minimum of 25 vernal pool complexes in San Diego, Orange, and Santa Barbara counties, and Baja California. Although the species inhabits a number of vernal pool complexes that were not included in the proposed rule, the Service's decision to list the animal is based on significant threats associated with past and likely future habitat loss and fragmentation, rather than solely on the basis of numbers of inhabited vernal pools or vernal pool complexes. Furthermore, based on available information, the Service estimates that less than 81 ha (200 ac) of habitat remain that support the species. Please see Factor ''A'' for a discussion of the status of the locations inhabited by the animal.

Issue 14

One commenter asserted that there are insufficient data upon which to determine the potential habitat of the San Diego fairy shrimp in California and Baja California, Mexico. This commenter suggested that the Service survey for the species throughout southern California, as well as the entire Baja California peninsula. In addition, the respondent said that the Service lacks the data to complete a ''reasoned analysis'' of the historic and potential loss of the vernal pool habitat of the animal and requested specific information on potential development projects to allow public review and comment on threats to the species posed by these proposed actions.

Service Response

Potentially suitable conditions for vernal pools in Baja California exist along the coast from the United States/Mexico border south to about 30 degrees north Latitude. Only a few vernal pools are known from this area because of the typically mountainous terrain and relative absence of plateaus and mesas. Those present are subject to adverse human impacts. Sonoran Desert habitat is found south of 30 degrees north Latitude (Shreve and Wiggins 1986, Wiggins 1980); ephemeral wetlands in that region do not provide suitable conditions for the San Diego fairy shrimp. Please see Factor ''A'' for a discussion of the specific threats to each of the locations inhabited by the San Diego fairy shrimp in California and northwestern Baja California. Copies of the Environmental Impact Statements for individual development projects impacting occupied locations are available for public review at the Carlsbad Field Office (see ADDRESSES section).

Issue 15

One commenter stated that 90 percent of the remaining vernal pool habitat in San Diego County is located on U.S. Navy and Marine Corps bases and, therefore, is protected. Two commenters noted that proactive management programs for vernal pools have been implemented at the affected military facilities. However, three commenters noted that vernal pool habitat for the San Diego fairy shrimp has been degraded by ORVs and trash dumping at Miramar Naval Air Station and Marine Corps Base Camp Pendleton.

Service Response

Weir and Bauder (1991) state that 70 percent of the remaining vernal pools occur on military lands. The largest remaining block of habitat for the San Diego fairy shrimp is located at Miramar Naval Air Station. This site contains approximately 26 ha (65 ac) of vernal pools, exclusive of associated watersheds. The base is owned by the U.S. Navy and will be realigned to the U.S. Marine Corps on October 1, 1997. Furthermore, proposed re-alignment related activities will impact

approximately 4 percent of the vernal pools at the air station. (Department of the Navy 1996). The U.S. Navy and the U.S. Marine Corps have stated that they do not have plans to permit a National Wildlife Refuge overlay of the vernal pools, and have not prepared a management plan for the vernal pools (Department of the Navy 1996). The U.S. Marine Corps has not yet prepared a management plan for the vernal pools at Camp Pendleton. Therefore, the protection of the San Diego fairy shrimp at the two bases containing the largest blocks of extant vernal pools within the range of the species is not assured.

Issue 16

One commenter questioned the accuracy of the references (Bauder 1986, Oberbauer 1990) which provided the amount of historic and extant vernal pools. In addition, the commenter stated that some of the information was only relevant to San Diego County and not the remainder of the species' range in California and Baja California. The commenter did not provide data to support his assertion that the information utilized by the Service was incorrect.

Service Response

The Service has determined that Bauder (1986) and Oberbauer (1990) based their conclusions on data gathered utilizing acceptable scientific methods. Except for a few remnant sites, vernal pools in Santa Barbara, Ventura, Los Angeles, and Orange counties have been destroyed.

Issue 17

Two commenters asserted that the San Diego fairy shrimp is not restricted to vernal pools because individuals have been observed in man-made non-vernal pool habitats such as roadside ditches, mud puddles, and road ruts. The City of San Diego provided information describing vernal pools inhabited by the animal that formed on soil placed on top of the Miramar Landfill. Expressing a contrary view, five biologists stated that the San Diego fairy shrimp is restricted to vernal pools. They reported that the ''artificial'' habitats are either degraded vernal pools or areas subject to overflow from extant pools during periods of high water.

Service Response

The Service has carefully reviewed the assertion that the San Diego fairy shrimp is found in non-vernal pool habitat. A number of the sites that served as the basis for this belief have been examined by Service biologists and were found to represent degraded vernal pool habitat. Some of these records, such as roadside ditches, scraped areas, and airport runoff ditches likely represent remnant vernal pool habitat or are part of the swale systems connected to vernal pools, a fact reiterated in the oral comments of a vernal pool expert during the public hearing. Most of these disturbed habitats are also imperiled by urban development.

The record of San Diego fairy shrimp in ''mud puddles'' at El Camino Memorial Park in Mira Mesa likely represents degraded vernal pool habitat. The animals that inhabit the Miramar Landfill site were likely distributed into this area from adjacent areas with extant vernal pools, or eggs were contained in material that was scraped from an area that previously contained vernal pools and was used to cover the landfill.

In addition, the accurate identification of fairy shrimp is extremely difficult because the morphological characters that differentiate the species are often subtle and can be misinterpreted by biologists not specifically trained in fairy shrimp identification. Widespread common species, such as Lindahl's fairy shrimp, can be mistaken for other fairy shrimp species, including the San Diego fairy shrimp. Some of the records of the San Diego fairy shrimp in non-vernal pool habitats may be the result of such misidentifications.

Issue 18

Three commenters questioned the scientific basis upon which the taxonomy of the San Diego fairy shrimp is based. Two of these parties, citing the lack of unambiguous genetic data, claimed that it is unclear that the animal is a distinct species. However, a recognized crustacean biologist stated that the San Diego fairy shrimp is distinct. This biologist noted that the genetics of the genus had been examined in detail by Fugate (1992).

Service Response

Using the best and most recent systematic information from a number of reliable sources, including Eng *et al.* (1990), Fugate (1992, 1993), and other recognized experts on fairy shrimp taxonomy, the Service adopts the prevailing scientific consensus and maintains that the San Diego fairy shrimp is a distinct species.

Issue 19

One commenter questioned the threat to the San Diego fairy shrimp posed by ORV activity, trash dumping, and alterations of vernal pool hydrology. This commenter felt that trash dumping and ORV use could benefit the animal because trash could provide shade and ORVs could serve as a dispersal agent. This same party questioned whether fragmentation of the vernal pool complexes resulting from human actions poses a threat to the San Diego fairy shrimp because the complexes have historically constituted fragmented habitat. In contrast, two biologists noted that the species is imperiled by chemicals associated with trash dumping, such as motor oil or pesticides, and by the physical damage or destruction of the vernal pools through alteration in hydrology caused by urban development, ORVs, and other actions.

Service Response

After reviewing all available data, the Service has determined that habitat fragmentation, trash dumping, ORV use, and alterations in the hydrology of the vernal pool habitat of the San Diego fairy shrimp imperil the species. Please refer to Factors ''A'' and ''E'' for an expanded discussion of these threats.

Issue 20

One commenter stated that cattle grazing does not affect the San Diego fairy shrimp, but did not present supporting data.

Service Response

The Service recognizes and acknowledges that low to moderate levels of livestock grazing likely have minimal impacts on the San Diego fairy shrimp. However, overgrazing in areas containing the animal is likely to be detrimental. High livestock densities may result in excessive physical disturbances, such as trampling, and changes in pool water chemistry and water quality. Trampling of pool margins and thinning of vegetation from overgrazing may increase pasture runoff, leading to erosion and increased siltation of vernal pool habitat.

Issue 21

One commenter stated that a minimum viable population analysis for the San Diego fairy shrimp must be completed prior to listing because an analysis based on the loss of the vernal pool habitat of the species does not provide a basis upon which to evaluate the status of the animal.

Service Response

A minimum viable population analysis, while potentially useful for developing a recovery plan for the species (Shaffer 1990), is not required to determine whether a taxon should be listed, nor does it address foreseeable deterministic threats to species.

Issue 22

Three respondents contended that the proposed rule did not accurately reflect the success of vernal pool ''creation'' efforts. The commenters claimed that artificial vernal pools were successful and were adequate mitigation for adverse impacts to vernal pools resulting from urban development.

Service Response

In a review of 21 vernal pool creation projects located throughout California, Ferren and Gervitz (1990) concluded that no conclusive data exist to substantiate the hypothesis ''that vernal pools can be restored or created to provide functional values within the range of variability of natural pools.'' The only known vernal pool creation experiment conducted in southern California that specifically investigated fairy shrimp was a failure (Branchiopod Research Group 1996). Although some individuals (Sugnet and Associates *et al.* 1992) have claimed complete success or some degree of success for vernal pools in the Central Valley of California, these conclusions are generally based on anecdotal studies and the persistence of fairy shrimp for only a short period of time (e.g., 3 years or less). Moreover, the principle pool creation technique (i.e., relocation of soil from excavated pool bottoms rather than inoculation with a known quantity of eggs) and a lack of scientifically designed monitoring do not allow for collection of the necessary data to determine the long-term population viability of transplanted species (Branchiopod Research Group 1996).

In a study of the preservation and management of vernal pools (Jones and Stokes Associates 1990), the researchers concluded that the ''science of vernal pool creation is still in its infancy and is primarily an experimental mitigation technique.'' Environmental requirements, not dispersal, are likely the limiting factors in the distribution of fairy shrimp (U.S. Fish and Wildlife Service (USFWS) 1994). The San Diego fairy shrimp requires more restrictive environmental conditions than more widely distributed taxa (Branchiopod Research Group 1996). No demonstrated long-term populations of the San Diego fairy shrimp exist in artificial habitats.

Artificially created habitats may also increase the potential for hybridization between the San Diego fairy shrimp and other more widespread species. For example, Lindahl's fairy shrimp is a widespread species found in western North America that occurs in a wide array of habitats, ranging from pools whose salinity is high enough to support brine shrimp (*Artemia* sp.) to snow melt pools. Poor planning, careless construction, or haphazard placement of the substrate during vernal pool creation may enhance conditions for species like Lindahl's fairy shrimp. Laboratory studies have shown that Lindahl's fairy shrimp and the San Diego fairy shrimp readily hybridize in the laboratory and produce viable first generation hybrids (Fugate 1992, Branchiopod Research Group 1996). Evidence suggests that hybridization between other fairy shrimp has occurred in the field due to human actions. Belk (1977) reported that the westward dispersal of a desert fairy shrimp (*Streptocephalus dorothae*) from Texas and New Mexico across extensive expanses of arid land into Arizona may be due to the cattle ponds and livestock watering holes that were built in the region during the past century. Wiman (1979) reported that viable hybrid offspring are produced by this species and Mackin's desert fairy shrimp (*S. mackini*), a resident species in Arizona.

The San Diego fairy shrimp may be adversely impacted as a result of actions taken to create and/or restore vernal pools (Branchiopod Research Group 1996). Scraping of the vernal pool bottoms for plant seed collection can damage or destroy fairy shrimp eggs, and heat or humidity during storage can mold or kill eggs. Created or modified vernal pools may hold water for inappropriate lengths of time, at inappropriate depths or temperatures.

Given these uncertainties associated with vernal pool creation, the Service maintains that transplanting target species (e.g., listed, proposed, and candidate species) into artificial pools cannot be considered adequate replacement for the loss of occupied vernal pool habitat. Even if such transplantation of the San Diego fairy shrimp and creation of its habitat were documented to be a proven procedure rather than an evolving problematic venture, artificial pool creation for the species would not fulfill the mandates of section 2 of the Act, which require the Service to develop programs that conserve the ecosystems upon which listed species depend. As discussed elsewhere in this rule, natural habitat throughout the range of the San Diego fairy shrimp has been damaged or eliminated. As a result, the Service concludes that the continued survival and recovery of the San Diego fairy shrimp can only be assured at this time by the preservation and enhancement of extant vernal pools and their associated watersheds.

Issue 23

Nine respondents alleged that Federal, State and local regulatory processes provide adequate protection for the crustaceans. Several of these commenters said that listing would directly affect agricultural, industrial and commercial development in areas that have been meticulously planned and subject to State laws such as the Natural Community Conservation Planning (NCCP) Act and the California Environmental Quality Act (CEQA). Some commenters noted the ''no net loss'' wetlands policies of several State and county agencies, while others cited section 404 of the Clean Water Act as providing protection for this habitat. Two commenters, citing two development projects in San Diego County, claimed that significant portions of the vernal pools at these project sites will be preserved. These commenters stated that these projects are representative of the level of preservation afforded vernal pool habitat in the San Diego area.

Expressing a contrary position, several other commenters noted that Federal, State, and local laws have been ineffective in providing protection for the species. One commenter noted that the City of San Diego has approved the California Terraces project on Otay Mesa, and has advanced other projects impacting San Diego fairy shrimp habitat through the CEQA planning process without adequate mitigation for the species.

Service Response

Based on an examination of the available information, the Service has determined that proposed and on-going damage or destruction of vernal pools in southern California caused by urban and agricultural development is prevalent despite existing Federal, State, and local regulations. Existing levels of protection are not adequate to assure the survival of the San Diego fairy shrimp. For example, while vernal pool habitat has been preserved permanently for some projects through special conditions of permits authorized under section 404 of the Federal Clean Water Act, significant areas of vernal pool habitat continue to be destroyed in spite of the U.S. Army Corps of Engineers' (Corps) jurisdictional authority to regulate these wetlands under the Clean Water Act. Between 1993 and 1996, the Service identified 15 unauthorized projects in San Diego and Orange counties that destroyed or damaged a minimum of 40 vernal pools exclusive of watersheds (Susan Wynn, USFWS, unpub. notes). The projects were not authorized

because landowners either were not required or failed to comply with the regulatory requirements of the section 404 permitting process. Please see Factor ''D'' for a detailed discussion of the inadequacy of existing regulations.

Issue 24

Five commenters stated that the San Diego Multiple Species Conservation Program (MSCP) plan and the Multiple Habitat Conservation Plan (MHCP) that are being prepared pursuant to the State of California's NCCP Act of 1991 will adequately protect the San Diego fairy shrimp and its vernal pool habitat in San Diego County. For this reason, the commenters urged the Service not to list the animal. Expressing a contrary view, one respondent stated that the MSCP and the MHCP will not adequately protect the animal or its habitat. This same respondent noted that no plan that will protect the San Diego fairy shrimp has been adopted by any local government in southern California.

Service Response

The San Diego fairy shrimp is proposed to be covered under the MSCP plan, which is currently in the final stages of the National Environmental Policy Act public review process. The Service anticipates making a decision on ''incidental take'' (section 10(a)(1)(B)) permit issuance in April 1997. The Service has determined that 72 percent of the remaining vernal pool habitat within the MSCP planning area is located in the proposed program preserve. However, less than 30 percent of the total San Diego fairy shrimp habitat is protected within the MSCP planning area. Additional important habitat for this species occurs on military lands, such as Miramar Naval Air Station, but this land is not included as part of the MSCP. Military lands contain the largest remaining blocks of vernal pool habitat for the San Diego fairy shrimp, approximately 70 percent of the total habitat of the species. Conservation planning for listed species on military lands will be accomplished through separate avenues, such as formal consultations pursuant to section 7 of the Act and through the Sikes Act agreements. It will be the responsibility of the Service to ensure that these conservation planning activities are consistent with the MSCP or MHCP should these plans be approved. Preserve management plans must include specific measures to protect against detrimental edge effects to the San Diego fairy shrimp. The MHCP is still in development and the precise configuration and conservation strategy have not been determined. Therefore the protections that would be afforded the San Diego fairy shrimp by this plan cannot yet been determined. Please see Factor ''D'' for a discussion of the inadequacy of these regulatory mechanisms.

Summary of Factors Affecting the Species

After a thorough review and consideration of all available information, the Service has determined that the San Diego fairy shrimp should be classified as an endangered species. Procedures found at section 4 of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the San Diego fairy shrimp (*Branchinecta sandiegonensis* Fugate) are as follows.

A. The Present or Threatened Destruction, Modification, or Curtailment of Their Habitat or Range

The San Diego fairy shrimp is imperiled because its vernal pool habitat is being damaged or destroyed by a variety of human-caused activities, primarily urban development and agricultural conversion. Habitat loss occurs from destruction and modification of vernal pools due to filling, grading, discing, leveling, and other activities, as well as the modification of surrounding uplands that alters vernal pool watersheds.

Rapid urbanization of areas containing vernal pools poses a significant threat to the San Diego fairy shrimp. Nearly all of the vernal pools that occurred throughout the range of the species from southern Santa Barbara County to extreme northwestern Baja California have been eliminated (Keeler-Wolf *et al.* 1995). The majority of extant vernal pools located in the range of the San Diego fairy shrimp are found in San Diego County. According to Bauder (1986), 838 vernal pools comprising 283 ha (698 ac) were eliminated by urban development between 1979 and 1986. Adequate mitigation measures were not implemented for these areas. In general, the growth rate of the human population and associated urban development in southern California and northwestern Baja California is equal to or exceeds that of any other region in California. San Diego is one of the fastest growing counties in the nation, with a population increase of 349 percent between 1950 and 1990 (California Department of Finance 1993). The population growth rate that is predicted could further fragment and degrade the remaining vernal pool habitat of the San Diego fairy shrimp.

The following is a discussion of the status of the locations that contain suitable vernal pool habit for the San Diego fairy shrimp.

San Diego County

Tijuana Slough National Wildlife Refuge

The vernal pool watershed is approximately 2 ha (5 ac) in size. Construction of an improved fence on the United States/Mexican border has apparently eliminated trampling caused by persons crossing the border illegally.

Proctor Valley

This small vernal pool complex is located in an isolated valley (Bauder 1986). The vernal pools are highly disturbed by grazing and ORV traffic (Julie Vanderweir, USFWS, pers. obs.). The San Diego fairy shrimp has been documented at this site. The vernal pools in Proctor Valley are part of the MSCP.

Otay Mesa

The vernal pools at this site are located in several disjunct locations across the southernmost mesa in California. Otay Mesa extends from just south of the Otay River, across the international border into Mexico, west to Interstate 805, and east to the foothills below Otay Mountain. Historical and ongoing agricultural activities, such as cattle ranching and dry land farming, have continually disturbed this area and have destroyed 78 percent of the vernal pools once located on Otay Mesa. The remaining vernal pools are scattered, with the only sizeable areas of vernal pool habitat occurring on the northeastern corner of Otay Mesa. The San Diego fairy shrimp has been documented at this site (H. Wier and J. Brown, *in litt.*, 1994). Portions of the vernal pool complexes on Otay Mesa are part of the MSCP and are also being considered for inclusion in the proposed San Diego National Wildlife Refuge. Otay Mesa currently is farmed for truck crops and barley and is grazed. However, significant portions have been or are proposed for industrial and residential development in the Otay Mesa Community Plan. This development is closely associated with development projects that have been or will be implemented on the United States/Mexican border. A proposed toll road would facilitate the development of significant portions of Otay Mesa.

On west Otay Mesa, the proposed California Terraces residential project will eliminate significant amounts of vernal pool habitat for the San Diego

fairy shrimp. The Final Environmental Impact Report for this project has been approved by the City of San Diego. Other proposed projects, such as State Highway 905, Robinhood Ridge, Hidden Trails, and Santee Investments also would adversely impact vernal pool habitat for this animal.

On east Otay Mesa, the proposed Otay Ranch and State Highway 125 would impact approximately 9,300 ha (23,000 ac), including substantial areas containing habitat for the San Diego fairy shrimp. Some of the vernal pools located within these project areas are located in a proposed biological reserve. However, the projects as proposed would eliminate the majority of the habitat for the San Diego fairy shrimp.

On-going actions by the U.S. Border Patrol on Otay Mesa continue to significantly impact vernal pools by ORV use and associated law enforcement activities. Unauthorized discing and grading on Otay Mesa also has impacted vernal pool habitat for the San Diego fairy shrimp.

Otay Lakes

These vernal pools consist of several scattered complexes, north and south of the lake, not connected by any continuous mesa system (Bauder 1986). Four vernal pool complexes at Otay Lakes are included in the MSCP and are proposed to be included within the San Diego National Wildlife Refuge. These pools are owned by the City of San Diego. A proposed resort would eliminate all vernal pools that are located north of the lake.

Sweetwater Reservoir

The vernal pools occur on the southwestern edge of Sweetwater Reservoir in southern San Diego County. These pools are one of the few remaining examples of isolated vernal pool habitat between the central mesas of San Diego and Otay Mesa to the south (Bauder 1986). The surrounding area has been brushed or grazed and consists primarily of disturbed ruderal vegetation. Portions of the area containing vernal pools have been proposed for urban development. Some of the vernal pool complexes at Sweetwater Reservoir are included in the MSCP and are proposed to be included within the San Diego National Wildlife Refuge. However, the extension of State Route 125 may impact a portion of these vernal pools.

Mission Trails County Park

The small vernal pool complex at this site is inhabited by the San Diego fairy shrimp. The vernal pools are subject to damage caused by bikes, trash dumping, and unrestricted hiking.

Linda Vista

Museum specimens of the San Diego fairy shrimp are known from Linda Vista. However, these vernal pools have been eliminated by urban development.

Kearney Mesa

The vernal pools on Kearney Mesa originally covered approximately 38 square km (15 square mi). However, the majority of this region has been developed for residential and commercial uses.

The largest and most contiguous block and number of vernal pools in southern California and northwestern Baja California occurs on Miramar Naval Air Station. Weir and Bauder (1991) state that 70 percent of the remaining vernal pools occur on military lands. Approximately 26 ha (65 ac) of vernal pools are located on the Miramar Naval Air Station. These pools exhibit a wide variety of conditions from disturbed to pristine, and vary greatly in size, depth, type and number of cobbles, soil type, hydrological characteristics, and species composition. The San Diego fairy shrimp has been estimated to inhabit 80 percent of the vernal pools at the base (Branchiopod Research Group 1996). This military base will be transferred from the U.S. Navy to the U.S. Marine Corps (Department of the Navy 1996). The Marine Corps has proposed construction of additional helicopter landing fields, ammunition bunkers, and other facilities that may adversely affect areas containing habitat for the San Diego fairy shrimp.

The vernal pools at Montgomery Field occur within the approach path of the airport. This vernal pool complex is in a heavily urbanized area surrounded by the airport, research and office developments, and Interstate 15 and State Route 163. Three separate areas of airport land encompass the watershed containing 138 vernal pools. Although this site has been set aside for the protection of the vernal pools, in February 1995 unknown persons dug trenches which resulted in the draining of some high-quality pools. The vernal pools at Montgomery Field are included in the MSCP and are proposed to be part of the San Diego National Wildlife Refuge.

The construction of a sludge processing facility and mounding of excess dirt at the Miramar Landfill, as well as on-going landfill maintenance have eliminated vernal pools inhabited by the San Diego fairy shrimp. The proposed extension of Nobel Drive would damage or eliminate the vernal pools containing habitat for the species.

Del Mar Mesa, Lopez Ridge, and Mira Mesa

The vernal pools found on Del Mar Mesa are part of a large mesa of approximately 36 square km (14 square mi). Approximately 120 vernal pools with a high diversity of sizes, depths, surface configuration, and soil type occur in this area (Bauder 1986). The San Diego fairy shrimp has been documented in vernal pools at this site (H. Wier and J. Brown, *in litt.*, 1994). Some of the vernal pool complexes at Del Mar Mesa are included in the MSCP and are proposed to be included within the San Diego National Wildlife Refuge. Residential development occurs to the east, agriculture consisting of row-crop dry farming occurs in McGonigle Canyon, and undeveloped private lands occur to the west.

The City of San Diego's proposed Future Urbanizing Area Neighborhood 8A project would result in the damage or loss of several vernal pools on Del Mar Mesa. Some of these vernal pools have recently been scraped. The construction of two major roads is proposed in the immediate vicinity of the California Department of Transportation vernal pool reserve. If completed, these roads would result in further isolation and fragmentation of these vernal pools and their watersheds, as well as impacts to several pools outside of the reserve. Used refrigerators, sofas, and other trash have been dumped in and around the vernal pools outside of the vernal pool reserve.

Ninety of the vernal pools on Lopez Ridge are owned by the California Department of Transportation and the City of San Diego. The vernal pools have a wide variety of sizes and depths (Bauder 1986). The area containing vernal pools on the north side of Carroll Canyon is being quarried for sand and gravel. Some of the vernal pool complexes at Lopez Ridge are included in the MSCP and are proposed to be included within the San Diego National Wildlife Refuge. The remainder are located on private property and are proposed to be developed for residential housing. Although the publicly owned pools are protected from development, ORV activity, proposed development immediately adjacent to the preserve, and proposed restoration actions may threaten the San Diego fairy shrimp at this locality (M. Simovich, pers. comm., 1993).

Some of the vernal pools at Challenger High School in Mira Mesa were filled without authorization under the Clean Water Act during the winter

of 1987 to 1988. No restoration for this action has occurred to date; a public park is proposed for this location.

Carlsbad

The small vernal pool complex in Carlsbad is located on a coastal bluff in an urbanized area. The San Diego fairy shrimp has been documented at this site (H. Wier and J. Brown, *in litt.*, 1994). Construction of a railroad station and associated facilities resulted in the permanent loss of some of the vernal pools. The mitigation consisted of restoration and preservation of additional habitat. The remaining vernal pools are protected in a preserve.

Marine Corps Base Camp Pendleton

The vernal pools at Marine Corps Base Camp Pendleton are found on the coastal bluffs in the vicinity of Interstate 5 north of the mouth of the Santa Margarita River, and in the vicinity of Wire Mountain (Bauder 1986). Mima mound topography (a natural patchwork of soil mounds and surrounding flat ground) is well developed on the coastal bluffs and the vernal pools vary greatly in size and depth. The vernal pools on Wire Mountain, in the western portion of the base, are located in a watershed consisting of coastal sage scrub. The vernal pools on Wire Mountain have been fenced to prevent entry by casual visitors and ''keep out'' signs have been placed around a few of the pools. Many of the vernal pools on the coastal bluffs continue to be damaged or destroyed during military maneuvers.

Poway

The vernal pools in Poway were historically located north of Poway Road and east of Interstate 15 (Bauder 1986). Some of the pools occurred on mesa fingers and others were in grassy hills (Bauder 1986); however, only three vernal pools were extant at this site by the end of 1987. The majority of the vernal pools at this site have been eliminated by urban development. No conservation measures have been undertaken or are proposed for the Poway vernal pools. Therefore, these pools are still subject to potential urban development, ORV use, and other human-caused disturbances.

Ramona

The vernal pools in Ramona are found in an inland valley approximately 65 km (40 mi) from the coast (Bauder 1986). They represent the easternmost and highest elevational occurrences in San Diego County. These vernal pools, which vary in size and depth, are located in non-native grassland and coastal sage scrub. Expansion of the Ramona Airport may impact some of the vernal pools. Other vernal pools have been eliminated by the construction of retail stores and the realignment of Dye and Highland Roads. Bauder (1986) stated that overgrazing by cattle has a significant impact on these pools. To date, no proposal has been made to protect the Ramona vernal pools.

San Marcos

The vernal pools in San Marcos are more closely related, physically and botanically, to vernal pools in Riverside County than those in San Diego County (Bauder 1986). Two of the four vernal pool complexes in San Marcos have been eliminated (Bauder 1986; Chris Nagano, USFWS, pers. obs., 1996). The remaining complexes have been significantly impacted by discing (F. Roberts, USFWS, pers. obs., 1995). Indirect impacts, such as runoff from adjacent industrial areas, adversely affect the vernal pools. No conservation measures have been undertaken or are proposed for the San Marcos vernal pools, which the City of San Marcos has requested be excluded from the proposed MHCP.

Orange County

The San Diego fairy shrimp has been recorded at Fairview Park in the City of Costa Mesa. This site has been damaged by recreational activities, such as dog walking, model airplane flying, and soccer players. Insecticide spraying for mosquito control in the park also likely adversely impacts the vernal pool habitat. The San Diego fairy shrimp has been found inhabiting a single vernal pool located along the proposed Antonio Parkway in southern Orange County.

Los Angeles County

The San Diego fairy shrimp has not been recorded from the two known extant vernal pools in Los Angeles County.

Ventura County

The San Diego fairy shrimp has not been recorded from the two known extant vernal pool complexes in Ventura County.

Santa Barbara County

Vernal pools are rare in Santa Barbara County; they are located at Moore Mesa, Ellwood Mesa, and Isla Vista. All of the vernal pools in this area have been or are currently imperiled by urban development, ORVs, draining, and other human-caused factors (Ferren and Pritchett 1988). The Santa Barbara County vernal pools are now isolated from those in San Diego County by substantial agricultural and urban development in Ventura, Los Angeles, and Orange counties.

The vernal pools at Isla Vista are found in an isolated group that occurs on a flat-topped coastal mesa. Despite intensive sampling, only a single adult female San Diego fairy shrimp is known from the Del Sol Open Space and Vernal Pool Reserve in Isla Vista. This park is owned and managed by the Isla Vista Recreation and Park District, a local agency (Ferren and Pritchett 1988). Directed surveys of vernal pools in Isla Vista for fairy shrimp have not located any additional San Diego fairy shrimp individuals (M. Simovich, pers. comm., 1994).

Baja California

Few vernal pool complexes in Baja California are similar to those in San Diego County. The vernal pool complex at Valle de las Palmas, located south of Tecate, contains several proposed or rare plant species (Brown *et al.* 1993). The vernal pools at Valle de las Palmas are being adversely affected by cattle grazing, agriculture, and removal of clay soil for pottery and bricks. The highly disturbed vernal pool complex located at Bajamar, north of Ensenada, is imperiled by cattle grazing and potentially from chemical spills from the adjacent highway. No Federal, State, or local regulations protect the vernal pools or the San Diego fairy shrimp in Mexico.

The San Diego fairy shrimp is especially vulnerable to alterations in hydrology. Its vernal pool habitat is also vulnerable to indirect destruction due to the alteration of supporting watersheds. Development projects adjacent to vernal pools are often responsible for adverse alterations in drainage. Hydrological alterations can result from urban or agricultural development or a combination of these activities. An increase in water due to urban run-off leads to increased inundation, making the pools vulnerable to invasion by marsh plant species that outcompete obligate (restricted to) vernal pool taxa, resulting in decreased abundance of obligate vernal pool taxa. At the other extreme, some pools have been drained or blocked from their source of water and have shown an increased domination by upland plant species. Alterations in vernal pool hydrology may adversely impact the San Diego fairy shrimp due to changes in the maximum and minimum water temperatures.

Filling of vernal pool wetlands without authorization from the Corps also poses a threat to this species. The Service is aware of 15 actions that

occurred between 1993 and 1996 in San Diego County, including urban development, that have resulted in the damage or destruction of approximately 40 vernal pools, exclusive of associated watersheds, that likely provided habitat for the San Diego fairy shrimp (S. Wynn, F. Roberts, unpub. notes). At least three of these parties likely intended to alter the elevations of the site to eliminate one or more of the parameters used by the Corps to define a wetland according to their 1987 jurisdictional manual (U.S. Army Corps of Engineers 1987). Similar deliberate activities that are damaging or destroying vernal pools are likely occurring throughout the range of the San Diego fairy shrimp (S. Wynn, unpub. notes). Because of the immediate threat posed by these on-going activities, the Service finds that good cause exists for this rule to take effect immediately upon publication in accordance with 5 U.S.C. 553(d)(3).

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

Not known to be applicable.

C. Disease or Predation.

No known diseases affect the San Diego fairy shrimp. Fairy shrimp are a food item in the diet of migratory waterfowl and other native animals (Krapu 1974, Swanson *et al.* 1974). However, this naturally occurring predation is not considered a threat to the continued existence of the San Diego fairy shrimp.

D. The Inadequacy of Existing Regulatory Mechanisms

The primary cause for the decline of this species is loss of habitat due to human activities. No State or local laws exist that adequately protect the San Diego fairy shrimp. Other regulatory mechanisms necessary for the conservation of its vernal pool habitat have also proven inadequate and ineffective.

Existing regulatory mechanisms that could provide some protection for the San Diego fairy shrimp include: (1) section 404 of the Federal Clean Water Act; (2) occurrence with other species protected by the Federal Endangered Species Act; (3) consideration under the California Environmental Quality Act (CEQA); (4) implementation of conservation plans pursuant to the State of California's Natural Community Conservation Planning Act of 1991 (NCCP), including the San Diego Multiple Species Conservation Plan (MSCP), the San Diego County Multiple Habitat Conservation Plan (MHCP), and the Central/Coastal Orange County NCCP/HCP; (5) local laws and regulations; (6) Federal land management responsibilities; and (7) Mexican law.

Clean Water Act

Under section 404 of the Clean Water Act, the Corps regulates the discharge of fill into waters of the United States, including navigable waters, wetlands (e.g., vernal pools), and other waters (33 CFR parts 320–330). The Clean Water Act requires project proponents to obtain a permit from the Corps prior to undertaking many activities (e.g., grading, discharge of soil or other fill material) that would result in the filling of wetlands subject to the Corps' jurisdiction. The Corps promulgated Nationwide Permit Number 26 to address fill of isolated or headwater wetlands totaling less than 10 acres. Under the 1996 reauthorized Nationwide Permit 26 (61 FR 65873), project proposals that involve the fill of wetlands of less than one-third of an acre are considered authorized. Fill of between one-third and one acre requires notification only to the Corps. Where fill would adversely modify between 1 and 3 acres of wetland, the Corps circulates a predischarge notification to the Service and other interested parties for comment to determine whether an individual permit should be required for a proposed fill activity and associated impacts.

Individual Corps permits are required for discharge of material that would fill or adversely modify more than 3 acres of wetlands. The review process for individual permits is more rigorous than for nationwide permits. Unlike nationwide permits, an analysis of cumulative wetland impacts is required for individual permit applications. Resulting permits may include special conditions that require potential avoidance or mitigation for environmental impacts. On nationwide permits, the Corps has discretionary authority to instead require an individual permit if the Corps believes that resources are sufficiently important, regardless of the wetland's size. In practice, however, the Corps generally does not require an individual permit when a project qualifies for a nationwide permit, unless a threatened or endangered species or other significant resources would be adversely affected by the proposed activity. Most vernal pools and swales within the range of the San Diego fairy shrimp encompass less than 1 acre. The discontinuous distribution of these sites has allowed some landowners to divide large projects into several smaller projects. Wetland acreage on these smaller projects is generally less than 1 acre, and therefore, most projects qualify for Nationwide Permit 26. Discing and other farming or ranching practices, including grazing, can degrade or destroy vernal pool habitat without a permit from the Corps because many of these activities are exempt from regulation under the Clean Water Act (33 CFR 323.4(a)). The discontinuous configuration of the pools and swales further obscures separation of these wetland losses.

Endangered Species Act

The Act can incidentally afford protection to San Diego fairy shrimp if they co-exist with species already listed as threatened or endangered. *Pogogyne abramsii* (San Diego mesa mint), *P. nudiscula* (Otay mesa mint), *Orcuttia californica* (California orcutt grass), *Eryngium aristulatum* var. *parishii* (San Diego button celery), and the Riverside fairy shrimp (*Streptocephalus wootoni*) are listed as endangered under the Act and occur in the same habitat as the San Diego fairy shrimp. However, these species are not always found in the same vernal pools or vernal pool complexes as the San Diego fairy shrimp. The Riverside fairy shrimp and San Diego fairy shrimp are known to co-exist in only three vernal pool complexes in San Diego County. Within a vernal pool complex, the San Diego fairy shrimp often does not occur in the same pools as listed plant species. Except for the Riverside fairy shrimp, these other noted vernal pool species are plants for which the Act does not provide prohibitions against take. Therefore, the umbrella protection that they may provide would only occur if a proposed federally funded or authorized action would jeopardize the continued existence of those species, as determined in a biological opinion developed under section 7 of the Act.

California Environmental Quality Act

Section 15380 of the CEQA requires that impacts to any taxon that meets the criteria for listing under the California Endangered Species Act be treated as significant regardless of its current listing status. The San Diego fairy shrimp has been recognized as a distinct taxon by the scientific and local conservation communities since 1990. Impacts to this species would qualify as significant under section 15380 of the CEQA even though this species was not described taxonomically until 1993 (Fugate 1993). However, this taxon has only been considered in a limited number of environmental impact reports since 1990. Required biological surveys are often inadequate and project

proponents may ignore the results of surveys if occurrences of sensitive species are viewed as a constraint on project design. Mitigation measures used to condition project approvals are essentially experimental and fail to adequately guarantee protection of the populations. Most mitigation plans that have been required were designed specifically for vernal pool plants. The artificial creation of vernal pools as compensatory mitigation has not been scientifically demonstrated to be successful (Ferren and Gevirtz 1990; Zedler and Black 1988; M. Simovich, *in litt.*, 1992). For example, in San Diego County, vernal pools containing the San Diego fairy shrimp and the federally and State-listed San Diego mesa mint were destroyed without adequate environmental documentation or coordination with the Service and the California Department of Fish and Game.

Natural Communities Conservation Planning Act

In 1991, the State of California passed the NCCP Act to address the conservation needs of natural ecosystems throughout the State. The initial focus of this program was the coastal sage scrub community in southern California, although other associated vegetation communities are also being addressed in this ecosystem-based planning approach. The San Diego fairy shrimp is found in vernal pools that are often not located in coastal sage scrub. However, the San Diego fairy shrimp is being treated as a covered species under the MSCP plan and MHCP. These plans, under development by the County of San Diego and its coastal cities, are being integrated as components of the NCCP program. The MSCP is developed and is currently undergoing the final stages of the public review process. The MHCP is still in the developmental phase, and it is uncertain as to how successful it will be in providing protection for this species. The Central/Coastal Orange County NCCP/HCP (approved by the Service on July 17, 1996) treats the San Diego fairy shrimp as a ''conditionally covered'' species and provides coverage for this species under the section 10(a)(1)(B) ''incidental take'' permits only for highly degraded and/or artificial habitat. Non-degraded, natural vernal pool habitat is not covered. The San Diego fairy shrimp has not been confirmed in the Central/Coastal NCCP/HCP planning area. If present, it would likely occur in highly degraded and/or artificial habitat, where incidental take would be allowed under the permit.

Local Laws and Regulations

The San Diego fairy shrimp is not specifically protected under any local laws or regulations. The San Diego fairy shrimp occurs within the California Department of Transportation Vernal Pool Preserve on Del Mar Mesa. Although these pools are being managed for the long-term protection of vernal pool flora and fauna, ORV activity, proposed development immediately adjacent to the preserve, and proposed restoration actions may threaten the San Diego fairy shrimp at this locality (M. Simovich, pers. comm., 1993).

The San Diego Vernal Pool Preservation Program, enacted by the City of San Diego in 1980, did not include adequate protection for vernal pools, nor did it contain sufficient mitigation to compensate for the loss of vernal pools. More than 800 pools have been destroyed under the preservation plan, and only three sites containing approximately 8 ha (21.8 ac) of watersheds containing vernal pools have been purchased using $882,000 of the mitigation funds. The preservation program did not collect sufficient funds to mitigate the vernal pool land area lost, nor did it include suitable preserve size, design configuration, or adequate management.

Federal Land Management Responsibilities

The Service has proposed a National Wildlife Refuge in San Diego County which includes a proposed Vernal Pool Stewardship Project. The Draft Environmental Assessment for the Vernal Pools Stewardship Project was released in November of 1996. Approval of the Vernal Pools Stewardship Project does not grant the Service jurisdiction or control over lands within the project boundary, nor does it automatically make lands within the project boundary part of the National Wildlife Refuge System (NWRS). Lands do not become part of the NWRS until they are purchased by the Service or are placed under an agreement that provides for management as part of the refuge system. Service policy is to acquire lands only from willing sellers. To date, the Service has not purchased any lands for inclusion in the vernal pool unit, nor are any lands under an agreement to be managed as part of the refuge. Proposed projects are located within several of the areas recommended for inclusion in the vernal pool refuge. On Otay Mesa and below the Sweetwater Reservoir, the proposed alignment for State Route 125 intersects lands within the proposed refuge boundary. Because these lands have not been purchased, the Federal Highways Administration does not have to complete an evaluation pursuant to section 4(f) of the U.S. Department of Transportation Act (49 U.S.C. 303). In addition, a resort is proposed within the unit located above Otay Lakes that would eliminate the vernal pools on that site.

The San Diego fairy shrimp is found on Federal lands managed by the U.S. Navy at Cholla Heights Naval Housing and Miramar Naval Air Station, and the U.S. Marine Corps at Camp Pendleton. These lands are used, in part, for military training activities that involve ORV maneuvers that adversely impact the species (Hogan and Belk 1992). The air station will be transferred to the Marine Corps on October 1, 1997. The Marine Corps has indicated that they will not allow a National Wildlife Refuge overlay on the air station (Department of the Navy 1996); however, they have agreed to place a vernal pool stewardship overlay on the areas of the base containing vernal pools. The Marine Corps stated that they will implement management plans for the vernal pools at Miramar Naval Air Station and Camp Pendleton, but none has been prepared to date. Surrounding privately owned vernal pool habitat and watershed is not protected.

Mexican Law

The Service is not aware of any existing regulatory mechanisms that would protect the San Diego fairy shrimp or its habitat where it occurs in northwestern Baja California, Mexico.

E. Other Natural or Man-Mmade Factors Affecting Their Continued Existence

Secondary impacts associated with urbanization include disposal of waste materials into habitat for the San Diego fairy shrimp. Disposal of concrete, tires, refrigerators, sofas, and other trash adversely affects these animals by eliminating habitat, disrupting pool hydrology or, in some cases, through release of toxic substances (Bauder 1986, 1987). Malathion, herbicides, laundry detergent, household plant fertilizer, and motor oil have been documented to be fatal to the San Diego fairy shrimp through poisoning of the animals or by the formation of a barrier to gas exchange on the surface of the water, which can result in asphyxiation (Branchiopod Research Group 1996). Dust and other forms of air or water pollution from commercial development or agricultural projects may also be deleterious to this animal.

ORV use also imperils the San Diego fairy shrimp. ORVs crush fairy shrimp eggs (Ericksen *et al.* 1986); less than the weight of an apple can crush dormant

fairy shrimp eggs (Branchiopod Research Group 1996). ORVs can also cut deep ruts, compact soil, destroy native vegetation, and alter pool hydrology. Fire fighting activities, security patrols, military maneuvers, and recreational activities have cumulatively damaged vernal pool habitats in many areas within the range of the species (Bauder 1986, 1987). On the Otay Mesa, law enforcement-related ORV use by the U.S. Border Patrol has adversely impacted vernal pools known to be inhabited by the San Diego fairy shrimp.

Cattle grazing occurs on Otay Mesa, Otay Lakes, and Ramona in areas where several vernal pool complexes contain the San Diego fairy shrimp. Overgrazing in areas containing the animal and its habitat is likely detrimental. High levels of pasture runoff may lead to increased siltation of vernal pool habitat. High livestock densities may result in excessive physical disturbance, such as trampling, and cause changes in pool water chemistry and water quality. Impacts due to overgrazing have been described as analogous to those from vehicle traffic (e.g., causing deep tracks, burying eggs, and trampling individuals) (Bauder 1986, 1987).

The Service has carefully assessed the best available scientific and commercial information regarding past, present, and future threats faced by the San Diego fairy shrimp in determining to issue this final rule. Based on this evaluation, the preferred action is to list the San Diego fairy shrimp as endangered. This species is imperiled by rapid urbanization, conversion of land to agricultural use, vehicle use, extremely limited available habitat (less than 81 ha (200 ac) of vernal pools), and changes in hydrologic patterns in areas where they occur. Numerous ongoing and proposed development projects pose an imminent threat to the San Diego fairy shrimp. Extraordinary increases in the human population and associated pressures from urban development have rendered existing regulatory mechanisms inadequate. All of the known populations of the San Diego fairy shrimp are imperiled. Only a portion of the extant vernal pools would be protected under the MSCP and/or the proposed San Diego National Wildlife Refuge. Because the San Diego fairy shrimp has been extirpated from all but approximately 81 ha (200 ac) of vernal pool habitat, and because of the threats to the species discussed above, the San Diego fairy shrimp is in danger of extinction throughout all or a significant portion of its range and thus meets the definition of endangered as defined in the Act. Designation of critical habitat for the San Diego fairy shrimp is not prudent for the reasons discussed below.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(I) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat concurrently with determining a species to be endangered or threatened. The Service finds that the designation of critical habitat is not prudent for the San Diego fairy shrimp. Service regulations at 50 CFR 424.12(a)(1) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. Because the San Diego fairy shrimp faces numerous human-caused threats (see Factors ''A'' and ''E'' above), the publication of precise maps and descriptions of critical habitat in the Federal Register would make this species more vulnerable to incidents of vandalism and, therefore, would contribute to the decline of the species. A number of sites inhabited by the San Diego fairy shrimp occur on private land that is undergoing rapid urban development and agricultural conversion. As documented in this rule, some areas have been destroyed to eliminate vernal pool characteristics and escape regulatory jurisdiction by the Corps. The proper agencies have been notified concerning management requirements of the animal. Protection of the habitat of the species will be addressed through the recovery, section 7 consultation, and incidental take permit processes. Federal involvement in areas where the animal occurs can be identified without designation of critical habitat. Therefore, the Service finds that designation of critical habitat for the San Diego fairy shrimp is not prudent at this time, because such designation would likely increase the degree of threat from vandalism or other human activities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery plans be developed for listed species. The protection required by Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(1) requires Federal agencies to use their authorities to further the purposes of the Act by carrying out programs for listed species. Section 7(a)(2) of the Act requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species. If a Federal action is likely to adversely affect a listed species, the responsible Federal agency must enter into formal consultation with the Service.

Federal agencies expected to have involvement with the San Diego fairy shrimp include the Army Corps of Engineers and the Environmental Protection Agency due to their permit authority under section 404 of the Clean Water Act. Nationwide permits are not valid where a federally listed endangered or threatened species would be affected by the proposed project. When listed species may be affected, formal consultation is required pursuant to section 7 of the Act before nationwide permits become effective.

The San Diego fairy shrimp occurs on Miramar Naval Air Station, Marine Corps Base Camp Pendleton, and Cholla Heights Naval Housing. These bases will likely be involved through military

activities or potential excessing of Federal lands. The Department of Transportation (Federal Highways Administration) may possibly be affected by the listing of this species because some populations occur on properties where federally funded roadways may be constructed. Activities undertaken by the U.S. Border Patrol may affect vernal pools containing the species along the international border. The Federal Aviation Administration will be affected through activities they fund, permit, or authorize at the Ramona Airport and Montgomery Field Airport. In addition, the Department of Housing and Urban Development (HUD) may insure housing loans in areas that presently support San Diego fairy shrimp. HUD actions regarding these loans would also be subject to review by the Service under section 7 of the Act.

The listing of the San Diego fairy shrimp also brings sections 5 and 6 of the Act into effect. Section 5 authorizes acquisition of lands for the purposes of conserving endangered and threatened species. Pursuant to section 6, the Service will be able to grant funds to the affected State for management actions aiding in protection and recovery of the species.

Listing the San Diego fairy shrimp as endangered provides for the development and implementation of a recovery plan for the species. Such a plan will bring together State and Federal efforts for conservation of the species. The plan will establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan will set recovery priorities and estimate the costs of various tasks necessary to accomplish the priorities. It also will describe site-specific management actions necessary to achieve conservation and survival of the San Diego fairy shrimp.

The Act and its implementing regulations set forth a series of prohibitions and exceptions that apply to all endangered wildlife. The prohibitions, codified at 50 CFR 17.21 for endangered wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

It is the policy of the Service, published in the Federal Register on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and on-going activities within a species' range. Activities that could potentially result in ''take'' of the San Diego fairy shrimp include, but are not limited to: unauthorized collecting or handling of the animal, unauthorized pesticide applications within the vernal pool habitat of the species, or intentional or unauthorized damage or destruction of its habitat (e.g., ORV use, urban development or agricultural conversion that damages or destroys the vernal pools or alters their hydrology), violation of the terms and conditions of discharge permits, and discharges or dumping of toxic chemicals, silt fertilizers, oil, organic wastes, or other pollutants into waters supporting the species.

Activities that the Service believes are unlikely to result in a violation of section 9 are: possession, delivery, or movement, including interstate transport and import into or export from the Unites States, involving no commercial activity, of dead specimens of the San Diego fairy shrimp that were collected prior to the date of publication in the Federal Register of the final regulation adding this species to the list of endangered species; and federally approved projects that involve activities such as discharge of fill material, draining, ditching, tiling, pond construction, stream channelization or diversion, or alteration of surface or ground water into or out of a wetland (i.e., due to roads, impoundments, discharge pipes, storm water detention basins, etc.), when such activity is conducted in accordance with any reasonable and prudent measures given by the Service in accordance with section 7 of the Act.

Questions regarding whether specific activities will constitute a violation of section 9 of the Act should be directed to the Field Supervisor of the Service's Carlsbad Field Office (see **ADDRESSES** section). Requests for copies of the regulations regarding listed wildlife and inquiries about prohibitions and permits should be addressed to U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–2063, facsimile 503/231–6243).

Reasons for Effective Date

The Service is concerned that issuance of a final rule for this species that is not effective immediately upon publication will result in continued deliberate damage to vernal pools inhabited by the San Diego fairy shrimp. As discussed under Factor ''A'' above, on-going alteration of vernal pool hydrology and destruction of pools has been documented by the Service. Because of the immediate threat to the continued existence of the San Diego fairy shrimp posed by these on-going activities, the Service finds that good cause exists for this rule to take effect immediately upon publication in accordance with 5 U.S.C. 553(d)(3).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this rule is available upon request from the Carlsbad Field Office (see **ADDRESSES** section).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements. This rulemaking was not subject to review by the Office of Managment and Budget under Executive Order 12866.

Authors

The primary authors of this final rule are Chris Nagano and Susan Wynn, Carlsbad Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under CRUSTACEANS, to the List of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
CRUSTACEANS							
*	*	*	*	*	*	*	
Fairy shrimp, San Diego	*Branchinecta sandiegonensis.*	U.S.A. (CA), Mexico ..	NA	E	608	NA	NA
*	*	*	*	*	*	*	

Dated: January 27, 1997.

John G. Rogers,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 97–2578 Filed 1–31–97; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 62, No. 22
Monday, February 3, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 900

RIN 3206–AH70

Intergovernmental Personnel Act Programs; Standards for a Merit System of Personnel Administration

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management is revising the regulations on the Standards for a Merit System of Personnel Administration. The revision reflects changes and revisions in laws or regulations that require State and local governments to establish and maintain merit systems of personnel administration. Specifically, the revised regulations eliminate any implied individual right of appeal to OPM, eliminate obsolete references to the Federal Personnel Manual, and provide a current list of covered programs.

DATES: Comments must be received on or before March 5, 1997.

ADDRESSES: Send or deliver written comments to Carol J. Okin, Associate Director, Office of Merit Systems Oversight and Effectiveness, Office of Personnel Management, Room 7470, 1900 E Street NW., Washington, DC 20415–0001.

FOR FURTHER INFORMATION CONTACT: Gary L. Smith, 202–606–2980, FAX 202–606–2663.

SUPPLEMENTARY INFORMATION: Section 900.606 of Subpart F, Standards for a Merit System of Personnel Administration, provided for publication of procedures implementing merit requirements in the Federal Personnel Manual (FPM). No procedures were ever issued under the FPM system which was abolished December 31, 1993. The section was unnecessary and is being withdrawn to be consistent with the sunset of the FPM. Appendix A is being revised to reflect changes in laws and regulations that have occurred since 1983 when the list of pertinent laws and regulations was last revised.

Our 1983 revisions to these regulations promoted flexibility and innovation at the State and local levels by eliminating standardized, detailed requirements. These new revisions continue that emphasis, and are consistent with the Intergovernmental Personnel Act's requirement to minimize Federal intervention in State and local government personnel administration. Consequently, we are modifying regulations at 5 CFR 900.604(b)(3) that require the Chief Executive to resolve compliance issues ''to the satisfaction of the Office of Personnel Management.'' We are doing this for two reasons. First, OPM has no independent authority to adjudicate individual complaints. The Act restricts OPM from exercising ''authority, direction or control over the selection, assignment, advancement, retention, compensation, or other personnel action with respect to any individual State or local employee.'' Second, the respective statutes which require State or local governments to establish merit systems do so pursuant to proper and efficient grants administration. We believe that issues of merit systems compliance should be raised and addressed in the context of State or local government performance in grants administration, and that this is appropriately done by or under the direction of the Federal grantor agency. Therefore, OPM's policy will be to accept allegations of non-compliance with the standards only from grantor agencies. As required by the Act, OPM will continue to provide, when requested, interpretation, advice, and technical assistance when such issues arise.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it imposes no new requirements on State or local governments.

List of Subjects in 5 CFR Part 900

Administrative practice and procedure, Civil rights, Government employees, Individuals with disabilities, Intergovernmental relations.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM proposes to amend part 900 subpart F, of title 5, Code of Federal Regulations, as follows:

PART 900—INTERGOVERNMENTAL PERSONNEL ACT PROGRAMS

1. The authority citation for part 900, subpart F, continues to read as follows.

Authority: 42 U.S.C. 4728, 4763; E. O. 11589, 3 CFR part 557. (1971–1975 Compilation).

2. In § 900.604 paragraph (b)(3) is revised and paragraph (b)(4) is added, § 900.606 is removed, and Appendix A is revised to read as follows.

§ 900.604 Compliance.

* * * * *

(b) * * *

(3) When a chief executive requests the assistance of the Office of Personnel Management, the Office will provide consultation and technical advice to aid the State or local government in complying with the Standards.

(4) The Office of Personnel Management will advise Federal agencies on application of the Standards in resolving compliance issues and will recommend actions to carry out the purposes of the Intergovernmental Personnel Act. Questions regarding interpretation of the Standards will be referred to the Office of Personnel Management.

§ 900.606 [Removed]

Appendix A to Subpart F—Standards for a Merit System of Personnel Administration

Part I

The following programs have a statutory requirement for the establishment and maintenance of personnel standards on a merit basis.

Program, Legislation, and Statutory Reference

Food Stamp, Food Stamp Act of 1977, as amended; 7 U.S.C. 2020(e)(6)(B).

Old-Age Assistance, Social Security Act (Title 1), as amended by the Social Security Act Amendments of 1939, section 101, on August 10, 1939; 42 U.S.C. 302(a)(5)(A).[1]

[1] Pub. L 92–603 repealed Titles 1, X, XIV, and XVI of the Social Security Act, effective January 1, 1974, except that ''such repeal does not apply to Puerto Rico, Guam, and the Virgin Islands.''

Employment Security (Unemployment Insurance and Employment Services), Social Security Act (Title III), as amended by the Social Security Act Amendments of 1939, Section 301, on August 10, 1939, and the Wagner-Peyser Act, as amended by Pub. L. 81–775, section 2, on September 8, 1950; 42 U.S.C. 503(a)(1) and 29 U.S.C. 49d(b).

Aid to Families with Dependent Children, Social Security Act (Title IV–A), as amended by the Social Security Act Amendments of 1939, section 401, on August 10, 1939; 42 U.S.C. 602(a)(5).

Aid to the Blind, Social Security Act (Title X), as amended by the Social Security Act Amendments of 1939, section 701, on August 10, 1939; 42 U.S.C. 1202(a)(5)(A).[1]

Aid to the Permanently and Totally Disabled, Social Security Act (Title XIV), as amended by the Social Security Act Amendments of 1950, section 1402, on August 28, 1950; 42 U.S.C. 1352(a)(5)(A).[1]

Aid to the Aged, Blind or Disabled. Social Security Act (Title XVI), as amended by the Public Welfare Amendments of 1962, section 1602, on July 25, 1962; 42 U.S.C. 1382(a)(5)(A).[1]

Medical Assistance (Medicaid), Social Security Act (Title XIX), as amended by the Social Security Amendments of 1965, section 1902, on July 30,1965; 42 U.S.C. 1396(a)(4)(A).

State and Community Programs on A&V (Older Americans), Older Americans Act of 1965 (Title III), as amended by the Comprehensive Older Americans Act Amendments of 1976, section 307 on October 18,1978; 42 U.S.C. 3027(a)(4).

Foster Care and Adoption Assistance, Social Security Act (Title IV–E) as amended by the Adoption Assistance and Child Welfare Act of 1980; 42 U.S.C. 671(a)(5).

Part II

The following programs have a regulatory requirement for the establishment and maintenance of personnel standards on a merit basis.

Program, Legislation, and Regulatory Reference

Occupational Safety and Health Standards, Williams-Steiger Occupational Safety and Health Act of 1970; Occupational Safety and Health State Plans for the Development and Enforcement of State Standards; Department of Labor, 29 CFR 1902.3(h).

Occupational Safety and Health Statistics, Williams-Steiger Occupational Safety and Health Act of 1970; BLS Grant Application Kit, May 1, 1973, Supplemental Assurance No. 15A.

Robert T. Stafford Disaster Assistance and Emergency Relief Act (42 U.S.C. 5196b), as amended; 44 CFR 302.4.

[FR Doc. 97–2616 Filed 1–31–97; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF ENERGY

Office of Civilian and Radioactive Waste Management

10 CFR Part 960

RIN 1901–1172

General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories

AGENCY: Office of Civilian Radioactive Waste Management, Energy.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: In response to requests from several interested persons, the Department of Energy has granted additional time to comment on proposed amendments to 10 CFR part 960 that were published at 61 FR 66157 December 16, 1996.

DATES: Comments should be received no later than March 17, 1997.

ADDRESSES: All written comments are to be submitted to April V. Gil, U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, P.O. Box 98608, or provided by electronic mail to 10 CFR960@notes.ymp.gov.

FOR FURTHER INFORMATION CONTACT: April V. Gil, U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, P.O. Box 98608, Las Vegas, Nevada 89193–8608, (800) 967–3477.

Issued in Washington, D.C. on this 28th day of January, 1997.

Lake H. Barrett,

Acting Director, U.S. Department of Energy, Office of Civilian Radioactive Waste Management.

[FR Doc. 97–2553 Filed 1–31–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–108–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes. That AD currently requires revisions to the Airplane Flight Manual (AFM) to advise the flight crew of the need to perform daily checks to verify proper operation of the elevator control system, and to restrict altitude and airspeed operations under certain conditions. That AD also requires removal of all elevator flutter dampers. That AD was prompted by reports that the installation of certain shear pins may jam or restrict movement of the elevator. The actions specified by that AD are intended to prevent such jamming or restricting movement of the elevator and the resultant adverse effect on the controllability of the airplane. This new proposed action would add inspections of certain airplanes to detect deformation or discrepancies of the flutter damper hinge fittings and lug of the horizontal stabilizer, the elevator hinge/damper fitting, and the shear pin lugs; and require replacement of discrepant parts with serviceable parts. This proposed action also would require installation of new elevator flutter dampers, and replacement of shear pins and shear links with new, improved pins and links.

DATES: Comments must be received by March 14, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 96–NM–108–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Franco Pieri, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581;

telephone (516) 256–7526; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–NM–108–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. 96–NM–108–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On November 17, 1994, the FAA issued AD 94–24–02, amendment 39–9075 (59 FR 60888, November 29, 1994), applicable to certain Bombardier Model CL–600–2B19 series airplanes. That AD requires:

1. the removal of all elevator flutter dampers; and

2. a revision to the FAA-Approved Airplane Flight Manual (AFM) to advise the flight crew of the need to perform daily checks to verify proper operation of the elevator control system.

In addition, that AD retained the requirements from AD 94–01–09, amendment 39–8791 (59 FR 1471, January 11, 1994), to revise the AFM to restrict altitude and airspeed operations under conditions of single or double hydraulic system failure.

That AD was prompted by reports that the installation of certain shear pins may jam or restrict movement of the elevator. The requirements of that AD are intended to prevent failure of the lugs and/or pins. Such failure could increase the likelihood of jamming or restricting movement of the elevator, which could result in an adverse effect on the controllability of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the manufacturer has issued Canadair Regional Jet Service Bulletin S.B. 601R–27–040, Revision 'B,' dated September 11, 1995. For certain airplanes, this service bulletin describes procedures for a visual inspection to detect deformation or discrepancies of the flutter damper hinge fitting and lug of the horizontal stabilizer, and of the elevator hinge/damper fitting and shear pin lugs; a fluorescent penetrant inspection and a dimensional inspection to detect any deformation or discrepancy of the shear pin lugs; and replacement of discrepant parts with serviceable parts. For these and other airplanes, this service bulletin also describes procedures for installation of a new elevator flutter damper having a reduced load capacity, and for replacement of the shear pins and shear links with new, improved shear pins and links.

Accomplishment of the actions described in that service bulletin will improve the integrity of the elevator damping system and increase the service fatigue life of the flutter damper.

The manufacturer also has issued two general revisions to the AFM for these airplanes:

- Revision 32, dated March 30, 1995, which advises the flight crew of the need to perform daily checks to verify proper operation of the elevator control system.
- Revision 34, dated June 12, 1995, which specifies certain altitude and airspeed restrictions to prevent flight control undamped vibration during hydraulic system failure.

Transport Canada Aviation, which is the airworthiness authority for Canada, classified the service bulletin and AFM revisions as mandatory, and issued Canadian airworthiness directive CF–94–21R1, dated November 3, 1995, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 94–24–02. It would continue to require the removal of the originally installed elevator dampers. It also would continue to require revisions to the Limitations Section of the FAA-approved AFM to restrict altitude and airspeed operations under conditions of single or double hydraulic system failure, and to advise the flight crew of the need to perform daily checks to verify proper operation of the elevator control system. As stated in this proposal, these revisions could be accomplished by inserting a copy of this AD or the new AFM revisions, described previously, in the AFM.

For certain airplanes, this new proposed AD would require inspections to detect deformation or discrepancies of the flutter damper hinge fitting and lug of the horizontal stabilizer, the elevator hinge/damper fitting, and the shear pin lugs; and replacement of discrepant parts with serviceable parts. For those and other airplanes, the proposed AD also would require installation of new elevator flutter dampers, and replacement of shear pins and shear links with new, improved pins and links. These actions would be required to be accomplished in accordance with the service bulletin described previously.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Difference Between the Proposed AD and the Service Information

Operators should note that, the effectivity listing of AFM Revision 32, dated March 30, 1995 (which advises the flight crew of the need to perform

daily checks of the elevator control system), indicates that it applies only to those airplanes having serial numbers 7002 through 7054 and on which Canadair Regional Jet Service Bulletin S.B. 601R–27–040 (Part A) *has not* been accomplished. However, this proposed AD would require that the AFM revision be accomplished for those airplanes, regardless of whether or not the procedures specified in the Canadair service bulletin have been accomplished. The FAA has been specifically advised by Transport Canada Aviation that the accomplishment of the service bulletin procedures should not be considered as a ''terminating action'' for the AFM revision. Further, the parallel Canadian airworthiness directive continues to require this revision of the AFM.

In light of this, the FAA has determined that, until final action addressing the unsafe condition is developed, the revision of the AFM must be required in addition to the procedures specified in the Canadair Regional Jet service bulletin.

Cost Impact

There are approximately 21 Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 94–24–02, and retained in this proposal, take approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be $7,560, or $360 per airplane. The FAA estimates that all affected U.S. operators have previously accomplished these requirements, therefore, the future cost impact of these requirements is minimal.

For airplanes that would require the inspections that are proposed in this AD, it would take approximately 26 work hours per airplane to accomplish them, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspections on U.S. operators is estimated to be $1,560 per airplane.

The installations that are proposed in this AD would take approximately 12 work hours per airplane to accomplish them, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact on U.S. operators of the proposed installations is estimated to be $15,120, or $720 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9075 (59 FR 60888, November 29, 1994), and by adding a new airworthiness directive (AD), to read as follows:

Bombardier, Inc. (Formerly Canadair): Docket 96–NM–108–AD. Supersedes AD 94–24–02, Amendment 39–9075.

Applicability: Model CL–600–2B19 (Regional Jet Series 100) series airplanes having serial numbers 7003 through 7054 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 (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of lugs and/or pins, which may increase the likelihood of jamming or restricting movement of the elevator and the resultant adverse effect on controllability of the airplane, accomplish the following:

Restatement of Requirements of AD 94–01–09

(a) Within 30 days after January 26, 1994 (the effective date of AD 94–01–09, amendment 39–8791), revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following restrictions of altitude and airspeed operations under conditions of single or double hydraulic system failure; and advise the flight crew of these revised limits. Revision of the AFM may be accomplished by inserting a copy of this AD or AFM Revision 34, dated June 12, 1995, in the AFM.

Altitude limit (maximum)	Airspeed limit (maximum)
Single Hydraulic System Failure	
31,000 feet	0.55 Mach (199 KIAS).
30,000 feet	0.55 Mach (204 KIAS).
28,000 feet	0.55 Mach (213 KIAS).
26,00 feet	0.55 Mach (222 KIAS).
24,000 feet	0.55 Mach (232 KIAS).
22,000 feet	0.55 Mach (241 KIAS).
20,000 feet and below	252 KIAS.
Double Hydraulic System Failure	
10,000 feet	200 KIAS.

Note 2: The restrictions described in the AFM Temporary Revision (TR) RJ/30, dated December 16, 1993; meet the requirements of this paragraph. Therefore, inserting a copy of TR RJ/30 in lieu of this AD in the AFM is considered an acceptable means of compliance with this paragraph.

Restatement of Requirements of AD 94–24–02

(b) Within 7 days after December 14, 1994 (the effective date of AD 94–24–02, amendment 39–9075), accomplish the requirements of paragraph (b)(1) and (b)(2) of this AD:

(1) Until the requirements of paragraph (c)(2) of this AD are accomplished, remove the elevator dampers in accordance with Canadair Regional Jet Alert Service Bulletin S.B. A601R–27–041, dated October 28, 1994.

(2) Revise the Limitations Section of the FAA-approved AFM to include the following, which advises the flight crew of daily checks to verify proper operation of the elevator control system. Revision of the AFM may be accomplished by inserting a copy of this AD or AFM Revision 32, dated March 30, 1995, in the AFM.

Note 3: The daily check described in the AFM Temporary Revision (TR)RJ/40, dated October 28, 1994, meets the requirements of this paragraph. Therefore, inserting a copy of TR RJ/40 into the AFM in lieu of this AD is considered an acceptable means of compliance with this paragraph.

''Elevator, Before Engine Start (First Flight of Day)

(1) Elevator ..... Check ..... Travel range (to approximately 1/2 travel) using each hydraulic system in turn, with the other hydraulic systems depressurized.''

New Requirements of this AD

(c) Within 12 months after the effective date of this AD, perform the requirements of paragraphs (c)(1) and (c)(2) of this AD, as applicable, in accordance with Canadair Regional Jet Service Bulletin S.B. 601R–27–040, Revision 'B,' dated September 11, 1995.

(1) For airplanes having serial numbers 7003 through 7049, inclusive: Perform the inspections specified in paragraphs (c)(1)(i), (c)(1)(ii), and (c)(1)(iii) of this AD in accordance with Section 2.B., Part A, of the service bulletin.

(i) Remove the shear pins and shear links of the flutter dampers and perform a visual inspection to detect any deformation or discrepancy of the flutter damper hinge fitting and lug of the horizontal stabilizer. Prior to further flight, replace any deformed or discrepant part with a serviceable part in accordance with the service bulletin.

(ii) Perform a visual inspection to detect any deformation or discrepancy of the elevator hinge/damper fitting and shear pin lugs. Prior to further flight, replace any discrepant part with a serviceable part in accordance with the service bulletin.

(iii) Perform a fluorescent penetrant inspection and a dimensional inspection to detect any deformation or discrepancy of the shear pin lugs. If any deformation or discrepancy is found on the lugs, prior to further flight, replace the elevator with a new or serviceable elevator in accordance with the service bulletin.

(2) For airplanes having serial numbers 7003 through 7054, inclusive: Install new shear pins [part number (P/N) 601R24063–953] and new elevator flutter dampers (P/N 601R75142–7) in accordance with Section 2.B., Part B, of the service bulletin:

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

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

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

Issued in Renton, Washington, on January 27, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–2519 Filed 1–31–97; 8:45 am]

BILLING CODE 4910–13–U

---

14 CFR Part 39

[Docket No. 95–NM–29–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0070 and 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0070 and 0100 series airplanes, that would have required a one-time operational test of the pitot heating system, and repair or replacement of failed elements. That action also proposed to require the replacement of the pitot heating system with a new improved system. This new action would revise the proposal by adding a requirement to install power supply wiring with increased gauge thickness and a circuit breaker with an increased amperage rating. This action also would add additional airplanes to the applicability of the rule. The actions specified by this proposed AD are intended to prevent icing of the No. 1 pitot tube, which could result in failure of the No. 1 Air Data Computer, or output of erroneous airspeed data to all on-side subsidiary systems, including the Automatic Flight Control and Augmentation System.

DATES: Comments must be received by February 24, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–29–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., Technical Support Department, P. O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–29–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–29–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 and 0070 series airplanes, was published as a supplemental notice of proposed rulemaking (NPRM) in the Federal Register on February 12, 1996 (61 FR 5329). That supplemental NPRM proposed to require a one-time operational test of the pitot heating system, and repair or replacement of failed elements. That supplemental NPRM also proposed to require the replacement of the No. 1 pitot heating system powered by direct current (DC) with a new improved pitot heating system powered by alternating current (AC). That supplemental NPRM was prompted by reports indicating that the captains airspeed indicator and the No. 1 Air Data Computer (ADC #1) failed on Model F28 Mark 0100 series airplanes due to icing of the No. 1 pitot tube, even though both DC-powered heating elements were operating normally. Icing of the No. 1 pitot heat system, if not corrected, could result in failure of the ADC #1, or lead to output of erroneous data to all on-side subsidiary systems, including the Automatic Flight Control and Augmentation System (AFCAS).

Actions Since Issuance of Previous Proposal

Since the issuance of that supplemental NPRM, the Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, and Fokker have notified the FAA that during emergency power conditions (battery power only), the new AC-powered (853BR) pitot tube described in Fokker Service Bulletin SBF100–30–017 may not de-ice sufficiently due to a low DC battery voltage input to the No. 1 pitot tube inverter. The low voltage is due to insufficient thickness of the wire gauge of the power supply wiring. Additionally, during emergency power conditions, the inverter draws more current to maintain the specified power to the pitot tube, which could trip the No. 1 pitot heating circuit breaker.

In light of this information, the actions proposed in the previous proposal would be inadequate to prevent icing of the No. 1 pitot tube, and the same unsafe condition would continue to exist.

New Service Information

In light of the above, Fokker has issued Service Bulletin SBF100–30–019, dated June 20, 1996, which supersedes Fokker Service Bulletin SBF100–30–017 (which was referenced in the previous supplemental NPRM). This new service bulletin describes procedures for:

1. Replacement of the captains pitot heating system with type 853BR pitot heating system,
2. Installation of a new power supply wiring with increased gauge thickness of AWG 12, and
3. Installation of a new No. 1 pitot tube circuit breaker with an increased amperage rating to 20 Amps.

Accomplishment of these actions will ensure that the No. 1 pitot tubes have adequate de-icing capability.

Fokker also has issued Service Bulletin SBF100–30–020, dated June 20, 1996, which describes procedures for installation of new power supply wiring with increased gauge thickness of AWG 12, and a new No. 1 pitot tube circuit breaker with an increased amperage rating of 20 Amps, for those airplanes on which type 853BR pitot heating system has previously been installed in accordance with Fokker Service Bulletin SBF100–30–017.

The RLD classified these service bulletins as mandatory and issued Netherlands airworthiness directive BLA 1994–114/4 (A), dated July 31, 1996, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

The FAA has examined the findings of the RLD and reviewed the new service information. The FAA finds that the proposed actions in the previously issued supplemental NPRM may not prevent freezing of the No. 1 pitot tube during emergency power conditions. Therefore, to ensure the safety of the fleet, the FAA finds that, in addition to the previously proposed actions, other actions are necessary.

Explanation of Requirements of Proposed AD

This new action proposes to continue to require operational tests of the No. 1 pitot heating system and replacement of the pitot heating system with a new improved system. This new action would add a requirement to install a new power supply wiring with increased gauge thickness, and a circuit breaker with an increased amperage rating. These new proposed requirements would affect airplanes on which the new improved pitot heating system has been installed previously (in accordance with Fokker Service Bulletin SBF100–30–017). In addition, this new proposal would add additional airplanes to the applicability of the rule. These actions would be required to be accomplished in accordance with the applicable service bulletins described previously.

Operators should note that the operational test of the No. 1 pitot heating system, as proposed previously, continues to be required in this supplemental NPRM. The service information describing that operational test (referenced as Fokker Service Bulletin SBF100–30–015, Revision 2, dated January 25, 1995, in the previous proposal) has been superseded by a later service bulletin (Fokker Service Bulletin SBF100–30–017, dated August 23, 1995, which was superseded by Fokker Service Bulletin SFB100–30–019); but the procedures for accomplishing the operational test were not included in the superseding service bulletins. However, the FAA has determined that accomplishment of this operational test is necessary in accordance with Fokker Service Bulletin SBF100–30–015 to determine if any pitot tube heating element is inoperative, and to ensure that any failed element is repaired or replaced.

Conclusion

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 285 Fokker Model F28 Mark 0100 and 0070 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 129 airplanes of U.S. registry would be affected by this proposed AD.

The proposed operational check would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour.

Based on these figures, the cost impact for the proposed operational check on U.S. operators is estimated to be $7,740, or $60 per airplane.

The proposed replacement of the pitot heating system would take approximately 36 work hours per airplane, at an average labor rate of $60 per work hour. Required parts would cost approximately $16,000 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $18,160 per airplane.

For airplanes on which replacement of the pitot heating system has been accomplished previously, the proposed installation of the power supply electrical wiring and circuit breaker would take approximately 12 work hours per airplane at an average labor rate of $60 per work hour. Required parts would cost approximately $350 per airplane. Based on these figures, the cost impact is estimated to be $1,070 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fokker: Docket 95–NM–29–AD.

Applicability: Model F28 Mark 0070 and 0100 series airplanes, certificated in any category, and having the following serial numbers: 11244 through 11495, inclusive; 11497 through 11507, inclusive; 11509; 11511 through 11517, inclusive; 11519 through 11523, inclusive; 11527 through 11529, inclusive; 11532; 11536 through 11541, inclusive; 11543; 11545; 11547; 11549; 11551; 11553 through 11565, inclusive; 11567; 11570; 11573; and 11574.

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 (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent icing of the No. 1 pitot tube, which could result in failure of the No. 1 Air Data Computer (ADC #1) or output of erroneous airspeed data to all on-side subsidiary systems, including the Automatic Flight Control and Augmentation System (AFCAS), accomplish the following:

(a) For airplanes that have type 853JB pitot tubes installed: Within 30 days after the effective date of this AD, perform an operational test of the No. 1 pitot heating system in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–30–015, Revision 2, dated January 25, 1995.

(1) If the pitot heating system passes the operational test, accomplish the requirements of either paragraph (b)(1) or (b)(2) of this AD, as applicable, at the times specified.

(2) If any pitot tube heating element is found to be inoperative, prior to further flight, repair or replace the failed element with a serviceable element, in accordance with the Fokker 100 Aircraft Maintenance Manual (AMM).

(b) For airplanes on which Fokker Service Bulletin SBF100–30–017, dated August 23, 1995, has *not* been accomplished: At the applicable time specified in either paragraph (b)(1) or (b)(2) of this AD, replace the type 853JB or type 853KK No. 1 pitot tube, with a type 853BR pitot tube; and install the inverter, current sensor, wiring, and circuit breaker; in accordance with Fokker Service Bulletin SBF100–30–019, dated June 20, 1996.

(1) For airplanes with the flight warning system (FWS) speed comparator not activated and with a type 853JB No. 1 pitot tube installed: Accomplish the replacement within 9 months after the effective date of this AD.

(2) For airplanes with the FWS speed comparator activated or with a type 853KK No. 1 pitot tube installed: Accomplish the replacement within 18 months after the effective date of this AD.

(c) For airplanes on which Fokker Service Bulletin SBF100–30–017, dated August 23, 1995, has been accomplished, either in service or factory-incorporated: Within 18 months after the effective date of the AD, replace the No. 1 pitot heating circuit breaker and modify the power supply electrical wiring, in accordance with Fokker Service Bulletin SBF100–30–020, dated June 20, 1996.

(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, Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

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

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

Issued in Renton, Washington, on January 27, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–2520 Filed 1–31– 97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 247

[RIN 0790–AG37]

Department of Defense Newspapers, Magazines and Civilian Enterprise Publications

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Proposed rule.

SUMMARY: This rule revises and provides DoD policy and updates procedures to meet changed circumstances for publishing DoD internal command information newspapers, magazines and civilian enterprise publications. It has minimal impact on some civilian printers who are contracted to print the publications.

DATE: Written comments on this proposed rule must be received by April 4, 1997.

ADDRESSES: Forward comments to American Forces Information Service, Attn: Print Media Policy, 601 N. Fairfax St., Alexandria, Virginia 22314–2007.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Frank Theising, USA, (703) 428–0628.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that 32 CFR part 247 is not a significant regulatory action. The rule does not:

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

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

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

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

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 44)

It has been certified that 32 CFR part 247 does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

List of Subjects in 32 CFR Part 247

Defense communications, Government publications, Newspapers and magazines.

Accordingly, 32 CFR part 247 is proposed to be revised to read as follows:

PART 247—DEPARTMENT OF DEFENSE NEWSPAPERS, MAGAZINES AND CIVILIAN ENTERPRISE PUBLICATIONS

Sec.
247.1 Purpose.
247.2 Applicability.
247.3 Definitions.
247.4 Policy.
247.5 Responsibilities.
247.6 Procedures.
247.7 Information requirements.
Appendix A to part 247—Funded Newspapers and Magazines
Appendix B to part 247—CE Publications
Appendix C to part 247—Mailing of DoD Newspapers, Magazines, CE Guides, and Installation Maps; Sales and Distribution of Non-DoD Publications
Appendix D to part 247—AFIS Print Media Directorate
Appendix E to part 247—DoD Command Newspaper and Magazine Review System

Authority: 10 U.S.C. 121 and 133.

§ 247.1 Purpose.

This part implements DoD Directive 5122.10 [1] and implements policy, assigns responsibilities, and prescribes procedures concerning authorized DoD Appropriated Funded (APF) newspapers and magazines, and Civilian Enterprise (CE) newspapers, magazines, guides, and installation maps in support of the DoD Internal Information Program.

§ 247.2 Applicability.

This part:

(a) Applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as ''the DoD Components''). The term ''Military Services,'' as used herein, refers to the Army, the Navy, the Air Force, the Marine Corps, and includes the Coast Guard when operating as a Military Service in the Navy.

(b) Does not apply to the *Stars and Stripes (S&S)* newspapers and business operations. *S&S* guidance is provided in DoD Directive 5122.11.[2]

(c) The term Commander, as used in this part, also means Heads of the DoD Components.

§ 247.3 Definitions.

Civilian Enterprise (CE) guides and installation maps. Authorized publications containing advertising that are prepared and published under contract with commercial publishers. The right to circulate the advertising in these publications to the DoD readership constitutes contractual consideration to pay for these DoD publications. The publications become the property of the command, installation, or intended recipient upon delivery in accordance with terms of the contract. Categories of these publications are:

(1) *Guides.* Publications that provide DoD personnel with information about the mission of their command; the availability of command, installation, or community services; local geography; historical background; and other information. These publications may include installation telephone directories at the discretion of the commander.

(2) *Installation maps.* Publications designed for orientation of new arrivals or for visitors.

CE publications. CE newspapers, CE magazines, CE guides and installation maps produced commercially under the CE concept.

DoD newspapers. Authorized, unofficial publications, serving as part of the commander's internal information program, that support DoD command internal communication requirements. Usually, they are distributed weekly or monthly. DoD newspapers contain most, if not all, of the following elements to communicate with the intended DoD readership: command, military department, and DoD news and features; commanders' comments; letters to the editor; editorials; commentaries; features; sports; entertainment items; morale; welfare, and recreation news and announcements; photography; line art; and installation and local community news and announcements. DoD newspapers do not necessarily reflect the official views of, or endorsement of content by, the Department of Defense.

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22121.

[2] See footnote 1 to § 247.1.

(1) *CE newspapers.* Newspapers published by commercial publishers under contract with the DoD Components or their subordinate commands. The commander or public affairs office provides oversight and final approval authority for the news and editorial content of the paper. Authorized news and information sources include the Office of the Assistant Secretary of Defense for Public Affairs (OASD(PA)), AFIS, the Military Departments, their subordinate levels of command, and other Government Agencies. CE contractor personnel may provide material for use in the newspaper if approved by the commander or public affairs officer (PAO), as the commander's representative. These newspapers contain advertising sold by the commercial publisher on the same basis as for CE guides and installation maps and may contain supplements or inserts. They become the property of the command, installation, or intended recipient upon delivery in accordance with terms of the contract.

(2) *Funded newspapers.* Newspapers published by the DoD Components or their subordinate commands using appropriated funds. The editorial content of these newspapers is prepared by the internal information section of the public affairs staff or other internal sources. Usually, these newspapers are printed by the Government Printing Office (GPO) or under GPO contract in accordance with Government printing regulations. DoD Directive 5330.3 [3] specifies DPS as the sole DoD conduit to the GPO.

(3) *Overseas Combatant Command newspapers.* Newspapers published for overseas audiences approved by the Assistant Secretary of Defense for Public Affairs (ASD(PA)) to provide world, U.S., and regional news from commercial sources, syndicated columns, editorial cartoons, and applicable U.S. Government, Department of Defense, Component, and subordinate command news and information.

(4) *News bulletins and summaries.* Publications of deployed or isolated commands and ships compiled from national and international news and opinion obtained from authorized sources. News bulletins or summaries may be authorized by the next higher level of command when no daily English language newspapers are readily available.

Inserts. A flier, circular, or freestanding advertisement placed within the folds of the newspaper. No disclaimer or other labeling is required.

Magazines. Authorized, unofficial publications, serving as part of the commander's internal information program. They are produced and distributed periodically, usually monthly, and contain information of interest to personnel of the publishing DoD component or organization. They usually reflect a continuing policy as to purpose, format, and content. They are normally non-directive in nature and are published to inform, motivate, and improve the performance of the personnel and organization. They may be published as funded magazines or under the CE concept.

Option. A unilateral right in a contract by which, for a specified time, the Government may elect to acquire additional supplies or services called for by the contract, or may elect to extend the term of the contract.

Organizational terms.

(1) *Command.* A unit or units, an organization, or an area under the command of one individual. It includes organizations headed by senior civilians that require command internal information-type media.

(2) *DoD Components.* See § 247.2(a).

(3) *Installation.* A DoD facility or ship that serves as the base for one or more commands. Media covered by this part may serve the command communication needs of one or several commands located at one installation.

(4) *Major command.* A designated command such as the Air Mobility Command or the Army Forces Command that serves as the headquarters for subordinate commands or installations that have the same or related missions.

(5) *Subordinate levels.* Lower levels or command.

Publications. As used in this part, ''publications'' refers to DoD newspapers, magazines, guides and/or installation maps serving the commander's internal information program.

Supplements. Features, advertising sections, or morale, welfare and recreation sections printed with or inserted into newspapers for distribution. Supplements must be labeled ''Supplement to the (name of newspaper).'' Editorial content in supplements is subject to approval by the commander or the PAO as his or her agent.

§ 247.4 Policy.

It is DoD policy that:

(a) A free flow of news and information shall be provided to all DoD personnel without censorship or news management. The calculated withholding of news unfavorable to the Department of Defense is prohibited.

(b) News coverage and other editorial content in DoD publications shall be factual and objective. News and headlines shall be selected using the dictates of good taste. Morbid, sensational, or alarming details not essential to factual reporting shall be avoided.

(c) DoD publications shall distinguish between fact and opinion, both of which may be part of a news story. When an opinion is expressed, the person or source shall be identified. Accuracy and balance in coverage are paramount.

(d) DoD publications shall distinguish between editorials (command position) and commentaries (personal opinion) by clearly identifying them as such.

(e) News content in DoD publications shall be based on releases, reports, and materials provided by the DoD Components and their subordinate levels, DoD newspaper staff members, and other government agencies. DoD publications shall credit sources of all material other than local, internal sources. This includes, but is not limited to, Military Department news sources, American Forces Information Service, and command news releases.

(f) DoD publications may contain articles of local interest to installation personnel produced outside official channels (e.g., stringers, local organizations), provided that the author's permission has been obtained, the source is credited, and they do not otherwise violate this part.

(g) DoD publications normally shall not be authorized the use of commercial news and opinion sources, such as Associated Press (AP), United Press International (UPI), New York Times, etc., except as stated in this paragraph and the following paragraph. The use of such sources is beyond the scope of the mission of command or installation publications and puts them in direct competition with commercial publications. The use of such sources may be authorized for a specific DoD newspaper by the cognizant DoD Component only when other sources of national and international news and opinion are not available.

(h) Overseas Combatant Command newspapers published outside the United States may purchase or contract for and carry news stories, features, syndicated columns, and editorial cartoons from commercial services or sources. A balanced selection of commercial news or opinion shall appear in the same issue and same page, whenever possible, but in any case, over a reasonable time period. Selection of

[3] See footnote 1 to § 247.1.

commercial news sources, syndicated columns, and editorial cartoons to be purchased or contracted for shall be approved by the Commanders. Overseas Combatant Command newspapers, news bulletins, and news summaries authorized to carry national and world news may include coverage of U.S. political campaign news from commercial news sources. Presentation of such political campaign news shall be made on a balanced, impartial, and nonpartisan basis.

(i) The masthead of all DoD publications shall contain the following disclaimer printed in type no smaller than 6-point: ''This (DoD newspaper, magazine, guide or installation map) is an authorized publication for members of the Department of Defense. Contents of (name of the DoD newspaper/ magazine/this guide/this installation map) are not necessarily the official views of, or endorsed by, the U.S. Government, the Department of Defense, or) the name of the publishing DoD Component).''

(j) The masthead of DoD CE publications shall contain the following statements in addition to that contained in paragraph (i) of this section:

(1) ''Published by (name), a private firm in no way connected with the (Department of Defense/the U.S. Army/ the U.S. Navy/ the U.S. Air Force/the U.S. Marine Corps) under exclusive written contract with (DoD Component or subordinate level).''

(2) ''The appearance of advertising in this publication, including inserts or supplements, does not constitute endorsement by the (Department of Defense/the U.S. Army/the U.S. Navy/ the U.S. Air Force/the U.S. Marine Corps), or (name of commercial publisher) of the products or services advertised.''

(3) ''Everything advertised in this publication shall be made available for purchase, use, or patronage without regard to race, color, religion, sex, national origin, age, marital status, physical handicap, political affiliation, or any other nonmerit factor of the purchaser, user, or patron.'' If a violation or rejection of this equal opportunity policy by an advertiser is confirmed, the publisher shall refuse to print advertising from that source until the violation is corrected.

(k) DoD publications shall not contain campaign news, partisan discussions, cartoons, editorials, or commentaries dealing with political campaigns, candidates, or issues. DoD CE publications shall not carry paid political advertisements for a candidate, party, or which advocate a particular position on a political issue. This includes those advertisements advocating a position on any proposed DoD policy or policy under review.

(l) DoD newspapers shall support the Federal Voting Assistance Program by carrying factual information about registration and voting laws, especially those on absentee voting requirements of the various States, the District of Columbia, Puerto Rico, and U.S. territories and possessions. DoD newspapers shall use voting materials provided by the Director, Federal Voting Assistance Program; the OSD; and the Military Departments. Such information is designed to encourage DoD personnel to register as voters and to exercise their right to vote as outlined in DoD Directive 1000.4.[4]

(m) DoD publications shall comply with DoD Instruction 1100.13[5] pertaining to polls, surveys, and straw votes.

(1) The DoD Components and subordinate levels may authorize polls on matters of local interest, such as soldier of the week, and favorite athlete.

(2) A DoD publication shall not conduct a poll, a survey, or a straw vote relating to a political campaign or issue.

(3) Opinion surveys must be in compliance with Military Service regulations.

(n) DoD newspapers will support officially authorized fund-raising campaigns (e.g., Combined Federal Campaign (CFC)) within the Department of Defense in accordance with DoD Directive 5035.1.[6] News coverage of the campaign will not discuss monetary goals, quotas, competition or tallies or solicitation between or among agencies. To avoid any appearance of endorsement, features and news coverage will discuss the campaign in general and not address specific agencies within the CFC.

(o) DoD publications shall not:

(1) Contain any material that implies that the DoD Components or their subordinate levels endorse or favor a specific commercial product, commodity, or service.

(2) Subscribe, even at no cost, to a commercial or feature wire or other service whose primary purpose is the advertisement or promotion of commercial products, commodities, or services.

(3) Carry any advertisement that violates or rejects DoD equal opportunity policy. (See paragraph (j)(3) of this section.)

(p) All commercial advertising, including advertising supplements, shall be clearly identifiable as such. Paid advertorials and advertising supplements may be included but must be clearly labeled as advertising and readily distinguishable from editorial content.

(q) Alteration of official photographic and video imagery will comply with DoD Directive 5040.5.[7]

(r) Commercial sponsors of Armed Forces Professional Entertainment Program events and morale, welfare and recreation events may be mentioned routinely with other pertinent facts in news stories and announcements in DoD newspapers. (See DoD Instructions 1330.13[8] and 1015.2[9]

(s) Book, radio, television, movie, travel, and other entertainment reviews may be carried if written objectively and if there is no implication of endorsement by the Department of Defense or any of its Components or their subordinate levels.

(t) All printing using appropriate funds will be obtained in accordance with DoD Directive 5330.3.

(u) Although DoD internet web sites are normally discouraged from linking to commercial activities, the commander may authorize an installation web site to be linked to the web site carrying the authorized civilian enterprise publication.

§ 247.5 Responsibilities.

(a) The Assistant Secretary of Defense for Public Affairs, consistent with DoD Directive 5122.5,[10] shall:

(1) Develop policies and provide guidance on the administration of the DoD Internal Information Program.

(2) Provide policy and operational direction to the Director, AFIS.

(3) Monitor and evaluate overall mission effectiveness within the Department of Defense for matters under this part.

(b) The Director, American Forces Information Service, shall:

(1) Develop and oversee the implementation of policies and procedures pertaining to the management, content, and publication of DoD publications encompassed by this part.

(2) Serve as DoD point of contact with the Joint Committee on Printing, Congress of the United States, for matters under this part.

(3) Serve as the DoD point of contact in the United States for Combatant Command newspaper matters.

(4) Provide guidance to the Combatant Commands, Military Departments, and

[4] See footnote 1 to § 247.1

[5] See footnote 1 to § 247.1

[6] See footnote 1 to § 247.1

[7] See footnote 1 to § 247.1

[8] See footnote 1 to § 247.1

[9] See footnote 1 to § 247.1

[10] See footnote 1 to § 247.1

other DoD Components pertaining to DoD publications.

(5) Monitor effectiveness of business and financial operations of DoD publications and provide business counsel and assistance, as appropriate.

(6) Sponsor a DoD Interservice Newspaper Committee and a Flagship Periodicals Committee composed of representatives of the Military Departments to coordinate DoD command or installation newspaper matters and flagship periodicals matters, respectively.

(7) Provide a press service for joint-Service news and information for use by authorized DoD publication editors.

(c) The Secretaries of the Military Departments shall:

(1) Provide policy guidance and assistance to the Department's publications.

(2) Encourage the use of CE publications when they are the most cost-effective means of fulfilling the command communication requirement.

(3) Ensure that adequate resources are available to support authorized internal information products under this part.

(4) Designate a member of their public affairs staff to serve on the DoD Interservice Newspaper Committee.

(5) Ensure all printing obtained with appropriated funds complies with DoD Directive 5330.3.

(d) The Commanders of Combatant Commands shall:

(1) Publish Combatant Command newspapers, if authorized. In discharging this responsibility, the Commander shall ensure that policy, direction, resources, and administrative support are provided, as required, to produce a professional quality newspaper to support the command mission.

(2) Ensure that the newspaper is prepared to support U.S. forces in the command area during contingencies and armed conflict.

§ 247.6 Procedures.

(a) *General.*

(1) National security information shall be protected in accordance with DoD Directive 5200.1 [11] and DoD 5200.1–R.[12]

(2) Specific items of internal information of interest to DoD personnel and their family members prepared for publication in DoD publications may be made available to requesters if the information can be released as provided in DoD Directive 5400.7 [13] and DoD 5400.1–R.[14]

(3) Editorial policies of DoD publications shall be designed to improve the ability of DoD personnel to execute the missions of the Department of Defense.

(4) DoD editors of publications covered under this part shall conform to applicable policies, regulations, and laws involving libel, photographic image alteration, copyright, classification of information, and U.S. Government printing and postal regulations.

(5) DoD publications shall comply with DoD Directive 5400.11 [15] regarding the DoD privacy program.

(b) *Establishment of DoD newspapers.*

(1) Commanders are authorized to establish Funded newspapers (Appendix A to this part) or CE newspapers (Appendix B to this part) when:

(i) A valid internal information mission requirement exists.

(A) Command or installation newspapers provide the commander a primary means of communicating mission-essential information to members of the command. They provide feedback through such forums as letters to the editor columns. This alerts the commander to the emotional status and state of DoD knowledge of the command. The newspaper is used as a return conduit for command information to improve attitudes and increase knowledge.

(B) News and feature treatment on individuals and organizational elements of the command provides a crossfeed of DoD information, which improves internal cooperation and mission performance. Recognition of excellence in individual or organizational performance motivates and sets forth expected norms for mission accomplishment.

(C) The newspaper improves morale by quelling rumors, and keeping members informed on DoD information that will affect their futures. It provides information and assistance to family members, which improve their spirits and thereby the effectiveness of their military service and/or civilian member. The newspaper encourages participation in various positive leisure-time activities to improve morale and deter alcohol abuse and other pursuits that impair their ability to perform.

(D) The newspaper provides information to make command members aware of the hazards of the abuse of drugs and other substances, and of the negative impact that substance abuse has on readiness.

(E) CE Newspapers provide advertisements that guide command members to outlets where they may fulfill their purchasing needs. A by-product of this commercial contact is increased installation-community communication, which enhances mutual support.

(F) The newspaper increases organizational cohesiveness and effectiveness by providing a visual representation of the essence of the command itself.

(G) Good journalistic practices are vital, but are not an end unto themselves. They are the primary means to enhance receptivity of command communication through the newspaper.

(H) The newspaper exists to facilitate accomplishment of the command or installation mission. That is the only basis for the expenditure of DoD resources to produce them.

(ii) A newspaper is determined by the commander and the next higher level of command to be the most cost-effective means of fulfilling the command internal communication requirement.

(2) The use of appropriated funds is authorized to establish a Funded newspaper if a CE newspaper is not feasible. The process of establishing a newspaper must include an investigation of the feasibility of publishing under the CE concept. This investigation must include careful consideration of the potential for real or apparent conflict of interest. If publishing under the CE concept is determined to be feasible, commanders must ensure that they have obtained approval to establish the newspaper before authorizing their representatives to negotiate a contract with a CE publisher.

(3) DoD newspapers are mission activities. The use of nonappropriated funds for any aspect of their operations is not authorized.

(4) Appropriated funds shall not be used to pay any part of the commercial publisher's costs incurred in publishing a CE publication.

(5) Only one DoD newspaper or magazine is authorized for each command or installation.

(i) If a newspaper is required at an installation where more than one command or headquarters is collocated, the host commander shall be responsible for publication of one funded or CE newspaper for all. The host command shall provide balanced and sufficient coverage of the other commands, their personnel, and activities in that locality. These commands, or headquarters, shall assist the staff of the host newspaper with coverage. If required by unusual

[11] See footnote 1 to § 247.1.

[12] See footnote 1 to § 247.1.

[13] See footnote 1 to § 247.1.

[14] See footnote 1 to § 247.1.

[15] See footnote 1 to § 247.1.

circumstance, a commander other than the host may publish the single authorized newspaper when the majority of affected organizations concur.

(ii) This provision is not intended to prohibit the headquarters of a geographically dispersed command that receives its local coverage in the host installation newspaper from publishing a command-wide newspaper; nor is it intended to prohibit a command that has information needs that are significantly different from the majority of the host installation audience from publishing a separate newspaper, when authorized by the designated approving authority. (See Appendix E to this part).

(iii) *Establishment of CE Guides and Installation Maps.* When valid communication requirements exist, publications in this category may be established by the commander, if feasible. (See Appendix B to this part) Only one CE guide and installation map is authorized for each command or installation. The requirements of paragraph (b) (4) of this section, apply to CE guides and installation maps. These publications shall be approved by the next higher level. Approval authorities shall exercise care not to overburden community advertisers.

(iv) *Use of trademark.* The DoD Components and their subordinate levels shall trademark—State, Federal, or both—the names of their publications when possible.

(v) *Use of recycled products.* The public affairs office shall, whenever possible, based on contractual agreements, use recycled paper for publications covered under this part.

(vi) *Mailing requirements and sales and distribution of non-DoD publications.* See appendix C to this part.

(vii) *AFIS print media directorate.* See appendix D to this part.

(viii) *DoD command newspaper and magazine review system.* See appendix E to this part.

(6) When, in the opinion of the Assistant Secretary of Defense for Public Affairs, or the Combatant Command Commander, a Combatant Command newspaper is needed, establishment shall be directed by the Secretary of Defense. Both appropriated and nonappropriated funds may be used in the publication of overseas Combatant Command newspapers.

(7) *Establishment of magazines.* New magazines shall be approved by the Head of the publishing DoD Component. New magazines serving the Military Services shall be approved in accordance with Service procedures. Only one DoD magazine or newspaper is authorized for each command or installation. Magazines are normally financed through appropriate funds. When CE magazines are approved, provisions in this part regarding advertising and contracting for CE publications apply to CE magazines. Magazines must:

(i) Serve a clearly defined purpose in support of the mission of the publishing DoD Component, and the purpose must justify the cost.

(ii) Not duplicate equivalent magazines serving the same, or substantially the same purpose.

(iii) Be published and distributed efficiently and economically.

(iv) Be reviewed every two years by the publishing DoD Component to ensure they are in compliance with this part, are mission essential, and are economically achieving their desired objective.

§ 247.7 Information requirements.

The biennial reporting requirement contained in this part has been assigned Report Control Symbol DD–PA(B1) 1638.

Appendix A to Part 247—Funded Newspapers and Magazines

A. *Purpose.* Funded newspapers and magazines support the command communication requirements of the DoD Components and their subordinate commands. Normally, printing is accomplished by a commercial printer under contract or in government printing facilities in accordance with DoD Directive.[1] The editorial content of these publications and distribution are accomplished by the contracting command. Overseas, Funded newspapers are authorized to be printed under contract with the *S&S.* Where printing *S&S* is not feasible because of distance or other factors, Funded newspapers may be printed by other means. These are evaluated on a case-by-case basis with the cognizant DPS office.

B. *Name.* The name of the publication may include the name of the command or installation, or, the name of the command or installation may appear separately in the nameplate (flag). The emblem of the command or installation may be included in the nameplate, also. When possible, the DoD Components and their subordinate levels shall trademark the names of their publications, as stated in § 247.5(d).

C. *Masthead.* The masthead shall include the names of the commanding officer and the PAO, the names and editorial titles of the primary staff of the publication, and the mailing address and telephone number of the editorial staff, in addition to that required in section § 247.4(ii).

D. *News and editorial materials.* The commander and the public affairs staff shall generate and select news, information, photographs, editorial, and other materials to be used. Authorized news and information sources include the Office of the Assistant Secretary of Defense for Public Affairs (OASD(PA)), AFIS, the Military Departments, their subordinate levels of command, and other Government Agencies. Civilian community service news and announcements of benefit to personnel assigned to the command or installation and their family members may also be used. Photographic images used will be in compliance with § 247.4(r).

E. *Assignment of personnel.* Military and DoD civilian personnel may not be assigned to duty at the premises of the contract printer to perform any job functions that are part of the business activities or contractual responsibilities of the contract printer. Members of the public affairs staff who produce editorial content may work on the premises as liaison and monitor to specify and coordinate layout and other production details provided for in the command contract with the contract printer. A member of the public affairs staff shall review proof copy to prevent mistakes.

F. *Funding.* The expense of publishing and distributing Funded newspapers and magazines is charged to appropriated funds of the publishing command.

G. *Printing.* Printing of a funded publication shall be handled in accordance with DoD Directive 5330.3 in conjunction with public affairs as the office of primary interest.

H. *Distribution.* Funded publications may be distributed through official channels. Appropriated funds and manpower may be used for distribution of Funded publications, as required.

I. *Advertising.* Funded publications shall not carry advertising. As a service, the Funded newspaper may carry nonpaid listings of personally owned items and services for sale by members of the command. Noncommercial news stories and announcements concerning nonappropriated fund activities and commissaries may be published in funded publications.

J. *Employment and gratuities.* DoD personnel shall not accept employment by or gratuities from GPO-contracted printers under contract to print funded publications. To avoid a conflict of

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22121.

interest, employment of spouses and minor children of DoD personnel by a contract printer shall be in accordance with the DoD 5500.7–R.[2]

Appendix B to Part 247—CE Publications

A. *Purpose.* CE publications consist of DoD newspapers, magazines, guides, and installation maps. They support command internal communications. The commander or public affairs office provides oversight and final approval authority for the news and editorial content of the publication. CE publishers sell advertising to cover costs and secure earnings, print the publications, and may make all or part of the distribution. Periodically, CE publishers compete for contracts to publish these publications. Neither appropriated nor nonappropriated funds shall be used to pay for any part of a CE publisher's costs incurred in publishing a CE publication.

B. *Name.* The name of the publication may include the name of the command or installation, or the name of the command or installation may appear separately in the nameplate (flag). The emblem of the command or installation may also be included in the nameplate. When possible, the DoD Components and their subordinates shall trademark the names of their publications, as stated in § 247.6(d).

C. *Masthead.* The masthead shall include the following in addition to that required in § 247.4 (i) and (j). ''The editorial content of this publication is the responsibility of the (name of command or installation) Public Affairs Office.'' The names of the commanding officer and PAO, the names and editorial titles of the staff assigned the duty of preparing the editorial content, and the office address and telephone number of the editorial staff shall be listed in the masthead of DoD newspapers, but is not required in CE guides and installation maps. The names of the publisher and employees of the publisher may be listed separately.

D. *News and editorial materials.* The commander or the public affairs office shall provide oversight and final approval authority for news, information, photographs, editorial, and other materials to be used in a CE publication in the space allotted for that purpose by written contract with the commercial publisher. Authorized news and information sources include the OASD(PA), AFIS, the Military Departments and their subordinate levels of command, and other Government Agencies. CE contractor personnel may provide material for use in the publication if approved by the commander or PAO, as the commander's representative. Commercial news and opinion sources, such as AP, UPI, New York Times, etc., are not normally authorized for use in DoD publications except as stated in § 247.4(q). Newspapers may publish community service news and announcements of the civilian community for the benefit of command or installation personnel and their families. Imagery used will be in compliance with § 247.4(r).

E. *Assignment of personnel.* Neither military nor DoD civilian personnel shall be assigned to duty at the premises of the CE publisher. Neither military nor DoD civilian personnel shall perform any job functions that are part of the business activities or contractual responsibilities of the CE publisher either at the contractor's facility or the Government facility. The PAO and staff who produce the non-advertising content of the CE publication may perform certain installation liaison functions on publisher premises including monitoring and coordinating layout and design and other publishing details set forth in the contract to ensure the effective presentation of information. One or more members of the public affairs staff shall review proof copy to prevent mistakes. Newspaper text-editing-system pagination and copy terminals owned by the CE publisher may be placed in the command or installation public affairs office under contractual agreement for use by the public affairs staff to coordinate layout and ensure that the preparation of editorial material is performed in such a way as to enhance the efficiency and effectiveness of the printing and publication functions performed by the CE publisher. All costs of these terminals shall be borne by the CE newspaper publishers who shall remain title to the equipment and full responsibility for any damage to or loss of such equipment. The relationship between the public affairs staff and employees of the CE contractor is that of Government employees working with employees of a private contractor. Supervision of CE employees; that is, the responsibility to rate performance, set rate of pay, grant vacation time, exercise discipline, assign day-to-day administrative tasks, etc., remains with the CE publisher. Any modifications of the contract must be made by the responsible contracting officer. Public affairs staff members must be aware that employees of the contractor are not employees of the government and should be treated accordingly.

F. Distribution of CE Publications

1. A funded newspaper shall not be distributed as an insert to a CE newspaper, unless provided for in the CE contract, nor shall a CE newspaper be distributed as an insert to a funded newspaper.

2. Supplements, clearly labeled as such, and advertising inserts, may be inserted into and distributed with a CE newspaper.

3. The commercial publisher of a CE publication shall make as much of the distribution to the intended readership as possible. CE publications may be distributed through official channels.

4. Except as authorized by the next higher headquarters for special situations or occasions (such as an installation open house), CE publications shall not be distributed outside the intended DoD audience and retirees, which includes family members. Electronic publication on the internet/world wide web is not considered distribution outside the intended DoD audience. The CE publisher may provide complete copies of each specific issue of a CE publication to an advertiser whose advertisement is carried therein.

5. The CE publisher of a CE newspaper will provide the appropriate number of news racks determined by the installation commander for publication distribution. CE publishers are responsible for maintenance of these racks.

6. CE guides, magazines, and installation maps may be delivered in bulk quantities to the appropriate installation offices to distribute these publications through official channels as necessary.

G. Responsibilities Regarding Advertising

1. Only the CE publisher shall use the space agreed upon for advertising. While the editorial content of the publication is completely controlled by the installation, the advertising section, including its content, is the responsibility of the CE publisher. The public affairs staff, however, retains the responsibility to review advertisements before they are printed.

2. Any decision by a CE publisher to accept or reject an advertisement is final. The PAO may discuss with a publisher their decision not to run an advertisement, but cannot substitute his judgment for that of the publisher.

3. Before each issue of a CE publication is printed, the public affairs staff shall review advertisements to

[2] See footnote 1 to section A. of this appendix.

identify any that are contrary to law or to DoD or Military Service regulations, including this part, or that may pose a danger or detriment to DoD personnel or their family members, or that interfere with the command or installation missions. It is in the command's best interest to carefully apply DoD and Service regulations and request exclusion of only those advertisements that are clearly in violation of this part. If any such advertisements are identified, the public affairs office shall obtain a legal coordination of the proposed exclusion. After coordination, the public affairs office shall request, in writing if necessary, that the commercial publisher delete any such advertisements. If the publisher prints the issue containing the objectionable advertisement(s), the commander may prohibit distribution in accordance with DoD Directive 1325.6.[1]

4. DoD Directive 1325.6 gives the commander authority to prohibit distribution on the installation of a CE publication containing advertising he or she determines likely to promote a situation leading to potential riots or other disturbances, or when the circulation of such advertising may present a danger to loyalty, discipline, or morale of personnel. Each commander shall determine whether particular advertisements to be placed by the publisher in a CE publication serving the command or installation may interfere with successful mission performance. Some considerations in this decision are the local situation, the content of the proposed advertisement, and the past performance of the advertiser. Prior to making a determination to prohibit distribution of a CE publication, the commander shall obtain a legal coordination.

5. CE publications may carry paid and nonpaid advertising of the products and services of nonappropriated fund activities and commissaries, if allowed by DoD and Military Service regulations. (See DoD Instruction 1015.2.[2])

6. Bingo games and lotteries conducted by a commercial organization whose primary business is conducting lotteries may not be advertised in CE publications. Non-lottery activities (such as dining at a restaurant or attending a musical performance) of a commercial organization whose primary business is conducting lotteries may be advertised in CE publications. Exceptions are allowed for authorized State lotteries, lotteries conducted by a non-profit organization or a governmental organization, or conducted as a promotional activity by a commercial organization and clearly occasional and ancillary to the primary business of that organization. An exception also pertains to any gaming conducted by an Indian tribe under 25 U.S.C. 2720. See section D. of Appendix C to this part.

H. CE Guides and Maps

1. The name of the publication may include the name and emblem of the command or installation.

2. At the discretion of the commander, an installation telephone directory may be included as a section of a CE guide. The telephone section shall be part of the guide contract specifications. Separate contracts for CE telephone directories are not authorized. Over-run printing of the telephone directory/yellow pages section of the installation guide is authorized. The number of guides with integral telephone directories and the number of over-run copies of the telephone directory/yellow pages will be clearly specified in the single guide contract. Required communication security information shall be printed on the first page of the telephone section and not on the cover of the guide. The cover of the guide may notify users that the publication contains the telephone directory.

3. CE contracts for guides and maps shall establish firm delivery dates and shall contain provisions to ensure distribution is controlled by the command. Delivery dates may vary for guides and maps to make them more attractive to advertisers. The contract provisions shall specify delivery dates.

I. Employment and Gratuities

DoD personnel involved with CE contracts shall not accept employment by or gratuities from a CE publisher. To avoid a conflict of interest, employment of spouses and minor children of DoD personnel by a contract publisher shall be in accordance with DoD Directive 5500.7–R.[3]

J. Contracting for a CE Publication

1. *General.* The DoD Components and their subordinate commands are authorized to contract in writing for CE publications. The underlying premise of the CE concept is that the DoD Components and their subordinate commands will save money by transferring certain publishing and distribution functions to a commercial publisher selected through a competitive process. The CE publication is printed and delivered to the command, installation, or its readership in accordance with the terms of a written contract. Oral contracts are not acceptable. The right to sell and circulate advertising to the complete readership in the CE publication provides the publisher revenue to cover costs and secure earnings. The command or installation guarantees first publication and distribution of locally-produced editorial content in the publication. The publication becomes the property of the command, installation, or intended reader upon delivery in accordance with terms of the contract.

2. *Contracting process.* Whether a first time initiative to establish a CE publication or a recompetition of an existing CE contract, the process must start with advance planning as to the nature of the command's requirements, the contracting strategy, and the market or potential advertisers and competitors for the job. The CE contract solicitation and the contract itself must contain a statement of work that describes in legally sufficient detail the Government's requirements and the conditions and restrictions under which the contractor will perform. The cognizant contracting office for the CE contracting action shall be the contracting office which normally provides contracting support to the command for service contracts and other procurements of a general nature which are above the simplified small purchase threshold. The contracting officer shall combine the statement of work with appropriate contractual terms and conditions, using 48 CFR chapter I and II as guides, although CE contracts are not subject to the FAR or DFARS, because they do not involve the expenditure of appropriated funds. The resulting solicitation and contract shall completely identify the rights and obligations of both parties. Proposals shall be solicited from all known commercial publishers who could potentially become the CE contractor. Upon evaluation of the competing proposals by the Source Selection Advisory Committee (SSAC) and selection of a winner by the selecting official, the CE contract shall be awarded by the contracting officer. The CE contract shall not require the contractor to pay money to the command or to provide goods, services, or other consideration not directly related to the CE publication. In the event that only one offer is received, the SSAC may recommend to the selecting

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to section G.3. of this appendix.

[3] See footnote 1 to section G.3. of this appendix.

official that no award be made or that the contracting officer enter into negotiations with the sole offeror to obtain the best possible service and product for the Government.

3. *Statement of Work (SOW).* The SOW should be written to have the CE contractor perform as many of the publishing and distribution functions as practical to generate maximum savings to the Department of Defense. In so doing, care must be taken to balance Government requirements with a realistic view of the advertising revenue potential so as to achieve a contract that is commercially viable. The command's internal information needs shall be paramount. Some of the key issues that shall be addressed in the SOW follow:

a. A general description of the scope of the proposed contract including the name and nature of the publication involved; for example, weekly newspaper, monthly magazine, annual guide and installation map. Normally, guides and installation maps are included in the same contract.

b. A description of editorial content to be carried; e.g., news, features, supplements, and factual information, along with provisions addressing the possible inclusion of contractor-furnished advertising supplements for newspapers, provided any such supplement shall have the prior approval of the commander.

c. A description of the rules for the inclusion of advertising in the publication. This provision shall specify that the commander's representative shall have the authority to specify newspaper advertising layout when required to enhance communications' effectiveness of the publication and shall require the contractor to notify advertisers of the requirements in § 247.4(i) and § 247.4(j). The Military Departments will coordinate a standard set of ratios of advertising-to-editorial copy for multiples of pages for run of the publication advertising in CE publications that will be included in all DoD Component regulations supplementing this part. The recommended annual average is a ratio of 60/40. Inserts and advertising supplements will not count in the total ad to copy ratio; however, the commander may prohibit the distribution of supplemental advertising deemed excessive. Contract provisions shall be formulated to prohibit the amount of advertising a publisher sells from forcing the contracting command or installation public affairs staff to produce editorial content exceeding that required for the command internal communication mission of the publication.

d. A provision substantially as follows: ''The contractor agrees not to enter into any exclusive advertising agreement with any firm, broker, or individual for the purpose of selling advertising associated with this contract.''

e. A description of the CE contractor's responsibilities for distribution of the publication. This provision should address such matters as contractor furnishing of news racks along with contractor responsibility for maintenance of these racks.

f. A description of contractor-owned and/or contractor-furnished equipment such as text editing, copy terminals, and modems determined to be required to coordinate layout and ensure that the preparation of editorial material is performed in such a way as to enhance the efficiency and effectiveness of the publication process.

g. A description of contractor-furnished editorial support services determined to be required. Such description must be in terms of the end product required; e.g., photography service and/or writer/reporter services, and not as a requirement to make available certain contractor personnel. In day-to-day performance and administration of the CE contract, contractor personnel performing such support services shall not be treated in any way as though they are Government employees.

h. A provision that the use, where economically feasible, of recycled paper for internal products will be a consideration for awarding the contract, as stated in § 247.6(e).

i. SOW's and RFP's for CE newspapers shall specify standard newsprint, recyclable, subject to requirements of applicable laws and regulations.

j. For CE magazines, a provision requiring the contractor to provide a bulk number of copies of each printing to the Government Printing Office (GPO) for distribution to Federal Depository Libraries. The number of copies to be provided will be determined on the number of libraries desiring to subscribe to the publication. The number could be a maximum of 1,400, but has historically averaged approximately 500 to 600 copies for military magazines. The contractor would be required to contact GPO to initiate this procedure at (202) 512–1071.

4. *Contract provisions.* The CE concept is based on an exception to the Government Printing and Binding Regulations [4] published by the Congressional Joint Committee on Printing. While CE contracts are not subject to the FAR (48 CFR chapter I) or the DFARS (48 CFR chapter II), the FAR contains many clauses that are useful in protecting the interests of the Government. The following clauses may be helpful in obtaining the best possible CE publication:

a. *Status of FAR clause.* To clarify the status of FAR clauses appearing in CE contracts, the following clause shall be included in all new CE contracts:

''The (name of DoD installation/unit/organization) is an element of the United States Government. This agreement is a United States Government contract authorized under the provisions of DoD Instruction 5120.4 [5] as an exception to the Government Printing and Binding Regulations published by the Congressional Joint Committee on Printing. Although this contract is not subject to the Federal Acquisition Regulation (FAR) or the Defense FAR Supplement (DFARS), FAR clauses useful in protecting the interests of the Government and implementing those provisions required by law are included in this contract.''

b. *Option clause.* Insert a clause substantially the same as the following to extend the term of the CE publisher contract:

(1) ''The Government may extend the term of this contract by written notice to the contractor within [insert in the clause the period of time in which the contracting officer has to exercise the option]; provided that the Government shall give the contractor a preliminary written notice of its intent to exercise the option at least 60 days before the contract expires. The preliminary notice does not commit the government to exercise the option.'' In the case of base closure or realignment the publisher has the right to request a renegotiation of the contract.

(2) ''If the Government exercises this option, the extended contract shall be considered to include this option provision.''

(3) ''The total duration of this contract, including the exercise of any options under this clause, shall not exceed 6 years.''

c. *Default clause.* Insert the following clause in solicitations and contracts:

(1) ''The Government may, by written notice of default to the contractor, terminate this contract in whole or in part if the contractor fails to:

[4] Copies may be obtained, at cost, from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

[5] See footnote 1 to section G.3. of this appendix.

(a) Deliver the CE publications in the quantities required or to perform the services within the time specified in this contract or any extension;

(b) Make progress, so as to endanger performance of this contract;

(c) Perform any of the other provisions of this contract.''

(2) ''If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the contracting officer considers appropriate, supplies or services similar to those terminated. However, the contractor shall continue the work not terminated.''

(3) ''The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.''

d. *Termination for convenience of the Government.* Insert the following clause in solicitations and contracts:

''The contracting officer, by written notice, may terminate this contract, in whole or in part if the services contracted for are no longer required by the Government, or when it is in the Government's interest, such as with installation closures. Any such termination shall be at no cost to the Government.'' The Government will use its best efforts to mitigate financial hardship on the publisher.

5. *Term of contract.* CE contracts may be entered into for an initial period of up to 2 years, and may contain options to extend the contract for one or more additional periods of 1 or 2 years duration. The total period of the contract, including options, shall not exceed 6 years, after which the contract must be recompeted.

6. *Exercise of options.* Under normal circumstances, when the contractor is performing satisfactorily, options for additional periods of performance should be exercised. However, the exercise of the option is the exclusive right of the Government, and decisions not to exercise the option, or to test the market before option exercise, are within the contracting officer's discretion working in concert with the PAO and other command officials.

7. *Modification of the contract.* Any changes to the SOW or other terms and conditions of the contract shall be made by written contract modification signed by both parties.

8. *SSAC.* The commander shall appoint an SSAC. The committee shall participate in the development of the Source Selection Plan (SSP) before the solicitation of proposals, evaluate proposals, and recommend a source to the selecting official. Since cost is not a factor in the evaluation, award will be based on technical proposals, the offeror's experience and/or qualifications, and past performance.

a. The SSAC shall consist of a minimum of five voting members: a chairperson, who shall be a senior member of the command; senior representatives from public affairs and printing; and a minimum of two other functional specialists with skills relevant to the selection process. Each SSAC shall have non-voting legal and contracting advisors to assist in the selection process.

b. In arriving at its recommendations, the SSAC shall follow the SSP and avail itself of all relevant information, including the proposals submitted, independently derived data regarding offerors' performance records, the results of on-site surveys of offerors' facilities, where feasible, and in appropriate cases, personal presentations by offerors.

c. The work of the SSAC must be coordinated with the contracting officer to ensure that the process is objective and fair. All communications between the offerors and the Government shall be through the contracting officer. No member of the SSAC or the selecting official shall communicate directly with any offeror regarding the source selection.

d. In cases where a losing competitor requests a debriefing from the contracting officer, members of the SSAC may be called upon to participate so as to give the losing competitor the most thorough explanation practical as to why its proposal was not successful. No information regarding competitors' proposals shall be discussed with the unsuccessful offerors during debriefings, discussions, or negotiations.

9. *SSP.* A SSP (see sample SSP at attachment 1 to this Appendix) must be developed early in the planning process to serve as a guide for the personnel involved and ensure a fair and objective process and a successful outcome. The contracting officer is primarily responsible for development of the SSP, in coordination with the PAO and other members of the SSAC. Ideally, the SSP should be completed and approved prior to issuance of the solicitation; it must be completed and approved before the receipt of proposals.

10. *Evaluation criteria and proposal requirements.* The solicitation must specify, in relative order of importance, the factors the Government will consider in selecting the most advantageous proposal. In addition, the solicitation must specify the types of information the proposal must contain to be properly evaluated. These two aspects of the solicitation must closely parallel one another. The contracting officer is primarily responsible for development of these two solicitation provisions, in coordination with the PAO, legal counsel, and members of the SSAC.

a. *Evaluation criteria for award.* Drawing upon the SSP, this feature of the solicitation must advise offerors what factors the Government will consider in evaluating proposals and the relative importance of each factor. The sample SSP (attachment 1 to this appendix) provides as an example of criteria that might be used. Note that under the ''Services and/or Items Offered'' factor, paragraph E.2.b of attachment 1 to this appendix, it is necessary to list and indicate the relative importance of services and/or items *above the minimum requirements of the SOW* that the command would consider desirable and that, if offered, will enhance the offeror's evaluation standing. The offer of services and/or items not listed in the evaluation criteria shall not be considered in the evaluation of proposals, but may be accepted in the contract award if deemed valuable to the Government, PROVIDED the service and/or item involved is directly related to producing the publication and not in violation of any other statute or regulation. Examples of items that cannot be considered during the evaluation process are: press kits, laminated maps, economic development reports, or other separate publications not an integral part of the CE publication.

b. *Proposal requirements.* This provision of the solicitation must describe the specific and general types of information necessary to be submitted as part of the proposal to be evaluated. Offerors shall be notified that unnecessarily elaborate proposals are not desired.

Attachment 1 to Appendix B to part 247—SSP

A. Introduction

1. The objectives of this plan are:

a. To ensure an impartial, equitable, and thorough evaluation of all offerors' proposals in accordance with the evaluation criteria presented in the request for proposals (RFP).

b. To ensure that the contracting officer is provided technical evaluation findings of the SSAC in such a manner that selection of the offer most advantageous to the Government is ensured.

c. To document clearly and thoroughly all aspects of the evaluation and decision process to provide effective debriefings to unsuccessful

offerors, to respond to legal challenges to the selection, and to ensure adherence to evaluation criteria.

2. This plan will be used to select a CE contractor for publication of the _____ newspaper (CE guide, magazine, or installation map) and will:

a. Give each SSAC member a clear understanding of his or her responsibilities as well as a complete overview of the evaluation process.

b. Establish a well-balanced evaluation structure, equitable and uniform scoring procedures, and a thorough and accurate appraisal of all considerations pertinent to the negotiated contracting process.

c. Provide the selecting official with meaningful findings that are clearly presented and founded on the collective, independent judgment of technical and managerial experts.

d. Ensure identification and selection of a contractor whose final proposal offers optimum satisfaction of the Government's technical and managerial requirements as expressed in the RFP.

e. Serve as part of the official record for the evaluation process.

B. Organization and Staffing

1. The SSAC will consist of the Chairperson and a minimum of four other voting committee members plus the non-voting advisors to the SSAC.

2. The SSAC committee members are:

Name	Position
_____	Chairperson.
_____	Member.
_____	Member.
_____	Member.
_____	Member.
_____	Legal Advisor.[1]
_____	Contract Advisor.[1]

[1] Non-voting members.

C. Responsibilities

1. Selecting Official:

a. Approves the SSP.

b. Reviews the evaluation and findings of the SSAC.

c. Considers the SSAC's recommendation of award.

d. Selects the successful offeror.

2. Chairperson of the Source Selection Advisory Committee (C/SSAC):

a. Reviews the SSP.

b. Approves membership of the SSAC.

c. Analyzes the evaluation and findings of the SSAC and applies weights to the evaluation results.

d. Approves the SSAC report for submission to the selecting official.

3. Contracting Officer:

a. Is responsible for the proper and efficient conduct of the entire source selection process encompassing solicitation, evaluation, selection, and contract award.

b. Provides SSAC and the selecting official with guidance and instructions to conduct the evaluation and selection process.

c. Receives proposals submitted and makes them available to the SSAC, taking necessary precautions to ensure against premature or unauthorized disclosure of source selection information.

4. SSAC members shall:

a. Familiarize themselves with the RFP and SSP.

b. Provide a fair and impartial review and evaluation of each proposal against the solicitation requirements and evaluation criteria.

c. Provide written documentation substantiating their evaluations to include strengths, weaknesses, and any deficiencies of each proposal.

5. Legal advisor:

a. Reviews RFP and SSP for form and legality.

b. Advises the SSAC members of their duties and responsibilities, regarding procurement integrity issues and confidentiality requirements.

c. Participate in SSAC meetings and provide legal advice as required.

d. Provides legal review of all documents supporting the selection decision to ensure legal sufficiency and consistency with the evaluation criteria in the RFP and SSP.

e. Advises the selecting official on the legality of the selection decision.

D. Administrative Instructions

1. *Evaluation overview.* The advisory committee will operate with maximum flexibility. Collective discussion by evaluators at committee meetings of their evaluation findings is permitted in the interchange of viewpoints regarding strengths, weaknesses, and deficiencies noted in the proposals relating to evaluation items. Evaluators will not suggest or disclose numerical scores or other information regarding the relative standing of offerors outside of committee meetings.

2. *Evaluation procedure.* The evaluation of offers is based on good judgment and a thorough knowledge of the guidelines and criteria applicable to each evaluation factor.

a. Numerical scoring is merely reflective of the composite findings of the SSAC. The evaluation scoring system is used as a tool to assist the Chairperson of the SSAC in determining the proposal most advantageous to the Government.

b. The most important documents supporting the contract award will be the findings, conclusions, and reports of the SSAC.

3. *Safeguarding data.* The sensitivity of the proceedings and documentation require stringent and special safeguards throughout the evaluation process:

a. Inadvertent release of information could be a source of considerable misunderstanding and embarrassment to the Government. It is imperative, therefore, for all members of the SSAC to avoid any unauthorized disclosures of information pertaining to this evaluation. Evaluation participants will observe the following rules:

(1) All offeror and evaluation materials will be secured when not in use (i.e., during breaks, lunch, and at the end of the day).

(2) All attempted communications by offeror's representatives shall be directed to the contracting officer. No communications between members of the SSAC or the selecting official and offerors regarding the contract award or evaluation is permitted except when called upon under the provisions of paragraph J.8.d, of Appendix B to this part.

(3) Neither SSAC members nor the selecting official shall disclose anything pertaining to the source selection process to any offeror except as authorize by the contracting officer.

(4) Neither SSAC members nor the selecting official shall discuss the substantive issues of the evaluation with any unauthorized individual, even after award of the contract.

E. Technical Evaluation Procedures

1. *Evaluation process.* Proposals will be evaluated based on the following criteria as indicated in Section M of the solicitation: The evaluation worksheet (attachment 2 to this appendix) shall be used to score the technical factors. Using the technical evaluation worksheet, each member of the SSAC will independently review each proposal and assign an appropriate number of points to each factor being considered. Point scores for each factor will range from ''0'' to ''5'' based on the committee member's evaluation of the proposal. Upon completion of individual evaluations, the group will meet in committee with the Chairperson and arrive at a single numeric score for each factor in the proposal.

2. *Criteria.* An example of applicable evaluation criteria and their relative order of importance are listed below in paragraphs E.2. a. through d of this appendix. Criteria and weights are provided as an example only. The SSAC must determine its own weighting factors tailored to meet the needs of the particular CE publication and describe the relative weights assigned in the RFP; e.g., ''Evaluation factors are listed in

descending order of importance; criteria #1 is twice as important as criteria #2,'' etc.

a. *Technical and production capability.* Scores will range from ''0'' (unacceptable), to ''5'' (exhibits state-of-the-art, award-winning, or clearly superior technical ability to produce the required newspaper, magazine, guide, or installation map). Factors to be considered for newspaper contracts include: level of automation; compatibility of automation with existing PAO automation (unless other automation is provided); printing capability; production equipment; physical plant (capabilities); and driving distance to the plant. Similar factors may be considered for magazines, guides and installation maps.

b. *Services and/or items offered.* Scores will range from ''0'' (unacceptable), to ''5'' (the offer of equipment, such as automation equipment; or services, such as editorial or photographic services as set forth in the contract solicitation that will greatly enhance the newspaper and/or its production). Factors to be considered for newspapers include: offer of automation equipment and the quality and amount of equipment offered; the quality and amount of services offered; the usefulness of the services and/or items to the public affairs office in enhancing the newspaper; the impact of the services and/or items on other parts of the contract. Similar factors may be considered for magazines, guides and installation maps. The offer of equipment or services not specifically related to producing the publication will not result in the assignment of a higher score.

c. *Past performance record.* Scores will range from ''0'' (no experience in newspaper, magazine, guide, or installation map publishing and/or unsatisfactory, previous performance,) to ''5'' (long-term, highly successful experience publishing similar newspapers, magazines, guides, or installation maps). Factors to be considered include: demonstrated ability to successfully produce a CE or similar publication; demonstrated printing ability (types of printing, history of newspaper, magazine, guide, or installation map printing); demonstrated success in contract performance in a timely and responsive manner; demonstrated capability to sell advertising and successfully recoup publication costs.

d. *Management approach.* Scores will range from ''0'' (approach unacceptable), to ''5'' (proposal demonstrates a sound and innovative approach to interfacing with the PAO and managing the CE publication operation). Factors to be considered include: The offeror's proposed approach to:

(1) Interfacing with the PAO staff.

(2) Controlling the quality and timeliness of the finished product.

(3) Sale of ads of the type that enhance the publication's image in the community and with the readership at large.

(4) Ensuring that contractor's personnel are properly supervised and managed.

3. *Weighting factors.* Points will be assigned to the final score of each factor in a proposal as determined by multiplying the score assigned (e.g., ''0,'' ''1,'' ''2,'' ''3,'' ''4,'' or ''5'') by the relative weight of the individual criterion as indicated:

Factor	Relative weight maximum points	
Criterion 1	40%	200
Criterion 2	30%	150
Criterion 3	20%	100
Criterion 4	10%	50
Total		500

(Example Only):

Criterion 1 Score 5 (5×40) Total Points	200
Criterion 1 Score 4 (4×30) Total Points	120
Criterion 1 Score 3 (3×20) Total Points	60
Criterion 1 Score 2 (2×10) Total Points	20
Total	400

4. *Report of findings and recommendations.* After the SSAC has completed final evaluation of proposals and all weighting has been completed, the committee will prepare a written report of its findings and recommendations, setting forth the consensus of the committee and its composite scores (Sample at attachment 3 to this appendix). The Chairperson will sign the report to confirm its accuracy and his agreement with the recommendation. All copies of proposals and evaluation worksheets will be returned to the contracting officer.

Attachment 2 to Appendix B to Part 247—Sample Evaluation Worksheet

Contractor _____

Evaluator _____ Date_____

Evaluation Criteria and Scores (Range 0–5 points for each) _____

1. Technical and production capability: ____

2. Services and items offered: _____

3. Past performance record: _____

4. Management approach: _____

Narrative Discussion: [1]

Strengths _____

Weaknesses _____

Deficiencies _____

Attachment 3 to Appendix B to Part 247—Sample Memorandum for Selecting Official

Subject: Evaluation of Proposals RFP No. __

1. All proposals received in response to subject RFP have been evaluated by the Source Selection Advisory Committee (SSAC). The results and comments are listed below.

a. Offeror's proposal were rated as follows:

Offeror Name Numerical Score

b. Summary Narrative Comments.

(This section of the report shall be a summary of the individual strengths and weaknesses in each proposal, along with any deficiencies that are susceptible to being cured through written or oral discussions with the offeror, as noted by the SSC evaluators. This summary should be supported by detailed narratives contained in the individual evaluator's worksheets.)

2. Recommendation.

_____

Chairperson, SSAC

Appendix C to Part 247—Mailing of DoD Newspapers, Magazines, CE Guides, and Installation Maps; Sales and Distribution of Non-DoD Publications

A. *Policy.* It is DoD policy that mailing costs shall be kept at a minimum consistent with timeliness and applicable postal regulations. (See DoD Instruction 4525.7 [1] and DoD 4525.8–M. [2] Responsible officials shall consult with appropriate postal authorities to obtain resolution of specific problems.

B. *Definition.* DoD appropriated fund postage includes all means of paying postage using funds appropriated for the Department of Defense. These means include meter imprints and stamps, permit imprints, postage stamps, and other means authorized by the U.S. Postal Service.

C. Use of Appropriated Fund Postage

1. DoD appropriated fund postage shall be used only for:

a. Mailing copies to satisfy mandatory distribution requirements.

b. Mailing copies to other public affairs offices for administrative purposes.

---

[1] (Discussions of strengths, weaknesses, and deficiencies should reference the specific evaluation factor involved to ensure that proposals are evaluated only against the criterion set forth in the RFP, to facilitate debriefings, and to provide an effective defense to any challenges regarding the legality of the selection process.)

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to section A. of this appendix.

c. Mailing copies to headquarters in the chain of command.

d. Bulk mailings of DoD newspapers and magazines to subordinate units for distribution to members of the units.

e. Mailing information copies to other U.S. Government Agencies, Members of Congress, libraries, hospitals, schools, and depositories.

f. Mailing of an individual copy of a DoD newspaper, magazine, or CE publication in response to an unsolicited request from a private person, firm, or organization, if such response is in the best interest of the DoD Component or its subordinate levels of command.

g. Mailing copies of DoD newspapers, magazines, guides, or installation maps to incoming DoD personnel and their families to orient them to their new command, installation, and community.

2. Dod appropriated fund postage shall not be used for mailing:

a. To the general readership of DoD newspapers, magazines, guides, and installation maps, unless specifically excepted in this part.

b. By a CE publisher.

c. CE publications other than newspapers and magazines in bulk. (See paragraph C.1.d. of this section).

3. Generally, DoD newspapers, magazines, and CE publications shall be mailed as second class Requester Publication Rate, third-class bulk, or third- or fourth-class mail.

D. *Legal prohibitions.* Compliance with 18 U.S.C. 1302 and 1307 is mandatory. 18 U.S.C. Section 1302 prohibits the mailing of publications containing advertisements of any type of lottery or scheme that is based on lot or chance. 18 U.S.C. 1307 authorizes exceptions pertaining to authorized State lotteries, lotteries conducted by a not-for-profit organization or a governmental organization, or conducted as a promotional activity by a commercial organization and clearly occasional and ancillary to the primary business of that organization. An exception also pertains to any gaming conducted by an Indian tribe under 25 U.S.C. 2720. Lottery is defined as containing the following three elements:

1. Prize (whatever items of value are offered in the particular game).

2. Chance (random selection of numbers to produce a winning combination).

3. Consideration (requirement to pay a fee to play).

E. Review of Mailing and Distribution Effectiveness

1. Mailing and distribution lists shall be reviewed annually to determine distribution effectiveness and continuing need of each recipient to receive the publication.

2. Distribution techniques, target audiences, readers-per-copy ratios, and use of the U.S. Postal Service to ensure the most economical use of mail services consistent with timeliness shall be revalidated annually.

F. *Non-DoD publications.* A commander shall afford reputable distributors of other publications the opportunity to sell or give away publications at the activity he or she commands in accordance with DoD Directive 1325.6.[3] Such publications shall not be distributed through official channels. These publications may be made available through subscription paid for by the recipient or placed in specific general use areas designated by the commander, such as the foyers of open messes or exchanges. They will be placed only in stands or racks provided by the responsible publisher. The responsible publisher will maintain the stand or rack to present a neat and orderly appearance. Subscriptions paid for by a recipient may be home-delivered by the commercial distributor in installation residential areas.

Appendix D to Part 247—AFIS Print Media Directorate

A. *General.* The Print Media Directorate (PMD), an element of AFIS, develops, publishes, and distributes a variety of print media products that support DoD-wide programs and policies for targeted audiences throughout the DoD community. Products include the following:

1. *American Forces Press Service*, news and feature articles, photographs, and art distributed principally to editors of DoD newspapers.

2. *DEFENSE* magazine, a bimonthly periodical featuring articles authored by senior military and civilian officials on DoD programs and policies. An annual almanac edition highlights DoD's organization.

3. *Defense Billboard*, a monthly poster featuring topics of particular interest to junior Military Service members, but applicable to general DoD audiences.

4. Pamphlets, booklets, and other posters covering a variety of joint interest information topics.

5. PMD also posts the *Press Service* on Military Service computer bulletin boards and internet world wide web sites. PAOs and editors may download text and art in a form readily usable for world processing or desktop publishing. All other PMD publications should be requisitioned through the Military Service's or organization's publications distribution system.

B. *Use of materials published by print media directorate.* With the exception of copyrighted matter, all materials published by PMD may be reproduced or adapted for use by DoD newspaper and magazine editors as appropriate. When PMD material is edited or revised, accuracy and conformance to DoD policy and accepted standards of good taste will be maintained. Due to the policy-oriented nature of *DEFENSE* magazine contents, particular care shall be taken to preserve the original context, tone, and meaning of any material adapted, revised, or edited from this publication.

C. *Eligible activities.* The following activities are eligible to receive the above listed PMD products:

1. All authorized DoD newspaper and magazines.

2. Headquarters of the DoD Components and their subordinate commands.

3. Proponent offices of DoD periodicals published by the DoD Components.

4. AFRTS networks and outlets.

5. Isolated commands and detachments at which DoD newspapers are not readily available.

Appendix E to Part 247—DoD Command Newspaper and Magazine Review System

A. *Purpose.* The purpose of the DoD command newspaper and magazine review system is to assist commanders in establishing and maintaining cost-effective internal communications essential to mission accomplishment. The system also enables internal information managers to assess the cost and effective use of resources devoted to command newspapers and to provide requested reports.

B. *Policy.* DoD newspapers and magazines shall be reviewed and reported biennially. The review process is not intended to replace day-to-day quality assurance procedures or established critique programs.

C. *Review criteria.* Each newspaper and magazine shall be evaluated on the basis of mission essentiality, communication effectiveness, cost-effectiveness, and compliance with applicable regulations.

D. Reporting Requirements

1. The DoD Components (less the Military Departments) shall forward, by January 31 of each even numbered year, the information indicated at attachment 1 to this Appendix for each newspaper published to: Director, American Forces Information Service, ATTN: Print Media

[3] See footnote 1 to section A. of this appendix.

Plans and Policy, 601 North Fairfax Street, Alexandria, VA 22314–2007.

2. No later than April 15 of each even-numbered year, the Secretary (or designee) of each Military Department shall forward to the address above a report of the Military Department's review of newspapers and magazines. This report shall include summary data on total number of newspapers and magazines, along with a listing of the information indicated at attachment 1 to this appendix.

3. One information copy of each issue of all DoD newspapers and magazines shall be forwarded on publication date to the address in paragraph H.1. of this appendix.

4. Information copies of CE contracts shall be forwarded to the address in paragraph H.1. of this appendix, upon request.

5. Administrative Instructions shall be issued by the Director, AFIS, for the annual review and reporting of newspapers and magazines.

Attachment 1 to Appendix E to Part 247—Newspaper and Magazine Reporting Data

As required by section H. of this appendix, the following information shall be provided biennially regarding newspapers and magazines:

A. Name of newspaper or magazine.

B. Publishing command and mailing address.

C. Printing arrangement:

1. Government equipment.

2. Government contract with commercial printer.

3. CE contract with commercial publisher (give name, mailing address, and phone number of commercial publisher).

D. Automation capabilities (desktop publishing, computer bulletin board, etc.)

E. Frequency and number of issues per year.

F. Number of copies printed and estimated readership.

G. Paper size (metro, tabloid, or magazine/newsletter) and average number of pages per issue.

H. Size of publication staff, listed as full time, part time, and contractor-provided.

Dated: January 21, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–2079 Filed 1–31–97; 8:45 am]

BILLING CODE 5000–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 25, 26, 73, 76 and 100

[MM Docket No. 95–176; FCC 97–4]

Closed Captioning of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56 (1996), added a new provision, Section 713, to the Communications Act of 1934, as amended, which requires the Commission to prescribe, by August 8, 1997, rules and implementation schedules for captioning of video programming. The Commission requests comment on proposed rules and timetables for mandatory closed captioning of video programming, as outlined in the *Notice of Proposed Rulemaking* (*''NPRM''*). The intended effect of this *NPRM* is to promote the accessibility of video programming to persons with hearing disabilities. Our proposals are based on comments and information submitted in response to a *Notice of Inquiry* (*''NOI''*) in this proceeding and additional data gathered by the Commission for our *Report* to Congress on video accessibility that was issued on July 29, 1996.

DATES: Comments are due on or before February 28, 1997, and reply comments are due on or before March 24, 1997. Written comments by the public on the proposed information collections are due on or before February 28, 1997. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed collections on or before April 4, 1997.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to dconway@fcc.gov, and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725—17th Street, N.W., Washington, DC 20503 or via the Internet to fain__t@al.eop.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 *NPRM,* contact Dorothy Conway at 202–418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rulemaking,* MM Docket No. 95–176, FCC 97–4, adopted January 9, 1997, and released January 17, 1997. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW, Washington, D.C. 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, TTY (202) 293–8810, 1919 M Street, N.W., Washington, D.C. 20554. For copies in alternative formats, such as braille, audio cassette, or large print, please contact Sheila Ray at International Transcription Service.

Paperwork Reduction Act

This *NPRM* contains proposed information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this *NPRM,* as required by the Paperwork Reduction Act of 1995. Public and agency comments are due at the same time as other comments on this *NPRM;* OMB notification of action is due 60 days from date of publication of this *NPRM* in the Federal Register. Comments should address: (a) whether the proposed collections of information are 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 collections of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–XXXX Approval number to be assigned.

Title: Closed Captioning of Video Programming.

Type of Review: New collection.

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

Number of Respondents: 23,342. (3,000 complainants + 20,342 program providers)

Estimated Time Per Response: 1–10 hours estimated as follows: We estimate that program providers will initiate 100 waivers/petitions each year requesting exemption from closed captioning requirements. At this time, we estimate

that the average burden to complete each waiver/petition process will be 5 hours. We estimate that 50% of program providers will use in-house assistance. We estimate that 50% of program providers will use outside legal assistance to complete waivers/petitions. These program providers will undergo an average burden of 2 hours for each waiver/petition to coordinate information with outside legal assistance. 50 (50% of program providers using in-house assistance) ×5 hours=250 hours. 50 (50% of program providers using outside legal assistance) ×2 hours=100 hours.

Estimated annual burden to complainants and program providers for the complaint process: We estimate there will be 3,000 annual complaints filed by viewers at the local level. The average burden for each complaint and response is estimated to be 1 hour per complainant and 1 hour per program provider. 3,000 viewer complaints × 1 hour and 3,000 program provider responses × 1 hour=6,000 hours.

We estimate that the majority of complaints will be resolved at the local level and assume that approximately 600 (20% of 3,000) will go unresolved, resulting in complaints and responses being filed with the Commission. The average burden for each complaint and response in this instance is estimated to be 2 hours per complainant and 4 hours per program provider. 600 viewer complaints × 2 hours and 600 program provider responses × 4 hours=3,600 hours. We estimate the average annual burden for recordkeeping and making information available upon request to viewers will be 10 hours for each program provider. The estimated number of program providers is 20,342 as follows: 11,200 cable television systems, 1,532 commercial and non-commercial television stations, 137 national cable video networks, 3 open video system (''OVS'') operators, 8 direct broadcast satellite (''DBS'') operators, 30 home satellite dish (''HSD'') program packagers, 5,200 satellite master antenna television systems (''SMATVs''), 200 wireless cable operators, and 2,032 instructional television fixed service (''ITFS'') providers. 20,342×10=203,420 hours.

Total Annual Burden: 213,370 hours. (250+100+6,000+ 3,600+203,420)

Estimated Costs for Respondents: $90,684 estimated as follows: Program providers will use outside legal assistance paid at $150 per hour to complete approximately 50 waivers/petitions. 50 waivers × 5 hours per waiver × $150 per hour=$37,500. Postage and stationery costs for waivers are estimated at an average of $5 per waiver. 100 waivers × $5=$500. Postage and stationary costs for filing complaints is estimated as follows: 3,000 viewer complaints filed at the local level × $1=$3,000. 3,000 program provider responses × $1=$3,000. 600 viewer complaints filed at the Commission × $5 per complaint (increased postage for mailing video logs or tapes)=$3,000. 600 program provider responses × $5=$3,000. Postage and stationery costs for recordkeeping and making records available upon request are estimated at an average of $2 per program provider. 20,342×$2=$40,684. Total costs=$37,500+ $500+$3,000 +$3,000+$3,000+$3,000 +$40,684=$90,684.

Needs and Uses: This *NPRM* is adopted pursuant to Section 713 of the Communications Act of 1934, as amended. The requirements set forth in Section 713 are intended to further Congress' goal to ''ensure that all Americans ultimately have access to video services and programs, particularly as video programming becomes an increasingly important part of the home, school and workplace.'' The requirements will be used 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 the Notice of Proposed Rulemaking

1. Closed captioning is an assistive technology designed to provide access to television for persons with hearing disabilities. Closed captioning is similar to subtitles. Captions also identify speakers, sound effects, music and laughter. Currently, programming accessible to persons with hearing disabilities through closed captioning is the result of the voluntary efforts of program producers and providers, although the Commission has encouraged these efforts in several previous actions.

2. Section 305 of the Telecommunications Act of 1996 (''1996 Act''), Public Law 104–104, 110 Stat. 56 (1996), added a new Section 713, Video Programming Accessibility, to the Communications Act of 1934, as amended (''Communications Act''), 47 U.S.C. 613. Section 713 requires the Commission to prescribe, by August 8, 1997, rules and implementation schedules for captioning of video programming. In this *NPRM,* the Commission discusses and seeks comment on proposals intended to maximize the amount of closed captioned programming, with appropriate exemptions and implementation schedules that take into account the relevant technical and costs issues involved. Our proposals are based on comments and information submitted in response to the *NOI* in this proceeding, summarized at 60 FR 65052 (December 18, 1995), and additional data gathered by the Commission for our *Report* to Congress on video accessibility that was issued on July 29, 1996, summarized at 61 FR 42249 (August 14, 1996), pursuant to the requirements of Section 713(a).

3. At the outset, we note that the provisions of Section 713 apply to all types of video programming delivered electronically to consumers, regardless of the entity that provides the programming or the category of programming. We consider over-the-air broadcast television service (both commercial and noncommercial), and all multichannel video programming distributors (''MVPDs''), including: cable television, direct-to-home (''DTH'') satellite services, including DBS and HSD services; wireless cable systems using the multichannel multipoint distribution service (''MMDS''), ITFS, or local multipoint distribution (''LMDS''); SMATV systems; and OVS. Also, as required by Section 713, we consider all sources of video programming distributed by these technologies, including programming from commercial and noncommercial broadcast television networks, basic and premium cable networks, syndicated programming, and locally or regionally produced broadcast and cable programming.

4. Throughout this *NPRM,* we seek comment on our proposed closed captioning requirements. We also invite commenters to provide alternative proposals that will fulfill the congressional mandate to ensure video accessibility to individuals with hearing disabilities.

5. *Responsibility for Compliance with Captioning Requirements.* In order to implement any closed captioning requirements that we may adopt, we must determine where the responsibility lies for ensuring that video programming is closed captioned, and which parties shall be required to comply with those requirements. Section 713(b)(1) focuses on the result that new programming be closed captioned, rather than who is responsible for accomplishing this goal, while Section 713(b)(2) refers to both video programming providers and program owners as being responsible for captioning of library programming. Our tentative proposal is to require those entities that deliver video programming

directly to consumers (i.e., television broadcasters and MVPDs) to be ultimately responsible for the rules we adopt. Although we propose to place the compliance obligations on video programming providers, we recognize, from a practical standpoint, that captioning is most efficient at the production stage. Thus, we believe that producers generally will have the responsibility for captioning programming, regardless of who has the obligation to comply with our rules.

6. *Transition Rules for New Programming.* Section 713(b)(1) requires the Commission to adopt rules to ensure that all non-exempt video programming first published or exhibited after the effective date of the our closed captioning rules (''new programming'') is fully accessible through the provision of closed captions. Section 713(c) further requires that the Commission's rules include an appropriate schedule of deadlines by which non-exempt video programming must be closed captioned. We propose to require that all non-exempt, new programming be closed captioned within eight years. We propose to phase in this captioning requirement by increasing the amount of required captioning by 25% every two years. Thus, we would require 25% of such programming to be captioned at the end of the second year, 50% at the end of the fourth year, 75% at the end of the sixth year, and to have all non-exempt, new programming captioned at the end of the eighth year. Alternatively, we seek comment on a ten year period, with 25% of new programming captioned after three years, 50% after five years, 75% after seven years, and 100% after ten years. With respect to MVPDs, we propose to apply the percentages of programming that must be captioned on a system-wide basis. However, we also solicit comment on whether the percentages of programming that must be captioned should apply to each program service or channel transmitted by an MVPD. We ask whether the determination that a percentage requirement has been met should be based on the amount of programming with captioning that has been shown over a month, a week, or some other period of time. We seek comment on what the period of time should be if we apply the percentages on a system-wide basis, and what it should be if we apply the percentages on a per-channel basis.

7. *Transition Rules For Library Programming.* With respect to programming that was first published or exhibited before the effective date of our rules (''library programming''), Section 713(b)(2) requires that our rules ensure that video programming providers or owners maximize the accessibility of such programming through closed captioning. In considering closed captioning requirements for library programming, we do not believe that the statute requires that all such programming be captioned, given the distinction between new programming (''fully accessible'') and library programming (''maximize accessibility'') evident in the statutory language of Sections 713 (b)(1) and (b)(2). We ask whether we should require that a percentage of library programming (e.g., 75%) ultimately be captioned. We also seek comment on what deadline should apply to captioning of library programming and what the relevant time frames for the transition period should be. Some commenters assert that captioning of previously published programming is increasing, and thus it may be unnecessary to require completion of closed captioned video libraries by a date certain. We ask that commenters who support this approach indicate how the Commission would ensure that video programming providers or owners ''maximize the accessibility'' of previously published programming, as required by Section 713(b)(2).

8. *Exemptions Based on Economic Burden.* Section 713(d)(1) provides for the exemption of classes of video programming or video providers where the requirement to close caption programming would be economically burdensome. While Section 713 and its legislative history do not define the term ''economic burden,'' we interpret this provision to permit us to exempt those classes of programming where the economic burden of captioning these programming types outweighs the benefits to be derived from captioning and, in some cases, the complexity of adding the captions. We seek to establish a general classification or a number of general classifications of programming for which captioning would be economically burdensome. Thus, we need to determine when a closed captioning requirement would be economically burdensome, and we seek comment on whether a definition of economic burden should be based on relative market size, degree of distribution, audience ratings or share, relative programming budgets or revenue base, lack of repeat value, or a combination of factors. We specifically discuss whether the following types of programming should be included in our own general exemptions: foreign language programs; programs which are primarily textual; cable access programs; instructional programs; advertising; home shopping; interstitials and promotional advertisements; political advertising; noncommercial broadcasters' fundraising activities; music programs; weather programs; and sports programs.

9. While the statute also allows us to exempt classes of video providers, we believe that a blanket exemption even for very small providers is unnecessary, because the various providers distribute the same types of programming to consumers, and all classes of providers appear to have the technical capability to deliver closed captioning to viewers intact.

10. *Exemptions Based on Existing Contracts.* Section 713(d)(2) exempts programming from any closed captioning requirements we may adopt, if applying such requirements would be ''inconsistent'' with a contract in existence as of February 8, 1996, the enactment date of the 1996 Act. We tentatively conclude that contracts which affirmatively prohibit closed captioning would fall within this exemption and we seek comment on this conclusion. Such contracts do not appear to be typical but may be entered into when the program creator wishes to maintain total creative control over the product involved. However, we recognize that it is possible that contracts may contain more general language, not explicitly mentioning closed captioning, that might nonetheless be inconsistent with captioning. We seek comment on the types of provisions that might be contained in programming contracts that would be inconsistent with a captioning requirement.

11. *Exemptions Based on Undue Burden.* Section 713(d)(3) provides for a program owner or provider of video programming to petition the Commission for an exemption from the closed captioning requirements based on a showing of undue burden. In determining whether closed captioning requirements would be an undue burden, the statute indicates that the factors the Commission must consider include: (1) the nature and cost of the closed captions for the programming; (2) the impact on the operation of the provider or program owner; (3) the financial resources of the provider or program owner; and (4) the type of operations of the provider or program owner. The Commission seeks comment on how to apply these factors and whether there are any other factors which should be considered when determining that closed captioning would result in an undue burden for an individual programming provider.

Commenters are also asked to address whether or not we should require parties to provide specific facts or meet objective tests to prove an undue burden or whether petitioners should have wider discretion in demonstrating that under their specific circumstances, the closed captioning requirements would constitute an undue burden. We also seek comment on what specific information petitioners should provide in order to demonstrate the factors needed to prove an undue burden. In addition, we request comment on a proposal to use standard ''special relief'' or waiver-type procedures for these types of requests.

12. *Standards for Quality and Accuracy.* Section 713 does not require the Commission to adopt rules or standards for the accuracy or quality of closed captioning. However, in the *NOI,* we sought comment on these issues based on reported problems with existing closed captions. We propose to extend to other programming providers the rule (47 CFR 76.606) that requires cable operators to deliver existing closed captions intact. However, we tentatively conclude that we should not adopt standards for the non-technical aspects of captioning, including accuracy of transcription, spelling, placement and style, at the start of our phase in period for closed captioning. We propose to monitor the closed captioning that results from our requirements and, if necessary, revisit this issue at a later date. We also do not propose to establish minimum credentials for captioners or to place any limits on the method used to create captions.

13. *The Enforcement Process.* We propose to rely on complaints as a primary enforcement mechanism for the rules we adopt. Further, all complaints would initially be directed to the program provider in an attempt to resolve problems privately within a specified time period in order to minimize administrative resources devoted to matters that are better resolved through informal processes. We also seek comment on other methods or information needed to verify compliance, such as a requirement that each entity responsible for compliance with the rules retain in its files, or have available upon appropriate request, records sufficient to verify compliance.

Initial Regulatory Flexibility Analysis

14. Pursuant to Section 603 of the Regulatory Flexibility Act (''RFA''), 5 U.S.C. 603, as amended, the Commission has prepared the following initial regulatory flexibility analysis (''IRFA'') of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *NPRM* but they must have a separate and distinct heading designating them as responses to the IRFA. The Secretary shall cause a copy of this *NPRM* to be sent to the Chief Counsel for Advocacy of the Small Business Administration (''SBA'') in accordance with Section 603(a) of the RFA, 5 U.S.C. 603(a).

15. *Reason for Action and Objectives of the Proposed Rule.* The 1996 Act requires the Commission to promulgate rules designed to maximize the availability of closed captioned programming. 47 U.S.C. 613. The Commission is issuing this *NPRM* to seek comment on proposed rules intended to implement this provision of the 1996 Act.

16. *Legal Basis.* This *NPRM* is adopted pursuant to Sections 4(i), 4(j) and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 613.

17. *Description and Number of Small Entities Affected.* The Regulatory Flexibility Act 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, 5 U.S.C. 601(3). 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. 15 U.S.C. 632.

18. *Small MVPDs.* SBA has developed a definition of a small entity 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, DBS services, MMDS systems, SMATV systems and subscription television services. According to the Bureau of the Census, there were 1423 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992. We will address each service individually to provide a more succinct estimate of small entities. We seek comment on the tentative conclusions below.

19. *Cable Systems.* The Commission has developed its own definition of a small cable company for the purposes of rate regulation. Under the Commission's 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 1,439 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 1,439 small entity cable system operators that may be affected by the decisions and rules proposed in this *NPRM.*

20. 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). The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that 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. 47 CFR 76.1403(b). Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450. 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.

21. *MMDS.* The Commission refined the definition of ''small entity'' for the auction of MMDS 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. 47 CFR 21.961(b)(1). This definition of a small entity in the context of the Commission's *Report and Order,* summarized at 60 FR 36524 (July 17, 1995), concerning MMDS auctions that has been approved by the SBA.

22. The Commission completed its 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 1,573 previously authorized and proposed MMDS facilities. Information available

to us indicates that no MDS facility generates revenue in excess of $11 million annually. We tentatively conclude that for purposes of this IRFA, there are approximately 1634 small MMDS providers as defined by the SBA and the Commission's auction rules.

23. *ITFS*. There are presently 2,032 ITFS licensees. All but one hundred 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. Thus, we tentatively conclude that at least 1932 licensees are small businesses.

24. *DBS*. As of December 1996, there were eight DBS licensees. However, the Commission does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. Although DBS service requires a great investment of capital for operation, we acknowledge that there are several new entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

25. *HSD*. The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. 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. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.

26. 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 MSO. Furthermore, because this an average, it is likely that some program packagers may be substantially smaller. We seek comment on these tentative conclusions.

27. *OVS*. The Commission has certified three OVS operators. On October 17, 1996, Bell Atlantic received approval for its certification to convert its Dover, New Jersey Video Dialtone (''VDT'') system to OVS. Bell Atlantic subsequently purchased the division of Futurevision which had been the only operating program package provider on the Dover system, and has begun offering programming on this system using these resources. Metropolitan Fiber Systems was granted certifications on December 9, 1996, for the operation of OVS systems in Boston and New York, both of which are being used to provide programming. On October 10, 1996, Digital Broadcasting Open Video Systems received approval to offer OVS service in southern California. Because these services have been introduced so recently, little financial information is available. Bell Atlantic and Metropolitan Fiber Systems have sufficient revenues to assure us that they do not qualify as small business entities. Digital Broadcasting Open Video Systems however is a general partnership just beginning operations. Accordingly, we tentatively conclude that one OVS licensee qualifies as a small business concern.

28. *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 tentatively conclude that a substantial number of SMATV operators qualify as small entities.

29. *LMDS*. Unlike the above pay television services, LMDS technology and spectrum allocation will allow licensees to provide wireless telephony, data, and/or video services. A LMDS provider is not limited in the number of potential applications that will be available for this service. 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 above. A small radiotelephone entity is one with 1,500 employees or less. 13 CFR § 121.201. However, for the purposes of this *NPRM* on closed captioning, we include only an estimate of LMDS video service providers.

30. 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, summarized at 60 FR 43740 (July 23, 1995), 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.

31. 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 tentatively conclude that a majority of the potential LMDS licensees will be small entities, as that term is defined by the SBA.

32. *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.

33. *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 dollars in annual receipts. Census data also indicates that 81% of operating firms (that owned at least one television station) had revenues of less than $10 million.

34. 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 dollars or less, representing approximately 68% of the 1141 full power commercial television stations listed in the BIA data base.

35. 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, of small entities would constitute 72% of the total number of owners.

36. 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 approximately 771 commercial television stations (about 68% of all commercial televisions 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.

37. *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—''Establishments primarily engaged in the production of theatrical and nontheatrical motion pictures and video tapes for exhibition or sale,'' including ''establishments engaged in both production and distribution''), Motion Picture and Video Tape Distribution (SIC 7822—''Establishments primarily engaged in the distribution * * * of theatrical and nontheatrical motion picture films or in the distribution of video tapes and disks, except to the general public''), and Theatrical Producers (Except Motion Pictures) and Miscellaneous Theatrical Services (SIC 7922—''Establishments primarily engaged in providing live theatrical presentations,'' including ''producers of * * * live television programs.''). 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 indicates 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. The Census data does not include a category for $21.5 million; therefore, we have reported the closest increment below and above the $21.5 million threshold.

38. Each of these SIC categories are very broad and includes firms that may be engaged in various industries including television. We tentatively conclude that cable networks that are essentially program distributors are included in this category. 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 tentatively 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 proposed rules in this *NPRM*.

39. *Reporting, Recordkeeping and Compliance Requirements.* The *NPRM* tentatively proposes requiring video programming providers (including broadcast licensees and MVPDs) to substantially increase the volume of closed captioned video programming carried over a period of time. Virtually all future programming and a gradually increasing volume of previously released programming is expected to be captioned over time. If this proposal is adopted, video programming providers may be choose to maintain records of the volume of closed captioned programming carried in order to resolve any disputes which may arise regarding compliance.

40. In addition to seeking comment on a complaint process, the Commission invites comments regarding alternative enforcement procedures including a requirement that video programming providers their compliance with by placing information regarding the amount of closed captioning they distribute in a public file. The Commission invites commenters to address the possible effectiveness of this alternative enforcement mechanisms and how it might be implemented.

41. *Federal Rules Which Overlap, Duplicate or Conflict With the Commission's Proposal.* None.

42. *Any Significant Alternatives Minimizing the Impact On Small Entities and Consistent With the Stated Objectives.* The statutory language provides for exemptions from any closed captioning requirements the Commission may adopt, when imposing those requirements would create an economic burden. 47 U.S.C. 613(e). Consistent with this directive, the *NPRM* seeks comment on several

mechanisms which would allow small entities to be exempt in whole or in part from the closed captioning requirements. These measures are intended, in part, to minimize the regulatory impact on small entities.

43. Section 713(d)(1) provides that the Commission may exempt classes of video programming or video providers where closed captioning would be economically burdensome. Pursuant to this provision, the Commission proposes to establish a general classification or a number of classifications of programming for which captioning would be economically burdensome. Thus, the Commission seeks comment on whether a definition of economic burden should be based on relative size, degree of distribution, audience ratings or share, relative programming budgets or revenue base, lack of repeat value, or a combination of factors.

44. Section 713(d)(3) permits video programming providers or program owners to petition the Commission for an exemption where our video captioning requirements would constitute an undue burden. 47 U.S.C. 613(d)(3). Section 713(d)(3) further provides specific factors to be considered when resolving such petitions. Accordingly, the Commission seeks comment on how to apply these factors and whether there are any factors which should be considered when determining if a requirement for closed captioning results in an undue burden for an individual video programming provider or program owner.

Ex Parte

45. *Ex parte Rules*—Non-Restricted Proceeding. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. *See generally,* 47 CFR 1.1202, 1.1203, and 1.1206(a).

Comment Dates

46. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before February 28, 1997, and reply comments on or before March 24, 1997. To file formally in this proceeding, you must file an original plus six copies of all comments, reply comments, and supporting comments. If you would like each Commissioner to receive a personal copy of your comments and reply comments, you must file an original plus 11 copies. You should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

Ordering Clauses

47. Authority for this proposed rulemaking is contained in Sections 4(i), 4(j), and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j) and 613.

48. *It is ordered* that the Secretary shall send a copy of the *Notice of Proposed Rulemaking,* including the 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, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects

47 CFR Part 25

Communications common carriers, Reporting and recordkeeping requirements, Satellites.

47 CFR Part 26

Communications common carriers, Reporting and recordkeeping requirements, Satellites.

47 CFR Part 73

Education, Political candidates, Reporting and recordkeeping requirements, Television.

47 CFR Part 76

Cable television, Political candidates, Reporting and recordkeeping requirements.

47 CFR Part 100

Satellites.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–2535 Filed 1–31–97; 8:45 am]

BILLING CODE 6712–01–P

---

47 CFR Part 63

[CC Docket No. 97–11; FCC 97–6]

Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is issuing a Notice of Proposed Rulemaking (''NPRM'') to seek comment on the scope of the statutory exemption under Section 402(b)(2)(A) of the Telecommunications Act of 1996. Section 402(b)(2)(A) provides that common carriers are exempt from the requirements of Section 214 of the Communications Act of 1934, as amended (''the Act'') ''for the extension of any line.'' The Commission seeks comment on how ''extension of any line'' should be defined. It tentatively concludes that an ''extension of a line'' is a line that allows the carrier to expand its service into a geographic territory that it is eligible to serve, but that its network does not currently reach. The Commission also proposes to forbear, under Section 401 of the 1996 Act (47 U.S.C. 160), from exercising Section 214 authority over ''new'' lines with respect to local exchange carriers (''LECs'') subject to price cap regulation, LECs that are considered average schedule companies, and domestic carriers deemed non-dominant, whether they are offering local or domestic, long distance services. In addition, the Commission proposes to grant Section 214 blanket authority for small projects undertaken by carriers to construct new lines. Further, it seeks comment on other alternatives, including whether to treat price cap LECs which have elected a ''no-sharing'' X-factor differently from other price-cap LECs and whether to forbear altogether from applying Section 214 to small carriers. The intended effect of this action is to implement Section 402(b)(2)(A).

DATES: Comments are due on or before February 24, 1997 and Reply Comments are due on or before March 17, 1997. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before April 4, 1997.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W. Room 222, Washington, D.C. 20554. Secretary, Network Services Division, Common Carrier Bureau, 2000 M Street, N.W., Room 235, Washington, D.C. 20554. International Transcription Services, Inc., 2100 M Street, N.W., Suite 140, Washington, D.C. 20037. Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet dconway@fcc.gov. Timothy Fain, OMB Desk Officer, 10236 NEOB, 725–17th Street, N.W., Washington, D.C. 20503 or via the Internet fain__t@al.eop.gov.

FOR FURTHER INFORMATION CONTACT: Marty Schwimmer, Attorney, Network

Services Division, Common Carrier Bureau, (202) 418–2334. For additional information concerning the information collections contained in this NPRM contact Dorothy Conway, (202) 418–0217, or via the Internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking adopted January 9, 1997, and released January 13, 1997 (FCC 97–6). The full text of this Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, D.C. and is also available from the FCC's World Wide Web site, http://www.fcc.gov. The complete text also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M St., NW., Suite 140, Washington D.C. 20037.

Paperwork Reduction Act

The NPRM contains either a proposed or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due April 4, 1997. 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: 3060–0149.

Title: Application and Supplemental Information Requirements—Part 63, Section 214, Sections 63.01–63.601.

Form No.: N/A.

Type of Review: Proposed revision to Existing Collection.

Respondents: Businesses or others for profit, including small businesses.

Number of Respondents: 255.

Estimate Hour Per Response: 10 hours.

Total Annual Burden: 2550.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Needs and Uses: The information is used to determine if proposed facilities are needed and to monitor the growth of networks and the availability of common carrier services in the telecommunications market, to relieve carriers and the Commission of a review of each subsequent facility addition.

Synopsis of Notice of Proposed Rulemaking

Table of Contents

Section	Paragraph
I. INTRODUCTION AND BACKGROUND	1
II. ISSUES	3
A. Overview	3
1. Statutory Authority and Construction	4
2. Definitional Issues	5
3. Discussion	21
B. Section 214 Requirements for Price Cap Carriers, Average Schedule Carriers, and Domestic, Non-dominant Carriers	37
C. Section 214 Requirements for Domestic, Dominant, Rate-of-Return Carriers	52
1. Streamlined Application Procedures	52
2. Blanket Authority for Small Projects	59
D. Reporting Requirements	63
1. Current Section 214 Reporting Requirements	63
2. Elimination of Reports	65
E. Section 214 Discontinuance Requirements	68
F. Technical Amendments to 47 CFR Part 63	72
III. PROCEDURAL MATTERS	74
A. *Ex Parte* Presentations	74
B. Regulatory Flexibility Act Analysis	75
C. Initial Paperwork Reduction Act Analysis	76
D. Comment Filing Procedures	78
IV. ORDERING CLAUSES	80

I. Introduction and Background

Section 214 of the Communications Act of 1934, as amended, imposes regulatory obligations on common carriers seeking to change their facilities or construct new facilities. Section 214 states that ''[n]o carrier shall undertake the construction of a new line or of an extension of any line, or shall acquire or operate any line, or extension thereof, or shall engage in transmission over or by means of such additional or extended line, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line.'' Congress enacted Section 214 to prevent useless duplication of facilities that could result in increased rates being imposed on captive telephone ratepayers.

On February 8, 1996, the Telecommunications Act of 1996 was signed into law to ''establish a pro-competitive, de-regulatory national policy'' framework for the United States telecommunications industry. As part of this comprehensive legislation, Congress adopted Section 402(b)(2)(A) of the 1996 Act. This provision states that, ''[t]he Commission shall permit any common carrier to be exempt from the requirements of Section 214 of the Communications Act of 1934 for the extension of any line . * * *'' Under this exemption, carriers seeking to extend their lines of communication no longer need to seek Commission authorization for their proposals under Section 214 or our Part 63 rules. Accordingly, we have initiated this rulemaking proceeding: (1) to implement Section 402(b)(2)(A) of the 1996 Act; and (2) to determine the extent to which the Commission should exercise its remaining Section 214 authority in light of the forbearance provisions of the 1996 Act.

II. Issues

A. Overview

Section 402(b)(2)(A) exempts common carriers from the requirements of Section 214 ''for the extension of any line.'' Accordingly, although they must continue to obtain appropriate authorization for the use of radio frequencies under Title III of the Communications Act of 1934, carriers are free to construct, acquire, operate, or transmit over the ''extension'' of a line without receiving Section 214 or Part 63 approval. In this notice, we seek comment on the scope of this statutory exemption and, in particular, on how ''extension of any line'' should be defined. As discussed below, we tentatively conclude that an ''extension of a line'' is a line that allows the carrier to expand its service into a geographic territory that it is eligible to serve, but that its network does not currently reach. We also propose to forbear, under Section 401 of the 1996 Act, from exercising Section 214 authority over ''new'' lines with respect to local exchange carriers (''LECs'') subject to price cap regulation, LECs that are considered average schedule companies, and domestic carriers deemed non-dominant, whether they are offering local or domestic, long distance services. In addition, we propose to grant Section 214 blanket authority for small projects undertaken by carriers to

construct new lines. We also seek comment on other alternatives: namely (1) whether we should treat price cap LECs which have elected a ''no-sharing'' X-factor differently from other price-cap LECs; and (2) whether we should forbear altogether from applying Section 214 to small carriers.

1. Statutory Authority and Construction

4. Section 214 defines a ''line'' as ''any channel of communication established by the use of appropriate equipment, other than a channel of communications established by the interconnection of two or more existing channels.'' Section 214 identifies two broad categories of lines. A carrier may construct a ''new line'' or it may construct an ''extension'' of a line. Similarly, a carrier may acquire or operate a ''line'' or an ''extension thereof,'' and may transmit over ''such additional * * * line'' or ''extended line.'' Section 402(b)(2)(A) exempts carriers from the requirements of Section 214 with respect to the ''extension of any line.'' Accordingly, the exemption created by Congress in 402(b)(2)(A) applies to some, not all, of the carrier activities otherwise subject to Section 214 certification.

2. Definitional Issues

5. Although the text of Section 214 identifies discrete categories of transactions subject to Section 214 certification, historically, the certification process, standards, and requirements applicable to all such transactions have been identical. As a result, neither courts nor the Commission has had a need to provide specific definitions of these categories or to distinguish among them. The language of Section 402(b)(2)(A), however, requires that we now define the ''extension of any line'' and distinguish such an extension from ''new lines,'' which are not exempted from the requirements of Section 214.

6. In developing a definition of ''extension of any line,'' we believe that appropriate guidance should be drawn from three sources: (a) the meaning of the words, ''extension'' and ''new;'' (b) Congress's original purposes in enacting Section 214 of the 1934 Act and Section 402(b)(2)(A) of the 1996 Act; and (c) court and Commission precedent interpreting the text of Section 214 and Section 1(18–22) of the Interstate Commerce Act, from which Section 214 was derived.

7. (a) Definitions of ''Extension'' and ''New.'' Webster's dictionary defines ''extension'' as, *inter alia,* ''the act of extending or state of being extended'' or ''an addition to a main structure.'' The verb ''extend'' means ''to expand the area or scope of'' or ''to increase the influence of.'' By contrast, the word ''new'' is defined as ''having existed or been made for only a short time,'' ''unfamiliar,'' ''novel,'' or ''recently arrived or established in a position, place or relationship.''

8. Thus, the phrase ''extension of a line'' implies that, to extend its lines, a carrier should add to its network by beginning to serve new territory, thereby expanding its area of service. As distinguished from an extension, a ''new line'' suggests one which, independent of location, has recently been created or is in some other way ''novel.''

9. *(b) Legislative Intent.* Section 214 was originally enacted to prevent a monopoly carrier from engaging in ''useless duplication of facilities, with consequently higher charges upon the users of the service.'' The stated legislative purpose of the 1996 Act is ''to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.'' Consistent with this broad purpose, Congress enacted Section 402(b)(2)(A), intending to ''eliminate[] the Section 214 approval requirement for extension of lines.'' In this proceeding, we seek to give effect to the de-regulatory letter and spirit of the 1996 Act in general, and Section 402(b)(2)(A) specifically, thereby promoting competition by removing outdated barriers to entry in telecommunications markets.

10. *(c) Precedent.* In expanding their own networks, carriers generally undertake one of two basic types of activities. They may either (1) expand the geographic area covered by their facilities; or (2) increase the capabilities of their network within their existing service area. Each type of activity has implications with respect to the definition of the ''extension'' of a line.

11. *(1) Geographic Considerations.* Congress patterned Section 214 on Section 1(18–22) of the Interstate Commerce Act. In interpreting that provision, the Supreme Court defined ''extensions'' as lines ''the purpose and effect [of which] is to extend substantially the line of a carrier into new territory.'' Two 1938 Commission decisions generally followed the Supreme Court's ''new territory'' language in the communications context, and instruct our efforts to distinguish ''new'' lines from ''extensions.'' That year, the Commission used the term ''extension'' to describe the acquisition of telegraph lines to serve ''new territory not theretofore served'' by the acquiring carrier. In another opinion issued the same day, the Commission used the term ''new, additional or supplemental facilities'' to describe lines constructed by Southwestern Bell within its service area in Texas.

12. Other decisions, however, cloud the Commission's 1938 definition. Since that time, the Commission has also stated that: ''Section 214 is not confined to the 'extension' of a line—which might reasonably be construed as requiring some part of the common carrier facilities to cross a state boundary—but includes the 'construction of a new line' even though wholly within a single [s]tate so long as it is part of an interstate 'channel of communication' or 'line.'''

13. In the international context, in granting certain Section 214 authorizations, the Commission staff has cautioned that ''should [the carrier] obtain any interest in facilities beyond the authorized international points for the purpose of providing common carrier services, including private line service, between the U.S. and other international points, such action would constitute an extension of lines under Section 214.'' We recently indicated, however, that we would not be bound by this view and provided the following preliminary guidance with respect to the expansion of service into a new international market: ''When we grant a carrier initial authority to acquire and operate facilities to a particular country, we do not grant that carrier authority for an 'extension of lines' within the meaning of Section 214 * * * but instead grant that carrier authority to acquire and operate new lines to a particular geographic market.'' Thus, in the international context, we have suggested that lines that allow a carrier to serve new international markets should be considered ''new lines.''

14. *(2) Capacity Considerations.* Carriers can create new channels of communication, not only by expanding into new territory, but also by increasing the capabilities of their existing networks. Such increases may result from the laying of lines between points the carrier serves to supplement or supplant existing lines or from the use of technologically advanced electronic multiplexing, switching, coding, or similar central office or network equipment to allow a carrier to derive additional channels of communication from its existing facilities.

15. The Commission has consistently held that increases in capacity by either method create channels of communication requiring Section 214

authorization; however, the Commission has not clearly or consistently stated whether these channels should be considered ''new lines'' or ''extensions.''

16. The Commission has suggested that in-region lines installed to supplement existing ones constitute ''new lines.'' However, when it first considered the issue of in-region increases in capacity, the Commission stated that, in enacting Section 214, ''there was no intention on the part of Congress to limit the right of carriers to make full use of their own physical facilities by the derivation of as many circuits thereon or therefrom as possible. Therefore, it is not our opinion that Section 214 requires a certificate of convenience and necessity when a company of the Bell System rearranges its circuits or derives new circuits so as to make maximum use of its existing facilities, when the result is not an extension of a particular company's service into fields not theretofore served by it.'' Therefore, the Commission did not require Section 214 certification for such projects until after Congress amended Section 214 in 1943 to define a line as ''any channel of communication. * * *''

17. In light of the 1943 amendment, the Commission held that channels produced through the use of electronic equipment in conjunction with a pre-existing wire pair were ''lines'' within the meaning of Section 214. The Commission did not, however, indicate whether these lines were ''new'' lines or ''extensions.''

18. Noting that carriers are required to obtain Section 214 certification before installing multiplexing equipment, the Commission more recently stated that such equipment creates ''new 'lines' or channels under Section 214.'' Consistent with that holding, the Commission rejected a tariff filed by AT&T for Bell Packet Switching Service (''BPSS'') based on the fact that AT&T had not obtained Section 214 authority to install the required equipment. The Commission stated that ''the BPSS processor and interface facilities together perform multiplex operations that effectively establish new or additional channels of communication.'' Although both of these opinions specifically use the term ''new lines'' to describe channels of communication created electronically, we find little evidence to suggest that the Commission deliberately chose that term with the intent to distinguish such lines from ''extensions.''

19. Recent Commission precedent, also, fails to indicate whether activities that increase the capabilities of a carrier's in-region network create ''new'' lines or ''extensions.'' With respect to carrier installation of facilities for the provision of video dialtone (''VDT''), the Commission stated that, ''an upgrade of * * * facilities to offer video dialtone service constitutes the establishment or extension of a line. * * *'' Although the Commission continued its discussion by stating that ''[b]y constructing video dialtone platforms, LECs will be installing new systems and laying fiber to create new channels of communication,'' the Commission did not indicate clearly that it had consciously distinguished between ''new'' lines and ''extensions'' in characterizing VDT facilities.

20. With respect to international service, increases in a carrier's capacity to serve a given country would be considered ''lines'' under the Commission's interpretation of Section 214 since 1943. The Commission, however, did not assert its Section 214 jurisdiction over international lines created by electronically increasing the capacity of existing facilitites until 1964. That year, the Commission stated:

AT&T, and the various record carriers, have increased the capacity of, or the number of messages (voice and record) handled, by their respective facilities by the use of appropriate equipment; *e.g.* the use of Time Assignment Speech Interpolation (''TASI'') equipment by AT&T. To date, we have not exercised the authority given us pursuant to the provisions of Section 214 * * * to require the filing and a grant of appropriate applications before installation of such equipment. We feel, however, that, in view of the rapid growth of facilities in this field, the imminence of satellite communications, and the vast increase in facilities possible through heretofore unregulated installations, we should require such an application, and a grant thereof before the installation of such equipment.

The Commission went on to impose suitable conditions on the grant of the application at issue. The Commission did not, however, provide clear guidance as to whether it considered increases such as these to be ''new lines'' or ''extensions,'' or whether it made any principled distinction between channels created electronically and channels created by constructing wholly separate, parallel facilities.

3. Discussion

21. After reviewing the legislative intent of Congress, and Commission and court precedent, we find that, to date, the Commission has not clearly defined ''extension of any line'' for purposes of Section 214. We, therefore, take this opportunity to seek comment on an appropriate definition. We tentatively conclude that an ''extension of a line'' is a line that allows the carrier to expand its service into geographic territory that it is eligible to serve, but that its network does not currently reach. With respect to projects that increase the capabilities of a carrier's existing network within an area it already serves, we tentatively conclude, based on a review of Commission precedent, that we should consider the resulting additional channels of communication to be ''new lines.'' We seek comment on this tentative conclusion, including comment on whether such upgrades should be treated instead as ''extensions.''

22. Alternately, we seek comment on whether, consistent with the Surface Transportation Board's treatment of ''double-tracking'' of rail lines, we should treat in-region increases in network capacity as ''improvements,'' outside the scope of Section 214. We seek specific comment on whether such treatment would be: (1) consistent with the statutory definition of a line as ''any channel of communication''; and (2) appropriate in light of the original intent of Section 214 to inhibit network ''gold-plating'' and the intent of the 1996 Act to promote competition by removing outdated barriers to entry in telecommunications markets.

23. *Extension Within the United States:* The definition of extension we have proposed exempts carriers from their obligation to obtain Section 214 authorization for expansions into additional domestic territory that they are otherwise eligible to serve. By relieving carriers of the burden of obtaining Section 214 approval for such projects, the definition would encourage carriers to expand their service areas into territory served by other carriers. We tentatively conclude that this definition would be consistent with the natural meaning of ''extend,'' as well as court and Commission precedent because it would exempt from Section 214 certification lines that ''expand the area or scope of'' a carrier's network. In addition, by exempting carriers' efforts to expand their facilities or services beyond the areas in which they are currently providing service, we believe that we would encourage the development of competition, consistent with the 1996 Act.

24. Consistent with the original purpose underlying Section 214, under our proposed definition, the Commission would retain jurisdiction over the construction of most in-region facilities. These projects take place within the area where there is the potential danger that a dominant carrier

will create needlessly duplicative facilities, the cost of which may be borne by captive telephone ratepayers. These potential dangers are especially great in the case of a LEC subject to rate-of-return regulation, which would be in a position to recover the cost of additional, unnecessary facilities from its ratepayers. We note, however, that our proposed definition would allow even a rate-of-return LEC to extend lines into additional geographic territory without specific Section 214 certification. We tentatively conclude that our existing accounting and cost allocation rules would help protect such a LEC's captive ratepayers from bearing the cost of such extensions, even if the LEC sought to build unneeded, out-of-region facilities. We request comment on this tentative conclusion.

25. Under our proposed definition, a carrier would be able to extend its lines only into additional domestic territory that it is eligible to serve under the Communications Act, as amended, and the Commission's rules and policies. In this respect, we note that most LECs (*i.e.*, all except the BOCs and GTE) were eligible to immediately provide interstate, interexchange services, consistent with the policies stated in the *Competitive Carrier Proceeding,* even before the 1996 Act became law. Under the 1996 Act, the Bell Operating Companies (''BOCs'') are authorized to provide out-of-region, interLATA service, and are eligible to provide in-region, interLATA service once they comply with the requirements imposed by new Sections 271 and 272. In addition, the 1996 Act replaced the GTE Consent Decree, which barred GTE from providing domestic, interstate, interexchange services; GTE may now do so consistent with the requirements of the Communications Act, as amended, and the Commission's rules and policies. Furthermore, all domestic carriers are eligible to provide exchange telephone service on a competitive basis. Some carriers are already providing such competitive local exchange service, and others may soon begin to do so, either on a facilities or resale basis. Congress intended the 1996 Act to encourage such competitive activities and we believe that the elimination of carriers' Section 214 obligations will further that intent. We tentatively conclude, therefore, that a domestic carrier wishing to serve new territory may extend its lines to do so without obtaining Section 214 authority, as long as the carrier obtains any other regulatory approvals that may still be required.

26. We recognize that this proposed definition of ''extension'' may produce some anomalous results. For example, a domestic IXC that does not currently have facilities that serve the entire geographic United States would be able to extend lines into additional territory consistent with the policies developed in the *Competitive Carrier* proceeding. However, an IXC that already serves the entire domestic United States with its own facilities would not be permitted, under our proposed definition, to extend its lines without obtaining Section 214 approval. We note, however, that there should be no substantial or practical impact on the domestic IXCs because, as discussed more fully below, we tentatively conclude that we should forbear from applying Section 214 and our Part 63 rules to non-dominant IXCs under Section 401 of the 1996 Act. We believe our proposed definition would create fewer anomalies overall than other possible definitions. In addition, we are confident that we will be able to correct such results through the exercise of our forbearance authority.

27. Under our tentative definition, once a carrier has expanded into new territory by ''extending'' its lines, additional activities within that territory seemingly would create ''new'' lines. In the *Competitive Carrier* proceeding, we determined that LECs could offer interstate, interexchange services on a non-dominant basis through an affiliate that met certain separation requirements; a LEC offering such services directly, by contrast, would be regulated as dominant. We recently extended this regulatory regime, on a temporary basis, to BOC provision of out-of-region, interLATA telecommunications services to provide interim protection from potential cost-shifting and anticompetitive conduct by the BOCs. While we have recently sought comment on whether it might be appropriate at some future date to modify or eliminate the separation requirements thus imposed, those requirements remain in place. In this proceeding, while we propose forbearance from Section 214 regulation for most LECs and all non-dominant carriers, as discussed below, we also propose that rate-of-return LECs remain subject to streamlined Section 214 regulation. Accordingly, rate-of-return LECs might find themselves subject to Section 214 certification requirements only for their second and subsequent lines into a given territory. We seek specific comment on these and other potential anomalies, including possible remedies.

28. Accordingly, we ask parties to comment on whether our proposed definition of line ''extensions,'' as it applies to all common carriers, whether they are IXCs, LECs, resellers, international carriers (discussed below), or others, satisfies the goals of Section 402(b)(2)(A). We seek specific discussion of our proposed definition's impact on particular projects subject to Section 214 regulation or the Section 402(b)(2)(A) exemption. In addition, commenters advocating revisions to our definition should propose specific language and discuss the basis for their proposals in light of the dictionary meanings, legislative history, and precedents discussed above.

29. Our proposed definition would exclude all carrier lines in areas within which the carrier is currently providing service. Accordingly, under our tentative conclusion in paragraph 21, above, channels of communication derived from in-region network upgrades would be treated as ''new lines.'' Such treatment would be consistent with past Commission characterizations of such lines. Furthermore, it would preserve the Commission's Section 214 authority with respect to in-region network upgrades by dominant carriers. In-region network upgrades by dominant carriers present the greatest opportunities to duplicate facilities unnecessarily, with consequently higher charges to ratepayers. Although we expect the development of competition to lessen those opportunities, we tentatively conclude that, currently, continued Commission regulation of such projects remains consistent with the goals of Section 214. As with the IXCs, however, we tentatively conclude that the full exercise of this authority is not necessary to protect ratepayers in every instance. Specifically, as discussed more fully below, we tentatively conclude that we should forbear from regulating the in-region activities of LECs that are subject to price cap regulation (''price cap carriers''), LECs that are considered average schedule companies, and competitive access providers (''CAPs'').

30. *International Lines:* We have provided preliminary guidance with respect to the definition of a line ''extension'' in the international context by stating, with respect to Section 402(b)(2)(A), that:

We do not view this provision as applicable to our authority to require common carriers to obtain Section 214 authority to acquire, operate, or resell facilities or services to serve individual countries. When we grant a carrier initial authority to acquire and operate facilities to a particular country, we do not grant that carrier authority for an ''extension of lines'' within the meaning

of Section 214 * * * but instead grant that carrier authority to acquire and operate new lines to a particular geographic market.

31. Because the initiation of service to a new foreign point raises an array of issues not associated with the expansion of service within the domestic United States, we tentatively conclude that such initiation of service involves the construction, acquisition, or operation of ''new lines.'' This definition would be consistent with the meaning of ''new,'' which, in contrast to an ''extension,'' implies something ''unfamiliar'' or ''novel.'' We seek comment on this tentative conclusion.

32. Within the international context, we have stated that ''the international geographic market exists in terms of separate and distinct areas determined by national borders.'' Therefore, we tentatively conclude that the initiation of service to a new country is an action fundamentally different in character from the extension of facilities domestically, where carriers have much greater economic and operational flexibility. Carrier initiation of international service raises legal, economic, policy, and facility-specific issues different from those raised by the provision of domestic service. The Commission, for example, recently adopted a route-by-route approach to reviewing foreign carrier Section 214 applications to provide international services. Where a foreign carrier holds market power in a proposed destination market, the Commission examines whether effective competitive opportunities exist for U.S. carriers in that market. This allows us to address the potential anticompetitive effects of permitting a foreign carrier to provide U.S. telecommunications services between the United States and a country where it has market power. The legal, economic, policy, and facility-specific issues involved in service to particular foreign points require individual consideration, as well as consultation with the Executive Branch.

33. Accordingly, when we grant a carrier authority to acquire and operate facilities to a particular country, we tentatively conclude that we do not grant that carrier authority to ''extend'' lines within the meaning of Section 214 and Section 402(b)(2)(A), but instead grant that carrier authority to acquire and operate new lines. International carriers are not eligible to initiate service to new international points until they receive specific Section 214 authorization to do so. We tentatively conclude, therefore, that few carrier activities involving the provision of international services can properly be considered line ''extensions'' within the meaning of Section 214 or Section 402(b)(2)(A). Accordingly, under our proposed definition, virtually all international lines must be classified as ''new.'' We seek comment on this tentative conclusion.

34. Our proposed definition also would exclude projects that increase a carrier's capacity to carry traffic between the United States and another country it already serves. Such projects do not involve the expansion of service into any new geographic territory. Accordingly, we tentatively conclude that such capacity increases constitute ''new'' lines subject to Section 214 regulation, consistent with our characterization of domestic carrier in-region network upgrades. Nevertheless, we seek specific comment on the impact of our decision on all international carrier projects.

35. *Other Options:* We have tentatively concluded that an ''extension'' of a carrier's line should be defined as a line that allows the carrier to expand its service into geographic territory that it is eligible to serve, but that its network does not currently reach. We seek comment, however, on other alternatives, such as defining ''extension of any line'' to include:

(i) any line, some part of which crosses a state boundary, consistent with the language of *General Tel. Co. of California.* Lines that are wholly within a single state, but that nevertheless form part of an interstate channel of communication would be excluded from this definition.

(ii) any augmentation of lines in a carrier's network, heretofore subject to Section 214 certification, without distinguishing ''new'' lines from ''extensions.'' Such a definition would be consistent with the Commission's historic treatment of ''new'' lines and ''extensions'' as one uniform group, without subdivision. Under such a definition, the Commission would exempt all additions to a carrier's network from the requirements of Section 214. Such a definition would subject to Section 214 review only discontinuance, reduction, or impairment of service.

(iii) any channel of communication that is not created with a physically new facility. Under such a definition, capacity increases in existing facilities would be considered extensions, while the installation of physically new lines would remain subject to Section 214 certification. Such a definition potentially could influence carrier business decisions, because physically new facilities would be subject to a greater regulatory burden than capacity increases in existing facilities.

(iv) any line that connects to a carrier's network. Such a definition would include any line that augments a carrier's facilities by connecting to them. It would exclude augmentations that do not directly connect to the carrier's existing lines, as well as any discontinuance, reduction, or impairment of service.

We seek comment on these alternatives and on whether another definition would better address the considerations apparent in the language of Sections 214 and Section 402(b)(2)(A), the legislative history, and judicial and Commission precedents.

36. We note that carrier activities constituting the ''extension'' of a line, as defined in the course of this proceeding, are exempt from the requirements of Section 214 as of the date of enactment of the 1996 Act, February 8, 1996.

B. Section 214 Requirements for Price Cap Carriers, Average Schedule Carriers, and Domestic, Non-dominant Carriers

37. Under the definition of line ''extension'' proposed above, Section 402(b)(2)(A) of the 1996 Act preserves the Commission's Section 214 authority over telecommunications carriers seeking to construct, acquire, or operate new lines of communication, or engage in transmission over such lines. Consistent with the forbearance authority granted the Commission in Section 401 of the 1996 Act, however, and for the reasons stated herein, we propose in this notice to forbear from applying all Section 214 authorization requirements to LECs subject to price cap regulation (''price cap carriers''), to LECs that are average schedule companies, and to all domestic carriers classified as non-dominant, whether they are offering local or long distance services. Accordingly, we tentatively conclude that these carriers should no longer be required to obtain Section 214 authorization for the construction, acquisition, or operation of new lines between domestic points, or for transmission over such lines. In light of this proposal, we tentatively conclude that Section 63.07 of our rules should be repealed.

38. Section 401 amends Title I of the Communications Act of 1934 by adding a new Section 10. Section 10(a) directs the Commission to forbear from enforcing a regulation or provision of the Communications Act when: (1) Enforcement is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with a carrier or service

are just and reasonable and not unjustly or unreasonably discriminatory; (2) enforcement is not necessary to protect consumers; and (3) forbearance is consistent with the public interest. Section 10(b) further instructs the Commission to consider whether forbearance will promote competitive market conditions and enhance competition among providers of telecommunications services. If the Commission determines that such forbearance will promote competition among providers of telecommunications services, that determination may provide the basis for the Commission's finding, pursuant to subsection 10(a)(3), that forbearance is in the public interest.

39. We tentatively conclude that, under the first prong of the three-part forbearance analysis set forth in Section 10(a), the imposition of Section 214 authorization requirements on price cap, average schedule, and non-dominant carriers is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with these carriers or their services are just, reasonable and not unreasonably discriminatory. This tentative conclusion is based primarily on the presumption that price cap and average schedule carriers, by virtue of the rate regulation schemes applied to each, are constrained in their ability to raise interstate telephone service rates. Non-dominant carriers, by virtue of facing competition in their service areas also are constrained in their ability to raise rates.

40. Price cap carriers are limited in their ability to realize a regulatory benefit from overinvesting in facilities because rates for interstate services are capped in accordance with preset formulas that account for inflation and productivity growth. By capping prices rather than carrier profits, price cap regulation discourages overinvestment in facilities and encourages carriers to lower costs and increase productivity. We recognize that, under the Commission's current price cap regulations, carriers may elect a ''sharing'' option, which could affect the rates charged for interstate services. In general, under our current interim LEC price cap rules, a BOC could select an X-factor option that requires it to share interstate earnings with its customers that exceed specified benchmarks and permits the BOC to make a low-end adjustment if interstate earnings fall below a specified floor. Therefore, price cap regulation of a monopoly carrier that has elected a sharing option may not eliminate entirely that carrier's incentive to invest in unnecessary facilities. Such ''gold-plating'' activities may have the potential to increase the carrier's costs and, therefore, to reduce the carrier's obligation to share its regulated profits with its customers.

41. Although price-cap regulation that includes a sharing option preserves some of the incentives toward ''gold-plating'' that accompany rate-of-return regulation, we believe that all forms of price cap regulation nevertheless reduce these incentives. Price cap carriers incur sharing obligations on a sliding scale once their profits exceed certain levels; only when the carrier enters its ''100% sharing'' zone would it reap the full benefit of an increase in its costs. Virtually all of the price-cap carriers have adopted the ''no-sharing'' X-factor. This fact seems to indicate strongly that, in general, the benefits associated with the no-sharing option exceed the benefits of adopting a sharing option and strategically overinvesting in facilities. Moreover, we expect that growth in competition for local exchange and interstate access will provide additional incentives for the price-cap LECs to increase their efficiency. Therefore, whether a price cap carrier elects a ''sharing'' or ''no sharing'' option, we tentatively conclude that additional regulation under Section 214 is not required to protect telephone service ratepayers adequately against potentially higher rates resulting from investment in unnecessary facilities. Accordingly, we tentatively conclude that ''sharing'' and ''no sharing'' price cap carriers should be treated alike for purposes of applying forbearance from the Section 214 authorization requirements. We seek comment on this tentative conclusion, and request that commenters address whether we should distinguish price cap carriers that have elected an X-factor with no sharing requirement from other price cap carriers. We seek specific comment on whether we should apply the streamlined Section 214 procedures that we propose for rate-of-return carriers to price cap carriers that have a sharing obligation.

42. Similarly, average schedule companies are compensated for interstate telephone services through access service rates developed by the National Exchange Carrier Association (''NECA'') on the basis of industry-wide averages. This constraint on the ability of average schedule carriers to raise interstate telephone service rates reduces the incentive that these carriers otherwise might have to overinvest in facilities. Accordingly, we tentatively conclude that the first prong of the Section 10 forbearance test is satisfied for carriers that are average schedule companies.

43. In the Competitive Carrier proceeding, the Commission granted blanket Section 214 authority to non-dominant domestic carriers based on its finding that, in a competitive environment, market forces could protect the public from unreasonably high rates and undue discrimination. More recently, the Commission has reaffirmed its view that marketplace forces can replace regulation and make burdensome regulatory requirements unnecessary for both carriers and the Commission. Based on our continuing belief that market forces limit the ability of non-dominant carriers to recover the cost of unnecessary facilities from telephone service ratepayers, we propose to forbear from applying the Section 214 authorization requirements to all domestic facilities of domestic non-dominant carriers. Such forbearance would be consistent with our decision, under the forbearance provisions of the 1996 Act, no longer to require or to allow nondominant interexchange carriers to file tariffs for their interstate, domestic, interexchange services.

44. As discussed above, Section 214 review was intended to protect against duplicative and wasteful investments that could harm telephone service ratepayers. Our concern is that interstate telephone ratepayers not pay for such investments through increased rates for telephone service, particularly when carriers' rates are based on their costs plus a reasonable rate-of-return above those costs. Accordingly, our tentative finding that price cap, average schedule, and non-dominant carriers need not be required to obtain Section 214 authorizations is consistent with the rationale for Section 214 review. Specific Section 214 review of these carriers' investments in facilities is not necessary to ensure that their charges are just and reasonable because competitive forces or other regulatory constraints on prices already ensure that these classes of carriers have little economic incentive or ability to invest in wasteful or duplicative facilities.

45. We also tentatively conclude that, under the first prong of the Section 10(a) forbearance analysis, the imposition of Section 214 authorization requirements on price cap, average schedule, and domestic non-dominant carriers is not necessary to prevent those carriers from engaging in anticompetitive or discriminatory practices. The Section 214 certification process is not designed to prevent such abusive practices and, furthermore, the Commission has in place rules specifically addressing anticompetitive and discriminatory practices. We retain the ability to

reimpose Section 214 requirements should it become necessary to ensure that carrier rates and practices are just, reasonable, and nondiscriminatory.

46. We tentatively conclude that, under the second prong of the Section 10(a) forbearance analysis, imposition of the Section 214 authorization requirements on price cap (sharing and non-sharing), average schedule, and domestic non-dominant carriers is not necessary to protect consumers. Section 214 was originally enacted to protect telephone ratepayers. The rate regulation scheme applied to price cap and average schedule carriers, and market forces acting on domestic nondominant carriers, however, minimize the risk that telephone ratepayers will pay for wasteful investments by these carriers. We also tentatively find that forbearance from imposing Section 214 authorization requirements will benefit consumers because it will reduce the regulatory costs and delay currently imposed on carriers seeking to introduce new services. Accordingly, forbearance treatment should promote the ability of carriers to satisfy consumer demands more efficiently and at lower rates.

47. We also seek comment on whether there are other factors, apart from rate-of-return regulation or sharing obligations, that may affect the potential for duplicative and wasteful investments. In particular, we seek comment on the extent to which the rules and policies advocated by LECs in the appeal of our interconnection order and in the universal service proceeding could affect the incentives of carriers to make investments that are inconsistent with the statutory objective(s) of Section 214.

48. We tentatively conclude that, under the final prong of the Section 10(a) forbearance analysis, forbearance is in the public interest because it will promote competitive market conditions and enhance competition among providers of telecommunications services. The Commission's Section 214 review process currently appears to impose regulatory barriers to the entry of new carriers and the creation or expansion of facilities by all carriers because carriers proposing projects that do not fall within one of the Commission's blanket authority rules must engage in a potentially lengthy Commission review of their proposals and disclose potentially competitively sensitive information to rivals. By reducing the regulatory burden imposed by Section 214, we would encourage the development of competition by facilitating market-driven network expansion and reducing the costs of obtaining regulatory approval. Accordingly, we tentatively conclude that forbearance from applying the Section 214 authorization requirements to price cap, average schedule, and domestic non-dominant carriers would stimulate competition by facilitating entry of new carriers, price decreases, and improved offerings. Accordingly, we tentatively conclude, pursuant to Sections 10(a)(3) and 10(b), that the forbearance policy proposed herein is in the public interest.

49. We seek comment on the forbearance policy proposed above. We also seek comment on the advantages and disadvantages of alternative reform proposals including, for example, streamlining our Section 214 application procedures with respect to one or more of these classes of carriers instead of forbearing from applying the Section 214 authorization requirements. In addition, we seek comment on any procedures which may be necessary with respect to Section 214 in the event a carrier subject to forbearance treatment changes its cost accounting method and, as a result, no longer falls within a forborne class of carriers.

50. In the *Competitive Carrier* proceeding, the Commission found, for purposes of assessing the market power of interexchange carriers covered by that proceeding, that: ''(1) interstate, domestic, interexchange telecommunications services comprise the relevant product market, and (2) the United States (including Alaska, Hawaii, Puerto Rico, U.S. Virgin Islands, and other U.S. offshore points) comprises the relevant geographic market for this product, with no relevant submarkets.''

51. The Commission recently tentatively concluded that, under certain circumstances, narrower market definitions may provide a more refined analytical tool for assessing market power. Specifically, its tentative conclusions were: (1) to define as a ''relevant product market an interstate, interexchange service for which there are no close substitutes or a group of services that are close substitutes for each other but for which there are no other close substitutes''; and (2) to define the ''relevant geographic market for interstate, interexchange services as all calls (in the relevant product market) between two particular points.'' Although the Commission proposed treating ''interstate, interexchange calling generally as one national market,'' the Commission also proposed to examine credible evidence of market power in particular product or point-to-point markets. We seek comment on how revisions to the Commission's assessment of market power in these differing contexts may affect our proposal to forbear from Section 214 regulation of nondominant carriers, if we were to adopt such revisions. In addition, we seek specific comment on the regulation under section 214 of a carrier that might be regulated as dominant in some product, geographic, or service markets, but nondominant in others.

C. Section 214 Requirements for Domestic, Dominant, Rate-of-Return Carriers

1. Streamlined Application Procedures

52. In this notice, we propose to amend Section 63.01 of our rules to streamline Section 214 filing procedures for domestic carriers that we tentatively conclude should remain subject to the Section 214 authorization requirements. We propose to limit this category of carriers to domestic dominant carriers that are subject to rate-of-return regulation (''dominant rate-of-return carriers''). We propose to retain a Section 214 authorization requirement for these carriers given our tentative conclusion that the rate regulation method applied to them gives them an incentive to overinvest in facilities and because they lack external constraints on their ability to pass such costs on to telephone service ratepayers. As recently stated by the Commission, ''[w]e are mindful of our statutory obligations under the Communications Act of 1934 to guard against abuses of market power in situations where effective competition does not yet exist. We meet these obligations through our Section 214 authorization process and apply dominant carrier regulation and other safeguards where circumstances warrant.'' Since dominant rate-of-return carriers have both the incentive and the opportunity to recover the cost of duplicative or wasteful facilities directly from telephone service ratepayers, we believe that Section 214 review remains warranted for such carriers' proposals to construct, acquire, or operate new or additional domestic lines.

53. Nevertheless, we propose to amend Part 63 of our rules to reduce the burden on carriers required to file Section 214 applications. Specifically, we propose to streamline the Section 63.01 filing requirements by eliminating the filing of unnecessary information and providing for automatic approval of Section 214 applications thirty-one days after the Commission issues public notice that the application has been accepted for filing, unless (1) the Common Carrier Bureau (the ''Bureau'') notifies the applicant within that period

that the grant will not be automatically effective; or (2) within thirty days following the issuance of public notice a party both files an opposition to the application with the Commission and serves a copy on the applicant.

54. As reflected in the attached appendix of proposed rule amendments, we propose to amend Section 63.01 to lessen the burden on carriers and to require carriers to file only the following information: (a) name and address of applicant; (b) state of incorporation of corporate applicant; (c) information identifying the officer to whom correspondence may be addressed; (d) points between which proposed facilities are to be located; (e) a brief description of the facilities to be added and of the applicant's existing facilities between these points; (f) an affidavit, executed under penalty of perjury: (1) that there is a public need for proposed facilities; and (2) that the facilities are economically justified; and (g) a statement whether authorization of facilities is categorically excluded from Section 1.1306 of the Commission's rules.

55. We propose to eliminate from our current Section 63.01 filing requirements information concerning: (a) whether the carrier is or will become a carrier subject to Section 214 of the Communications Act; (b) whether the facilities will be used to extend communication services into territory at present not directly served by the applicant or to supplement existing facilities of the applicant; (c) the types of services to be provided over the proposed facilities; (d) the applicant's present and estimated future facilities requirements; (e) the map or sketch showing the proposed facilities; (f) a description of the manner and means by which other interstate and foreign communications services of a similar character are now being rendered by the applicant and others in the area to be served by the proposed facilities; (g) proposed tariff charges and regulations for domestic applications; (h) a statement of the accounting proposed to be performed in connection with the project; and (i) whether the carrier has an affiliation with a foreign carrier. We tentatively conclude that all of this information is either collected elsewhere by the Commission, unnecessary, confusing in light of the provisions of Section 402(b)(2)(A), or no longer of decisional significance to the Commission.

56. Our proposed streamlined application procedure also would revise the current requirement that a carrier provide a summary of the factors showing the public need for the proposed facility and a detailed economic justification. We propose to allow a carrier instead to certify that there is a public need for its proposed facilities and that they are economically justified. The filing of detailed statements setting forth this information is burdensome on carriers and, in recent years, it has been our experience that few (if any) carriers have filed Section 214 applications proposing projects that do not meet these requirements. Nevertheless, we retain the authority to request from a carrier this or any other detailed information our review of a specific application may require.

57. We also propose automatic approval of Section 214 applications on the thirty-first day following the date on which each application is placed on public notice, unless the Common Carrier Bureau notifies the applicant that the grant will not be automatically effective, or another party files an opposition with the Commission and serves the opposition on the applicant. If the Bureau so notifies the applicant, or an opposition is filed and served, within 30 days, final action by the Bureau would be taken within 90 days of the expiration of the 30 day period (i.e., within 120 days of the issuance of public notice). We seek comment on these proposed Part 63 rule amendments and on alternative proposals to streamline the Section 214 approval process.

58. Although we have tentatively concluded that streamlined regulation will be appropriate with respect to dominant rate-of-return carriers, we recognize that the firms remaining under rate of return regulation are generally small (accounting, in the aggregate, for less than approximately 2% of interstate revenues), and that, as a practical matter, few Section 214 applications from such firms have ever been challenged or rejected. Accordingly, we seek comment on whether, as with the other types of carriers discussed above, the Commission should forbear from regulating these small carriers under Section 214 altogether.

2. Blanket Authority for Small Projects

59. Current Commission rules allow carriers to file streamlined, informal applications for Section 214 certification for certain small, in-region projects with a cost of less than $2,000,000 each or an annual rental of less than $500,000 each. In recent years, it has been our experience that few applications have been filed under this section and those few have not been contested, but instead have been deemed approved twenty one days after the Commission issues public notice that the application has been accepted for filing. In addition, based on the size of the projects involved, we believe that project-specific applications are not required to protect ratepayers from unnecessary rate increases. Accordingly, we tentatively conclude that we should grant blanket authority for small projects involving the construction, operation, or acquisition of new lines, or transmission over such lines.

60. We believe that it would be difficult for a carrier to engage in any substantial wasteful duplication of facilities or to raise its rates significantly based on projects undertaken pursuant to this rule. Not only are the dollar amounts involved small, but these projects require investment in facilities that, as a general matter, must be amortized over long periods of time, with the result that even a rate-of-return carrier could include only a fraction of the total outlay in its cost data for a single accounting period. As the rule is currently written, however, a carrier may engage in as many projects as it deems appropriate under this rule, subject to the approval of the Commission under the streamlined provisions of Section 63.03. Therefore, we tentatively conclude that a grant of blanket authority on any per-project basis would leave no meaningful check on the ability of a rate-of-return carrier to construct facilities at will, with the possible result that rates will be raised unnecessarily. Instead, we propose to grant blanket authority for carriers to construct, operate, or acquire new lines, or engage in transmission over such lines, subject to an annual cap on spending.

61. In developing an appropriate dollar amount for such an annual cap, we take initial note of the current $2,000,000 per-project limit under our streamlined rule. We propose that one such project could be undertaken by a carrier on average every two months without any significant adverse effect on ratepayers. However, we are also aware that there are great size differences between the largest and smallest rate-of-return carriers. Accordingly, for such large carriers, we propose an alternate annual percentage cap. Specifically, we propose that a carrier could increase the total book value of its lines by up to 10% in any given year without any significant adverse effects on ratepayers. Because these investments are typically amortized over long periods of time, any potential rate increase from such projects would necessarily be small.

62. In sum, we propose to replace the current $2,000,000 per-project cap to allow carriers to engage in projects that,

in the aggregate, either: (1) Have a total annual cost of no more than $12,000,000 or an annual rental of no more than $3,000,000; or (2) increase the total book value of the carrier's lines by not more than 10%. Projects in excess of this annual cap would be subject to the streamlined application procedures proposed above. We seek comment on this proposal, including specific comment on several issues. We request that commenters discuss: (a) Whether we should forbear from imposing Section 214 regulation on these projects, including specific reference to the forbearance criteria in the 1996 Act; (b) whether we should subject these projects to the streamlined regulation proposed above; and (c) whether the proposed cost limits are appropriate.

D. Reporting Requirements

1. Current Section 214 Reporting Requirements

63. In the past, the Commission has streamlined its Section 214 application process or granted blanket authorizations when it was able to conclude that review of all information required by Section 63.01 no longer was consistent with the public interest. In connection with such streamlining or blanket authorization, the Commission has imposed reporting obligations on carriers engaging in the activities covered by these streamlined filing requirements or blanket authorizations. Part 63 of our rules currently imposes two such reporting requirements. Section 63.03(e) of our rules requires annual reports from carriers that have obtained continuing authority to commence small projects within their existing service areas. Section 63.04(c) imposes a similar, semiannual, reporting requirement on those carriers that have obtained continuing authority to provide temporary or emergency service.

64. If, as discussed above, we adopt a policy of forbearance toward certain classes of carriers, then we tentatively conclude that those classes of carriers would not be subject to any Section 214 reporting requirements under the Commission's rules. In addition, we tentatively conclude that the reporting burden should be substantially reduced for carriers required to obtain Section 214 certification.

2. Elimination of Reports

65. We tentatively conclude that the Commission no longer needs to require carriers to file routinely the reports required under Sections 63.03(e) and 63.04(c) of our rules. In recent years, neither the public nor the Commission's staff has made significant use of the information provided in these reports. Under Section 63.03(e), carriers may request continuing authority to commence small projects to supplement existing facilities within the carrier's service area. Projects commenced under this authority must have a construction, installation, or acquisition cost of no more than $70,000 or an annual rental cost of no more than $14,000. Carriers subject to this requirement must file this report annually.

66. Under Section 63.04(c), carriers may request continuing authority to provide temporary or emergency service through the construction or installation of facilities for which the estimated construction, installation, and acquisition costs do not exceed $35,000 or an annual rental of $7000, as long as the project does not involve a ''major action'' under the Commission's environmental rules. Carriers that obtain such authority are required to file semiannual reports identifying the projects commenced over the preceding six months.

67. It would be extremely difficult for carriers to construct or acquire significantly wasteful, duplicative facilities covered by either Section 63.03 or 63.04 because of the relatively small cost of the projects covered by those sections. Instead of obligating carriers to file these reports, we propose to rely on the Commission's general authority under the Communications Act to obtain information from carriers in individual instances if the information becomes necessary for us to perform our regulatory duties. Parties requesting that the Commission retain these reporting requirements should explain clearly how these reports have benefitted members of the public in the past and how the reports would benefit the public in the future.

E. Section 214 Discontinuance Requirements

68. Section 214(a) requires carriers that discontinue, reduce, or impair service to a community to obtain from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected. In general, dominant carriers seeking Commission authority to discontinue, reduce, or impair service are required, pursuant to current Section 63.61 of our rules, to file a formal application with the Commission. Depending on the nature of the service for which authority to discontinue is sought, Section 63.62 of our rules instructs applicants with respect to the contents of particular applications. Upon reviewing an application for discontinuance authority, the Commission then issues a formal order granting or denying such authorization.

69. Under current Section 63.71 of our rules, non-dominant carriers seeking to reduce or discontinue service are required to notify all affected customers in writing of the planned discontinuance, reduction or impairment of service unless the Commission authorizes another form of notice in advance. Non-dominant carriers must also file with the Commission an application that includes a description and the date of the planned discontinuance, reduction or impairment, the geographic areas of service affected, the dates and method of notice given to customers, and any other information the Commission may require. The application is automatically granted on the thirty-first day after its filing with the Commission, unless the Commission notifies the applicant within that time that the grant will not automatically be effective.

70. The 1996 Act does not alter the Commission's authority under Section 214(a) with respect to discontinuances or reductions in services. We note, however, that carriers assume a certain amount of risk when entering a new geographic or product market. If regulatory requirements create significant barriers to exit, a carrier may be reluctant to accept potential risks and, as a result, may never enter the market. Accordingly, in order to further the 1996 Act's goal to promote competition, we seek in this proceeding to eliminate any unnecessary barriers to exit currently imposed by our rules. Specifically, we seek comment on whether the streamlined discontinuance procedures set forth in Section 63.71 of our rules, which currently apply only to domestic non-dominant carriers, should apply to all domestic common carriers. In doing so, we tentatively conclude that the streamlined procedures contained in Section 63.71 appear to strike a reasonable balance between protecting consumers and reducing unnecessary barriers to exit for all carriers, whether dominant or non-dominant. We seek comment on this tentative conclusion.

71. As local exchange markets becomes increasingly competitive, however, many currently dominant LECs may find themselves under increasing pressure to reduce or eliminate service in unprofitable areas. Therefore, although we propose to extend the applicability of Section 63.71 to domestic dominant carriers, we remain concerned that the relatively short advance notification period

provided under Section 63.71 might allow a dominant carrier to obtain automatic discontinuance authority even though it is the only carrier serving a particular community. In addition, we are mindful of the Commission's obligation under the new universal service provisions of the 1996 Act to order a common carrier, or carriers, to provide interstate telecommunications service to an unserved community, or portion thereof, that requests such service. At a minimum, therefore, we tentatively conclude that we should extend the advance notification period contained in Section 63.71 to 60 days with respect to domestic, dominant carriers, in the event that we do apply Section 63.71 to all domestic carriers. We seek comment on this tentative conclusion, including comment on (1) whether a 60 day advance notification period, in conjunction with the universal service support mechanisms recommended by the Joint Board and/or adopted by the Commission, will provide adequate incentives to carriers and protection to consumers; and (2) whether additional safeguards are necessary to protect consumers against discontinuance of service by dominant carriers; and (3) whether we should treat differently from all other carriers a dominant carrier that is either (a) the sole service provider in a particular community; or (b) relinquishing its designation as an eligible telecommunications carrier under Section 214(e)(4).

F. Technical Amendments to 47 CFR Part 63

72. In light of the rule amendments proposed above, we tentatively conclude that we should rewrite the entire text of Sections 63.01, 63.02, and 63.03 of our rules, to repeal Sections 63.06 and 63.07 of our rules, and to make technical, conforming amendments to Sections 63.04, 63.08, 63.52, 63.61, 63.62 and 63.71 of our rules. We seek comment on our proposal to repeal or amend these rule sections.

73. The 1996 Act also provides that ''a common carrier shall not be required to obtain a certificate under [S]ection 214 with respect to the establishment or operation of a system for the delivery of video programming.'' Accordingly, we propose an amendment to our rules, in the form of a new Section 63.01(b), to conform to this statutory mandate.

III. Procedural Matters

A. Ex Parte Presentations

74. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period provided that they are disclosed as provided in the Commission's rules.

B. Regulatory Flexibility Act Analysis

75. We certify that the Regulatory Flexibility Act of 1980 is not applicable to this rulemaking proceeding. If the proposed rule changes are promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act because these rule changes would lessen, not increase, the regulatory burden on small businesses. The Secretary shall send a copy of this Notice of Proposed Rulemaking to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 605(b) of the Regulatory Flexibility Act.

C. Initial Paperwork Reduction Act Analysis

76. This NPRM contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (''OMB'') to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from date of publication of this NPRM in the Federal Register. 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.

77. In addition to filing comments with the Secretary, as detailed below, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, N.W., Washington, D.C. 20554, or via the Internet to dconway@fcc.gov and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, D.C. 20503, or via the Internet to fain__t@al.eop.gov.

D. Comment Filing Procedures

78. Pursuant to applicable rules set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415 and 1.419, interested parties may file comments on or before February 24, 1997, and reply comments on or before March 17, 1997, with the reference number ''CC Docket 9–11'' on each document. To file formally in this proceeding, commenters and reply commenters must file an original and six copies of all comments, reply comments, and supporting comments. Commenters and reply commenters wishing each Commissioner to receive a personal copy of their comments must file an original and eleven copies. Comments and reply comments must comply with Section 1.49 and all other applicable sections of the Commission's rules. However, we require here that a summary be included with all comments, regardless of length. All comments must be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Room 222, Washington, D.C. 20554, with a copy to the Secretary, Network Services Division, Common Carrier Bureau, 2000 M Street, N.W., Suite 235, Washington, D.C. 20554. Parties must also file one copy of any documents filed in this docket with the Commission's duplicating contractor, International Transcription Services, Inc. (''ITS''), 2100 M Street, N.W., Suite 140, Washington, D.C. 20037 (tel. 202–857–3800). Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 1919 M Street, N.W., Room 239, Washington, D.C. 20554. Copies of comments and reply comments will also be available through ITS.

79. Parties are also asked to submit comments and reply comments on diskette. Such diskette submissions are in addition to, and not a substitute for, the formal filing requirements addressed above. Parties submitting diskettes should submit them to Secretary, Network Services Division, Common Carrier Bureau, 2000 M Street, N.W., Suite 235, Washington, D.C. 20554. Diskette submissions should be on a 3.5 inch diskette formatted in an IBM-compatible form using MS–DOS 5.0 and WordPerfect 5.1 software. The diskette should be submitted in ''read-only'' mode. The diskette should be clearly labelled with the party's name, proceeding, type of pleading (comments or reply comments) and date of submission. The diskette should be accompanied by a cover letter.

IV. Ordering Clauses

80. Accordingly, *it is hereby ordered* that, pursuant to Sections 1, 4(i), 4(j), 10, 214, 218, 254 and 571 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 214, 218, 254 and 571, a NOTICE OF PROPOSED RULEMAKING is hereby ADOPTED.

81. It is further ordered that the Secretary shall send a copy of this NOTICE OF PROPOSED RULEMAKING, including the regulatory flexibility certification to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

List of Subjects in 47 CFR Part 63

Communications common carriers, Reporting and recordkeeping requirements, Telegraph, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–2568 Filed 1–31–97; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 62, No. 22
Monday, February 3, 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

Office of the Secretary

Edward R. Madigan United States Agricultural Export Excellence Award

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of Award Program; nominations.

SUMMARY: The Secretary announces the establishment of the Edward R. Madigan United States Agricultural Export Excellence Award Program.

ADDRESSES: All nominations should be sent to: Coordinator, Edward R. Madigan United States Agricultural Export Excellence Award, AgExport Services Division, room 4939 South Building, Foreign Agricultural Service, United States Department of Agriculture, 1400 Independence Ave SW, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Miller, AgExport Services Division, Foreign Agricultural Service, United States Department of Agriculture at 202–720–6343.

SUPPLEMENTARY INFORMATION: Section 261 of Title II of the Federal Agriculture Improvement and Reform Act of 1996 establishes the Edward R. Madigan United States Agricultural Export Excellence Award. The award is intended in increase United States exports by: (a) identifying efforts of United States entities to develop and expand markets for U.S. agricultural exports through the development of new products and services and through the use of innovative marketing techniques; (b) recognizing achievements of those who have exhibited or supported entrepreneurial efforts to expand and create new markets for United States agricultural exports or increase the volume or value of U.S. agricultural exports; and (c) disseminating information on successful methods used to develop and expand markets for United States agricultural exports.

The Secretary of Agriculture will periodically bestow the Award upon individuals, companies, and other entities that in the judgment of the Secretary substantially encourage entrepreneurial efforts in the food and agriculture sector for advancing United States agricultural exports. The receipt of the award will be evidenced by a medallion bearing the inscription ''Edward R. Madigan United States Agricultural Export Excellence Award''.

Separate awards will be made to qualifying entities in each of the following categories: (1) Development of new products or services of agricultural export markets; (2) Development of new agricultural export markets; and (3) Creative marketing of products or services in agricultural export markets.

The Secretary will appoint a board of evaluators, consisting of at least 5 individuals from the private sector selected for their knowledge and experience in exporting United States agricultural products to review and evaluate all nominations. The Secretary may seek and accept gifts from public and private sources to carry out this award program. Only nominations made to the board of evaluators by, or on behalf of, the entity being nominated or by, or on behalf of, the Governor of a State will be considered. To qualify, nominees must have:

(a) Exhibited significant entrepreneurial effort to create new markets for United States agricultural exports or increase United States agricultural exports; or

(b) Provided significant assistance to others in an effort to create new markets for United States agricultural exports or increase United States agricultural exports;

(c) Have not received another award in the same category during the preceding five year period.

Signed at Washington, D.C. on January 27, 1997.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 97–2521 Filed 1–31–97; 8:45 am]

BILLING CODE 3410–10–M

Forest Service

Willamette Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Willamette PIEC Advisory Committee will meet on Thursday, February 20, 1997. The meeting will be held at the USDI Salem BLM; 1717 Fabry Road SE; Salem, Oregon 97306; phone (503) 375–5642. The meeting is schedule to begin at 9:00 a.m. and concluded at approximately 3:00 p.m. Topics tentatively scheduled on the agenda include: Province Advisory Committee links to local watershed councils and Province level conservation planning. The meeting is open to the public and opportunity will be available to address the Advisory Committee during the public forum. The public forum is tentatively scheduled for 11:30 a.m. Time allotted for individual presentations to the committee will be limited to 3–5 minutes each. Written comments are encouraged and can be submitted prior to the meeting.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Neal Forrester; Willamette National Forest, 211 East Seventh Avenue; Eugene, Oregon 97401; (541) 465–6924.

Dated: January 28, 1997.

Harold A. Legard,

Fire and Engineering Staff Officer.

[FR Doc. 97–2570 Filed 1–31–97; 8:45 am]

BILLING CODE 3410–11–M

Grain Inspection, Packers and Stockyards Administration

Designations for the Springfield (IL) Area and the State of Alabama

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Springfield Grain Inspection, Inc. (Springfield), and the Alabama Department of Agriculture and Industries (Alabama), to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: March 1, 1997.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, 1400 Independence Avenue, S.W., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the September 3, 1996, Federal Register (61 FR 46432), GIPSA asked persons interested in providing official services in the geographic areas assigned to Springfield and Alabama to submit an application for designation. Applications were due by October 3, 1996. Springfield and Alabama, the only applicants, each applied for designation to provide official services in the entire area currently assigned to them.

Since Springfield and Alabama were the only applicants for the respective areas, GIPSA did not ask for comments on the applicants.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act; and according to Section 7(f)(l)(B), determined that Springfield and Alabama are able to provide official services in the geographic areas for which they applied. Effective April 1, 1997, and ending February 29, 2000, Springfield is designated to provide official services in the geographic area specified in the September 3, 1996, Federal Register. Effective March 1, 1997, and ending February 29, 2000, Alabama is designated to provide official services in the geographic area specified in the September 3, 1996, Federal Register.

Interested persons may obtain official services by contacting Springfield at 217–522–5233, and Alabama at 334–415–2531.

AUTHORITY: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: January 14, 1997

Neil E. Porter

Director, Compliance Division

[FR Doc. 97–1946 Filed 1–31–97; 8:45 am]

BILLING CODE 3410–EN–F

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with § 353.22 or § 355.22 of the Department of Commerce (the Department) Regulations (19 CFR 353.22/355.22 (1993)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than the last day of February 1997, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in February for the following periods:

	Period
ANTIDUMPING PROCEEDINGS	
Austria: Railway Track Maintenance Equipment, A–433–064	2/1/96–1/31/97
Brazil: Stainless Steel Bar, A–351–825	2/1/96–1/31/97
Canada: Racing Plates, A–122–050	2/1/96–1/31/97
Germany: Sodium Thiosulfate, A–428–807	2/1/96–1/31/97
India:	
Forged Stainless Steel Flanges, A–533–809	2/1/96–1/31/97
Stainless Steel Bar, A–533–810	2/1/96–1/31/97
Japan:	
Benzyl Paraben, A–588–816	2/1/96–1/31/97
Butt-Weld Pipe Fittings, A–588–602	2/1/96–1/31/97
Mechanical Transfer Presses, A–588–810	2/1/96–1/31/97
Melamine, A–588–056	2/1/96–1/31/97
Stainless Steel Bar, A–588–833	2/1/96–1/31/97
South Korea:	
Business Telephone Systems, A–580–803	2/1/96–1/31/97
Stainless Steel Butt-Weld Pipe Fittings, A–580–813	2/1/96–1/31/97
Taiwan: Forged Stainless Steel Flanges, A–583–821	2/1/96–1/31/97
The People's Republic of China:	
Axes/adzes, A–570–803	2/1/96–1/31/97
Bars/wedges, A–570–803	2/1/96–1/31/97
Coumarin, A–570–830	2/1/96–1/31/97
Hammers/sledges, A–570–803	2/1/96–1/31/97
Manganese Metal, A–570–840	6/14/95–1/31/97
Paint Brushes, A–570–501	2/1/96–1/31/97
Picks/mattocks, A–570–803	2/1/96–1/31/97
Sodium Thiosulfate, A–570–805	2/1/96–1/31/97
The United Kingdom: Sodium Thiosulfate, A–412–805	2/1/96–1/31/97

	Period
COUNTERVAILING PROCEEDINGS	
None	
SUSPENSION AGREEMENTS	
Venezuela: Cement, A–307–803	2/1/96–1/31/97

In accordance with §§ 353.22(a) and 355.22(a) of the regulations, an interested party as defined by § 353.2(k) may request in writing that the Secretary conduct an administrative review. The Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 19 CFR 355.22(a) of the regulations, an interested party must specify the individual producers or exporters covered by the order or suspension agreement for which they are requesting a review, (Interim Regulations, 60 FR 25130, 25137 (May 11, 1995)). Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC. 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/ Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with § 353.31(g) or § 355.31(g) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the Federal Register a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation,'' for requests received by the last day of February 1997. If the Department does not receive, by the last day of February 1997, a request for review of entries covered by an order, finding, or suspended investigation 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.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: January 28, 1997.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 97–2610 Filed 1–31–97; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–506]

Porcelain-on-Steel Cooking Ware From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request by an importer of the subject merchandise, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on porcelain-on-steel (POS) cooking ware from the People's Republic of China (PRC). The review covers one manufacturer/ exporter of the subject merchandise and its affiliated third-country reseller in Hong Kong and the period December 1, 1994 through November 30, 1995. The review preliminarily indicates the existence of a dumping margin during the period of review.

We have preliminarily determined that sales have been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: February 3, 1997.

FOR FURTHER INFORMATION CONTACT: Judy Kornfeld or Kelly Parkhill, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington D.C. 20230; telephone: (202) 482–2786.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions as of 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 current regulations, as amended by the interim regulations published in the Federal Register on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

On December 2, 1986, the Department published in the Federal Register the antidumping duty order on POS cooking ware from the PRC (51 FR 43414). On December 4, 1995, the Department published in the Federal Register a notice of opportunity to request an administrative review of this antidumping duty order (60 FR 62070). On February 27, 1995, in accordance with 19 CFR 353.22(a), an importer of the subject merchandise to the United States, CGS International, requested that the Department conduct an administrative review of Clover Enamelware Enterprise, Ltd. of China (Clover), a manufacturer/exporter, and its third-country reseller Lucky Enamelware Factory Ltd. of Hong Kong (Lucky). We published the notice of initiation of this review covering the

period December 1, 1994 through November 30, 1995, on February 1, 1995 (61 FR 3670). The Department is conducting this administrative review of one manufacturer/exporter of POS cooking ware from the PRC, Clover, and its third-country reseller in Hong Kong, Lucky, in accordance with section 751(a) of the Act. We will be conducting verification of the information provided by Clover and Lucky after publication of the preliminary results of this administrative review. The final results will incorporate our findings from the verification.

Scope of the Review

Imports covered by this review are shipments of POS cooking ware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. The merchandise is currently classifiable under the HTS item 7323.94.00. HTS items numbers are provided for convenience and Customs purposes. The written description of the scope remains dispositive.

Collapsing

The Department collapses affiliated firms (*i.e.,* treats them as a single entity for review purposes and assigns them a single dumping margin) where the type and degree of relationship is so significant that we find there is a strong possibility of price manipulation. *See Notice of Final Determination of Sales at Less than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan* (61 FR 38139, 38163; July 23, 1996). *See also Nihon Cement Co. Ltd.* v. *United States,* 17 CIT 400 (CIT 1993).

Clover is two-thirds owned by Lucky and therefore Lucky holds controlling interest in Clover. Due to Lucky's ownership interest in Clover, and the fact that the same individual is the general manager at both companies, we consider Clover and Lucky to be affiliated pursuant to section 771(33) of the Act. As such, and consistent with prior reviews of this order, we are collapsing Clover and Lucky (hereafter Clover/Lucky) and assigning them a single dumping margin. For a further discussion of this issue, *see* Memorandum from Case Analyst to the File ''Status as Affiliated Parties'' dated January 17, 1997, which is a public document on file in the Central Records Unit (room B–099 of the Main Commerce Building).

Separate Rates

Lucky is located outside the PRC and there is no PRC ownership of the company. Therefore, we determine that no separate rates analysis is required for this third-country reseller because it is beyond the jurisdiction of the PRC government. *See Final Determination of Sales at Less Than Fair Value; Disposable Pocket Lighters from the People's Republic of China* (60 FR 22359, 22361; May 5, 1995). Clover is partially owned by a PRC government company and therefore a separate rates analysis is necessary to determine whether this exporter is independent from government control.

To establish whether a company is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified in *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under this policy, exporters in non-market-economy (NME) countries are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law (de jure) and in fact (de facto), with respect to exports.

1. Absence of De Jure Control

Evidence supporting, though not requiring, a finding of de jure absence of government control includes: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. Clover's submissions pertaining to legislative enactments and the terms of its Enterprise Legal Person Operation License demonstrate the absence of de jure control. (*See* Memorandum from Kelly Parkhill to Barbara E. Tillman, dated January 17, 1997, ''Assignment of Separate Rate for Clover/Lucky in the 1993–1994 and 1994–1995 Administrative Reviews of POS Cooking Ware from the People's Republic of China'' (*Separate Rate Memorandum),* which is a public document on file in the Central Records Unit (room B–009 of the Department of Commerce).

2. Absence of De Facto Control

De facto absence of government control with respect to exports is based on four criteria: (1) whether the export prices are set by or subject to the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits and financing of losses; (3) whether each exporter has autonomy in making decisions regarding the selection of management; and (4) whether each exporter has the authority to negotiate and sign contracts. *See Silicon Carbide* at 22587.

With respect to de facto absence of government control, the information submitted by Clover in the questionnaire response indicates the following: (1) no government entity exercises control over its export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, utilizing profits to provide dividends to shareholders, and it has the authority to seek out loans at market interest rates. This information supports the finding that there is de facto absence of governmental control of export functions. Consequently, we have determined that Clover/Lucky has met the criteria for the application of separate rates according to the criteria identified in *Sparklers* and *Silicon Carbide*. For a further discussion of this issue, *see Separate Rate Memorandum*.

Export Price

The Department used export price (EP) for sales made by Clover/Lucky, in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated purchasers in the United States, or Hong Kong (in cases where Clover/Lucky knew the ultimate destination was the United States), prior to importation into the United States and constructed export price is not otherwise indicated.

We calculated EP based on Lucky's price charged to unaffiliated purchasers in the United States because Lucky is the sales agent with respect to all subject merchandise manufactured by Clover. We deducted amounts, where appropriate, for discounts, and for brokerage and handling, foreign inland freight, ocean freight, and marine insurance, which were provided by market economy carriers and paid for in market economy currencies.

Normal Value

For companies located in NME countries, section 773(c)(1) of the Act provides that the Department shall determine normal value (NV) using a factors of production methodology if (1)

the subject merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home market prices or third country prices, in accordance with section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(c)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Accordingly, we treated the PRC as an NME country for purposes of this review.

We calculated NV by valuing factors of production as set forth in 773(c)(3) of the Act, except for the factors of steel, percolators and packing materials. For these factors, which were paid for in market economy currencies, we used the actual prices paid for the factors to calculate the factor-based NV in accordance with our practice. *See Lasko Metal Products* v. *United States,* 437 F. 3d 1442, 1443 (Fed. Cir. 1994).

For the remaining factors, we have selected a comparable market economy country which is a significant producer of comparable merchandise. Pursuant to section 773(c)(4) of the Act and section 353.52(c) of the Department's regulations, we determined that Indonesia is comparable to the PRC in terms of per capita gross national product (GNP), the growth rate in per capita GNP, and the national distribution of labor, and that Indonesia is a significant producer of comparable merchandise. Therefore, for this review, we have used publicly available published information regarding Indonesia to value most of the factors of production. (*See* Memorandum to Barbara Tillman, Director, Office of CVD/AD Enforcement VI from David Mueller, Director, Office of Policy, dated September 24, 1996, ''Porcelain-on-Steel Cooking Ware from the People's Republic of China, Non-Market Economy Status and Surrogate Country Selection'' and Memorandum to the File from Case Analysts, dated January 13, 1997, ''Porcelain-on Steel Cooking Ware from the People's Republic of China—Surrogate Country Selection,'' which are public documents on file in the Central Records Unit (room B–099 of the Main Commerce Building).)

For purposes of calculating NV, we valued PRC factors of production as follows, in accordance with section 773(c)(1) of the Act:

- For surrogate values of materials used in the production of POS cooking ware, including soda ash, sulphuric acid, degreasing agents, borax, barium molybdate, magnesium sulphate, potassium carbonate, urea, quartz powder, clay, color oxides, and enamel frits, we used per kilogram values obtained from the *Foreign Trade Statistical Bulletin-Imports,* November 1995, from Indonesia (Indonesian Import Statistics).

We calculated a cost for freight incurred between the supplier and Clover by using the freight rates reported in a September, 1991 cable from the U.S. Embassy in Jakarta, Indonesia and the actual kilometers reported in the questionnaire response. The cable was received for the less than fair value (LTFV) investigation of *Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China.* We adjusted these freight rates to reflect yearly inflation through the period of review (POR) using wholesale price indices (WPI), excluding petroleum, obtained from the *International Financial Statistics* published by the International Monetary Fund (IMF).

- For labor amounts, we were unable to find a published, publicly available source for skilled and unskilled labor rates for the POS cooking ware industry, or other a similar industry, in Indonesia. We therefore used information obtained from a September, 1991 cable from the U.S. Embassy in Jakarta, Indonesia. This cable was received for the LTFV investigation of *Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China,* and provides unskilled and skilled labor rates. We adjusted these labor rates to reflect yearly inflation through the POR using consumer price indices (CPI) obtained from the *International Financial Statistics* published by the IMF.

- For factory overhead, we were unable to locate any published, publicly available data for the POS cooking ware industry, or a similar industry, in Indonesia. Therefore, we used information reported in a December 2, 1994, U.S. State Department cable from the U.S. Embassy in Jakarta, Indonesia. This data was received for the LTFV investigation of *Furfuryl Alcohol from the People's Republic of China,* and provides an estimated range of factory overhead costs in Indonesia. The information was also used in the LTFV investigation of *Disposable Pocket Lighters from the People's Republic of China.* From this information, we were able to determine factory overhead as a percentage of materials and labor. The surrogate overhead rate included energy and indirect labor; therefore, we did not include Clover/Lucky's reported energy and indirect labor factors.

- For selling, general and administrative (SG&A) expenses, we were unable to find published, publicly available data for POS cooking ware, or a similar industry, in Indonesia. Therefore, we used information obtained from a September, 1991 cable from the U.S. Embassy in Jakarta, Indonesia. This cable was received for the LTFV investigation of *Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China,* and provides an estimated range of SG&A percentages.

- For profit, we could not find published, publicly available data for the POS cooking ware industry, or another similar industry, in Indonesia. Therefore, to calculate a profit rate, we used information obtained from a September 1991 cable from the U.S. Embassy in Jakarta, Indonesia. This cable was received for the LTFV investigation of *Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China,* and provides a range of profit margin percentages.

For a complete analysis of surrogate values, *see* ''Factor Values Used for the Preliminary Results of the 1994–1995 Administrative Review of POS Cooking Ware from the PRC'' (Public Version) dated January 17, 1997, on file in the Central Records Unit (room B–099 of the Main Commerce Building).

Use of Facts Available

Section 776(a)(1) of the Act states that if necessary information is not available on the record, the Department shall use the facts otherwise available in reaching the applicable determination. Section 776(b) of the Act authorizes the Department to use as facts otherwise available information derived from the petition, the final determination, a previous review, or other information placed on the record. We preliminarily determine, in accordance with section 776(a)(1) of the Act, that the use of partial facts available as the basis for calculating certain constructed values is appropriate in this case.

Clover/Lucky did not report some or all factors of production data for three models sold in the U.S. during the POR. Since Clover/Lucky did not act to the best of its ability in responding to our request for such information pursuant to section 782(e)(4) of the Act, we have drawn an adverse inference under the authority provided by section 776 of the Act. As partial facts available, we are using the highest rate applicable to the

company from a previous review or the original LTFV investigation to calculate constructed values for those models for which incomplete or no factors of production data was reported.

We have also used partial facts available to calculate the packing materials cost for one other model for which no packing factors of production data was submitted. As facts available, we are using the highest packing materials cost, excluding set costs, for an individual piece of cooking ware from the information submitted by Clover/Lucky. *See Notice of Final Results of Antidumping Duty Administrative Review: Welded Carbon Steel Pipe from Turkey* (61 FR 69067, 69073; December 31, 1996).

Currency Conversion

We made currency conversions pursuant to section 773A(a) of the Act and section 353.60(a) of the Department's regulations. Currency conversions were made at rates certified by the Federal Reserve Bank.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following dumping margins exist for the period December 1, 1994 through November 30, 1995:

Manufacturer/Exporter	Margin (percent)
Clover Enamelware Enterprise/ Lucky Enamelware Factory ...	1.32
PRC-Wide Rate	66.65

The PRC-wide rate applies to all entries of subject merchandise except for entries from manufacturers and exporters that are individually identified above. The Department implements a policy in NME cases whereby all exporters or producers are presumed to comprise a single entity, the ''NME entity.'' The U.S. Court of International Trade has upheld our NME policy in previous cases. *See,* e.g., *UCF America, Inc.* v. *United States,* 870 F. Supp. 1120, 1126 (CIT 1994); *Sigma Corp.* v. *United States,* 841 F. Supp. 1255, 1266–67 (CIT 1993), and; *Tianjin Machinery Import & Export Corp.* v. *United States,* 806 F. Supp. 1008, 1013–15 (CIT 1992). Thus, we assign the NME rate to the NME entity just as we assign an individual rate to a single exporter or producer operating in a market economy. As a result, all exporters and producers that are part of the NME entity are assigned the ''NME-wide'' rate. Because the ''NME-wide'' rate is the equivalent of a company-specific rate, it changes only when we review the NME entity (*i.e.*, all NME producers and exporters that have not qualified for a separate rate). To qualify for a separate rate, as discussed under the *Separate Rates* section of this notice, an NME exporter or producer must provide evidence showing both de jure and de facto absence of government control over export activities. Until such evidence is presented, a company is presumed to be part of the NME entity and receives the ''NME-wide'' rate. All exporters or producers will either qualify for separate company-specific rate, or be part of the NME enterprise, and receive the ''NME-wide'' rate. Thus, there can be no exporters or producers who have never been investigated or reviewed. In this review, Clover/Lucky qualifies for a separate rate as discussed in the ''Separate Rates'' section of this notice. The PRC-wide rate has not changed from the last administrative review because no company representing the single entity was reviewed.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice in accordance with 19 CFR 353.22(c)(6). Any interested party may request a hearing within 10 days of publication in accordance with 19 CFR 353.38(b). Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 353.38(c). In accordance with 19 CFR 353.38(d), rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price and NV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of POS cooking ware 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) for Clover/Lucky, which has a separate rate, the cash deposit rate will be the company-specific rate established in the final results of this administrative review; (2) for all other PRC exporters, the cash deposit rate will be the PRC-wide rate established in the final results of this administrative review; and (3) the cash deposit rates for non-PRC exporters of subject merchandise from the PRC will be the rates applicable to the PRC supplier of that exporter. We preliminarily determine that the PRC-wide rate continues to be 66.65 percent because no company representing the single entity was reviewed. This is the highest rate found for any respondent in the LTFV investigation or any review. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 of the Department's regulations 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 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 of the Department's regulations.

Dated: January 21, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–2611 Filed 1–31–97; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 012797H]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will

convene a public meeting of the Reef Fish Stock Assessment Panel (RFSAP).

DATES: The meeting will begin at 1:00 p.m. on February 12, 1997, and will conclude at 12:00 noon on February 14, 1997.

ADDRESSES: The meeting will be held at the NMFS Pascagoula Laboratory, 3209 Frederic Street, Pascagoula, MS.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Steve Atran, Population Dynamics Statistician; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: On February 12, the RFSAP members, in conjunction with a representative of NMFS, the Council's Standing Scientific and Statistical Committee (SSC), and the shrimp industry will review recommendations of a select group of statisticians regarding changes to the database and methodology used in estimating shrimp trawl bycatch of red snapper. The combined group will make recommendations for additional analyses of the data for estimating shrimp trawl bycatch, if any, that should be performed by NMFS for subsequent review by the SSC and the Council.

On February 13 and February 14, the RFSAP will re-examine stock assessment information for vermilion snapper and potentially develop proposed management options for Council consideration that would phase in total allowable catch levels, a quota, and bag limits over a 3-year period to gradually reduce harvest levels.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by February 5, 1997.

Dated: January 28, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–2588 Filed 1–31–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 012797I]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Stone Crab Advisory Panel (AP).

DATES: This meeting will be held on February 20, 1997, from 8:00 a.m. to 4:00 p.m.

ADDRESSES: This meeting will be held at the Monroe County Regional Service Center, 2798 Overseas Highway, Marathon, FL; telephone: (305) 743–6727.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne Swingle, Executive Director; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: The purpose of the meeting will be to review effort and landing trends in the fishery and indicate to the Council whether the industry supports development of a limited access system and structure of such a system.

The AP will hold a fact-finding hearing prior to their meeting to obtain suggestions on the structure of the limited access system from fishermen in other areas. The hearing will be from 10:00 a.m. to 2:00 p.m. on February 19, 1997 at the Radisson Inn Fort Myers, 12635 Cleveland Avenue, Fort Myers, FL; telephone: (941) 936–2058.

The AP is comprised of fishermen and other user groups who advise the Council on fishery issues.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by February 13, 1997.

Dated: January 28, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–2589 Filed 1–31–97; 8:45 am]

BILLING CODE 3510–22–F

(I.D. 012797C)

Mid-Atlantic Fishery Management Council; Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Atlantic Mackerel, Squid, and Butterfish Committee and its Comprehensive Management Committee will hold a public meeting.

DATES: Tuesday, February 18, to Thursday, February 20, 1997. On Tuesday, the Atlantic Mackerel, Squid, and Butterfish Committee will meet from 1:00–4:00 p.m. On Wednesday, the Council will meet from 8:00 a.m. until 4:00 p.m., at which time the Comprehensive Management Committee will meet until 5:00 p.m. On Thursday, the Council will meet from 8:00 a.m. until approximately noon.

ADDRESSES: This meeting will be held at the Sheraton Atlantic City West, 6821 Black Horse Pike, Atlantic City, NJ 08232, telephone 1–800–782–9237.

Council Address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19901, telephone 302–674–2331.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss the Council's joint venture processing policy and the 1997 Atlantic mackerel joint venture processing specifications, hear a report on the Stock Assessment Workshop, discuss NMFS proposed regulations concerning essential fish habitat, have a presentation on NMFS proposed weakfish regulations, discuss vessel replacement criteria in Comprehensive Management, possible adoption of Amendment 1 to the Bluefish Fishery Management Plan for public hearings, and other fishery management matters. In addition, there will be discussion regarding Mr. Schmitten's inquiry into the rebuilding schedule of summer flounder during the Executive Director's Report.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at least five days prior to the meeting dates.

Dated: January 28, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–2593 Filed 1–31–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 012797J]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's Scientific and Statistical Committee's Salmon Subcommittee will hold a public meeting.

DATES: The meeting will be held on February 11, 1997. The meeting will begin at 10 a.m. and is scheduled to adjourn by 5 p.m.

ADDRESSES: The meeting will be held at the Red Lion downtown Portland in the Coos Bay Room, 310 SW Lincoln, Portland, OR 97201.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Mr. James Seger, Economic Analysis Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of this meeting is to review California recreational fishery hooking mortality studies and the chinook fishery regulation assessment model.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric W. Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: January 28, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–2590 Filed 1–31–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 012797E]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Shrimp Committee, Joint Controlled Access and Snapper Grouper Committees, Joint Snapper Grouper Committee and Wreckfish Advisory Panel, Scientific and Statistical Selection Committee (closed session), and a Council session.

DATES: The meetings will be held from February 10-14, 1997. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Ponce de Leon Conference Resort, 4000 U.S. Highway 1 North, St. Augustine, FL; telephone: 800-228-2821. Please note: This meeting location is different from what was originally announced in ''The South Atlantic Update.''

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407-4699.

FOR FURTHER INFORMATION CONTACT: Susan Buchanan, Public Information Officer; telephone: (803) 571-4366; fax: (803) 769-4520; email: susan_buchanan@safmc.nmfs.gov

SUPPLEMENTARY INFORMATION:

Meeting Dates

February 10, 1997, 1:30 p.m. to 5:30 p.m.—Shrimp Committee. The Shrimp Committee will meet to receive a report on the Scientific and Statistical Committee and Bycatch Reduction Device (BRD) Advisory Panel review of the BRD and proxy analysis by Drs. Shah and Watson. The Committee will also approve the final BRD testing protocol;

February 10, 1997, 6:30 p.m. until all business is complete—Atlantic Coast Cooperative Statistics Program Scoping Meeting (ACCSP). As a partner in the ACCSP, the Council will hold a scoping meeting to solicit public input on ways to improve commercial and recreational fisheries data collection;

February 11, 1997, 8:30 a.m. to 12:00 noon—Joint Controlled Access and Snapper Grouper Committees. The committees will meet to review public hearing comments and letters on Snapper Grouper Amendment 8 and the Draft Supplemental Environmental Impact Statement (DSEIS), the NMFS informal review, and the Law Enforcement Advisory Panel's recommendations for the Amendment;

February 11, 1997, 1:30 p.m. to 5:30 p.m.—Joint Controlled Access and Snapper Grouper Committees. The Committees will meet to develop recommendations for finalizing Snapper Grouper Amendment 8;

February 12, 1997, 8:30 a.m. to 12:00 noon—Joint Snapper Grouper Committee and the Wreckfish Advisory Panel. The committee will meet jointly with the Wreckfish Advisory Panel to review the Wreckfish Assessment, discuss the status of the wreckfish fishery, and develop recommendations for the 1997–98 wreckfish total allowable catch (TAC) and other framework actions;

February 12, 1997, 1:30 p.m. to 2:30 p.m.—Scientific and Statistical Selection Committee (closed session). The committee will meet in closed session to develop recommendations for appointment of Scientific and Statistical Committee members;

February 12, 1997, 3:00 p.m. to 5:30 p.m.—Council Session. At 3:15 p.m. the Council will take public comment on the wreckfish TAC and other framework actions and Snapper Grouper Amendment 8, before making a decision at this session on the 1997–98 wreckfish TAC and other framework actions and approving Amendment 8 for submission to the Secretary of Commerce;

February 13, 1997, 8:30 a.m. to 5:45 p.m.—Council Session. From 8:30 a.m. to 12:00 noon the Council will continue to receive the Controlled Access and Snapper Grouper Committee report;

From 1:30 p.m. to 2:00 p.m. the Council will meet in closed session to receive the SSC Committee report and appoint SSC members;

From 2:00 p.m. to 3:00 p.m. The Council will receive the Shrimp Committee report, take public comment on the BRD testing protocol before approving the protocol;

From 3:00 p.m. to 3:30 p.m. the Council will receive the Law Enforcement Committee report and address recommendations made by the Committee and Law Enforcement Advisory Panel;

From 3:45 p.m. to 4:45 p.m. the Council will receive a report on the proposed NMFS habitat guidelines before taking action on these guidelines;

From 4:45 p.m. to 5:15 p.m. the Council will receive a report on the proposed NMFS weakfish regulations;

From 5:15 to 5:45 the Council will hear a report on Atlantic Coast Cooperative Statistics Program activities;

February 14, 1997, 8:30 a.m. to 12:00 noon—Council Session. The Council will receive a report on Harbor Branch research being conducted in the Oculina Bank Habitat Area of Particular Concern; hear the status of Atlantic king and Spanish mackerel catches and Amendment 8 to the Coastal Pelagics Fishery Management Plan (FMP); hear a report on the status of the Golden Crab FMP, implementation of the Plan, and permit review; discuss implementation of the Magnuson-Stevens Fishery Conservation and Management Act amendment; hear a report on the NOAA General Counsel penalty schedule meeting; hear a report on planning a workshop for marine reserves; receive agency and liaison reports and discuss other business and upcoming meetings.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by February 5, 1997.

Dated: January 28, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–2594 Filed 1–31–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 012797A]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council will hold a meeting of its Bottomfish Task Force.

DATES: The meeting will be held on 28 February 1997, from 9:00 am to 5:00 pm.

ADDRESSES: The meeting will be held at the Leiopapa A Kamehameha Bldg (State Office Tower), 235 South Beretania Street, Room 204, Honolulu, Hawaii 96813; telephone: (808) 522–8220.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI, 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone 808–522–8220.

SUPPLEMENTARY INFORMATION: The task force will hold it's fourth meeting to discuss and formulate limited entry alternatives for the Mau Zone bottomfish fishery in the Northwestern Hawaiian Islands and consider other business as required.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: January 28, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–2591 Filed 1–31–97; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 012797B]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council will hold a meeting of its Pacific Insular Area Fishery Agreement Working Group.

DATES: The meeting will be held on 21 February 1997, from 8:30 am to 4:00 pm.

ADDRESSES: The meeting will be held at the Ala Moana Hotel, 410 Atkinson Drive, Honolulu, HI; telephone: (808) 955–4811.

Council address: Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1405, Honolulu, HI, 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone 808–522–8220.

SUPPLEMENTARY INFORMATION: The Pacific Insular Area Fishery Agreement Working Group will hold a meeting to discuss the process of developing and implementing fishery agreements allowing foreign fishing within the 200–mile Exclusive Economic Zones of Guam, American Samoa and the Northern Mariana Islands. The Working Group plans to discuss the development of marine conservation plans, content of fishery agreements, determination of the Total Allowable Level of Foreign Fishing, determination of fishing fees, foreign fishing vessel permits, enforcement, timing of agreement process and consider other issues as required.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: January 28, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–2592 Filed 1–31–97; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Applications of the New York Cotton Exchange as a Contract Market in the U.S. Dollar-Singapore Dollar, U.S. Dollar-Indonesia Rupiah, U.S. Dollar-Malaysian Ringgit and U.S. Dollar-Thai Baht Currency Futures and Option Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and option contracts

SUMMARY: The New York Cotton Exchange (NYCE or Exchange) has applied for designation as a contract market in the U.S. dollar-Singapore dollar, U.S. dollar-Indonesia rupiah, U.S. dollar-Malaysian ringgit and U.S. dollar-Thai baht currency futures and option contracts. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before March 5, 1997.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading

Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the U.S. dollar-Singapore dollar, U.S. dollar-Indonesia rupiah, U.S. dollar-Malaysian ringgit and U.S. dollar-Thai baht futures and options contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581, telephone 202–418–5277. Facsimile number: (202) 418–5527. Electronic mail: ssherrod@cftc.gov

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC

20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the NYCE in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the NYCE, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on January 28, 1997.

Blake Imel,

Acting Director.

[FR Doc. 97–2546 Filed 1–31–97; 8:45 am]

BILLING CODE 6351–01–P

CONGRESSIONAL BUDGET OFFICE

Notice of Transmittal of Sequestration Preview Report for Fiscal Year 1998 to Congress and the Office of Management and Budget

Pursuant to Section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 904(b)), the Congressional Budget Office hereby reports that it has submitted its Sequestration Preview Report for Fiscal Year 1998 to the House of Representatives, the Senate, and the Office of Management and Budget.

Stanley L. Greigg,

Director, Office of Intergovernmental Relations, Congressional Budget Office.

[FR Doc. 97–2747 Filed 1–31–97; 8:45 am]

BILLING CODE 97–0702–M

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request—Safety Standard for Automatic Residential Garage Door Operators

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the Federal Register of February 12, 1996 (61 FR 5537), the Consumer Product Safety Commission published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek approval of the collection of information in the Safety Standard for Automatic Residential Garage Door Operators (16 CFR Part 1211). The Commission now announces that it has submitted to the Office of Management and Budget a request for approval of that collection of information without change through December 31, 1999.

The Consumer Product Safety Improvement Act of 1990 (Pub. L. 101–608, 104 Stat. 3110) requires all automatic residential garage door openers manufactured after January 1, 1993, to comply with the entrapment protection requirements of UL Standard 325 that were in effect on January 1, 1992. In 1992, the Commission codified the entrapment protection provisions of UL Standard 325 in effect on January 1, 1992, as the Safety Standard for Automatic Residential Garage Door Operators, 16 CFR Part 1211, Subpart A. Certification regulations implementing the standard require manufacturers, importers and private labelers of garage door operators subject to the standard to test their products for compliance with the standard, and to maintain records of that testing. Those regulations are codified at 16 CFR Part 1211, Subparts B and C.

The Commission uses the records of testing and other information required by the certification regulations to determine that automatic residential garage door operators subject to the standard comply with its requirements. The Commission also uses this information to obtain corrective actions if garage door operators fail to comply with the standard in a manner which creates a substantial risk of injury to the public.

Additional Information About the Request for Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Safety Standard for Automatic Residential Garage Door Operators, 16 CFR Part 1211.

Type of request: Approval of a collection of information.

General description of respondents: Manufacturers, importers, and private labelers of automatic residential garage door operators.

Estimated number of respondents: 14.

Estimated average number of hours per respondent: 22 per year.

Estimated number of hours for all respondents: 308 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be sent within 30 days of publication of this notice to Victoria Wassmer, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340. Copies of the request for reinstatement of information collection requirements and supporting documentation are available from Robert Frye, Director, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416, extension 2243.

Dated: January 28, 1997.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 97–2613 Filed 1–31–97; 8:45 am]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Learn and Serve America—School and Community-Based Programs; Correction

The application deadline published in the Federal Register on January 23, 1997, page 3500, second column, under **DATES**, ''All applications must be received by 3:30 p.m., Eastern Standard Time, March 12, 1997,'' is changed to, ''All applications must be received by 3:30 p.m., Eastern Standard Time, March 14, 1997.''

Dated: January 29, 1997.

Barry W. Stevens,

Acting General Counsel, Corporation for National and Community Service.

[FR Doc. 97–2606 Filed 1–31–97; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness).

ACTION: Notice; correction.

SUMMARY: In FR Doc. 96–32567 concerning a notice of proposed information collection available for comment on Department of Defense FY 1997: Assistance to Local Educational Agencies (LEAs), 0704–0389, appearing on page 67774 in the issue of Tuesday, December 24, 1996, change ''OMB Number:'' ''074–0388'' to read ''0704–0389.'' All other information remains unchanged.

FOR FURTHER INFORMATION CONTACT: Office of the Under Secretary of Defense (Personnel and Readiness), (Department of Defense Domestic Dependent Elementary and Secondary Schools), ATTN: Mr. Norman Heitzman, 4040 North Fairfax Drive, Arlington, VA 22203–1635, telephone number (703) 696–4373.

Dated: January 28, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–2489 Filed 1–31–97; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Control Number: Defense Reutilization & Marketing Service Business Reply Card.

Type of Request: New collection.

Number of Respondents: 800.

Responses per Respondent: One.

Annual Responses: 800.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 200.

Needs and Uses: Purpose of survey is to assess the service customers receive from the Defense Logistics Agency, Defense Reutilization and Marketing Office (DRMO). Assessed services may include turning in property, supplying property, selling property, or disposing of hazardous property. A customer comment card will be placed at the DRMO where the actual disposal mission occurs.

Affected Public: Individuals or households; Business or other for profit; Not for profit; State, local, or tribal government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: January 28, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–2491 Filed 1–31–97; 8:45 am]

BILLING CODE 5000–04–M

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0026]

Submission for OMB review; Comment Request Entitled Change Order Accounting

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0026).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Change Order Accounting. The OMB clearance currently expires on February 28, 1997.

DATES: *Comment Due Date:* March 5, 1997.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405. Please cite OMB Control No. 9000–0026, Change Order Accounting, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Office of Federal Acquisition Policy, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR clause 52.243–6, Change Order Accounting, requires that, whenever the estimated cost of a change or series of related changes exceed $100,000, the contracting officer may require the contractor to maintain separate accounts for each change or series of related changes. The account shall record all incurred segregable, direct costs (less allocable credits) of work, both changed and unchanged, allocable to the change. These accounts are to be maintained until the parties agree to an equitable adjustment for the changes or until the matter is conclusively disposed of under the Disputes clause. This requirement is necessary in order to be able to account properly for costs associated with changes in supply and research and development contracts that are technically complex and incur numerous changes.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *5* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *8,750;* responses per respondent, *18;* total annual responses, *157,500;* preparation hours per response, *.084;* and total response burden hours, *13,230*.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, *8,750;* hours per recordkeeper. *1.5;* total recordkeeping burden hours, *13,125;* and total burden hours *26,355*.

Dated: January 28, 1997.

Sharon A. Kiser,

FAR Secretariat.

[FR Doc. 97–2561 Filed 1–31–97; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.275C]

Partnership Training; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997

PURPOSE OF PROGRAM: To support the formation of consortia or partnerships of public or nonprofit private entities for the purpose of providing opportunities for career advancement or competency-based training to current employees of public or nonprofit private agencies that provide services to individuals with disabilities. Those opportunities must include certificate or degree granting programs in vocational rehabilitation services and related services.

ELIGIBLE APPLICANTS: States, public or nonprofit private agencies and organizations, and institutions of higher education.

SUPPLEMENTARY INFORMATION: Congress expressed a concern that led to the inclusion of the partnership training program effort in the Rehabilitation Act Amendments of 1992. The following is an excerpt from the U.S. House of Representatives report on the Rehabilitation Act Amendments of 1992, H.R. Rep. No. 102–973, page 117, (1992): ''The recruitment, training and retention of personnel continues to be a problem in the provision of vocational rehabilitation services to individuals with disabilities. The personnel training initiative (e.g., demonstration grants and technical assistance) provides an opportunity to train and retain workers who currently hold entry level or paraprofessional positions in public and private agencies that serve individuals with disabilities and have demonstrated a commitment to remaining in the field of vocational rehabilitation.''

Deadline for Transmittal of Applications: April 4, 1997.

Deadline for Intergovernmental Review: June 4, 1997.

Applications Available: February 5, 1997.

Available Funds: $400,000.

Estimated Range of Awards: $150,000–$200,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Statutory Authorizations: The statutory authorizations in section 302(e) of the Rehabilitation Act of 1973, as amended, apply to this program.

An entity that receives a grant under this program may use the grant for purposes including—

(1) Establishing a program with an institution of higher education to develop creative new programs and coursework options, or to expand existing programs, in the fields of vocational rehabilitation services and related services including—

(a) Providing release time for faculty and staff for curriculum development;

(b) Paying for instructional costs and start-up and other program development costs;

(2) Establishing a career development mentoring program using faculty and professional staff members of participating agencies as role models, career sponsors, and academic advisors for experienced State, city, and county employees, and volunteers who—

(a) Have demonstrated a commitment to working in the fields described in paragraph (1)(a) above; and

(b) Are enrolled in a program relating to such a field at an institution of higher education;

(3) Supporting a wide range of programmatic and research activities aimed at increasing opportunities for career advancement and competency-based training in fields related to vocational rehabilitation and related services; and

(4) Identifying existing public or private agency and labor union personnel policies and benefit programs that may facilitate the ability of employees to take advantage of higher education opportunities, such as leave time and tuition reimbursement.

In awarding grants for these projects, the Commissioner ensures that the projects are geographically distributed throughout the United States in urban and rural areas.

FOR APPLICATIONS: To request an application package, please write to U.S. Department of Education, 600 Independence Avenue, SW., Room 3038, Switzer Building, Washington, DC 20202–2649, Attention Joyce R. Jones; or call (202) 205–8351.

FOR FURTHER INFORMATION CONTACT: Dr. Beverly Brightly, U.S. Department of Education, Room 3322, Switzer Building, 600 Independence Avenue, SW., Washington, DC 20202–2649. Telephone: (202) 205–9561. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at gopher://gcs.ed.gov); or on the World Wide Web (at http://gcs.ed.gov). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 29 U.S.C. 774.

Dated: January 29, 1997.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97–2562 Filed 1–31–97; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No.: 84.264B]

Rehabilitation Continuing Education Programs; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1997

PURPOSE OF PROGRAM: To support cooperative agreements for training centers that serve either a Federal region or another geographic area and provide a broad, integrated sequence of training activities throughout a multi-State geographical area.

ELIGIBLE APPLICANTS: States and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education.

Note: Applications are invited for the provision of training for Department of Education Regions II, IV, and X only.

Deadline for Transmittal of Applications: April 4, 1997.

Deadline for Intergovernmental Review: June 4, 1997.

Applications Available: February 5, 1997.

Available Funds: $1,500,000.

Estimated Range of Awards: $475,000-$500,000

Estimated Average Size of Award: $500,000.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Maximum Award: In no case does the Secretary make an initial award greater than $500,000 for a single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this maximum amount.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in

34 CFR parts 74, 75, 77, 79, 80, 81, 82, and 86; and (b) The regulations for this program in 34 CFR parts 385 and 389.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

FOR APPLICATIONS: To request an application package, please write to U.S. Department of Education, 600 Independence Avenue, S.W., Room 3038 Switzer Building, Washington, DC 20202–2649, Attention Joyce R. Jones; or call (202) 205–8351.

FOR FURTHER INFORMATION CONTACT: Beverly Steburg, U.S. Department of Education, Region IV, PO Box 1691, Atlanta, Georgia 30301. Telephone: (404) 331–0530. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; on the Internet Gopher Server (at gopher://gcs.ed.gov); or on the World Wide Web (at http://gcs.ed.gov). However, the official application notice for a discretionary grant competition is the notice published in the Federal Register.

Program Authority: 29 U.S.C. 774.

Dated: January 29, 1997.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 97–2563 Filed 1–31–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Reopening of the Public Comment Period for the Waste Isolation Pilot Plant Disposal Phase Draft Supplemental Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Reopening of the Public Comment Period.

SUMMARY: This notice reopens the public comment period for the Department of Energy's (DOE) Waste Isolation Pilot Plant Disposal Phase Draft Supplemental Environmental Impact Statement (SEIS–II) until February 27, 1997. All comments received by that date will be considered in preparing the final SEIS–II. A Notice of Availability of the draft was published on November 29, 1996 (61 FR 60690). All other information contained in the Notice of Availability remains unchanged.

ADDRESSES: *Written comments* on the draft SEIS-II should be mailed to the following address: Harold Johnson, NEPA Compliance Officer, Att: SEIS Comments, P.O. Box 9800, Albuquerque, NM 87119.

Although some written comments mailed to this address were mistakenly returned by the U.S. Postal Service to sender, this situation has been rectified and individuals are requested to resubmit their comments to the above address. Comments may also be submitted by electronic mail to WIPPSEIS@battelle.org or by fax to Harold Johnson, NEPA Compliance Officer at (505) 224–8030. For more information on WIPP and the SEIS-II, contact the WIPP Information Center at 1–800–336–WIPP (1–800–336–9477).

For information on the DOE National Environmental Policy Act process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–4600 or leave a message at 1–800–472–2756.

DATES: The comment period on the draft SEIS–II will be reopened until February 27, 1997. Comments postmarked after that date will be considered to the extent practicable.

SUPPLEMENTARY INFORMATION: On November 29, 1996, the Department issued a Notice of Availability (61 FR 60690) on the draft SEIS–II that included: A brief description of the contents of the document and alternatives analyzed; a list of reading rooms where the full document is available to the public; information on how to obtain additional copies of the document and submit public comments; and a schedule of public hearings. This Notice also announced a sixty-day public comment period extending from November 29, 1996 to January 28, 1997.

The public comment period is being reopened until February 27, 1997, in response to public requests for additional time to review the document and prepare comments. The Department has individually notified interested stakeholders of the reopened comment period. Except for the end of the comment period, all information contained in the November 29, 1996, Notice of Availability remains unchanged. Please note that some written comments on the draft SEIS–II that were mailed to the Department were mistakenly returned by the U.S. Postal Service to sender. This situation has been rectified and these comments may be resubmitted to the address above. Comments postmarked after February 27, 1997, will be considered to the extent practicable. Further information on the Waste Isolation Pilot Plant and on the SEIS–II is contained in the November 29, 1996, Notice of Availability.

Issued in Washington, DC., this 27 day of January, 1997.

Mark W. Frei,

Acting Deputy Assistant Secretary for Waste Management Environmental Management.

[FR Doc. 97–2554 Filed 1–31–97; 8:45 am]

BILLING CODE 6450–01–P

Floodplain Statement of Findings for Operable Unit 5 Remedial Action at the Fernald Environmental Management Project

AGENCY: Department of Energy (DOE), Fernald Environmental Management Project.

ACTION: Floodplain statement of findings.

SUMMARY: This is to give notice of DOE's planned actions for the Fernald Environmental Management Project (FEMP), located approximately 18 miles (29 kilometers) northwest of downtown Cincinnati, Ohio. The subject of this Floodplain Statement of Findings is the Operable Unit 5 Remedial Action. DOE proposes to protect human health and the environment by excavating and consolidating contaminated soil and sediment within an on-property, above-grade disposal facility. Excavation and construction activities associated with implementation of this action would involve the floodplain along Paddys Run in Hamilton County, Ohio. In accordance with Executive Order 11988 and 10 CFR part 1022, DOE prepared a floodplain/wetland assessment describing the effects, alternatives and measures designed to avoid or minimize potential harm to or within the affected floodplain. The assessment found that the proposed action would have minimal temporary or long-term impacts on the floodplain.

DATES: Written comments must be received by the DOE at the following address on or before February 18, 1997.

ADDRESSES: Mail comments and/or requests for further information, including a site map, to: Mr. David Kozlowski, Associate Director, Office of Safety & Assessment, U.S. Department of Energy, Fernald Environmental Management Project, PO. Box 538705,

Cincinnati, Ohio 45253–8705. Phone: (513) 648–3187; Facsimile: (513) 648–3077.

FURTHER INFORMATION: For further information on general DOE floodplain and wetland environmental review requirements, contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy & Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Phone: (202) 586–4600 or 1–800–472–2756.

SUPPLEMENTARY INFORMATION: This Floodplain Statement of Findings for the Operable Unit 5 Remedial Action at the FEMP has been prepared in accordance with Executive Order 11988, ''Floodplain Management,'' and 10 CFR part 1022, ''DOE Regulations for Compliance with Floodplain/Wetland Environmental Review Requirements.'' A Notice of Floodplain/Wetland Involvement was published in the Federal Register (FR) on April 17, 1995 (60 FR 19238) and a floodplain/wetland assessment was incorporated in the Operable Unit 5 Feasibility Study. DOE is proposing to protect human health and the environment by excavating contaminated soil and sediment to prevent leaching of contaminants into the Great Miami Aquifer.

In addition, DOE is proposing to extract and treat contaminated groundwater, along with collection and treatment of contaminated stormwater runoff. In order to eliminate the threat of a release to Paddys Run, excavation may occur within the floodplain, depending on the extent of soil contamination in this area. Direct physical impact to the floodplain would result from the operation of heavy equipment during excavation of contaminated soil and sediment, and construction of a stormwater basin within the floodplain. Potential indirect impacts to the 100- and 500-year floodplains, as a result of remedial activities involving soil excavation and construction of the stormwater basin, include surface water runoff and sediment deposition into the floodplain. Several alternatives were considered and evaluated in making this determination, including: no action; excavation and off-site shipment; excavation and on-property engineered disposal facility with off-site disposal of waste exceeding waste acceptance criteria (the preferred alternative); and excavation and on-property consolidation with an earthen cover with off-site disposal of waste exceeding waste acceptance criteria. Direct and indirect impacts would occur during the implementation of any action alternatives considered. However, minimal or no permanent change in flood elevations would be expected from any of the alternatives. The proposed remedial action has been designed to conform to applicable Federal and State regulations, including floodplain protection standards. Before this action begins, approval would be obtained from Federal and State agencies having jurisdiction.

DOE has determined that there is no practicable alternative to the proposed remedial action and that this action has been designed to minimize harm to the 100- and 500-year floodplains of Paddys Run. Engineering controls (e.g., silt fences, straw bales) will minimize any indirect impacts such as runoff and sediment deposition to the floodplain. Backfilling and regrading activities following the Operable Unit 5 Remedial Action will eliminate any long-term adverse impacts and would be implemented during remedial activities to avoid/minimize any environmental impacts.

Issued in Miamisburg, Ohio on January 23, 1997.

Susan L. Smiley,

NEPA Compliance Officer, Ohio Field Office.

[FR Doc. 97–2558 Filed 1–31–97; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

National Coal Council and Coal Policy Committee Joint Meeting; Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Coal Council and Coal Policy Committee.

Date and Time: Tuesday, February 18, 1997, 12:00 Noon.

Place: The Washington National Airport Hilton, 2399 Jefferson Davis Highway, Arlington, VA 22202.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–5), Washington, D.C. 20585, Telephone: 202/586–3867.

Purpose of the Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Purpose of the Meeting: To consider and act upon Council study entitled ''Vision 2020: The Role of Coal in U.S. Energy Strategy.'

Tentative Agenda

—Call to order and opening remarks by Clifford Miercort, Chairman of the National Coal Council.
—Discussion of any other business properly brought before the Council.
—Public comment—10-minute rule.
—Adjournment.

Public Participation: The meeting is open to the public. The Chairman of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 AM and 4:00 PM, Monday through Friday, except Federal holidays.

Issued at Washington, DC, on January 28, 1997

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 97–2555 Filed 1–31–97; 8:45 am]

BILLING CODE 6450–01–P

Secretary of Energy Advisory Board; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board—Openness Advisory Panel.

Date and Time: Tuesday, February 11, 1997, 8:30 AM–4:30 PM.

Place: The Westin Hotel at City Center, Vista Ballroom A, 1400 M Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), US Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–1709.

SUPPLEMENTARY INFORMATION: *Purpose of the Committee:* The purpose of the Openness Advisory Panel is to provide advice to the Secretary of Energy Advisory Board regarding the current status and strategic direction for the Department's classification and declassification policies and programs, as well as other aspects of the Department's ongoing Openness Initiative. The Panel's work will help institutionalize the Department's Openness Initiative.

Tentative Agenda

Tuesday, February 11, 1997

8:30 AM–9:00 AM Opening Remarks
9:00 AM–9:30 AM Overview of the DOE Openness Press Conference
9:30 AM–10:30 AM Working Session
10:30 AM–10:45 AM Break
10:45 AM–12:00 PM Working Session
12:00 PM–1:00 PM Lunch
1:00 PM–2:30 PM Working Session
2:30 PM–2:45 PM Break
2:45 PM–4:00 PM Working Session
4:00 PM–4:30 PM Public Comment
4:30 PM Adjourn

This tentative agenda is subject to change. A final agenda will be available at the meeting.

Public Participation: The Chairman of the Panel is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington, DC the Panel 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 Panel will make every effort to hear the views of all interested parties. Written comments may be submitted to David Cheney, Acting Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW, Washington, DC 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, DC, between 9:00 AM and 4:00 PM, Monday through Friday except Federal holidays.

Issued at Washington, DC, on January 28, 1997.

Rachel M. Samuel,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 97–2557 Filed 1–31–97; 8:45 am]

BILLING CODE 6450–01–P

Bonneville Power Administration

Firm Non-Requirements Products and Services Contracts

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of supplement to record of decision (ROD).

SUMMARY: This notice announces the availability of a Supplement to the Firm Non-Requirements Products and Services Contracts (FNR) ROD (October 17, 1995). This Supplement relies on BPA's Business Plan Environmental Impact Statement (EIS) (June 1995) and the Business Plan ROD (August 15, 1995).

BPA has decided to modify an earlier decision regarding the energy services portion of its business. BPA's historical role in regional conservation is extended to enlarge the energy efficiency market beyond that which is currently being profitably captured by the private sector.

ADDRESSES: Copies of the Business Plan, Business Plan EIS, the Business Plan ROD, and the FNR ROD and additional copies of this Supplement to the FNR ROD are available from BPA's Public Involvement Office, PO Box 12999, Portland, Oregon 97212. Copies of these documents may also be obtained by using BPA's nationwide toll-free document request line, 1–800–622–4520.

FOR FURTHER INFORMATION, CONTACT: Katherine S. Pierce—EC, Bonneville Power Administration, PO Box 3621, Portland, Oregon, 97208–3621, phone number (503) 230–3962, fax number (503) 230–5166.

SUPPLEMENTARY INFORMATION:

Introduction

The Bonneville Power Administration (BPA) has decided to modify an earlier decision regarding the energy services portion of its business. BPA issued the FNR ROD on October 17, 1995. The FNR ROD was consistent with BPA's Business Plan, Business Plan EIS (DOE/EIS–0183, June 1995), and the Business Plan ROD (August 15, 1995).

The FNR ROD noted that, within the context of increased marketplace competitiveness, BPA needed to develop new strategies to retain existing customers and to attract new ones. FNR contracts increased BPA's flexibility and offered BPA an opportunity to sell a wide variety of power, transmission, and energy products and services. The FNR ROD also provided examples of energy services business products and services to increase business and enhance BPA's revenue potential.

Over the following year, BPA continued to examine its energy services role in the Pacific Northwest (PNW). On June 19, 1996, BPA submitted a proposal to the Comprehensive Review to create an ''Energy Services Business.'' There were concerns in the region about the broad scope of BPA's activities and the appearance BPA was competing with the private sector. As a result, BPA has decided to supplement the FNR ROD. Only the Energy Services portion of the FNR ROD is affected.

Description of Changes to the Energy Services Business

On December 12, 1996, the Comprehensive Review Steering Committee released its final report to the four PNW Governors. The report proposed an energy efficiency market development role for BPA. BPA's historical role in regional conservation would be extended to enlarge the energy efficiency market beyond that which is currently being profitably captured by the private sector. BPA worked closely with the committee to develop the 13 guiding principles in the final report:

1. Not a Business: Bonneville's energy-efficiency activities are not a ''business.'' The purpose of these activities is to serve Bonneville's statutory directive to promote cost-effective energy-efficiency investments. The Committee considers it unlikely that these activities will completely recover their costs without unduly competing with private enterprises. To address concerns about the net cost of these activities, the Committee proposes borrowing and spending caps in items 11 and 12 below.
2. Grow the Pie: Bonneville's role in market development should be structured and managed to enlarge energy-efficiency markets beyond that which is being profitably captured by private business.
3. Market Catalyst: Bonneville's market development activities should be limited to markets or individual situations that are not currently accessible, viable, or profitable for the private sector energy-efficiency industry.
4. Leverage Private Sector Services: Bonneville's market development activities should be designed and implemented to take full advantage of private sector energy goods and services. These activities should not favor one competitor over another.
5. Match Maker: Bonneville will act primarily as a facilitator/aggregator of transactions for services provided by its partners.
6. Exiting Viable Markets After Cost Recovery: Specific Bonneville market development activities will be discontinued when they become viable and profitable for the private sector energy-efficiency business.
7. Establish Advisory Board: An advisory board should be established immediately to monitor Bonneville's compliance with these restrictions. The advisory board should consist, among others, of private businesses that could be adversely affected by Bonneville's failure to comply with these restrictions as well as power and transmission customers. Bonneville should consult with and report to this board at regular intervals, and the board should report concerns to the Northwest Power Planning Council.
8. Focus on Federal Agencies and Power Sales Customers: Bonneville's market development activities should be limited to its regional power sales contract customers and federal agencies. Bonneville should provide energy-efficiency services for federal

agencies in cooperation with the serving utility or when the serving utility cannot or elects not to provide those services itself.

9. Full Cost Recovery: Agencies and customers contracting for market development services should repay the full cost of those services, including repayment of loans at the appropriate U.S. Treasury rate.

10. Energy-Efficiency Focus: Any Bonneville organizational unit or activity currently named ''Energy Services'' should be renamed ''Energy Efficiency.'' This is intended to clarify that previous proposals to undertake a broad spectrum of other retail services have been dropped, and to preclude Bonneville support for load-building activities that are inconsistent with Bonneville's conservation directives.

11. Capital Borrowing Guidelines: Bonneville's use of U.S. Treasury capital should be limited to $5 million per year and restricted to federal projects. This represents a reduction of roughly 50 percent relative to Bonneville's October 31, 1996 proposal, and a reduction of $71 million relative to the final rate case figure. Capital borrowed from the U.S. Treasury should be repaid in full by the participating federal entity. All third party borrowing shall be non-recourse to Bonneville.

12. Self-Supporting: Bonneville's net costs for market development activities should not exceed $8 million for the Fiscal Years 1997–2001. Bonneville's energy-efficiency activities should be self-supporting by September 30, 1999 or these activities should be terminated.

13. ROD Modifications: Bonneville should revise its October 1995 record of decision for firm non-requirements products and services contracts by replacing the ''Energy Services'' section with an ''Energy-Efficiency'' section that incorporates a final plan for energy-efficiency activities consistent with the restrictions herein. The energy-efficiency plan should not include activities listed in the original Record of Decision ''Energy Services'' section except those directly related to energy-efficiency. Other new activities listed in the original Record of Decision ''Energy Services'' section should not be offered by any part of Bonneville in competition with the private sector.

In order to provide a public service to help meet the region's energy efficiency needs and in response to principle 13 above, BPA is replacing, in total, the Energy Services section of the FNR ROD as outlined in the box below. This new section, Energy Efficiency, more accurately describes BPA's intent to properly manage the public assets to enhance and enlarge the energy efficiency market in the region through a process that is consistent with the other 12 principles.

Energy Efficiency

In order to fulfill its energy efficiency market development role, BPA proposes to provide products and services such as:

Rebates or incentives for achieving energy or capacity conservation; Demand-side management (DSM) services; Power quality services; and

Tracking and accounting for the use of power and other services under the terms of customized contracts.

The fundamental purpose of these products and services is to help enlarge the energy efficiency marketplace. Using its unique characteristics as a Federal agency with extensive experience in managing conservation efforts, BPA will serve as a catalyst or facilitator in making energy efficiency happen. While BPA must be financially self-sufficient, it will not compete with the private sector. Instead, BPA will work with private business partners, government and the utility community to help overcome barriers to conservation and efficiency efforts. BPA's success will be measured by its ability to make a difference, increasing the amount of conservation investments and expanding the business opportunities for private sector partners.

All other parts of the original FNR ROD remain unchanged to continue quality service to the region's electric industry.

Anticipated Effects of These Changes

The supplement outlined above is consistent with the Business Plan, Business Plan EIS, the Business Plan ROD, and the other sections of the FNR ROD. No change in environmental effects is expected. Nothing in this ROD Supplement is intended to affect BPA's practice of providing traditional reimbursable services to its customers.

Conclusion

I have decided that the focus of BPA's energy efficiency market development role is to enlarge the energy efficiency opportunities beyond that which is currently being profitably captured by the private sector. This decision remains consistent with BPA's Market-Driven approach for participation in the increasingly competitive electric power market. BPA is ensuring continued public benefits while being responsive to its customers'' needs.

Issued in Portland, Oregon, on January 21, 1997.

Randall W. Hardy,

Administrator.

[FR Doc. 97–2552 Filed 1–31–97; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP97–184–001]

Crossroads Pipeline Company; Notice of Compliance Filing

January 28, 1997.

Take notice that on January 23, 1997, Crossroads Pipeline Company (Crossroads) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fourth Substitute Original Sheet No. 6, effective February 1, 1997.

Crossroads states that the purpose of this filing is to comply with the Commission's Letter Order in the above-referenced docket dated January 8, 1997.

Crossroads states further that copies of the compliance filing were served on its current firm and interruptible customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). 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 in this proceeding, but will not serve to make protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–2504 Filed 1–31–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER96–3144–000]

Northeast Utilities Service Company; Notice of Filing

January 28, 1997.

Take notice that on January 23, 1997, Northeast Utilities Service Company tendered for filing an amendment 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, 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 February 7, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–2506 Filed 1–31–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP97–235–000]

Panhandle Eastern Pipe Line Company; Notice of Filing of Reconciliation Report

January 28, 1997.

Take notice that on January 23, 1997, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing its final reconciliation report in compliance with Article I, Section 4(e)(ii) of the May 22, 1995 Stipulation and Agreement in Docket No. RP94–325–000 (Settlement). The Settlement requires the filing of a reconciliation report as soon as practicable following the termination of the Firm GSR Settlement Rates for Sponsoring Parties and Subject Parties.

Panhandle states that on September 30, 1996, it filed in Docket No. RP96–399–000 to suspend the GSR Settlement Reservation Surcharge for firm transportation services provided under Rate Schedules FT, EFT, and LFT and the GSR Settlement Volumetric Surcharge for service under Rate Schedule SCT for Sponsoring Parties and Subject Parties to the Settlement effective November 1, 1996. Panhandle's September 30, 1996 filing was approved by a Commission letter order dated October 21, 1996.

Panhandle states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to the proceedings in Docket No. RP94–325–000.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before February 4, 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 in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–2509 Filed 1–31–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER97–420–000]

ProLiance Energy, LLC; Notice of Issuance of Order

January 28, 1997.

ProLiance Energy, LLC (ProLiance) submitted for filing a rate schedule under which ProLiance will engage in wholesale electric power and energy transactions as a marketer. ProLiance also requested waiver of various Commission regulations. In particular, ProLiance requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by ProLiance.

On January 16, 1997, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by ProLiance 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 385.214).

Absent a request for hearing within this period, ProLiance is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of ProLiance's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is February 18, 1997. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 97–2508 Filed 1–31–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EC97–12–000]

San Diego Gas & Electric Company; Enova Energy, Inc.; Notice of Filing

January 28, 1997.

Take Notice that on January 27, 1997, San Diego Gas & Electric Company (''SDG&E'') and Enova Energy, Inc. (''Enova Energy'') (collectively, the ''Applicants'') tendered for filing pursuant to Section 203 of the Federal Power Act (''FPA'') 16 U.S.C. 824(b) (1994), and Part 33 of the Commission's Regulations, 18 CFR Part 33, of the Commission's Regulations, 18 CFR Part 33, an application for an order approving a proposed business combination of Enova Corporation (''Enova'') and Pacific Energy (''Pacific''). SDG&E and Enova Energy are subsidiaries of Enova. Additionally, Ensource, a subsidiary of Pacific, joins in the application if and for so long as it is deemed to be a ''public utility'' under the FPA.

Pursuant to a Combination Agreement, Pacific and Enova will become wholly owned subsidiaries of a new holding company which will, in turn be owned by the former shareholders of Pacific and Enova. The Applicants state that they have filed in Docket No. EL97–15–000 a petition for a declaratory order disclaiming jurisdiction over the proposed transaction. Grant of that petition, they state, would moot the application in this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal 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 March 28, 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–2541 Filed 1–31–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP92–298–001]

U–T Offshore System; Notice of Application To Amend Certificate

January 28, 1997.

Take notice that on January 15, 1997, U–T Offshore System (UTOS), 600 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP92–298–001, an application pursuant to Section 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations (18 CFR 157), to amend its certificate of public convenience and necessity issued in Docket No. CP92–298–000, to reflect a change in delivery of gas currently being processed in the Cameron Plant in Johnsons Bayou, Cameron Parish, Louisiana (Cameron Plant), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

UTOS states that the original certificate issued on April 8, 1992, authorized it to construct and operate certain pipeline facilities to deliver certain volumes for processing at the Cameron Plant. UTOS explains that the reason for the amendment is because the Cameron Plant is transferring certain of its pipeline facilities immediately downstream of UTOS' delivery point in order to permit the gas that has been processed in the Cameron Plant to now be processed at the Barracuda Plant, and to the extent necessary from time to time, at other nearby processing plants. UTOS says that it was advised that such gas will be redelivered following processing to the same array of downstream pipelines that currently receive the processed gas at the tailgate of the Cameron Plant.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 18, 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 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, or if the Commission on its own review of the matter finds that a grant of the certificate for the proposal 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 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 UTOS to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–2507 Filed 1–31–97; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. OA96–11–001, et al.]

Long Sault, Inc., et al.; Notice of Filings Made Pursuant to Order Nos. 888 and 889 Not Covered by Other Notices

Janaury 28, 1997.

Take notice that the entities shown on the Attachment to this notice recently submitted filings in response to the Commission's Order Nos. 888 and 889.[1] These filings include: (1) Amendments to coordination agreements that unbundle the rates; (2) requests for waiver of Order Nos. 888 and 889; (3) revised tariffs; (3) requests for time extensions; (4) amendments to joint ownership agreements; (5) other compliance filings under Order No. 888; and (6) status reports on OASIS implementation.[2] These filings were assigned the docket numbers shown on the Attachment.

Any person desiring to be heard or to protest any of the filings listed in the Attachment should file, in each particular proceeding and referencing the appropriate docket number, 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).

In light of the number of filings listed in the Attachment, and for the convenience of the Commission, the parties, and any interested persons, the filing dates for submitting any motions or protests in response to the filings listed in the Attachment are being staggered as described below. All motions or protests in response to filings made by entities whose names, as listed in the Attachment, begin with the letters A–E should be filed on or before March 6, 1997, those made in response to filings by entities whose names, as listed in the Attachment, begin with the letters F–O should be filed on or before March 13, 1997, and those made in response to filings made by entities whose names, as listed in the Attachment, begin with the letters P–Z should be filed on or before March 20, 1997. (These deadlines supersede any earlier deadlines provided in individual notices of filing issued for any of the filings listed in the Attachment). 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 the filings listed on the Attachment are on file with the Commission and are available for public inspection during normal business hours in the Public Reference Room at 888 First Street, N.E., Washington, DC 20426.

Lois D. Cashell,

Secretary.

---

[1] Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (Order No. 888), *reh'g pending;* Open Access Same-Time Information System and Standards of Conduct, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs. ¶ 31,037 (Order No. 889), *reh'g pending.*

[2] We already have issued notices of filing for filings by power pool members and holding company members made pursuant to Order No. 888 and for OASIS standards of conduct compliance filings made pursuant to Order No. 889. We will issue individual notices of filing for ''NJ'' filings by nonpublic utilities pursuant to the procedures discussed in Order No. 888.

ATTACHMENT

Docket No.	Company	Date filed
OA97–277–000	AEP Operating Companies	12/31/96
OA97–488–000	APS Operating Companies	12/20/96
OA96–018–000	APS Operating Companies	1/17/97
OA97–426–000	Arizona Public Service Company	1/2/97
OA97–465–000	Arizona Public Service Company	1/8/97
OA97–264–000	Atlantic City Electric Company	12/31/96
OA97–265–000	Atlantic City Electric Company	12/31/96
OA97–160–000	Baltimore Gas & Electric Company	12/24/96
OA96–191–000	Bangor Hydro-Electric Company	12/30/96
OA97–192–000	Boston Edison Company	12/30/96
OA97–213–000	Carolina Power & Light Company	12/30/96
OA97–214–000	Carolina Power & Light Company	12/30/96
OA97–252–000	Carolina Power & Light Company	12/31/96
OA97–253–000	Carolina Power & Light Company	12/31/96
OA97–254–000	Carolina Power & Light Company	12/31/96
OA97–255–000	Carolina Power & Light Company	12/31/96
OA97–256–000	Carolina Power & Light Company	12/31/96
OA97–315–000	Carolina Power & Light Company	12/31/96
OA97–479–000	Central Hudson Gas & Electric Corp	12/23/96
OA97–179–000	Central Illinois Light Company	12/26/96
OA97–403–000	Central Illinois Light Company	1/2/97
OA97–404–000	Central Illinois Light Company	1/2/97
OA97–412–000	Central Illinois Light Company	1/6/97
OA97–413–000	Central Illinois Light Company	1/6/97
OA97–183–000	Central Illinois Public Service Company	12/27/97
OA97–282–000	Central Louisiana Electric Company, Inc	12/31/96
OA97–324–000	Central Louisiana Electric Company, Inc	12/31/96
OA97–325–000	Central Louisiana Electric Company, Inc	12/31/96
OA97–326–000	Central Louisiana Electric Company, Inc	12/31/96
OA97–015–002	Central Louisiana Electric Company, Inc	1/16/97
OA97–266–000	Central Maine Power Company	12/31/96
OA97–474–000	Central Vermont Public Service Corp	12/23/96
OA97–475–000	Central Vermont Public Service Corp	12/30/96
OA97–069–000	Cinergy Operating Companies	12/4/96
OA97–144–000	Cinergy Service, Inc	12/23/96
OA97–145–000	Cinergy Service, Inc	12/23/96
OA97–146–000	Cinergy Service, Inc	12/23/96
OA97–147–000	Cinergy Service, Inc	12/23/96
OA97–148–000	Cinergy Service, Inc	12/23/96
OA97–149–000	Cinergy Service, Inc	12/23/96
OA97–150–000	Cinergy Service, Inc	12/23/96
OA97–151–000	Cinergy Service, Inc	12/23/96
OA97–152–000	Cinergy Services, Inc	12/23/96
OA97–153–000	Cinergy Services, Inc	12/23/96
OA97–164–000	Cinergy Services, Inc	12/24/96
OA97–165–000	Cinergy Services, Inc	12/24/96
OA97–166–000	Cinergy Services, Inc	12/24/96
OA97–167–000	Cinergy Services, Inc	12/24/96
OA97–454–000	Citizens Utilities Company	1/3/96
OA97–141–000	Cleveland Electric Illuminating Company	12/23/96
OA97–491–000	Cleveland Electric Illuminating Company	1/8/96
OA97–309–000	Commonwealth Edison Company	12/31/96
OA97–182–000	Consolidated Edison Company of NY, Inc	12/27/96
OA97–259–000	Consumers Power Company	12/31/96
OA97–263–000	CSW Operating Companies	12/31/96
OA97–288–000	CSW Operating Companies	12/31/96
OA97–142–000	Dayton Power & Light Company	12/23/96
OA97–133–000	Dayton Power & Light Company	12/23/96
OA97–134–000	Dayton Power & Light Company	12/23/96
OA97–138–000	Dayton Power & Light Company	12/23/96
OA97–273–000	Dayton Power & Light Company	12/31/96
OA97–274–000	Dayton Power & Light Company	12/31/96
OA97–131–000	Dayton Power & Light Company	12/23/96
OA97–132–000	Dayton Power & Light Company	12/23/96
OA97–064–000	Dayton Power & Light Company	1/2/97
OA97–428–000	Delmarva Power & Light Company	12/31/96
OA97–487–000	Deseret Generation & Transmission Cooperative	1/14/97
OA97–198–000	Duke Power Company	12/30/96
OA97–199–000	Duke Power Company	12/30/96
OA97–200–000	Duke Power Company	12/30/96
OA97–201–000	Duke Power Company	12/30/96
OA97–202–000	Duke Power Company	12/30/96

ATTACHMENT—Continued

Docket No.	Company	Date filed
OA97–203–000	Duke Power Company	12/30/96
OA97–204–000	Duke Power Company	12/30/96
OA97–205–000	Duke Power Company	12/30/96
OA97–206–000	Duke Power Company	12/30/96
OA97–207–000	Duke Power Company	12/30/96
OA97–208–000	Duke Power Company	12/30/96
OA97–209–000	Duke Power Company	12/30/96
OA97–195–000	Duquesne Light Company	12/30/96
OA97–247–000	East Texas Electric Cooperative, Inc	12/31/96
OA97–301–000	El Paso Electric Company	12/31/96
OA97–093–000	Empire District Electric Company	12/17/96
OA97–285–000	Entergy Arkansas, Inc	12/31/96
OA97–336–000	Entergy Arkansas, Inc	12/31/96
OA97–343–000	Entergy Arkansas, Inc	12/31/96
OA97–344–000	Entergy Arkansas, Inc	12/31/96
OA97–345–000	Entergy Arkansas, Inc	12/31/96
OA97–334–000	Entergy Gulf States, Inc	12/31/96
OA97–346–000	Entergy Gulf States, Inc	12/31/96
OA97–352–000	Entergy Gulf States, Inc	12/31/96
OA97–353–000	Entergy Gulf States, Inc	12/31/96
OA97–354–000	Entergy Gulf States, Inc	12/31/96
OA97–355–000	Entergy Gulf States, Inc	12/31/96
OA97–356–000	Entergy Gulf States, Inc	12/31/96
OA97–337–000	Entergy Louisiana, Inc, Inc	12/31/96
OA97–338–000	Entergy Louisiana, Inc, Inc	12/31/96
OA97–339–000	Entergy Louisiana, Inc, Inc	12/31/96
OA97–340–000	Entergy Louisiana, Inc, Inc	12/31/96
OA97–341–000	Entergy Louisiana, Inc, Inc	12/31/96
OA97–342–000	Entergy Louisiana, Inc, Inc	12/31/96
OA97–335–000	Entergy Mississippi, Inc	12/31/96
OA97–347–000	Entergy Mississippi, Inc	12/31/96
OA97–348–000	Entergy Mississippi, Inc	12/31/96
OA97–349–000	Entergy Mississippi, Inc	12/31/96
OA97–350–000	Entergy Mississippi, Inc	12/31/96
OA97–351–000	Entergy Mississippi, Inc	12/31/96
OA97–269–000	Entergy Operating Companies	12/31/96
OA97–270–000	Entergy Operating Companies	12/31/96
OA97–327–000	Entergy Operating Companies	12/31/96
OA97–328–000	Entergy Operating Companies	12/31/96
OA97–329–000	Entergy Operating Companies	12/31/96
OA97–330–000	Entergy Operating Companies	12/31/96
OA97–331–000	Entergy Operating Companies	12/31/96
OA97–332–000	Entergy Operating Companies	12/31/96
OA97–333–000	Entergy Operating Companies	12/31/96
OA97–245–000	Florida Power & Light Company	12/31/96
OA97–358–000	Florida Power Corp	12/31/96
OA97–359–000	Florida Power Corp	12/31/96
OA97–360–000	Florida Power Corp	12/31/96
OA97–361–000	Florida Power Corp	12/31/96
OA97–362–000	Florida Power Corp	12/31/96
OA97–363–000	Florida Power Corp	12/31/96
OA97–364–000	Florida Power Corp	12/31/96
OA97–365–000	Florida Power Corp	12/31/96
OA97–366–000	Florida Power Corp	12/31/96
OA97–367–000	Florida Power Corp	12/31/96
OA97–368–000	Florida Power Corp	12/31/96
OA97–369–000	Florida Power Corp	12/31/96
OA97–370–000	Florida Power Corp	12/31/96
OA97–371–000	Florida Power Corp	12/31/96
OA97–372–000	Florida Power Corp	12/31/96
OA97–373–000	Florida Power Corp	12/31/96
OA97–374–000	Florida Power Corp	12/31/96
OA97–375–000	Florida Power Corp	12/31/96
OA97–376–000	Florida Power Corp	12/31/96
OA97–377–000	Florida Power Corp	12/31/96
OA97–378–000	Florida Power Corp	12/31/96
OA97–379–000	Florida Power Corp	12/31/96
OA97–380–000	Florida Power Corp	12/31/96
OA97–381–000	Florida Power Corp	12/31/96
OA97–382–000	Florida Power Corp	12/31/96
OA97–383–000	Florida Power Corp	12/31/96
OA97–384–000	Florida Power Corp	12/31/96

ATTACHMENT—Continued

Docket No.	Company	Date filed
OA97–385–000	Florida Power Corp	12/31/96
OA97–386–000	Florida Power Corp	12/31/96
OA97–387–000	Florida Power Corp	12/31/96
OA97–388–000	Florida Power Corp	12/31/96
OA97–389–000	Florida Power Corp	12/31/96
OA97–390–000	Florida Power Corp	12/31/96
OA97–391–000	Florida Power Corp	12/31/96
OA97–392–000	Florida Power Corp	12/31/96
OA97–393–000	Florida Power Corp	12/31/96
OA97–394–000	Florida Power Corp	12/31/96
OA97–395–000	Florida Power Corp	12/31/96
OA97–396–000	Florida Power Corp	12/31/96
OA97–397–000	Florida Power Corp	12/31/96
OA97–223–002	GPU Operating Companies	12/31/96
OA97–319–000	GPU Operating Companies	12/31/96
OA97–320–000	GPU Operating Companies	12/31/96
OA97–321–000	GPU Operating Companies	12/31/96
OA97–322–000	GPU Operating Companies	12/31/96
OA97–323–000	GPU Operating Companies	12/31/96
OA97–037–000	Green Mountain Power Corp	1/2/97
OA97–156–000	Interstate Power Company	12/24/96
OA97–468–000	Interstate Power Company	12/24/96
OA97–170–000	Kansas City Power & Light Company	12/26/96
OA97–171–000	Kansas City Power & Light Company	12/26/96
OA97–175–000	Kansas City Power & Light Company	12/26/96
OA97–188–000	Kansas City Power & Light Company	12/27/96
OA97–172–000	Kansas Gas & Electric Company	12/26/96
OA97–257–000	Kentucky Utilities Company	12/31/96
OA97–011–001	Long Sault, Inc	1/16/97
OA97–129–000	Louisville Gas & Electric Company	12/23/96
OA97–469–000	Louisville Gas & Electric Company	12/31/96
OA97–169–000	Madison Gas & Electric Company	12/26/96
OA97–122–001	Maine Public Service Company	11/27/96
OA97–438–000	Michigan Public Power Agency	1/3/97
OA97–486–000	Michigan Public Power Rate Payers Ass'n	1/14/97
OA97–211–000	Mid-Continent Area Power Pool	12/30/96
OA97–143–000	MidAmerican Energy Company	12/23/96
OA97–191–000	MidAmerican Energy Company	12/30/96
OA97–275–000	MidAmerican Energy Company	12/31/96
OA97–420–000	MidAmerican Energy Company	1/2/97
OA97–136–000	Minnesota Power & Light Company	12/23/96
OA97–155–000	Minnesota Power & Light Company	12/18/96
OA97–168–000	Minnesota Power & Light Company	12/26/96
OA97–174–000	Minnesota Power & Light Company	12/26/96
OA97–176–000	Minnesota Power & Light Company	12/26/96
OA97–177–000	Minnesota Power & Light Company	12/26/96
OA97–178–000	Minnesota Power & Light Company	12/26/96
OA97–193–000	Minnesota Power & Light Company	12/30/96
OA97–194–000	Minnesota Power & Light Company	12/30/96
OA97–307–000	Montana Power Company	12/31/96
OA97–401–000	Montana Power Company	1/2/97
OA96–040–001	Montana–Dakota Utilities Company	12/2/96
OA97–099–000	Montana–Dakota Utilities Company	12/19/96
OA96–067–002	Montaup Electric Company	12/31/96
OA96–115–001	Mount Carmel Public Utility Company	1/14/97
OA97–212–000	Nantahala Power & Light Company	12/30/96
OA96–188–001	Nevada Power Company	12/12/96
OA97–293–000	New York State Electric & Gas Corp	12/31/96
OA97–481–000	Niagara Mohawk Power Corp	1/6/97
OA97–482–000	Niagara Mohawk Power Corp	1/6/97
OA97–483–000	Niagara Mohawk Power Corp	1/6/97
OA97–484–000	Niagara Mohawk Power Corp	1/6/97
OA97–222–000	Northern Indiana Public Service Company	12/31/96
OA97–240–000	Northern States Power Company (Minn)	12/31/96
OA97–241–000	Northern States Power Company (Minn)	12/31/96
OA97–242–000	Northern States Power Company (Minn)	12/31/96
OA97–135–000	Northwestern Wisconsin Electric Company	12/23/96
OA97–239–000	NSP Operating Companies	12/31/96
OA97–283–000	NU Operating Companies	12/31/96
OA97–300–000	NU Operating Companies	12/31/96
OA97–317–000	NU Operating Companies	12/31/96
OA97–442–000	NU Operating Companies	1/3/97

ATTACHMENT—Continued

Docket No.	Company	Date filed
OA97–236–000	Ohio Edison Company	12/31/96
OA96–017–002	Oklahoma Gas & Electric Company	1/17/97
OA97–139–000	Otter Tail Power Company	12/23/96
OA97–302–000	Otter Tail Power Company	12/31/96
OA97–303–000	Otter Tail Power Company	12/31/96
OA97–304–000	Otter Tail Power Company	12/31/96
OA97–305–000	Otter Tail Power Company	12/31/96
OA97–159–000	Pacific Gas & Electric Company	12/24/96
OA97–405–000	PacifiCorp	1/3/97
OA97–032–000	Pacific Northwest Generation Cooperative	11/14/96
OA97–306–000	PECO Energy Company	12/31/96
OA97–311–000	Pennsylvania–New Jersey–Maryland Interconnection	12/31/96
OA97–248–000	Pennsylvania Power & Light Company	12/31/96
OA97–250–000	Portland General Electric Company	12/31/96
OA97–301–000	Portland General Electric Company	12/31/96
OA97–471–000	Portland General Electric Company	1/8/97
OA97–137–000	Potomac Electric Power Company	12/23/96
OA97–295–000	Potomac Electric Power Company	12/31/96
OA97–448–000	Public Service Company of New Mexico	1/2/97
OA97–410–000	Public Service Electric & Gas Company	1/2/97
OA97–298–000	Puget Sound Power & Light Company	12/31/96
OA97–299–000	Puget Sound Power & Light Company	12/31/96
OA96–161–001	Puget Sound Power & Light Company	1/2/97
OA97–243–000	Rochester Gas & Electric Corp.	12/31/96
OA97–246–000	San Diego Gas & Electric Company	12/31/96
OA97–140–000	Seminole Electric Cooperative, Inc	12/23/96
OA97–267–000	Southern California Edison Company	12/31/96
OA97–161–000	Southern Company Services, Inc	12/24/96
OA97–357–000	Southern Indiana Gas & Electric Company	12/31/96
OA97–473–000	Southern Indiana Gas & Electric Company	12/23/96
OA97–289–000	Southern Minnesota Municipal Power Agency	12/31/96
OA97–215–000	Southern Operating Companies	12/30/96
OA97–224–000	Southwestern Public Service Company	12/31/96
OA97–225–000	Southwestern Public Service Company	12/31/96
OA97–226–000	Southwestern Public Service Company	12/31/96
OA97–227–000	Southwestern Public Service Company	12/31/96
OA97–228–000	Southwestern Public Service Company	12/31/96
OA97–229–000	Southwestern Public Service Company	12/31/96
OA97–230–000	Southwestern Public Service Company	12/31/96
OA97–231–000	Southwestern Public Service Company	12/31/96
OA97–232–000	Southwestern Public Service Company	12/31/96
OA97–233–000	Southwestern Public Service Company	12/31/96
OA97–268–000	Southwestern Electric Power Company	12/31/96
OA97–235–000	St. Joseph Light & Power Company	12/31/96
OA97–244–000	Tampa Electric Company	12/31/96
OA96–010–001	Tapoco Inc	1/22/97
OA96–030–001	Texas-New Mexico Power Company	12/27/96
OA96–030–002	Texas-New Mexico Power Company	12/27/96
OA97–272–000	Tucson Electric Power Company	12/31/96
OA97–290–000	Tucson Electric Power Company	12/31/96
OA96–140–001	Tucson Electric Power Company	1/6/97
OA97–271–000	Union Electric Company	12/31/96
OA96–050–002	Union Electric Company	1/17/97
OA97–490–000	United Illuminating Company	12/20/96
OA97–260–000	Utilicorp United Inc	12/31/96
OA97–186–000	Virginia Electric & Power Company	12/27/96
OA97–187–000	Virginia Electric & Power Company	12/27/96
OA97–477–000	Virginia Electric & Power Company	12/27/96
OA97–478–000	Virginia Electric & Power Company	12/27/96
OA96–052–002	Virginia Electric & Power Company	1/17/97
OA97–251–000	Western Resources, Inc	12/31/96
OA97–314–000	Western Resources, Inc	12/31/96
OA97–217–000	Wisconsin Electric Power Company	12/30/96
OA96–424–000	Wisconsin Electric Power Company	1/2/97
OA97–409–000	Wisconsin Power & Light Company	1/2/97
OA97–157–000	Wisconsin Public Service Corp	12/24/96
OA97–234–000	Wisconsin Public Service Corp	12/31/96
OA97–476–000	Wisconsin Public Service Corp	12/30/96
OA96–012–001	Yadkin Inc	1/24/97

[FR Doc. 97–2542 Filed 1–31–97; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. ER96–2607–000, et al.]

Washington Water Power Company, et al; Electric Rate and Corporate Regulation Filings

January 27, 1996.

Take notice that the following filings have been made with the Commission:

1. Washington Water Power Company

[Docket No. ER96–2607–000]

Take notice that on January 13, 1997, Washington Water Power (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR Section 35.12, an amendment to the above referenced docket. The purpose of the amended filing is to provide additional information in order to satisfy the Commission's transmission unbundling requirements.

Comment date: February 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Consolidated Edison Company of New York, Inc.

[Docket No. ER97–408–001]

Take notice that on January 17, 1997, Consolidated Edison Company of New York, Inc. tendered for filing its refund report in the above-referenced docket.

Comment date: February 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Monongahela Power Company

[Docket No. ER97–509–001]

Take notice that on January 21, 1997, Monongahela Power Company tendered for filing its refund report in the above-referenced docket.

Comment date: February 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Northern States Power Company (Minnesota Company)

[Docket No. ER97–1207–000]

Take notice that on January 13, 1997, Northern States Power Company (Minnesota) (NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement between NSP and Union Electric Company.

NSP requests that the Commission accept the agreement effective December 16, 1996, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: February 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Northern States Power Company (Minnesota Company)

[Docket No. ER97–1208–000]

Take notice that on January 13, 1997, Northern States Power Company (Minnesota)(NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement between NSP and Aquila Power Corporation.

NSP requests that the Commission accept the agreement effective December 16, 1996, and request waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: February 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Northern States Power Company (Minnesota Company)

[Docket No. ER97–1209–000]

Take notice that on January 13, 1997, Northern States Power Company (Minnesota)(NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement between NSP and PanEnergy Trading and Market Services, L.L.C.

NSP requests that the Commission accept the agreement effective December 30, 1996, and requests waiver of the Commission's notice requirements in order for the agreement to be accepted for filing on the date requested.

Comment date: February 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. PacifiCorp

[Docket No. ER97–1210–000]

Take notice that on January 13, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, a Notice of Termination of Service Agreement No. 9 to PacifiCorp's FERC Electric Tariff, Second Revised Volume No. 4 (Tariff), revisions to the Tariff and an Interconnection Agreement between PacifiCorp and Montana-Dakota Utilities Co. (MDU).

Copies of this filing were supplied to MDU, 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: February 7, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. PacifiCorp

[Docket No. ER97–1211–000]

Take notice that on January 13, 1997, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Non-Firm Transmission Service Agreements with Eugene Water & Electric Board, Idaho Power Company, Illinova Power Marketing, Inc., Rocky Mountain Generation Cooperative, Inc., Sierra Pacific Power Company, The Power Company of America, L.P., The Utility-Trade Corp. and Utah Municipal Power Agency under PacifiCorp's FERC Electric Tariff, Original Volume No. 11.

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: February 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Commonwealth Electric Company

[Docket No. ER97–1212–000]

Take notice that on January 13, 1997, Commonwealth Electric Company (Commonwealth), tendered for filing a non-firm point-to-point transmission service agreement with itself. Commonwealth states that the service agreement sets out the transmission arrangements under which Commonwealth will take non-firm point-to-point transmission service under its FERC Electric tariff, Original Volume No. 6, accepted for filing in Docket No. OA96–167–000.

Comment date: February 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Cambridge Electric Light Company

[Docket No. ER97–1213–000]

Take notice that on January 13, 1997, Cambridge Electric Light Company (Cambridge), tendered for filing a non-firm point-to-point transmission service agreement with itself. Cambridge states that the service agreement sets out the transmission arrangements under which Cambridge will take non-firm point-to-point transmission service under its FERC Electric Tariff, Original Volume No. 8, accepted for filing in Docket No. OA96–178–000.

Comment date: February 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER97–1214–000]

Take notice that on January 13,1997, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 19 to add seven (7) new Customers to the Standard Generation Service Rate Schedule under which Allegheny Power offers standard generation and emergency service on an hourly, daily, weekly, monthly or yearly basis. Allegheny Power requests a waiver of notice requirements to make service available as of January 10, 1997, to Baltimore Gas & Electric Company, Duquesne Light Company, IUC Power Services, Illinois Power Company, Ohio Edison Company, Plum Street Energy Marketing, and WPS Energy Services, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: February 10, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Public Service Corporation

[Docket No. ER97–1215–000]

Take notice that on January 13, 1997, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Transmission Service Agreement between WPSC and Illinois Power Company. The Agreement provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

Comment date: February 10, 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. 97–2540 Filed 1–31–97; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2609]

International Paper Company and Curtis/Palmer Hydroelectric Company L.P.; Notice of Availability of Study Results and Request for Additional Studies

January 28, 1997.

International Paper Company and Curtis/Palmer Hydroelectric Company L.P. are currently engaged in the process of obtaining from the Federal Energy Regulatory Commission (Commission) a new operating license for the Curtis/Palmer Falls Hydroelectric Project (FERC No. 2609). The current license for the project is due to expire on April 30, 2000. The project is located on the Hudson River in the Village of Corinth and the Towns of Corinth, Lake Luzerne and Hadley, in Saratoga County, New York. Under the Commission's regulations, an application for licensing for the project must be filed by April 30, 1998. International Paper Company is managing relicensing activities in cooperation with a team of state and federal resources agencies, conservation groups and local governments (the Cooperative Team).

Pursuant to the Energy Policy Act of 1992 and the Commission's regulations, Curtis/Palmer Hydroelectric Company L.P. and International Paper Company intend to prepare a Draft Environmental Assessment (DEA) as part of the license application, to be filed with the Commission for the project. Public scoping meetings were held on January 10, 1996 and February 8, 1996 to identify the scope of environmental issues that should be analyzed in the DEA.

Based on information contained in Scoping Document 1 and comments received from resources agencies and other interested parties during the scoping meetings and comment period, the Cooperative Team prepared study plans to address issues raised during the scoping process and published them in Scoping Document 2. Study plans were subsequently finalized and studies were undertaken throughout the spring, summer, and fall of 1996. The majority of the study reports have been completed and organized as Volume I Reports. During the period from January 31, 1997 until March 3, 1997, these Volume I Reports will be available for public review at the International Paper Administration Building at the Hudson River Mill on Pine Street in Corinth, New York. The Volume I Reports will also be available in the Corinth Town Office and in the Commission's Public Reference Room at 888 1st Street NE. in Washington, DC. The public is invited to review these documents and to file comments on the adequacy of these studies in addressing issues raised during scoping. Comments on these studies and requests for any additional studies are due by March 3, 1997.

Because Section 4.32(b)(7) of the Commission's regulations has been previously waived, we are requesting that if any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the project on its merit, the resource agency, Indian tribe, or person must file a request for a study with the Secretary of the Commission at 888 First Street, NE., Washington, DC 20426 by March 3, 1997 and serve a copy of the request on Mr. Robert McK. Hunziker, International Paper Company, Two Manhattanville Road, Purchase, NY 10577 and Mr. Andrew Sims, Kleinschmidt Associates, 75 Main Street, Pittsfield, ME 04967. Any comments or recommendations for further study should be supported by appropriate documentation.

The remaining reports (Volume II) will be made available for review and comment between approximately April 15, 1997 and May 15, 1997 at the same locations. Comments and requests for additional studies on the Volume II Reports will be due by approximately May 15, 1997. A separate public notice will be published specifying the exact due date for comments and additional study requests on Volume II.

Lois D. Cashell,

Secretary.

[FR Doc. 97–2505 Filed 1–3–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00463; FRL–5577–7]

Label Review Manual; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is announcing the availability of the second edition of the Label Review Manual. The Label Review Manual is used as a training tool for new employees and as guidance for product team members who are responsible for performing label reviews. It is the goal of this manual to improve the quality of labels as well as increase the consistency of label reviews. In addition, this manual may be very useful for pesticide label writers. Interested parties may order copies of the Label Review Manual as set forth in the ADDRESSES unit of this notice.

DATES: Copies of the Label Review Manual are now available.

ADDRESSES: Copies of the Label Review Manual may be ordered from the National Technical Information Service (NTIS). The order number is: PB 97-117667. By mail: National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. Telephone and fax number: (703) 487–4650 and (703) 321–8547. The Label Review Manual is also available in electronic form on FedWorld, an information service of NTIS. Electronic access to FedWorld can be through Internet-telnet to: fedworld.gov; or connect via modem be dialing (703) 321–3339, with the settings Parity = none, Data Bits = 8, Stop Bit = (N-8-1), with terminal emulation = ANSI or VT 100. FedWorld accomodates speeds up to 28,800 baud. The manual can also be obtained through the Internet at: gopher.epa.gov.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Downing (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 4th Floor, Westfield Building, 2800 Crystal Drive, Arlington, VA, (703) 308–8641, e-mail: downing.james@epamail.gov.

SUPPLEMENTARY INFORMATION: EPA's Registration Division's Labeling Center for Excellence (LCE) within the Office of Pesticide Programs (OPP) originally developed this manual to serve as a training tool for its new employees and as guidance for product management team members who are responsible for performing label reviews. Initially, availability of the Label Review Manual was announced in the Federal Register of February 8, 1995 (60 FR 7539) (FRL–4934–2). Since then, the Agency has received comments and suggestions from OPP label reviewers as well as the regulated community. Accordingly, the manual has been revised to address these comments and to reflect current changes in Agency policy. It is the goal of this manual to improve the quality of labels as well as increase the consistency of label reviews.

The Label Review Manual is updated on an ''as needed'' basis to reflect new and changing labeling policies.

List of Subjects

Environmental protection, Administrative practice and procedure, Pesticides and pests, and Pesticide labels.

Dated: January 14, 1997.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–2495 Filed 1–31–97; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5683–3]

Common Sense Initiative Council (CSIC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public advisory meetings of the Common Sense Initiative Council and the CSIC's Metal Finishing and Printing Sector Subcommittees; Open meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Common Sense Initiative Council and the CSIC's Metal Finishing and Printing Sector Subcommittees will meet on the dates and times described below. All meetings are open to the public. Seating at all three meetings will be on a first-come basis and limited time will be provided for public comment. For further information concerning specific meetings, please contact the individuals listed with the Council and two Sector Subcommittee announcements below.

(1) Common Sense Initiative Council—February 19 and 20, 1997

Notice is hereby given that the Environmental Protection Agency will hold an open meeting of the Common Sense Initiative Council on Wednesday, February 19, 1997 from 1:00 p.m. EST to 5:30 p.m. EST and Thursday, February 20, 1997, from 8:30 a.m. EST to 3:30 p.m. EST. The meeting will be held at the Georgetown University Conference Center, 3800 Reservoir Road, NW., Washington, DC 20057. The telephone number is (202) 687–3200.

The Council will meet in a strategic session to discuss topics including: how to balance making broad based sector changes with achieving incremental changes to existing systems; how sector-based approaches are working in a multi-stakeholder, consensus forum; does the CSI process work differently for small and large industries; what are some possible structural changes for CSI; and CSI's two year goals. The Council's goal for this meeting is to advise the agency on options for strengthening CSI.

For further information concerning this Council meeting, please contact Prudence Goforth, Designated Federal Officer (DFO), at EPA by telephone on (202) 260–7417, or by e-mail at goforth.prudence@epamail.epa.gov.

(2) Metal Finishing Sector Subcommittee—March 12–13, 1997

Notice is hereby given that the Environmental Protection Agency will hold an open meeting of the Metal Finishing Sector Subcommittee on March 12 and 13, 1997, from approximately 9:00 a.m. EST to 4:00 p.m. EST. It is anticipated that some of the workgroups will meet in breakout sessions during this time. The meeting will be held at the Radisson Barcelo Hotel, 2121 P Street, NW., Washington, DC 20037. The telephone number is (202) 293–3100.

The Metal Finishing Sector Subcommittee will focus on further discussion of the sector's Strategic Goals Initiative. It is also anticipated that the Subcommittee will discuss various Sector-endorsed projects as they relate to the Goals effort.

For further information concerning meeting times and agenda of the Metal Finishing Sector Subcommittee, please contact Bob Benson, DFO, at EPA by telephone on (202) 260–8668 in Washington, DC, by fax at 260–8662, or by e-mail at benson.robert@epamail.epa.gov.

(3) Printing Sector Subcommittee—March 25, 1997

Notice is hereby given that the Environmental Protection Agency will hold an open meeting of the Printing Sector Subcommittee on Tuesday, March 25, 1997, from approximately 1:00 p.m. EST until 4:00 p.m EST. The New York City Education Project Team (NYCEPT) and the Multi-Media Flexible Permit Project Team will hold meetings the previous day, Monday, March 24,

1997, from 9:00 a.m. EST until 5:00 p.m. EST, and again the morning of the Subcommittee Meeting, Tuesday, March 25, 1997, from 9:00 a.m. EST until noon EST. The meetings will be held at the Washington Hilton and Towers, 1919 Connecticut Avenue, NW., Washington, DC 20009. The telephone number is 202–483–3000. The purpose of the Subcommittee meeting is to discuss the continued progress of the two project teams. The NYCEPT will be reporting on project developments in technical assistance and community involvement. The Multi-media Flexible Permit Project Team will be reporting on the results of exploring major sources, public participation, and thresholds for the proposed permit.

For further information concerning meeting times and agenda of the Printing Sector Subcommittee, please contact Frank Finamore, DFO, at EPA on (202) 564–7039 in Washington, DC or Mick Kulik, Alternate DFO at EPA Region 3 on (215) 566–5337 in Philadelphia, PA.

Inspection of Subcommittee Documents: Documents relating to the above Sector Subcommittee announcements will be publicly available at the meeting. Thereafter, these documents, together with the official minutes for the meetings, will be available for public inspection in room 2821M of EPA Headquarters, Common Sense Initiative Staff, 401 M Street, SW., Washington, DC 20460, telephone number 202–260–7417. Common Sense Initiative information can be accessed electronically through contacting Daria Willis at willis.daria@epamail.epa.gov.

Dated: January 28, 1997.

Prudence Goforth,

Designated Federal Officer.

[FR Doc. 97–2576 Filed 1–31–97; 8:45 am]

BILLING CODE 6560–50–P

[OPP–66235; FRL 5583–1]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by August 4, 1997, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the Federal Register before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some four pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
006248–00003	Black Magic Rat Killer with Pivalyl	2-Pivalyl-1,3-indandione
010163–00176	Prokil Parathion 25 WSB.	*O,O*-Diethyl *O*-p-nitrophenyl phosphorothioate
034704 MT–91–0002	Tenax	*O*-Ethyl *S*-phenyl ethylphosphonodithioate
		O,O-Diethyl *S*-((ethylthio)methyl) phosphorodithioate
059198–20001	Sodium Hypochlorite 12.5%	Sodium hypochlorite

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180–day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
006248	Black Magic Inc., 217 Space Park Dr., Nashville, TN 37211.
010163	Gowan Co., Box 5569, Yuma, AZ 85366.
034704	Platte Chemical Co., Inc., c/o William M. Mahlburg, Box 667, Greeley, CO 80632.
059198	Viking Chemical Co., Box 1595, Rockford, IL 61110.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before August 4, 1997. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in Federal Register (56 FR 29362) June 26, 1991; [FRL 3846–4]. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

Dated: January 10, 1997.

Oscar Morales,

Acting Director, Program Management and Support Division, Office of Pesticide Programs.

[FR Doc. 97–2494 Filed 1–31–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval

January 27, 1997.

SUMMARY: The Federal Communications, 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 proposed and/or continuing information collections, 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 Commissions 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: Written comments should be submitted on or before March 5, 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 Dorothy Conway, Federal Communications, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, N.W., Washington, DC 20503 or fain__t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0127.
Title: Assignment of Authorization.
Form No: FCC 1046.
Type of Review: Revision of a currently approved collection.
Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local or Tribal Government.
Number of Respondents: 6,000.
Estimated Time Per Response: 5 minutes.
Total Annual Burden: 498 hours.
Estimated Costs Per Respondent: 0.
Needs and Uses: This form is required by the Communications Act, International Treaties and FCC Rules 47 CFR Parts 1.922, 1.924, 80.19, 87.21, 90.119 and Part 1010. The FCC 1046 is used by applicants to assign authorization of radio station to another entity. In accordance with the FCC rules, the assignor must in writing, assign all right, title and interest of the authorization to the other entity. The form has been revised to change the reference to Microwave Radio Services form and rule part 402/Part 94 to Form 415/Part 101 as a result of a new rule effective August 1, 1996.

OMB Approval Number: 3060–0056.
Title: Registration of Telephone and Data Terminal Equipment.
Form No: FCC 730.
Type of Review: Revision of a currently approved collection.
Respondents: Business or other for-profit.
Number of Respondents: 2,400.
Estimated Time Per Response: 24 hours.
Total Annual Burden: 57,600 hours.
Estimated Costs Per Respondent: Approximately 75 percent of the respondents solicit the services of testing laboratories to comply with the requirement to submit test procedures for certain electronic devices. Costs for these services range from a few hundred dollars to several thousand dollars. The commission estimates an average cost of $1,500.
Needs and Uses: FCC Form 730 is used to obtain registration of telephone equipment pursuant to Part 68 of the Commission's rules. In addition to filing the form, applicants are required to submit exhibits and other informational showings as specified in Part 68. Part 68, Subpart C contains the procedures for registering equipment and lists many of the exhibits and showings that must be filed with the application form. The

exhibits and showings are described in Section 68.200 (a) through (k). These requirements are also specified in the application form. The information is used by the Common Carrier Bureau to determine whether such equipment meets the criteria set forth in Part 68 of the Commission's rules. This is necessary in order to prevent improperly designed equipment from causing harm to the nation's telephone network.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–2501 Filed 1–31–97; 8:45 am]

BILLING CODE 6712–01–P

Notice of Public Information Collections Submitted to OMB for Review and Approval

January 29, 1997.

SUMMARY: The Federal Communications, 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 proposed and/or continuing information collections, 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 Commissions 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: Written comments should be submitted on or before March 5, 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 Dorothy Conway, Federal Communications, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to dconway@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, N.W., Washington, DC 20503 or fain—t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Dorothy Conway at 202–418–0217 or via internet at dconway@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0410.

Title: Forecast of Investment Usage Report and Actual Usage of Investment Report.

Form No.: FCC 495A, FCC 495B.

Type of Review: Extension of an existing collection.

Respondents: Businesses or others for profit.

Number of Respondents: 150.

Estimate Hour Per Response: 40 hours per response.

Total Annual Burden: 12,000.

Needs and Uses: The Forecast of Investment Usage and Actual Usage of Investment Reports are needed to detect and correct forecast errors that could lead to significant misallocation of network plant between regulated and nonregulated activities. FCC's purpose is to protect the regulated ratepayer from subsidizing the nonregulated activities of rate regulated telephone companies.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–2534 Filed 1–31–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1158–DR]

Minnesota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Minnesota (FEMA–1158-DR), dated January 16, 1997, and related determinations.

EFFECTIVE DATE: January 16, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated January 16, 1997, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Minnesota, resulting from severe winter storms beginning January 3, 1997, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act''). I, therefore, declare that such a major disaster exists in the State of Minnesota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide reimbursement for the costs of equipment, contracts, and personnel overtime that are required to clear one lane in each direction along snow emergency routes (or select primary roads in those communities without such designated roadways), and routes necessary to allow the passage of emergency vehicles to hospitals, nursing homes, and other critical facilities. Additional assistance may be added, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Gary Pierson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Minnesota to have been affected adversely by this declared major disaster:

FEMA will provide reimbursement for the costs of equipment, contracts, and personnel overtime that are required to clear one lane in each direction along snow emergency routes (or select primary roads in those communities without such designated roadways), and routes necessary to allow the passage of emergency vehicles to hospitals, nursing homes, and other critical facilities to the counties of Becker, Big Stone, Blue Earth, Brown, Chippewa, Clay, Clearwater, Cottonwood, Douglas, Faribault, Grant, Jackson, Kandiyohi, Kittson, Lac qui Parle, Lincoln, Lyon, Mahnomen, Marshall, Martin, Murray, Nicollet, Nobles, Norman, Otter Tail, Pennington, Pipestone, Polk, Pope, Red Lake, Redwood, Renville, Rock, Roseau, Stevens,

Swift, Traverse, Watonwan, Wilkin, and Yellow Medicine.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 97–2565 Filed 1–31–97; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1153–DR]

Nevada; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Nevada, (FEMA–1153–DR), dated January 3, 1997, and related determinations.

EFFECTIVE DATE: January 17, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Nevada, is hereby amended to include the Hazard Mitigation Grant program in those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 3, 1997:

The Independent City of Carson City and the counties of Churchill, Douglas, Lyon, Mineral, Storey, and Washoe, including the Walker River Paiute tribal lands located in Lyon, Churchill, and Mineral Counties for Hazard Mitigation assistance. (Already designated for Individual Assistance and Public Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–2564 Filed 1–31–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting

Announcing an Open Meeting of the Board

Time and Date: 9:00 a.m. Thursday, February 6, 1997.

Place: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

Status: The entire meeting will be open to the public.

Matters to be Considered During Portions Open to the Public:

- Qualified Thrift Lender Test—Interim Final Rule
- Federal Home Loan Bank of Seattle AHP First-Time Homebuyer Set-Aside Program.

Contact Person for More Information: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 97–2702 Filed 1–30–97; 12:51 pm]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 86–9]

A/S Ivarans Rederi v. Companhia De Navegacao Lloyd Brasileiro, et al.; Order

This case originated with the complaint of A/S Ivarans Rederi (''Ivarans'') filed in 1986, which sought a cease and desist order and reparations for violations of the Shipping Act, 1916, 46 U.S.C. § 801 *et seq.* (1982) (''1916 Act''), and the Shipping Act of 1984, 46 U.S.C. app. § 1701 *et seq.* (''1984 Act''), resulting from attempts by respondent carrier members of the Brazil/U.S. Atlantic Coast Pool Agreement (FMC No. 10027) (''Respondents''), to enforce an arbitration award obtained in Brazil. The Commission's proceeding was discontinued in 1990 with the understanding that no further efforts to enforce the arbitration award would be undertaken by the parties pursuant to rulings by the U.S. Court of Appeals for the D.C. Circuit that enforcement of the arbitration award would result in violation of the 1984 Act. Nevertheless, it appears that a new effort to enforce the arbitration award is being made in Brazil by one of the original six Respondents, Companhia de Navegacao Maritima Netumar (''Netumar''). Therefore, Ivarans filed the Motion to Reinstate Complaint and for a Cease and Desist Order (''Motion'') which is before us.

Background

Ivarans, a party to Agreement No. 10027, a revenue pooling agreement in the northbound Brazil/U.S. Atlantic coast trade, filed its complaint against the other members of the Agreement in 1986. In addition to Netumar and Ivarans, the Respondents and parties to the Agreement were Companhia de Navegacao Lloyd Brasileiro (''Lloyd Brasileiro''), another Brazilian-flag carrier, referred to along with Netumar and the U.S.-flag carrier (originally Moore-McCormack succeeded by United States Lines, (S.A.) Inc. (''USLSA'')) as the ''National-Flag Lines,'' and Empresa Lineas Maritimas Argentinas, S.A. (''ELMA''), A. Bottachi S.A. de Navigacion C.F.I.I. (''Bottachi''), and Van Nievelt Goudriaan and Co., B.V. (''Hopal''), referred to as the ''Non-national Flag Lines.''

The Agreement divided the pool cargo among the members, assigning an 80 per cent share to the National-Flag Lines, divided equally between Brazilian and U.S.-flag lines, and a 20 per cent share to the Non-national Flag Lines; provided for a minimum number of sailings per pool period for each member carrier; established penalties for over-carriage; and provided for automatic suspension of the pool when any party or combination of parties exceeding one third of the total pool share failed to provide the minimum number of sailings.

In 1982, Moore-McCormack, then the only U.S.-flag carrier member, fell substantially short of its minimum 40 sailings. The other members of the Agreement sought substantial penalties from Ivarans which had carried a greater proportion of the trade cargo as a result of Moore-McCormack's missed sailings. Pursuant to the Agreement's provision for arbitration, an arbitration panel was assembled in Brazil. The panel ruled that the Agreement had not been suspended during the 1982 pool period. The panel found that Ivarans owed some $1,475,017 in over-carriage penalties to be paid to the other agreement parties in proportion to their pool shares. However, the panel reasoned that, because Moore-McCormack's failure to make its sailings had been voluntary, the over-carriage penalties due Moore-McCormack's corporate successor, USLSA, should be paid instead to the remaining Agreement parties in proportion to their pool shares.

Ivarans then filed its FMC complaint, contending that the interpretation of the Agreement by the other parties and the arbitration panel was inconsistent with the Agreement's own terms and the Commission's intention in approving the Agreement and thus, enforcement of the arbitration award would result in implementation of the Agreement not in accordance with its terms in violation of the 1984 and 1916 Acts. The presiding administrative law judge (''ALJ'') agreed with the arbitration panel's interpretation of the Agreement, but found that the remedy fashioned by the arbitration panel was unauthorized by the Agreement and that its implementation would result in a violation of the 1984 Act.

The Commission adopted this finding, agreeing with the ALJ that the thrust of

the pooling agreement was to divide the rights to pool cargo between National-Flag Lines and Non-national Flag Lines, and that the National-Flag Lines could be considered as a group for purposes of considering whether there was a failure to meet its minimum sailings by any party or combination of parties exceeding one third of the total pool. In addition, finding that the mere ''homologation,'' or judicial approval, of the arbitration panel's decision would not result in the enforcement of the unauthorized remedy, because the arbitration award was not self-enforcing and had, in fact, been vacated by a Brazilian court, the Commission denied the cease and desist order sought by Ivarans.

On appeal by Ivarans, the U.S. Court of Appeals for the D.C. Circuit reversed the Commission's dismissal of the complaint, finding that the language of the Agreement required that the Agreement be suspended under the facts presented.[1] On remand, the Commission again denied Ivarans' request for an order directing the Respondents to cease and desist from attempting to collect monies under the Agreement and for attorney's fees. The Commission concluded that a cease and desist order was unnecessary, despite the intervening decision of the Brazilian Supreme Court said to reinstate the arbitrators' award of pool payments for the 1982 pool period when the Agreement was suspended. The Commission found Ivarans' concerns unwarranted, because ''no payments under the Agreement may lawfully be made for the suspension period by virtue of the Court of Appeals' decision, and enforcement of the Agreement for this period appears unlikely.'' ____ F.M.C. ____, 25 S.R.R. 1061, 1062 (1990). The Commission noted, moreover, that USLSA had stated that it ''will take no action to enforce the arbitration award [,]'' and that the Brazilian and Argentina carriers recognized that ''the arbitral decision was contrary to the terms of the Pooling Agreement and could not be enforced by any party without violating the 1984 Act and/or the 1916 Act.'' *Id.* at 1062.

Therefore, the Commission found no indication that violation of the statute was likely and considered an injunction to obey the statute unnecessary. In dismissing Ivarans' compliant, however, the Commission acted * * *

> * * * without prejudice to its reinstatement if any action is taken by respondents to enforce the Agreement for the suspended period.* * * Furthermore, to save Ivarans the additional expense of filing a new complaint * * *, the Commission will permit reinstitution of this proceeding upon motion * * * should further action with respect to the complaint become necessary.

Id. at 1063.

Ivarans' Motion To Reinstate the Complaint and for a Cease and Desist Order

After recounting the history of this proceeding, Ivarans states in its Motion that on April 11, 1996, Netumar secured a judicial ''Writ of Enforcement'' from the 33rd Civil Court of Rio de Janeiro for enforcement of the arbitration award. The amount claimed by Netumar for its share of the original award plus interest totals $936,587. No response to Ivarans' Motion was received from any party.[2]

Ivarans reports that Netumar has filed for protection from creditors under Chapter 11 of the U.S. bankruptcy codes and has obtained an order from the U.S. bankruptcy court in Newark, N.J., bifurcating the case. Under the order, the court declines jurisdiction over any Netumar assets located in Brazil and excludes from participation in the U.S. bankruptcy case any claims arising from or relating to transactions in Brazil or creditors whose claims arise from such transactions. Thus, Ivarans states, it will be unable to secure relief from the U.S. bankruptcy court if Netumar succeeds in collecting the arbitration award in Brazil. Ivarans states, to the best of its knowledge, that Netumar has not filed a bankruptcy petition in Brazil.

Ivarans requests that the Commission reinstate this proceeding and order Netumar to cease and desist from proceeding in Brazil with its efforts to enforce the arbitration award. Such an order is appropriate, Ivarans advises, because, absent such an order, Ivarans will suffer irreparable injury, that is, injury for which a later Commission award for reparations would be ineffective due to the Netumar bankruptcy proceeding. Ivarans argues that a cease and desist order is within the Commission's authority and is the most appropriate form of relief, citing *Trans-Pacific Freight Conference* v. *FMC*, 314 F.2d 928 (9th Cir. 1963); *Pacific Coast European Conference* v. *FMC*, 537 F.2d 333 (9th Cir. 1976); and *FMC* v. *Australia/U.S. Atlantic & Gulf Conference*, 337 F.Supp. 1032 (S.D.N.Y. 1972). It is, says Ivarans, its intention to present the cease and desist order to the Brazilian court with a request that the Brazilian court ''recognize'' the Commission's action as a matter of comity.

Discussion

The relief requested by Ivarans was denied by the Commission in 1990 only because Netumar's representations that it recognized the unlawfulness of the arbitration award under U.S. law rendered a cease and desist order unnecessary. The Commission stated that:

> It appears that no payments under the Agreement may lawfully be made for the suspension period by virtue of the court of appeals' decision and enforcement of the Agreement for this period appears unlikely. * * * Moreover, the Brazilian and Argentinean carriers have done nothing to date which would constitute a violation of law. * * * [T]he Brazilian and Argentinean carriers recognize that ''the arbitral decision is contrary to the terms of the Pooling Agreement and could not be enforced by any party without violating the 1984 Act and/or the 1916 Act.'' * * * We have no basis to find that respondents will act to enforce a decision which they recognize is unlawful, and thus see no purpose to be served by issuing a cease and desist order in this proceeding.

25 S.R.R. at 1062.

However, since the last occasion on which we had examined this matter, Netumar appears to have ceased all active service in the U.S. trades. Netumar was a member of the Inter-American Freight Conference until May 16, 1994. Netumar has no current tariff on file with the Commission.[3] We are therefore concerned that the Commission may lack jurisdiction over Netumar because it is no longer a common carrier in U.S. commerce.

Ivarans contends that, as a result of Netumar's action in Brazil, it is likely to suffer injury for which it could not be made whole. Ivarans argues that the Commission would be unable to effectively make an award of reparations due to Netumar's U.S. bankruptcy and the order of the bankruptcy court bifurcating the proceeding. Ivarans indicates that it intends to present the cease and desist order it requests from the Commission to the Brazilian court, with a request that it be recognized and accorded ''comity.'' However, Ivarans makes no statement as to whether it

[1] *A/S Ivarans Rederi* v. *United States*, 895, F.2d 1441 (D.C. Cir. 1990).

[2] Ivarans served its Motion on counsel who had represented Netumar, Lloyd Brasileiro, USLSA, ELMA and Bottachi before the proceeding was discontinued in 1990. It does not appear from the record that service on attorneys who represented Netumar in the bankruptcy proceeding was attempted.

[3] This information is based on examination of the Commission's tariff and agreement files, of which the Commission herein takes official notice pursuant to 46 CFR § 502.161. Netumar's only ATFI tariff, Tariff No. 030, was canceled as of May 23, 1995 (Notice published in the Federal Register, 60 *FR* 25910 (May 15, 1995)). Netumar was reflected in FMC tariff organization records as an affiliate of the Inter-American Freight Conference until May 16, 1994.

participated in the proceeding before the Brazilian court before entry of the order of enforcement; whether it has presented or plans to present to the Brazilian court the decision of the U.S. Court of Appeals finding that the arbitration award was not in accordance with the Shipping Act of 1984; whether it presented to the Brazilian court the Commission's 1990 order on remand or Netumar's own acknowledgment in the Commission proceeding on remand that ''the arbitral decision was contrary to the terms of the Pooling Agreement and could not be enforced by any party without violating the 1984 Act and/or the 1916 Act;'' or whether Ivarans has appealed the decision of the Brazilian court.[4] Nor does Ivarans raise or address the issue of present Commission jurisdiction over Netumar, or the extraterritorial nature of the relief it requests.

There is a troubling corollary issue raised by Ivarans' argument that the Commission would be unable to effectively make an award of reparations due to Netumar's U.S. bankruptcy and the order of the bankruptcy court bifurcating the proceeding; it is unclear whether under these circumstances a cease and desist order issued by the Commission would be enforceable. We are also concerned that the issue of present Commission jurisdiction over Netumar be addressed.

While Netumar may have acted in violation of the 1984 Act by seeking to enforce an unlawful interpretation of the pooling agreement, Ivarans has not offered compelling evidence that it has been damaged by Netumar's action. Ivarans has not provided a copy of the Brazilian court's order of enforcement nor any evidence of action by Netumar to secure attachment or other action against Ivarans' assets in Brazil. Therefore, we are disposed to grant Ivarans' Motion only to the extent of re-opening the proceeding and allowing Ivarans an opportunity to present evidence as to the present status of proceedings in Brazil (including the orders of the Brazilian court not previously provided by Ivarans in support of its Motion), actual or likely damages to Ivarans, and what form of relief it believes the Commission can effectively grant.

Therefore, it is ordered, That F.M.C. Docket No. 86–9, *A/S Ivarans Rederi* v. *Companhia de Navegacao Lloyd Brasileiro, et al.*, is re-opened and it is referred to the Chief Administrative Law Judge, for assignment and issuance of an initial decision;

It is further ordered, That the administrative law judge to whom this proceeding is assigned shall exercise his discretion to insure that the issues are resolved by the most expeditious means consistent with due process and a sufficient record upon which to render a decision;

It is further ordered, That the following issues be addressed by Ivarans in the proceeding:

1. Commission jurisdiction over Netumar;

2. Ivarans' role in the proceedings in Brazil and the status of those proceedings;

3. Damage to Ivarans resulting from Netumar's action; and

4. What relief the Commission might effectively grant.

It is further ordered, That pursuant to Rule 61 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.61, the initial decision of the Administrative Law Judge shall be issued by November 1, 1997 and the final decision of the Commission shall be issued by February 28, 1998;

It is further ordered, That notice of this Order be published in the Federal Register, and a copy be served on A/S Ivarans Rederi;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.72;

It is further ordered, That all further notices, orders, and decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record; and

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 C.F.R. 502.118, and shall be served on all parties of record.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–2531 Filed 1–31–97; 8:45 am]

BILLING CODE 6730–01–M

[4] A copy of Netumar's March 7, 1996 application to the Brazilian court for enforcement of the award and an English translation are attached as Exhibit 1 to Ivarans' Motion. However, no copies of other pleadings or the court's order of enforcement are provided.

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. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 18, 1997.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Charleen Y. Frerichs, Hildreth, Nebraska; to acquire an additional 6.8 percent, for a total of 100 percent, of the voting shares of Hildreth State Company, Inc., Hildreth, Nebraska, and thereby indirectly acquire State Bank of Hildreth, Hildreth, Nebraska.

Board of Governors of the Federal Reserve System, January 28, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–2528 Filed 1–31–97; 8:45 am]

BILLING CODE 6210–01–F

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. Once the application has been accepted for processing, it will also

be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the 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, including whether the acquisition of the nonbanking company can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 27, 1997.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. First Equity Corp., Skokie, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of 1st Equity Bank, Skokie, Illinois, a *de novo* bank.

Board of Governors of the Federal Reserve System, January 28, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–2527 Filed 1–31–97; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act, including whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 18, 1997.

A. Federal Reserve Bank of Cleveland (R. Chris Moore, Senior Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Banc One Corporation, Columbus, Ohio; to acquire Banc One Capital Corporation, Columbus, Ohio, and thereby engage in underwriting and dealing to a limited extent in all types of debt and equity securities. *See J.P. Morgan & Co., Inc., The Chase Manhattan Corp., Bankers Trust New York Corp., Citicorp and Security Pacific Corp.*, 75 Fed. Res. Bull. 192 (1989).

Board of Governors of the Federal Reserve System, January 28, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–2526 Filed 1–31–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[Docket No. C–3703]

AAF–McQuay, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order prohibits, among other things, a Kentucky-based manufacturer of residential air filters from making any representation regarding the performance, health or other benefits, or efficacy of air cleaning products, unless the respondent possesses competent and reliable scientific evidence to substantiate such representations.

DATES: Complaint and Order issued January 6, 1997.[1]

FOR FURTHER INFORMATION CONTACT: Michael Milgrom, Federal Trade Commission, Cleveland Regional Office, 668 Euclid Avenue, Suite 520–A, Cleveland, OH 44114–3006. (216) 522–4210.

SUPPLEMENTARY INFORMATION: On Monday, October 28, 1996, there was published in the Federal Register, 61 FR 55641, a proposed consent agreement with analysis In the Matter of AAF–McQuay, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 97–2584 Filed 1–31–97; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3701]

Class Rings, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order permits Class Rings, Inc. to acquire L.G. Balfour Company and prohibits, among other things, Class

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

Rings, Inc. and Castle Harlan from acquiring or agreeing to acquire from Town & Country any stock, share capital, equity, or other interest in or assets of Gold Lance.

DATES: Complaint and Order issued December 20, 1996.[1]

FOR FURTHER INFORMATION CONTACT: Joseph Krauss, FTC/S–3627, Washington, D.C. 20580. (202) 326–2713.

SUPPLEMENTARY INFORMATION: On Tuesday, October 8, 1996, there was published in the Federal Register 61 FR 52796, a proposed consent agreement with analysis In the Matter of Castle Harlan Partners, II, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 97–2585 Filed 1–31–97; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint, the Decision and Order, and Commissioner Azcuenaga's statement are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

[Dkt. C–3702]

Filtration Manufacturing, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order prohibits, among other things, an Alabama-based corporation and three of its officers from making any representation regarding the performance, health or other benefits, or efficacy of air cleaning products, and from using the name ''Allergy 2000'' or any other trade names that represents that such products will relieve allergy symptoms, unless the respondents possesses competent and reliable scientific evidence to substantiate such representations.

DATES: Complaint Order issued January 6, 1997.[1]

FOR FURTHER INFORMATION CONTACT: Michael Milgrom, Federal Trade Commission, Cleveland Regional Office, 668 Euclid Avenue, Suite 520–A, Cleveland, OH 44114–3006. (216) 522–4210.

SUPPLEMENTARY INFORMATION: On Monday, October 28, 1996, there was published in the Federal Register, 61 FR 55642, a proposed consent agreement with analysis In the Matter of Filtration Manufacturing, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 97–2586 Filed 1–31–97; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[Dkt. C–3700]

Wesley-Jessen Corporation; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent order requires, among other things, an Illinois-based manufacturer of opaque contact lenses to divest, within four months, the Pilkington Barnes Hind's opaque lens business to a Commission-approved acquirer.

DATES: Complaint and Order issued January 3, 1997.[1]

FOR FURTHER INFORMATION CONTACT: Catharine Moscatelli, FTC/S–2308, Washington, D.C. 20580. (202) 326–2749.

SUPPLEMENTARY INFORMATION: On Tuesday, October 8, 1996, there was published in the Federal Register, 61 FR 52799, a proposed consent agreement with analysis In the Matter of Wesley-Jessen Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 731; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 97–2587 Filed 1–31–97 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions, and Delegations of Authority

Part A, (Office of the Secretary), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Chapter ABC, ''Office of Intergovernmental Affairs (OIA),'' as last amended at 61 FR 24311, dated May 14, 1966; and Chapter AC, ''Office of Public Health and Science (OPHS),'' as last amended at 60 FR 56606–06 dated November 9, 1995 are being revised. The change is to transfer the military liaison and veterans affairs function from the OIA to the OPHS. The changes are as follows:

I. Under Chapter ABC, ''Office of Intergovernmental Affairs,'' Section ABC.00 Mission, delete any references to the Office of Veterans Affairs and Military Liaison; and under Section 20 Functions, delete the fifth paragraph in its entirety.

II. Under Chapter AC, ''Office of Public Health and Science,'' the ''Immediate Office (ACA),'' add item #12 to read as follows:

12. The Office of Veterans Affairs and Military Liaison provides advice and counsel and appropriate information and liaison to the White House, the Secretary, and the veteran's and military

organizations and associations; develops initiatives with the Department to improve services to veterans and the military; and focuses health and human resources on the needs of all veterans and military families as part of a Health and Human Services/Department of Veterans Affairs/Department of Defense initiative to better serve their health and human service needs. Provides coordinative support relating to sick, disabled and disadvantaged veterans/military for research targeted toward specific areas.

Dated: January 28, 1997.

John J. Callahan,

Assistant Secretary for Management and Budget.

[FR Doc. 97–2574 Filed 1–31–97; 8:45 am]

BILLING CODE 4150–04–M

Statement of Organization, Functions and Delegations of Authority; Program Support Center

Part P, (Program Support Center) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (60 FR 51480, October 2, 1995 as amended most recently at 61 FR 53226, October 10, 1996) is amended to reflect changes in Chapter PC with Part P, Program Support Center, Department of Health and Human Services (HHS). These changes will more accurately reflect the responsibilities of the Divisions within the Financial Management Service.

Program Support Center

Under *Part P, Section P–20, Functions,* change the following:

Chapter PC, Financial Management Service (PC) is amended as follows:

Delete the functional statement in its entirety for the *Division of Payment Management (PCC)* and substitute it with the following:

Division of Payment Management (PCC)

(1) Manages a Payment Management System (PMS) which pays the HHS grants and contracts and provides such services to other Departments; (2) assures the timely payment to grantees and contractors and prescribes requirements for grantee and contractor reporting of expenditures and accountability of Federal cash received; (3) operates and provides the automated data processing support and maintenance of the PMS; (4) approves payments to grant recipients; (5) manages Federal cash in the hands of grant recipients; (6) provides technical guidance to HHS components in the area of electronic commerce and electronic funds transfer; (7) provides financial data to customer agencies relative to grant activity; (8) collects, deposits, and reports interest earned on Federal funds held by all non-governmental recipient organizations; (9) provides debt management services to customer agencies; (10) maintains liaison with Federal regulatory agencies and National Banking Associations relative to cash management, financial reporting, electronic commerce, and electronic funds transfer, and (11) maintains, operates and develops policy in support of the Departmental Central Registry System.

Under the heading *Division of Fiscal Services (PCE*), delete the title and functional statement in its entirety and substitute the following:

Division of Financial Operations (PCE)

(1) Provides comprehensive accounting and fiscal services for HHS and other customer agencies; (2) performs all financial transactions necessary to implement the authorized budget and program plans of customer agencies; (3) provides complete financial reporting for all customers as required for both program management and oversight agencies to meet or exceed all applicable accounting standards; (4) provides complete debt management services; (5) directs planning and implementation of accounting systems and procedures; (6) furnishes fiscal advice for contracting and purchasing operations; (7) provides financial technical and policy guidance to headquarters and field program offices to support design and operation of authorized programs; (8) maintains accounts of designated programs; (9) provides advice on the proper use of appropriated and other funds; (10) prepares auditable financial statements for internal and external use; (11) analyzes and audits financial transactions; (12) leads or participates in the design and development of new or modified accounting systems; (13) provides liaison and representation on fiscal and accounting matters for customer agencies; (14) provides for integration of accounting and related management control systems; (15) performs financial and management control reviews; (16) provides a full range of disbursement services for customer agencies; and (17) provides comprehensive ADP support for all financial operations.

Dated: January 28, 1997.

Lynnda M. Regan,

Director, Program Support Center.

[FR Doc. 97–2612 Filed 1–31–97; 8:45 am]

BILLING CODE 4160–17–M

Centers for Disease Control and Prevention

National Center for HIV, STD, and TB Prevention; Meetings

The National Center for HIV, STD, and TB Prevention (NCHSTP) of the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Consultation on Guidelines for HIV Prevention Case Management, a Behavioral Prevention Intervention Conducted by Public Health Programs in the United States.

Times and Dates: 8:30 a.m.–5 p.m., February 18, 1997; 9 a.m.–4:15 p.m., February 19, 1997.

Place: Wyndham Garden Hotel, 125 10th Street, Atlanta, Georgia 30309, telephone 404/873–4800, fax 404/872–7377.

Status: Open to the public for participation, comment, and observation, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: To invite comment from recognized representatives of public health agencies and the public on revising the existing prevention case management guidelines. HIV Prevention Case Management was initially funded by CDC in 1992. Guidelines for this intervention were published in ''Guidelines for Health Education and Risk Reduction Activities,'' U.S. Department of Health and Human Services, April 1995. Because prevention case management is a relatively new type of HIV prevention intervention, important issues have emerged based on the experiences of those implementing the first programs of this type.

Matters to be Discussed: Agenda items will focus on discussion of prevention case management practices and principles for the purpose of disease control and prevention in the United States concerning HIV, STD, and TB.

Contact Person For More Information: Amy DeGroff, Division of HIV/AIDS Prevention, NCHSTP, CDC, M/S E40, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–2918.

Dated: January 28, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–2571 Filed 1–31–97; 8:45 am]

BILLING CODE 4163–18–P

National Center for Health Statistics; Meeting

The National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following meeting:

Name: 1997 Joint Meeting of the Public Health Conference on Records and Statistics and the Data Users Conference.

Times and Dates: 9 a.m.–5 p.m., July 28–30, 1997; 9 a.m.–12:30 p.m., July 31, 1997.

Place: Omni Shoreham Hotel, 2500 Calvert Street, N.W., Washington, D.C. 20008.

Status: Open to the public, limited only by the space available. Preregistration is recommended, and there is no registration fee. Please obtain registration information from the contact person listed below.

Purpose: The agenda will focus on collaborations for health information sharing among the various stakeholders and partners in public health. Papers presented will address the theme, ''Partnerships, Technologies, and Communities: Evolving Roles for Health Data.'' Each day will focus on a public health issue as follows: Day 1, ''Health Information Partnerships—National, State, and Local;'' Day 2, ''Information Technology and Informatics;'' and Days 3 and 4, ''Communities at Risk.'' This agenda will cover a broad spectrum of current and future public health concerns. Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Substantive program and registration information for the meeting may be obtained from Barbara Butler, Public Health Conference on Records and Statistics, Office of Data Standards, Program Development, and Extramural Programs, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7122, extension 144.

Dated: January 28, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–2580 Filed 1–31–97; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

[Docket No. 97F–0035]

Ashland Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ashland Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polypropylene glycol with a molecular weight of 1,200 to 3,000 as a defoaming agent in water for sliced potatoes.

DATES: Written comments on the petitioner's environmental assessment by March 5, 1997.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vivian M. Gilliam, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3167.

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 6A4490) has been filed by Ashland Chemical Co., One Drew Plaza, Boonton, NJ 07005. The petition proposes to amend the food additive regulations in § 173.340 *Defoaming agents* (21 CFR 173.340) to provide for the use of polypropylene glycol with a molecular weight of 1,200 to 3,000 as a component of defoaming agents in water for sliced potatoes.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the original petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before March 5, 1997, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the Federal Register. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: January 17, 1997.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 97–2532 Filed 1–31–97; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 96N–0391]

Review of Infant Formula Nutrient Requirements for Preterm Infants; Announcement of Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) and the Life Sciences Research Office (LSRO) of the Federation of American Societies for Experimental Biology (FASEB) are announcing an open meeting on the review of infant formula nutrient requirements for preterm infants. The LSRO/FASEB has undertaken this review and will prepare a documented scientific report that summarizes the available information. To assist in the preparation of its scientific report, LSRO/FASEB is inviting the submission of scientific data, information, and views bearing on this topic both in writing and orally at the open meeting.

DATES: The LSRO will hold a 1-day open meeting on this topic on March 26, 1997. The meeting will begin at 9 a.m. Requests to make oral presentations at the open meeting must be submitted in writing and received by March 7, 1997. To be included in the review process, written presentations of scientific data, information, and views should be submitted on or before June 30, 1997. Written materials arriving at LSRO/FASEB on or before March 20, 1997, will be part of the official record of the open meeting.

ADDRESSES: The open meeting will be held in the Chen Auditorium, Lee Bldg., Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD. Written requests to make oral presentations of scientific data, information, and views at the open meeting should be submitted to Daniel J. Raiten (address below) and to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Two copies of the scientific data, information, and views are to be submitted to each office. These two copies are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel J. Raiten, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814–3998, 301–530–7030 or Linda H. Tonucci, Center for Food Safety and Applied Nutrition (HFS–456), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5372.

SUPPLEMENTARY INFORMATION: FDA has a contract (223–92–2185) with FASEB concerning the analysis of scientific issues that bear on the safety of foods and cosmetics. The objectives of this contract are to provide information to FDA on general and specific issues of scientific fact associated with the analysis of human nutrition.

Infant formulas for infants with low birthweight are regulated as exempt infant formulas under the Infant Formula Act of 1980 and its 1986 amendments (21 U.S.C. 350a). Exempt infant formulas may have nutrients or nutrient levels that are different from those that are codified in 21 CFR 107.100, if the manufacturer of the infant formula can justify the nutrient deviation. LSRO will perform a review to consider the scientific basis for having different recommendations for energy and macronutrients (protein, fat, including long-chain polyunsaturated fatty acids (LCPUFA's), and carbohydrates) in formulas for low birthweight preterm infants.

In the Federal Register of November 15, 1996 (61 FR 58566), FDA announced that it asked FASEB, as a task under contract 223–92–2185, to provide FDA's Center for Food Safety and Applied Nutrition with both an up-to-date review of nutrient requirements of preterm infants and of the effects of new information about nutritional needs of preterm infants on recommendations for levels of nutrients in formulas for preterm infants. In response to this request, FASEB has directed LSRO to obtain state-of-the-art scientific information on infant nutrient requirements and related scientific questions on specifications for preterm infant formula. The LSRO/FASEB has undertaken a study and will prepare a documented scientific report that summarizes the available information related to these questions.

LSRO is performing a review of the scientific and medical literature with a particular emphasis on studies published since 1986, when 21 U.S.C. 350a was last amended. Requirements of other governmental bodies are also being considered in this review. Specifically, LSRO will address the following issues in its review:

(1) What scientific basis is there to support requirements for energy and macronutrients (protein, fat, and carbohydrates) in infant formulas intended for use by preterm infants as distinct from the requirements for energy and macronutrients in formulas for term infants? The American Academy of Pediatrics, the European Society for Pediatric Gastroenterology and Nutrition, and the Canadian Pediatric Society have proposed some nutrient requirements for preterm infants distinct from those for term infants.

(2) Has scientific knowledge advanced to the point that distinct composition standards for energy and macronutrients in formulas for these preterm infants are warranted?

(3) Nutrient requirements of hospitalized preterm infants who are fed enteral formulas are sometimes described according to stages, such as a first or transition stage (between birth and 10 days of age), a stable growing stage (from about 10 days until discharge from hospital, 6 to 8 weeks after birth), and a post-discharge stage (from discharge home to approximately 1 year of age). Is there scientific evidence to support more than one set of energy and macronutrient requirements to support growth and development of the hospitalized preterm infant at the different stages of development? If so, how should the stages be defined?

(4) Are the energy and macronutrient requirements for infant formulas for term infants sufficient for healthy post-discharge preterm infants?

(5) Is there scientific evidence to support specific deviations from current nutrient standards for healthy post-discharge preterm infants, and if so, what would they be, and to what stage (age/weight) should these special formulas be given?

(6) Does available evidence establish the essentiality of addition of subcomponents of the macronutrients (specifically, taurine, carnitine, and LCPUFA's) to formulas for preterm infants, and if so, does the evidence establish what the amount and ratios of these compounds should be in the formula? For example, the Canadian *Guidelines for the Composition and Clinical Testing for Formulas for Preterm Infants* (p. 17) finds that term infant formulas that contain adequate and balanced 18:2n-6 and 18:3n-3 fatty acids do not require addition of the 20 and 22 carbon n-6 and n-3 fatty acids.

(7) Is there available evidence to suggest that this result also applies to preterm infant formulas? If so, is there an optimum level and ratio of 18:2n-6 and 18:3n-3 fatty acids in formulas for preterm infants?

(8) Does the available evidence address the issue of safety of various sources of these LCPUFA's for use in preterm infant formulas? If so, is there a safe source of LCPUFA's?

(9) Does available evidence establish the essentiality of the addition of nucleotides to formulas for preterm infants, and if so, does the evidence establish what the amounts should be in the formulas?

LSRO will use these questions as a guide in the drafting of its report. LSRO notes that, in arriving at answers to the above questions, it will consult with the American Academy of Pediatrics' Committee on Nutrition and, to the extent possible, the Institute of Medicine's Food and Nutrition Board. LSRO will prepare a comprehensive final report that documents and summarizes the results of its evaluation.

Under its contract with FDA, FASEB will provide the agency with its scientific report on or about September 30, 1997.

Dated: January 24, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–2493 Filed 1–31–97; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Ryan White Title IV; Grants for Coordinated HIV Services and Access to Research for Children, Youth, Women, and Families

AGENCY: Health Resources and Services Administration, HRSA.

ACTION: Notice of availability of funds.

SUMMARY: The HRSA announces that approximately $15.5 million in fiscal year (FY) 1997 funds will be available for project grants that enhance access to clinical research trials and other research, and develop and support the provision of coordinated comprehensive services and activities for children, youth, women and families infected/affected by the Human Immunodeficiency Virus (HIV). Grants will be funded that link clinical research and other research activities with comprehensive care systems, and improve and expand the coordination of a system of comprehensive care for children, youth, women, and families who are infected/affected by HIV. These projects are authorized under Section 2671 of the Public Health Service Act, as amended by the Ryan White Comprehensive AIDS Resource Emergency (CARE) Act Amendments of 1996, Public Law 104–146 (42 U.S.C. 300f–71). Within the HRSA, Ryan White Title IV projects are administered by the Maternal and Child Health Bureau (MCHB).

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS national activity for setting

priority areas. Title IV directly addresses the Healthy People 2000 objectives related to the priority area of HIV infection. Potential applicants may obtain a copy of *Healthy People 2000* (Full Report; Stock Number 017–001–0474–0) or *Healthy People 2000* (Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone 202–512–1800).

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases any portion of a facility) in which regular routine education, library, day care, child care or early development services are provided to children.

ADDRESSES: Federal Register notices and application guidance for MCHB programs are available on the World Wide Web via the Internet at address: http://www.os.dhhs.gov/hrsa/mchb. Click on the file name you want to download to your computer. It will be saved as a self-extracting (Macintosh or) WordPerfect 5.1 file. To decompress the file once it is downloaded, type in the file name followed by a <return>. The file will expand to a WordPerfect 5.1 file.

For applicants for Ryan White Title IV Grants who are unable to access application materials electronically, a hard copy (Revised PHS form 5161–1, approved under OMB clearance number 0937–0189) may be obtained from the HRSA Grants Application Center. The Center may be contacted at: Telephone Number: 1–888–300–HRSA, FAX Number: 301–309–0579, E-mail Address: HRSA.GAC@ix.netcom.com. Completed applications should be returned to: Grants Management Officer (CFDA #93.153), HRSA Grants Application Center, 40 West Gude Drive, Suite 100, Rockville, Maryland 20850.

DATES: The application deadline date for Ryan White Title IV grants is April 18, 1997. Competing applications will be considered to be on time if they are:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline date and received in time for orderly processing.

As proof of timely mailing, applicants should obtain a legibly dated receipt from the commercial carrier or the U.S. Postal Service; private metered postmarks will not be accepted as proof of timely mailing. Late applications not accepted for processing will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: Additional information regarding technical and program issues may be obtained from: Marilyn J. Vranas, Project Officer, Division of Services for Children with Special Health Care Needs, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18–A–19, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone 301–443–9051. Requests for information concerning administration and business management issues should be directed to: Sandra Perry, Chief, Grants Management Branch, Maternal and Child Health Bureau, 5600 Fishers Lane, Room 18–12, Rockville, Maryland, 20857, telephone 301–443–1440.

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

The Pediatric AIDS Program was initiated in 1988. The program grew from 13 projects funded at $4.4 million to a total of 51 projects funded at $27.4 million in FY 1995. Since 1988, the program has evolved from a primary focus on the coordination of services for the management and care of infected children and their families to also address the broader prevention and care needs of youth and women infected/affected by HIV. In FY 1994, Congress funded the Pediatric AIDS Program under section 2671, Title IV of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act 1990, Public Law 101–381 (Title IV). As a consequence of authorization under Title IV, the focus of the program was expanded to include the development of innovative models linking clinical trials offered by the National Institutes of Health (NIH) and other research entities, with systems of comprehensive primary/community-based medical and social services.

In 1994, published results from a NIH clinical trial (ACTG 076) demonstrated the potential for reducing perinatal HIV transmission by two-thirds when pregnant women and their newborns were given zidovidine (ZDV). The ZDV therapy regimen has been published in the Centers for Disease Control's Morbidity and Mortality Weekly Report (MMWR 1994:43(RR–11)).

In 1995, the CDC issued recommendations for enhanced voluntary HIV counseling and testing for women of child bearing age, and the HRSA issued an *Advisory: The Use of Zidovidine (ZDV) to Reduce Perinatal HIV Transmission in HRSA-Funded Programs.* This advisory contains practical, specific steps for implementing PHS recommendations for offering ZDV to pregnant women. A copy of this advisory will be included in the application kit. All Title IV grantees are expected to implement the ZDV recommendations.

The 1996 amendments to the Ryan White CARE Act impose new requirements on the services to be provided or arranged by the applicant, require coordination with other providers of health care services under the Ryan White Care Act and Title V of the Social Security Act, enhance opportunities for and participation in clinical and other research by Title IV clients, specify arrangements that must exist between Title IV programs and research entities, and enhance opportunities for Title IV clients to participate in clinical research. The law requires new grantees to enroll a significant number of clients in clinical trials or other research by the end of the second grant year.

The amended Ryan White law does not define the term ''significant participation''. Nor does it define the type of research in which patients are to participate; it specifies only ''research for the prevention and treatment of HIV disease''. The law mandates the Secretary to establish a group composed of providers, consumers and researchers to recommend priority research protocols to be put on a list. Given that these two key legislative terms will not be defined prior to the application due date, we will not use significant participation in research protocols as an evaluation criterion in the review of applications for new FY 1997 grants. Rather, new applicants will be expected to have demonstrable research linkages or credible plans to link services to research; offer clients research opportunities; and support client participation in research through case management, transportation, and other required services. See REVIEW CRITERIA for the list of evaluation criteria.

Eligible Applicants

Ryan White Title IV grants may be made only to public and nonprofit private entities that provide primary care, directly or through contracts.

Funding Categories

For FY 1997, there will be a single funding category for competition: Grants for coordinated HIV services and access to research for children, youth, women, and families. Applications which do not fall within this category will not be considered for funding. Up to 23 grants,

at an estimated $15.5 million will be awarded. The project period is 3 years.

These grants will develop and support innovative projects that foster collaboration between clinical research institutions and family-centered, primary/community-based medical and social service programs, and that coordinate systems of comprehensive HIV care for children, youth, women and their families. Projects are expected to focus on local capacity-building, making maximum use of all available public and private resources, and to strengthen existing comprehensive care infrastructures.

Activities under these grants should address the goals of:

—Increasing client access by linking HIV/AIDS clinical research trials and activities with comprehensive care; and
—Fostering the development and support of comprehensive, culturally competent, community-based and family-centered care infrastructures; and emphasizing prevention within the care system.

Preference for funding in Category (1) will be given to projects that have:

—Established and currently support a comprehensive, coordinated, system of HIV care serving either children, youth, women, or families; and
—Linked with, or initiated activities to link with, clinical trials or other research.

This means that these projects will be funded ahead of new groups of applications in this category.

Special consideration for funding may be given to projects which help to achieve an equitable geographical distribution of projects across all States and territories. This means that the score of an individual project may be favorably adjusted if it addresses this objective.

Special Concerns

Grantees supported by Title IV of the Ryan White CARE Act should coordinate their projects with other Federal, State, and local programs concerned with HIV and/or serving the target population of children, youth, women and families affected by or at risk for HIV, particularly: Title V Maternal and Child Health programs; Ryan White Titles I, II and III(b) programs; providers funded by the Substance Abuse and Mental Health Services Administration; the Health Resources and Services Administration; the Centers for Disease Control and Prevention efforts; and clinical trials funded by NIH or other sources.

HRSA's Maternal and Child Health Bureau places special emphasis on improving service delivery to women, children and youth from communities with limited access to comprehensive care. In order to assure access and cultural competence, it is expected that projects will involve individuals from the populations to be served in the planning and implementation of the project. The Bureau's intent is to ensure that project interventions are responsive to the cultural and linguistic needs of special populations, that services are accessible to consumers, and that the broadest possible representation of culturally distinct and historically underrepresented groups is supported through programs and projects sponsored by the MCHB.

In keeping with the goals of advancing the development of human potential, strengthening the Nation's capacity to provide high quality education by broadening participation in MCHB programs of institutions that may have perspectives uniquely reflecting the Nation's cultural and linguistic diversity, and increasing opportunities for all Americans to participate in and benefit from Federal public health programs, HRSA will place a funding priority on projects from Historically Black Colleges and Universities (HBCU) or Hispanic Serving Institutions (HSI) in all categories and subcategories in this notice for which applications from academic institutions are encouraged. This is in conformity with the Federal Government's policies in support of White House Initiatives on Historically Black Colleges and Universities (Executive Order 12876) and Educational Excellence for Hispanic Americans (Executive Order 12900). An approved proposal from a HBCU or HSI will receive a 0.5 point favorable adjustment of the priority score in a 4 point range before funding decisions are made.

Review Criteria

Applications will be reviewed with particular attention to inclusion of women and persons from culturally distinct populations. Funding will be provided to those which, in the Department's view, best meet the statutory purposes of the Ryan White Title IV program and address achievement of the Healthy People 2000 objectives related to HIV infection.

Applications for grants will be reviewed and rated by objective review panels according the following weighted criteria:

—Documentation of the HIV medical and social support service needs of children, youth, women and families (weight 15%);
—Demonstration of capacity to coordinate and support a comprehensive system of HIV care for this population (weight 20%);
—Demonstrated capacity to enhance client access to clinical trials or other research and/or to establish linkages with providers offering clinical trials or other research (weight 20%);
—The degree to which the Title IV's program priority of consumer involvement has been implemented (weight 10%);
—The degree to which the proposed plan: Addresses the issues identified in response to the first criterion on this list; reflects the legislative and programmatic priorities of the Title IV program (access to clinical trials, reduction of perinatal HIV transmission and consumer involvement); contains goals and objectives that are clear, measurable, time framed and address identified needs; and presents an evaluation strategy capable of documenting the achievement of project goals (weight 25%); and
—The degree to which the proposed budget clearly supports administrative and programmatic activities necessary to manage the program and accomplish proposed goals and activities. (weight 10%)

Review criteria will be described in further detail in the application guidance.

Allowable Costs

The HRSA may support reasonable and necessary costs of HIV Project grants within the scope of approved projects. Allowable costs may include salaries, equipment and supplies, travel, contractual arrangements, consultants, and others, as well as indirect costs. The HRSA adheres to administrative standards reflected in the Code of Federal Regulations (45 CFR part 92 and 45 CFR part 74). All other sources of funding to support this project must be accurately reflected in the applicant's budget.

Reporting Requirements

A successful applicant under this notice will submit reports in accordance with the provisions of the general regulations which apply under 45 CFR part 74, subpart J, Monitoring and Reporting of Program Performance, with the exception of State and local governments to which 45 CFR 92.40 will apply. Financial reporting will be required in accordance with 45 CFR part 74, subpart I, with the exception of State

and local governments, to which 45 CFR part 92, subpart C will apply.

Public Health System Reporting Requirements

This program is subject to the Public Health System Reporting Requirements (approved under OMB No. 0937–0195). Under these requirements, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

(a) A copy of the face page of the application (SF 5161).

(b) A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State and local health agencies.

The project abstract may be used in lieu of the one-page PHSIS, if the applicant is required to submit a PHSIS.

Executive Order 12372

The Title IV Program has been determined to be subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice (Form PHS 5161–1 with revised face sheet HHS Form 424 and with Program Narrative and Checklist approved under OMB 0937–0189) will contain a listing of States which have chosen to set up such a review system and will provide a single point of contact (SPOC) in the States for review. Applicants (other than federally-recognized Indian tribal governments) should contact their State SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to ''accommodate or explain'' State process recommendations it receives after that date. (See part 148, Intergovernmental Review of PHS Programs under Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements.)

(The OMB Catalog of Federal Domestic Assistance number for the HIV Program for Children, Youth, Women, and Families is 93.153.)

Dated: January 27, 1997.

Ciro V. Sumaya,

Administrator.

[FR Doc. 97–2374 Filed 1–31–97; 8:45 am]

BILLING CODE 4160–15–P

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of March, 1997.

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: March 13, 1997; 9:00 a.m.—4:30 p.m.

Place: Parklawn Building, Conference Room E, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.

The first day of the meeting, Wednesday, March 12, will consist of a meeting of one of the Commission's workgroups.

Name: Workgroup on Intent, Provisions and Process.

Time: March 12, 1997; 10:00 a.m.—5:00 p.m.

Purpose: The Workgroup will address issues related to the operation process of the National Vaccine Injury Compensation Program.

Agenda: Agenda items will include, but not be limited to, discussion of the following issues: Status of recommendations from the September and December 1996 WIPP meetings; Program and policy issues related to the operation of the Vaccine Injury Compensation Program, including proposals to revise the wage loss calculation, to provide for an interim payment of attorneys fee and expenses, and to extend the statute of limitations; and a report on the Department of Justice's Process Improvement Initiatives.

The full Commission will meet on Thursday, March 13, from 9:00 a.m. to 4:30 p.m. Agenda items will include, but not be limited to: an overview of the Vaccine Injury Compensation Program; reports from the Workgroup on Intent, Provision, and Process and the Vaccine Safety Subcommittee; an update on the Proposed Vaccine Information Statement for DTaP; and routine Program reports.

Public comment will be permitted before lunch and at the end of the Workgroup meeting on March 12, as well as the full Commission meeting on March 13. Oral presentations will be limited to 5 minutes per public speaker.

Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Ms. Melissa Palmer, Principal Staff Liaison, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–35, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–6593. Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation Program will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation, but desire to make an oral statement, may sign-up in Conference Room E on March 12–13. These persons will be allocated time as time permits.

Anyone requiring information regarding the Commission should contact Ms. Palmer.

Agenda Items are subject to change as priorities dictate.

Dated: January 28, 1997.

J. Henry Montes,

Director, Office of Policy and Information Coordination, HRSA.

[FR Doc. 97–2487 Filed 1–31–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4200–N–19]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: April 4, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven days from the date of this Notice. Comments should

refer to the proposal by name and/or OMB approval number and should be sent to: Mr. Oliver Walker, Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Faye Norman, Office of Multifamily Housing Development, 451 7th Street, Southwest, Washington, DC 20410 telephone (202) 708–0624 ext 2482. This is not a toll-free number. Copies of the proposed questionnaire and other available documents may be obtained from Ms. Norman.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Neighborhood Underwriting Guidelines Questionnaire.

OMB Control Number: 2502–xxxx.

Description of the need for the information and proposed use:

This Notice describes the questionnaire to be used by Applicants for FHA's Neighborhood Underwriting process. The purpose of the questionnaire is to provide additional information to assist FHA in evaluating the effect of the other developments in the neighborhood upon the proposed project and will consider the potential effect of the proposed project upon existing or other proposed developments.

I. Background

Neighborhood Underwriting establishes as official HUD policy an important role for FHA in assuring that any use of mortgage insurance takes into consideration the health of the entire neighborhood. While playing an active role of participation with local leaders in planning for new housing initiatives, coordinates a wide spectrum of existing resources (relating to both bricks and mortar and other neighborhood amenities), and identifies neighborhood needs for social, educational and economic development initiatives.

Neighborhood Underwriting will encourage FHA field staff to base underwriting decisions, in part, upon a proposal's effect upon the neighborhood and vice versa.

FHA wants to target its efforts (and make its mortgage insurance available) in those communities and neighborhoods which have in place a mechanism for area-wide comprehensive planning, decision making, and problem-solving. FHA feels that where these local processes are ongoing, there is greater likelihood for neighborhood stability, market attractiveness, and long-term financial viability of FHA-insured housing.

The process of Neighborhood Underwriting is expected to bring FHA much closer to local concerns, enhance the positive impact of FHA-insured developments on the neighborhood, and—at the same time—afford greater financial security to the FHA mortgage insurance fund. This process represents a natural and major step forward in FHA's integration of its programs with neighborhood needs, as well as a prudent step forward in protecting the long-term value of FHA's investments.

Neighborhood Underwriting is FHA's way of supporting and enhancing the Department's broader initiatives relative to placebased development and partnerships. Through Neighborhood Underwriting, the Department will encourage and foster coordination across cylinders within HUD. This focus is consistent with the Department's emphasis upon place-based program efforts.

Dated: January 28, 1997.

James E. Schoenberger,

Associate General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 97–2598 Filed 1–31–97; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. FR–4181–N–02]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: April 4, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, S.W., Room 4238, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0846, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public Housing Drug Elimination Program (PHDEP) Outcome Monitoring System.

OMB Control Number: 2577–0190.

Description of the need for the information and proposed use: Housing Agencies (HAs) that receive PHDEP grants are subject to certain reporting requirements (24 CFR 961.28) in connection with grant administration. The Outcome Monitoring System assists grantees in fulfilling their reporting requirements without undue burden. Grantees are required to provide the local HUD Area Office with a semi-annual performance report that

evaluates the grantee's performance against its plan. These reports shall include in summary form (but are not limited to) the following: any change or lack of change in crime statistics. . . .'' In HUD has required grantees to develop an evaluation process to measure the effects of the PHDEP-funded activities on the drug-related problems in the targeted developments. The grantees conduct very diverse activities in their local PHDEP programs. Certain key characteristics and goals are, however, common to most local PHDEP programs. The Outcome Monitoring System is a structured means of collecting information, from all PHDEP grantees, that will address the changes in drug-related problems at targeted developments.

Agency form numbers; HUD–52356.

Members of affected public: PHAs; IHAs.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: On a semi-annual basis, 650 respondents, two responses per respondent, 1300 total responses, 1300 total burden hours.

Status of the proposed information collection: Reinstatement.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 27, 1997.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–M

Public Housing Drug Elimination Program
Outcome Monitoring Report

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0190 (exp. 3/31/96)

Public reporting burden for this collection of information is estimated to average 16 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2577-0190), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

Do not send this form to the above address.

HUD regulations in 24 CFR 961.28, require HAs that receive Public Housing Drug Elimination Program (PHDEP) grants to report information for the Outcome Monitoring System. The information includes crime statistics, participation and performance indicators, and linkages with outside agencies. HUD will use the information to monitor data on a comparable basis across different grants, to allow better assessment of local program performance and to provide better identification of patterns across the national program. In addition, HUD intends to use the System to learn about non-traditional indicators being used by PHDEP grantees, so that its ability to assess progress and impact can be improved in the future. Responses to the collection of information are required to obtain a benefit. The information requested does not lend itself to confidentiality.

Complete one set of forms each semi-annual period for all Public Housing Drug Elimination Program (PHDEP) grant activities combined. If the HA has received more than one PHDEP grant, consolidate counts from all grants and report on one form.

Name of HA:		HA Code:
Total Number of Units in Management: ☐ 1,250 or more ☐ Less than 1,250	PHDEP Grant Numbers:	
Contact Person's Name & Phone No: (include area code)	Reporting Period: (report for semi-annual periods) ☐ 1st: January - June, 19 _____ ☐ 2nd: July - December, 19 _____	Date of this Report:

List the name, address and population of each PHDEP-targeted development. If a HA has targeted more than four developments, choose the four developments that receive the most PHDEP funds. If you cannot report on targeted developments, define below the area (or combination of developments) for which you are reporting. Please refer to these numbers and these reporting areas in tables 3 and 5.

PHDEP-targeted Developments or Areas

Name	Location/Boundaries	Total Number of Resident Households	Total Number * of Residents	Month/Year in which PHDEP Grant Activity Began **
1.				
2.				
3.				
4.				

* Include all household members.

** For targeted areas, report calendar year in which PHDEP grant activity began in any portion of the reporting area.

Table 1: **Crime Statistics and Other Crime and Drug-Related Indiciators**

Provide crime statistics for PHDEP-targeted developments and the larger community. The larger community should be the same as the local reporting unit for the FBI's Uniform Crime Reporting Program. Please identify this larger community below.
If development- or area-level statistics are not available, provide crime statistics for the smallest reporting area that includes all of each targeted development or area. Please indicate below the reporting areas used for crime statistics.

Name of the larger Community:	Type of Community: ☐ City or Municipality ☐ County ☐ Other	Population of Community:

Reporting Area for Crime Statistics

Check box if same as page 1 *or...* if Other: (please define reporting area)

Development or Area 1 ☐ _____
Development or Area 2 ☐ _____
Development or Area 3 ☐ _____
Development or Area 4 ☐ _____

Enter "U" where data are unknown. **Crime Statistics** (during ***this period*** only)		Community Wide	Development or Area 1	Development or Area 2	Development or Area 3	Development or Area 4
1. Reported *UCR Part 1* Offenses: [1]	Murder					
	Robbery					
	Total					
2. Total Arrests for Drug Offenses:						
3. Total Calls for Service: (to 911 or other emergency service systems)						
Other Crime and Drug-Related Indicators (during ***this period*** only)						
4. Number of Open-Air Drug Markets Observed:						
5. Number of Drive-by Shootings:						
6. Number of Vandalism-related Repairs or Replacements of Outdoor Lighting: (bulbs or fixtures)						
7. Other:						
8. Other:						

[1] Grand total reported in column 4 of the Uniform Crime Report. Includes murder and non-negligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny theft, and motor vehicle theft. Does not include arson.

Table 2: **PHDEP Participation/Performance Indicators**

Answer all items that apply to your program. Statistics should reflect this quarter only. Report unduplicated numbers of participants in PHDEP-sponsored activities. For example, for a course meeting weekly for six weeks with 10 participants, report 10 attendees, not 60. However, if the same individuals participated in multiple activities, they should be counted as separate participants in each activity. Report all of the indicators for the PHDEP program as a whole.

Enter "U" where data are unavailable or unknown.
Enter "X" if the PHDEP program does not include the listed program or activity.

Indicators (during ***this period*** only)	HA-Wide
1. Youth Education/Tutoring Activities (e.g., after-school tutoring programs, GED prep classes, etc.)	
2. Youth Recreational/Cultural Activities (e.g., sports programs, cultural sensitivity or awareness training, etc.)	
3. Youth Job Training / Job Search / Employment Programs (e.g., training on preparing resumes, job skills programs, job placement services, etc.)	
4. Youth Mentoring Programs (e.g. self awareness, positive role models, etc.)	
5. Adult Education/Literacy Programs (e.g., reading programs, ESL, computer skills, etc.)	
6. Adult Job Training/Job Search/Employment Programs (e.g., job placement, job readiness, job skills programs, etc.)	
7. Adult Case Management/Referral (numbers of residents receiving case management services or referrals)	
8. Parenting / Family Support Services (e.g., programs for single mothers, parenting programs for grandparents, etc.)	
9. Substance Abuse Education (e.g., prevention or education programs on over-the-counter drugs, dealing with drug abuse within the family, etc.)	
10. How many Residents are receiving Substance Abuse Counseling/Treatment	
11. How many Residents Participated in Resident Patrols (foot patrols, bike patrols, etc.)	
12. How many Residents Participated in Neighborhood Watches	
13. How many PHDEP Activities were being Run by Residents (organized and/or staffed by residents)	
14. How many PHA/IHA Residents were Employed by the PHDEP program	

Table 3: **HA Management Indicators**

For HAs with fewer than 1,250 units, report only HA-wide statistics.
For HAs with 1,250 units or more, fill in the table for each targeted development or area, ***as well as*** HA-wide.

Enter "U" where data are unavailable or unknown.

Indicators (during ***this period*** only)	HA-Wide	HAs with More than 1,250 Units Only: Development or Area 1	Development or Area 2	Development or Area 3	Development or Area 4
1. Vacancy Rates:(percentage of total units available for occupancy)	%	%	%	%	%
2. Unit Rejection Rates for • Total number of Unit Offers to prospective tenants:					
• Total number of Unit Offers Turned Down by applicants:					
3. Average Number of calendar days between a unit becoming vacant and re-rental (count both week days and weekend days)	days	days	days	days	days
4. Number of Notices of Evictions Issued for Cause:					
5. Total Evictions for Cause Executed: (including lease violations of any sort)					
6. Total Evictions for Non-payment Executed: (30 days in arrears or other guidelines set forth by the HA)					
7. Number of Resident Households Reporting Income from Employment:					
8. Tenant Accounts Receivable (monies owed to HA by residents in possession as a percentage of total rent roll)	%	%	%	%	%

Table 4: **External Linkages**

Indicate which of the following types of outside agencies were actively involved in management or service provision in the PHDEP during this period:

Type of Agency	Check if actively involved ***during this period***
Public Schools / School System	☐
Parks and Recreation	☐
Mental Health Agencies	☐
Human or Social Services Agencies	☐
Economic Development Agency	☐
Community Development Agency	☐
Community Action Agency	☐
Neighborhood Organization(s)	☐
Other Community-Based Organization(s)	☐
Probation/Court System	☐
Private Industry Council (PIC)	☐
Local Business / Business Association	☐
Local Colleges/Universities	☐
Foundation(s)	☐
Police Department	☐
Weed and Seed Committee	☐
U.S. Attorney	☐
Other: (specify)	☐
Other: (specify)	☐

Table 5: **Suggested Questions for Resident Survey**

Development or Area No: 1☐ 2☐ 3☐ 4☐	Name of Development or Area:	Dates of Survey (mo./yr.) from: to:

Question A Frequency of ...	Number of Respondents to each Question	Percent answering for Each Category: Never 1	2	3	4	5	Always 6
· sitting or walking in development (daytime)		%	%	%	%	%	%
· sitting or walking in development (after dark)		%	%	%	%	%	%
· letting children play or walk in development (daytime)		%	%	%	%	%	%
· letting children play or walk in development (after dark)		%	%	%	%	%	%

Question B Compared to 1 year ago, how safe are you while...		Less 1	Same 2	More 3
· in apartment		%	%	%
· in development (daytime)		%	%	%
· in development (after dark)		%	%	%

Question C Level of drug and crime-related problems in this development...		Hardly any at all 1	2	3	4	5	A Great Deal 6
· how much concealed drug dealing occurs?		%	%	%	%	%	%
· how much open-air drug dealing occurs?		%	%	%	%	%	%
· how much drug use by residents?		%	%	%	%	%	%
· how much vandalism or graffiti?		%	%	%	%	%	%
· how much crime?		%	%	%	%	%	%
· how much gang activity is there?		%	%	%	%	%	%

Question D Compared to 1 year ago, what is the change in the amount of...		Less 1	Same 2	More 3
· concealed drug dealing in development?		%	%	%
· open-air drug dealing?		%	%	%
· drug use by residents?		%	%	%
· vandalism or graffiti?		%	%	%
· crime?		%	%	%
· gang activity?		%	%	%

Question E How much of the crime in your development do you believe is drug-related?		None	Very Little	About Half	Most	All
		%	%	%	%	%

Question F Are the following services offered in your development?	Number of Respondents to each Question	Percent Yes	Percent No
· Education on drugs and alcohol?		%	%
· Drug counseling for youth?		%	%
· Drug treatment for youth?		%	%
· Drug counseling for adults?		%	%
· Drug treatment for adults?		%	%
· Police Foot Patrols?		%	%
· Police Cruiser Patrols?		%	%
· Resident Patrols?		%	%

[FR Doc. 97–2599 Filed 1–31–97; 8:45 am]
BILLING CODE 4210–33–C

[Docket No. FR–4046–N–02]

Notice of Proposed Information Collection for Public Comments

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: April 4, 1997.

ADDRESSES: Interested person are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4238, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642 extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public Housing Drug Elimination Program—Technical Assistance—Application Requirements and Reporting.

OMB Control Number: 2577–0133.

Description of the need for the information and proposed use: HUD will require eligible applicants (Housing Agencies, Resident Management Corporations (RMCs), Resident Councils (RCs)) must contact three Technical Assistance consultants and submit a written justification to HUD listing consultants in order of preference. To participate, consultants will submit a consultant application, complete the Consultant Resource Inventory Questionnaire and resume. The selected consultants and applicants will develop a statement of work which includes a timeline, estimated budget, discussion of the Technical Assistance needed, description of the current crime and drug elimination strategy, and how the requested Technical Assistance will assist the strategy. Other required information will be an application letter, certification statement, and completed and signed Form HUD–2880. The information provided to HUD will be reviewed and evaluate to ensure compliance with Technical Assistance program requirements and to determine eligibility for program participation.

Members of affected public: State or Local Government, Individuals, business or other for profit.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 1,900 respondents, one-time response, 17 hour average per response, 32,000 total reporting burden hours.

Status of the proposed information collection: Reinstatement.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 28, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–M

Drug Elimination Technical Assistance Program

Consultant Application

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0133 (exp. 8/31/96)

Public Housing Drug Elimination Technical Assistance (TA) Program

Public reporting burden for this collection of information is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2577-0133), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Do not send this form to the above address.

Completion of this form is voluntary, but if you wish to provide technical assistance, it will ensure that your primary areas of interest/expertise are recorded . Data collected is publicly available. The collection of this information is authorized by Sections 23(c) and (g) of the U.S. Housing Act of 1937 as amended by Section 554 of the Cranston-Gonzales National Affordable Housing Act, P.L. 101-625.

Privacy Act Statement: The U.S. Housing Act of 1937, as amended, authorizes the Department of Housing & Urban Development (HUD) to collect all the information on this form. The Housing & Community Development Act of 1987, 42 U.S.C 3543 authorizes HUD to collect Social Security Numbers (SSN). The information will used to help manage the number and quality of consultants participating in the program. Specifically, the information will allow HUD to categorize consultants by field of expertise, geographic location, check references, and determine daily fees. The SSN is used as a unique identifier. HUD may disclose this information to Federal, State and local agencies when relevant to civil, criminal, or regulatory investigations and prosecutions. It will not be otherwise disclosed or released outside of HUD, except as required and permitted by law. Failure to provide the information could result in HUD's denial of proposed management or fees or cancellation of management contracts for noncompliance with HUD procedures. Providing the SSN is mandatory, and failure to provide it could affect your participation in HUD programs.

Please answer all the following questions. Part 1 asks for your name and other personal information and your business mailing address. Part 2 requests you identify from a list your specific capabilities and skills. Part 3 requests information about your references and background.

Part 1: Personal Information

Your Last Name	Your First Name	Your Social Security Number	Your Home Phone (Include Area Code)

Your Mailing Address (Department)

Office

Street Address	Business Phone (Include Area Code)
City, State & Zip Code	Business Fax (Include Area Code)

Part 2: Skills Inventory

Please identify the types of projects you feel you would be most effective in providing technical assistance. Refer the the categories on the back of this form. These categories are refined further into specific Skill Areas. Please review the categories listed, and then list the specific Skill Areas (eg.A101, B203) which best fits your capabilities and interests in the spaces provided below:

Skill 1	Skill 2	Skill 3	Skill 4	Skill 5	Skill 6	Skill 7	Skill 8

Part 3: Work References (Please list at least three references)

Name and Address of Reference	City, State, and Zip Code	Phone Number (Include Area Code)
1.		
2.		
3.		

Part 4: Background

Do you have experience working with persons who: speak only Spanish? Yes ☐ No ☐ are Native Americans? Yes ☐ No ☐

speak only Asian language(s)? Yes ☐ No ☐

Do you have a criminal record/ Yes ☐ No ☐ Having a criminal record may not prevent you from participating in the program. If you checked "Yes," please explain: (attach additional information if necessary)

Have you completed all parts of this form? Yes ☐ No ☐

Have you attached your resume? Yes ☐ No ☐

Have you attached your rate justification? Yes ☐ No ☐

Incomplete applications will be returned

DRAFT

Previous editions are obsolete

form **HUD-52354** (1/97)

TA Resource Skill Areas:

A Agency Organization and Management

A101 Crisis Intervention/Mediation
A102 Lease Agreements/Eviction Procedures/Screening Procedures
A103 One Strike and You're Out
A104 Management Systems and Techniques

B Facility Operations

B201 Defensible Space/Crime Prevention Through Environmental Design
B202 Computer Operations/Database Programing
B203 Graffiti Removal/Prevention

C Program Development

C301 Designing Programs/Strategies
C302 Needs Assessment/Surveys
C303 Long-Term Planning
C304 Training Program Design
C305 Working with State and Local Officials
C306 Developing Partnerships with Local Agencies/Service Providers
C307 Grant Writing Training and Funding Research/Development

D Prevention and Intervention Programs

D401 Drug Information Training
D402 Life Skills Training
D403 Peer Support Groups
D404 Development of Prevention Programs
D405 Development of Intervention Programs

E Enforcement Strategies

E501 Community Policing
E502 Neighborhood Watch
E503 Resident Patrols
E504 "Clean Sweep" Operations
E505 Developing Partnerships with Law Enforcement
E506 Gang Activities

F Alternative Programs

F601 Economic Development
F602 Boys and Girls Clubs
F603 Job Skills Development/Career Planning
F604 Recreation/Youth Sports Programs
F605 Developing Child Care Programs

G Community Organizing

G701 Community Organizing
G702 Resident Involvement
G703 Leadership Training for Resident Organizations

DRAFT

Previous editions are obsolete

form **HUD-52354** (1/97)

[FR Doc. 97–2600 Filed 1–31–97; 8:45 am]
BILLING CODE 4210–33–C

[Docket No. FR–4200–N–18]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: April 4, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Oliver Walker, Housing, Department of Housing & Urban Development, 451—7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Daniel Kahn, Mortgage Underwriting and Insurance Branch (HSIHM), Telephone number (202) 708–2121 ext. 2212 (this is not a toll-free number) for copies of the proposed form and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also listing the following information:

Title of Proposal: Request for Insurance Endorsement under the Direct Endorsement Program.

OMB Control Number: 2502–0365.

Description of the need for the information and the proposed use: The Direct Endorsement Program permits mortgage lenders to underwrite applications for mortgage insurance and close mortgage loans without prior HUD review. Lenders then submit the closing package to HUD with request for insurance endorsement. The request is keyed into HUD's computer system to speed the process of issuing a computer-generated mortgage insurance certificate.

Agency form numbers: HUD–54111.

Members of affected public: Business or other for-profit.

Public reporting burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The burden of completing the form will be eliminated. Lenders will be able to key the information online or have their computer transmit the information. The number of respondents is 3,378 and the frequency of response is on occasion, that is a specific event, a mortgage closing. Since remittance is made through the Automatic Clearinghouse, the upfront remittance is submitted electronically and there is no paperwork to complete and mail in.

Status of the proposed information collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: January 24, 1997.

James E. Schoenberger,

Associate General Deputy Assistant Secretary for Housing–Federal Housing Commissioner.

[FR Doc. 97–2601 Filed 1–31–97; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. FR–3255–N–09]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: March 5, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 23, 1997.

David S. Cristy,

Acting Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Initial/Annual Escrow Account Settlement (FR–3255).

Office: Housing.

OMB Approval Number: 2502–0501.

Description of the Need for the Information and Its Proposed Use: The

Real Estate Settlement Procedures Act requires mortgage originators to submit an initial escrow account statement describing payments and disbursements to the account. Mortgage services are required to submit annual escrow account statements describing the previous year's activity and certifying that the account was operated legally.

Form Number: None.

Respondents: Individuals or Households and Business or Other For-Profit.

Frequency of Submission: Recordkeeping, Third Party Disclosure, and Annually.

Reporting burden	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Information Collection	2,000		19,775		.1176		4,649,250
Recordkeeping	2,000		1		329.6		659,167

Total Estimated Burden Hours: 5,308,417.

Status: Extension, without changes.

Contact: Ivy M. Jackson, HUD, (202) 708–4560; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 97–2596 Filed 1–31–97; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–3638–N–09]

Submission for OMB Review: Comment Request

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: March 5, 1997.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 23, 1997.

David S. Cristy,

Acting Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Affiliated Business Arrangement Disclosure (FR–3638).

Office: Housing.

OMB Approval Number: 2502–0516.

Description of the Need for the Information and its Proposed Use: A settlement service provider or an employee of a settlement service provider is required to give the borrower an affiliated business arrangement disclosure prior to or at the time the borrower is referred to an affiliated provider. The disclosure must be a separate document and the format must contain the following information: (1) specify the nature of the relationship (explaining the ownership and financial interest) between the person performing the settlement service and the person making the referral; (2) describe the estimated changes or range of changes generally made by the provider of settlement services; and (3) state that the borrower is not required to use the referred provider (except for certain circumstances).

Form Number: None.

Respondents: Individuals or Households and Business or Other For-Profit.

Frequency of Submission: Third Party Disclosure.

Reporting burden	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Third party disclosure	10,000		240		.10		240,000

Total Estimated Burden Hours: 240,000.

Status: Extension, without changes.

Contact: Ivy M. Jackson, HUD, (202) 708–4560; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

[FR Doc. 97–2597 Filed 1–31–97; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. FR–4171–D–01]

Redelegation of Authority

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Redelegation of Authority.

SUMMARY: This notice amends the field reorganization Revocation and Redelegation of Authority for the Office of Housing, published on December 6, 1994, at 59 FR 62739, which was amended by the Revocation and Redelegation of Authority published on June 26, 1996, at 59 FR 33130. This notice redelegates certain Multifamily Housing program functions to the Director, Office of Housing, and the Director, Multifamily Housing Division, in the Atlanta, Georgia and Fort Worth, Texas field offices.

EFFECTIVE DATE: January 22, 1997.

FOR FURTHER INFORMATION CONTACT: William H. Melvin, Chief, Multifamily Real Estate Owned Branch, Department of Housing and Urban Development, Georgia State Office, Richard B. Russell Federal Building, Room 572, 75 Spring Street, S.W., Atlanta, Georgia 30303–3388, (Telephone (404) 331–5001, Ext. 2187), (TTY (404) 730–2654), or Alvin E. Braggs, Chief, Multifamily Real Estate Owned Branch, Department of Housing and Urban Development, Texas State Office, Department of Housing and Urban Development, 12th Floor, 1600 Throckmorton Street, Post Office Box 2905, Fort Worth, Texas 76113–2905, (Telephone (817) 978–9044), (TTY (817) 885–5447). All telephone and TTY numbers listed are not toll-free numbers.

SUPPLEMENTARY INFORMATION: In November of 1993, the Secretary announced the reorganization of HUD's field structure to improve performance and provide HUD's customers—members of the public and program beneficiaries—more efficient service and less bureaucracy by empowering HUD's employees to more effectively serve these customers. As part of that ongoing process, on December 6, 1994, at 59 FR 62739, the Department published a Notice of Revocation and Redelegation of Authority pertaining to authority in the field over Office of Housing programs, which was amended by the Revocation and Redelegation of Authority published on June 26, 1996, at 61 FR 33130.

With the decline of the Multifamily Property Disposition inventory, many of the offices with authority to administer Multifamily Property Disposition inventory are managing only a small number of projects. Top maximize staff resources, the Assistant Secretary for Housing-Federal Housing Commissioner determined to consolidate the Multifamily Property Disposition inventory into two ''HUB'' offices which would have nationwide authority to perform Multifamily Property Management and Disposition functions.

In June, 1996, the Assistant Secretary for Housing-Federal Housing Commissioner selected the Atlanta, Georgia and Fort Worth, Texas field offices to serve as the two ''HUB'' offices for certain Multifamily Housing program functions. Implementation of these HUBs will serve to free field office staff, currently performing real estate owned processing, to focus on loss mitigation and servicing of troubled properties to avoid future foreclosures, as well as other critical field office priorities.

As the Department strives to provide increasingly efficient service, the ability to do more with less is of crucial importance. Through this Redelegation of Authority, the Department seeks to shift certain powers and authorities in order to best utilize its finite resources to the benefit of the customer. Implementation of the two HUBs will ensure that as staff resources continue to decline, the Department will have staff available to manage and dispose of defaulted FHA-insured multifamily properties that have reverted to HUD.

Accordingly, the Assistant Secretary for Housing-Federal Housing Commissioner redelegates authority as follows:

Section A. Authority Redelegated

The Assistant Secretary for Housing—Federal Housing Commissioner redelegates to the Director, Office of Housing, and the Director, Multifamily Housing Division, in the Atlanta, Georgia, and Fort Worth, Texas field offices, nationwide authority over those functions listed in the Revocation and Redelegation of Authority published December 6, 1994, at 59 FR 62739 at the following sections:

- B., III., (a), (iii), A., 31; and
- B., III., (a), (iv).

Section B. Authority to Further Redelegate

The authority redelegated above, in Section A of the instant document, may be further redelegated in writing to appropriate field office staff so as to maximize efficiency. In cases where authority is redelegated to staff not reporting to the redelegating field office official, prior concurrence of the Assistant Secretary for Housing-Federal Housing Commissioner, or appropriate Deputy Assistant Secretary, is required.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. § 3535(d).

Dated: January 22, 1997.

Stephanie A. Smith,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 97–2595 Filed 1–31–97; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit No. 821962

Applicant: Mark E. Angelos, Torrance, California

The applicant requests a permit to take (harass by survey, capture and release, collect voucher specimens) the Riverside fairy shrimp (*Streptocephalus wootoni*) in Los Angeles, Riverside, and San Diego Counties, California in conjunction with presence or absence surveys and aquatic insect research for the purpose of enhancing its survival.

Permit No. 807055

Applicant: Justine Gibb, La Mesa, California

The applicant requests an amendment of her permit to include take (locate and monitor nests) of the least Bell's vireo (*Vireo bellii pusillus*) in Los Angeles, Orange, Riverside, San Diego, and San Bernardino Counties, California in conjunction with conducting surveys and nest monitoring for the purpose of enhancing its survival.

Permit No. 810313

Applicant: Stephen Eugene Leach, Oakland, California

The applicant requests a permit to take (harass by survey, capture and release, collect voucher specimens) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in Shasta, Tehama, Butte, Glenn, Colusa, Sutter, Yuba, Placer, Yolo, Sacramento, San Joaquin, Madera, Fresno, Contra Costa, Alameda, and Solano Counties, California in conjunction with presence or absence surveys for the purpose of enhancing their survival.

Permit No. 815144
Applicant: Rosemary Ann Thompson, Santa Barbara, California

The applicant requests an amendment of her permit to extend the area authorized to take (harass by survey, capture and release) the tidewater goby (*Eucyclogobius newberryi*) to include its entire range in California in conjunction with presence or absence surveys for the purpose of enhancing its survival.

Permit No. 821967
Applicant: J. Paul Galvin, Newport Beach, California

The applicant requests a permit to take (harass by survey, locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*) and southwestern willow flycatcher (*Empidonax traillii extimus*) throughout the range of the species in California in conjunction with surveys and nest monitoring for the purpose of enhancing their survival.

Permit No. 821229
Applicant: David Guy Crawford, Camarillo, California

The applicant requests a permit to take (harass by survey, capture and release) the unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*) in Ventura and Los Angeles Counties, California in conjunction with surveys for the purpose of enhancing its survival.

Permit No. 822468
Applicant: Redwood National and State Parks, Orick, California

The applicant requests a permit to take (harass by survey, capture and release) the tidewater goby (*Eucyclogobius newberryi*) in Humboldt County, California in conjunction with presence or absence surveys and long term monitoring for the purpose of enhancing its survival.

Permit No. 820805
Applicant: Philip Leitner, Orinda, California

The applicant requests a permit to take (capture and release) the salt marsh harvest mouse (*Reithrodontomys raviventris*) throughout the range of the species in California in conjunction with population monitoring for the purpose of enhancing its survival.

Permit No. 812740
Applicant: Ingri S. Quon, San Diego, California

The applicant requests an amendment to her permit to include take (locate and monitor nests) of the southwestern willow flycatcher (*Empidonax traillii extimus*) in San Diego County, California in conjunction with population monitoring for the purpose of enhancing its survival.

Permit No. 802445
Applicant: Elaine K. Harding-Smith, Santa Cruz, California

The applicant requests an amendment to her permit to take (tag) the salt marsh harvest mouse (*Reithrodontomys raviventris*) during an extended trapping period and to extend the area authorized to include the range of the species in California in conjunction with population studies for the purpose of enhancing its survival.

Permit No. 823795
Applicant: Theresa Ann Cabrera, Honolulu, Hawaii

The applicant requests a permit to take (capture, band, radio-tag, and release) the Hawaiian hoary bat (*Lasiurus cinereus semotus*) in Hawaii County, Hawaii in conjunction with scientific research for the purpose of enhancing its survival.

Permit No. 778195
Applicant: Sweetwater Environmental Biologists, Inc., San Diego, California

The applicant requests an amendment of his permit to include take (harass by survey, capture and release, collect voucher specimens) of the Riverside fairy shrimp (*Streptocephalus woottoni*) in Riverside, Orange, and San Diego Counties, California in conjunction with presence or absence surveys for the purpose of enhancing its survival.

Permit No. 820658
Applicant: EDAW, Sacramento, California

The applicant requests a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*), to take (locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*), and to take (harass by survey; capture and release; collect voucher specimens) the conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), and Riverside fairy shrimp (*Streptocephalus woottoni*) throughout the range of the species in California in conjunction with presence or absence surveys and scientific research for the purpose of enhancing their survival.

Permit No. 799561
Applicant: Entrix, Inc., Walnut Creek, California

The applicant requests an amendment to his permit to take (harass by survey, locate and monitor nests, conduct habitat studies) for the southwestern willow flycatcher (*Empidonax traillii extimus*), California least tern (*Sterna albifrons browni*) and least Bell's vireo (*Vireo bellii pusillus*) throughout the range of the species in California in conjunction with population and habitat studies for the purpose of enhancing their survival.

Permit No. 823990
Applicant: BioResources, Los Osos, California

The applicant requests a permit to take (harass by survey, locate and monitor nests) the California least tern (*Sterna albifrons browni*) along the central California coast in conjunction with surveys and population monitoring for the purpose of enhancing its survival.

Permit No. 787376
Peter Bloom, Camarillo, California

The applicant requests an amendment to his permit to take (capture, band, radio-tag, and release) the peregrine falcon (*Falco peregrinus*) and to take (harass by disturbance while conducting trapping activities) the California least tern (*Sterna albifrons browni*) and western snowy plover (*Charadrius alexandrinus nivosus*) along the California coast from (and including) San Luis Obispo County south to the Mexican border, including the Channel Islands, in conjunction with scientific research on peregrine falcons, especially with regard to their interactions with California least tern colonies and western snowy plovers, for the purpose of enhancing their survival.

Permit No. 823806
Applicant: Pacific Estuarine Research Laboratory, San Diego, California

The applicant requests a permit to remove and reduce to possession specimens of *Cordylanthus maritimus* ssp. *maritimus* (salt marsh bird's beak) from Sweetwater Marsh National Wildlife Refuge and Tijuana Estuary, San Diego County, California in conjunction with scientific research for the purpose of enhancing its propagation and survival.

Permit No. 824105
Applicant: Burl L. Mostul, Portland, Oregon

The applicant requests an interstate commerce permit to sell artificially propagated *Brighamia insignis* (''Olulu) and *Manihot walkeri* (Walker's manioc) in order to enhance their propagation and survival.

Permit No. 799558
Applicant: Idaho Power Company, Boise, Idaho

The applicant requests an amendment of their permit to extend the area authorized to take (collect, release, sacrifice voucher specimens) the Snake River physa snail (*Physa natricina*), Idaho springsnail (*Fontelicella idahoensis*), Utah valvata snail (*Valvata*

utahensis), and Banbury Springs Limpet (*Lanx* n. sp.) in the Snake River, Idaho, and its tributaries to (and including) river mile 458 (Swan Falls) while conducting presence or absence surveys and various life history and ecological studies for the purpose of enhancing their survival.

DATES: Written comments on these permit applications must be received on or before March 5, 1997.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Consultation and Conservation Planning, Ecological Services, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181. Please refer to the respective permit number for each application when submitting comments. All comments, including names and addresses, received will become part of the official administrative record and may be made available to the public. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice, to the above office. Please refer to the respective permit number for each application when requesting copies of documents.

FOR FURTHER INFORMATION CONTACT: Jennifer Frie, Fish and Wildlife Biologist, at the above address; telephone (503) 231–6125.

Dated: January 22, 1997.

Thomas J. Dwyer,

Acting Regional Director, Region 1, Portland, Oregon

[FR Doc. 97–2572 Filed 1–31–97; 8:45 am]

BILLING CODE 4310–55–P

Notice of Receipt of an Application, and Availability of an Environmental Assessment and Finding of No Significant Impact for an Incidental Take Permit for the Red Hills Salamander by Wilmon Timberlands for Forest Management in Southcentral Alabama

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Wilmon Timberlands seeks an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) (Act), as amended. The ITP would authorize, for a period of 30 years, the incidental take of a threatened species, the Red Hills salamander (Phaeognathus hubrichti). The proposed take is incidental to forest management activities on about 2,970 acres of Red Hills salamander habitat managed by the Applicant in Monroe County, Alabama. The Service also announces the availability of an Environmental Assessment (EA) and Habitat Conservation Plan (HCP) for this incidental take permit application. The HCP, which is required by Section 10(a)(2)(A) of the Act, was prepared and submitted by the Applicant with the permit application. Copies of the EA and/or HCP may be obtained by making a request in writing to the Regional Office (see **ADDRESSES**). This notice also advises the public that the Service has made preliminary determinations that issuing an ITP to the Applicant is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended. The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

DATES: Written comments on the application, EA and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before March 5, 1997.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or at the Jackson, Mississippi, Field Office, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Comments must be submitted in writing to be processed. Please reference permit under PRT–824543 in such comments, or in requests for the documents discussed herein. Requests for the documents must be in writing to be adequately processed.

FOR FURTHER INFORMATION CONTACT: Mr. Rick G. Gooch, Regional Permit Coordinator, Atlanta, Georgia (see **ADDRESSES** above), telephone: 404/679–7110; or Mr. Will McDearman at the Jackson, Mississippi, Field Office (see **ADDRESSES** above), telephone: 601/965–4900, extension 24.

SUPPLEMENTARY INFORMATION: The Red Hills salamander (RHS), Phaeognathus hubrichti, is a plethodontid salamander known only from the Red Hills region of southcentral Alabama in portions of Butler, Conecuh, Covington, Crenshaw, and Monroe Counties. This physiographic subdivision of the Gulf Coastal Plain is distinguished by hilly, dissected terrain, frequently with steep side slopes extending 200 feet from the ridge to the base of the lower slope. Natural vegetation of these moist, steep, sheltered slopes and ravines consists of a beech-magnolia forest community. Characteristic woody species in the forest overstory include American beech (Fagus grandifolia), bigleaf magnolia (Magnolia macrophylla), southern magnolia (M. grandiflora), white oak (Quercus alba), and tulip tree (Liriodendron tulipifera). Portions of this and closely related forest types in the Red Hills region are underlain by clays, claystones, and siltstones of the Tallahatta and Hatchetigbee formations. RHS occupy subterranean burrows within the fissures and channels of these formations on relatively steep slopes beneath undisturbed and moderately disturbed hardwood and hardwood-pine dominated forests. RHS, which rarely leave their burrows, prey upon ground-dwelling arthropods located within burrows or outside burrows near the burrow entrance. Substrates of the Tallahatta and Hatchetigbee formation apparently are important for maintaining suitable moisture required for these amphibians. Other important factors preventing the desiccation of RHS micro-habitat include loamy soils, leaf litter from deciduous trees, and a well developed overstory canopy of hardwoods that intercepts direct sunlight. Timber management practices that reduce or eliminate the forest canopy, disturb or compact soils, and convert hardwood-dominated forests to pine-dominated forests can incidentally kill, injure, or harm RHS in violation of Section 9 of the Act. Such practices can involve timber harvest, the operation of vehicular logging equipment, timber regeneration, and site preparation in habitat occupied by RHS. Based on RHS surveys conducted by the Applicant, RHS may occur on about 2,970 acres managed by Wilmon Timberlands. This represents about five percent of the range wide total habitat estimated to remain in 1978.

The EA considers the environmental consequences of two alternatives. The proposed action is the issuance of the ITP based upon the submittal of the HCP. This action is based on a preliminary determination by the Service that the HCP will satisfy the requirements of Section 10(a)(2)(B) of the Act. By this alternative, the HCP conserves RHS by restricting timber management activities in optimal and moderately suitable habitat. Optimal habitat occupies about 1,340 acres with steep (> 27 degree) slopes, underlain by the Tallahatta formation, with a forest dominated by deciduous trees. Timber harvests, if any, in optimal habitat will be limited to single tree selection while maintaining a forest canopy coverage over at least 90 percent of a site. To minimize disturbance to soils and destruction of RHS burrows, no vehicular logging equipment will operate within optimal habitat. Felled timber will be pulled from preferred habitat by cable from vehicular or other logging equipment located in adjacent habitat. Also, timber regeneration will occur naturally without site preparation or planting. Moderately suitable RHS habitat consists of slopes 18 to 27 degrees on either the Tallahatta or Hatchetigbee formations, with naturally occurring mixed hardwood-pine and pine-hardwood forest types. Timber harvests by single tree selection will be conducted while maintaining a forest canopy cover over at least 65 percent of a site, followed by natural regeneration. In marginally suitable to unsuitable RHS habitat on slopes of less than 18 degrees within the Tallahatta or Hatchetigbee formations, the Applicant will use a full array of forest management practices, including uneven-aged management, even-aged management with clear cutting, site preparation, and artificial and natural regeneration.

RHS populations in marginally suitable habitat will be significantly reduced or eliminated as a result of clear cutting, site preparation, and conversion to pine forests. Because RHS are more common and abundant in optimal habitat, the HCP will conserve core RHS populations where most RHS exist. The conservation of RHS in optimal habitat is consistent with the Service's recovery plan for the species. Populations in moderately suitable habitat may be extirpated or they may persist following timber harvests with vehicular logging equipment and a reduction in the forest canopy to 65 percent coverage of a site. The HCP also includes maintaining forest buffer zones adjacent to optimal habitat, staff training to implement the conservation plan, funding, and monitoring and reporting of management actions.

The second alternative in the EA is the no action alternative in which the Service would not issue the ITP. The basis for this alternative would be the failure of the Applicant to satisfy requirements of Section 10(a)(2)(B) of the Act for permit issuance. Without the authority to incidentally take RHS, the Applicant is expected to avoid timber harvesting and related forest management actions in habitat occupied by the RHS to reduce or eliminate the possibility of illegally taking the RHS.

As stated above, the Service has made a preliminary determination that the issuance of this ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA and will result in the FONSI. This preliminary determination is based on information in the EA and HCP. The determination may be revised due to public comment received in response to this notice. An excerpt from the FONSI reflecting the Service's finding on the application is provided below:

Based on the analysis conducted by the Service, it has been determined that:

1. Issuance of an ITP would not have significant effects on the human environment in the project area.

2. The proposed take is incidental to an otherwise lawful activity.

3. The Applicant has ensured that adequate funding will be provided to implement the measures proposed in the submitted HCP.

4. Other than impacts to endangered and threatened species as outlined in the documentation of this decision, the indirect impacts which may result from issuance of the ITPs are addressed by other regulations and statutes under the jurisdiction of other government entities. The validity of the Service's ITPs are contingent upon the Applicants' compliance with the terms of their permits and all other laws and regulations under the control of State, local, and other Federal governmental entities.

The Service will also evaluate whether the issuance of a Section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the Section 7 biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: January 27, 1997.

Noreen K. Clough,

Regional Director.

[FR Doc. 97–2579 Filed 1–31–97; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal/State Compact.

SUMMARY: Pursuant to 25 U.S.C. § 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the Federal Register, notice of approved Tribal/State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Tribal/State Gaming Compact between the Citizen Band Potawatomi Indian Tribe and the State of Oklahoma, which was executed on December 5, 1996.

DATES: February 3 1997.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4068.

Dated: January 24, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–2551 Filed 1–31–97; 8:45 am]

BILLING CODE 4310–02–P

Bureau of Land Management

[CA–067–7122–6606; CACA–35511]

Environmental Impact Statement/ Environmental Impact Report for the Proposal Imperial Project, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment.

SUMMARY: In the Federal Register of November 1, 1996 (Vol. 61, p. 56567), a notice was published pertaining to the availability of the draft Environmental Impact Statement/Environmental Impact Report for the proposed Imperial Project. This amends that notice.

Because of expressed interest, a public hearing will be held at the Barbara Worth Convention Center in Holtville, California at 6:30 PST to 8:30 PST on Thursday February 6, 1997. Furthermore, the comment period on

the draft Environmental Impact Statement/Environmental Impact Report is extended an additional 13 days through February 13, 1997. Written comments should be sent to the Bureau of Land Management, 1661 South Fourth Street, El Centro, California, 92251, Attention: Keith Shone, and must be delivered or postmarked no later than February 13, 1997.

FOR FURTHER INFORMATION CONTACT: Keith Shone (619) 337–4412 or Thomas Zale (619) 337–4420.

Dated: January 28, 1997.

Thomas Zale,

Acting Area Manager.

[FR Doc. 97–2607 Filed 1–31–97; 8:45 am]

BILLING CODE 4310–40–P

[NM–070–1610–00]

Change of Mailing Address; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice sets forth the new mailing address of the Bureau of Land Management, Farmington District Office, Farmington New Mexico AND the new mailing address and physical location of the Farmington Indian Minerals Office (FIMO).

DATES: February 3, 1997.

FOR FURTHER INFORMATION CONTACT: Mary McCloskey, Administrative Officer, Bureau of Land Management, Farmington District Office, 505–599–8920.

SUPPLEMENTARY INFORMATION: The Department of Interior's Bureau of Land Management, New Mexico State, Farmington District Office is changing their mailing address effective February 3, 1997. The new mailing address will be: Bureau of Land Management, Farmington District Office, 1235 La Plata Highway, Suite A, Farmington, New Mexico 87401.

The Department of Interior's Farmington Indian Minerals Office (FIMO) is changing their mailing address and physical location. The new mailing address and physical location will be. Farmington Indian Minerals Office (FIMO), 1235 La Plata Highway, Suite B, Farmington, New Mexico 87401.

Dated: January 28, 1997.

Joel E. Farrell,

Acting District Manager.

[FR Doc. 97–2582 Filed 1–31–97; 8:45 am]

BILLING CODE 4310–FB–M

[CA–018–1990–02]

Recreation Management; Final Supplementary Rules; California

ACTION: Final supplementary rules.

SUMMARY: Establishment of Supplemental Rules for the management of recreational suction dredging only on Public Lands and associated waters that are withdrawn from mineral entry. These rules would apply to all mineral withdrawn lands administered by the Folsom Resource Area.

Casual use mineral hunting is allowed without a permit in the above defined areas. Casual use mineral hunting is defined as removing gold from the ground using gold pans, sluice boxes, hand shovels, metal detectors, or picks. Casual use mineral hunting does not include any activity using suction dredges, machinery, water pumps, or explosives.

The use of any suction dredge or water pump (power sluicing) is allowed with a Special Recreation Permit issued by the Bureau of Land Management, Folsom Resource Area. Using machinery to remove rock and soil above the water level of a river or stream, commonly referred to as ''highbanking'', is not allowed. Permits will not be issued for areas designated wild rivers under the Wild and Scenic Rivers Act.

Any persons camping in areas open to camping must comply with the established 14 day camping limit published in the Federal Register on October 26, 1983. Exceptions to this established rule will be only with a Special Recreation Permit authorizing the holder to camp longer than 14 days.

Persons holding a Special Recreation Use Permit who fail to follow the stipulations shall have the permit revoked by the Authorized Officer.

No person shall:

1. Operate or possess a suction dredge or water pump (power sluice) without a valid Special Recreation Permit. The definition of possess includes having a suction dredge in the water or on the shore adjacent to water.

2. Remove soil or rock above the water level with any machinery (commonly referred to as ''highbanking'').

3. Camp over the established 14-day limit without having a valid Special Recreation Use Permit.

4. Operate or possess a suction dredge or water pump (power sluice) in violation of California permit requirements or California established seasons. Supplemental Rule Number 4 shall apply to all public lands administered by the Folsom Resource Area Office.

Any person who fails to comply with these Supplemental Rules may be subject to fines up to $100,000 and/or imprisonment not to exceed 12 months. These penalties are specified by title 43 of the United States Code, section 303 and title 18 of the United States Code, section 3623.

DATES: This rule will be in effect on March 1, 1997 and is permanent until canceled, amended, or replaced.

FOR FURTHER INFORMATION: Contact Deane Swickard, Area Manager, Bureau of Land Management, Folsom Resource Area, 63 Natoma Street, Folsom, CA 95630, (916) 985–4474.

SUPPLEMENTARY INFORMATION: Public Lands withdrawn from mineral entry are currently unavailable for recreational mineral hunting by the public. The recreational gold hunter who wishes to suction dredge or gold pan must now locate an area open for mineral entry that is free from claims. This process is very cumbersome to the person who wishes to engage in this recreational activity. Opening some of the withdrawn lands to the recreational gold hunter will greatly increase the opportunities.

The public has expressed a need for places to gold pan and suction dredge without the burden of mining claims. This Supplemental Rule will make available rivers for the recreational gold hunter and will protect the public lands and resources from unnecessary or undue degradation.

Authority for Supplemental Rules are contained in title 43 Code of Federal Regulations, subpart 8364.1.

Deane K. Swickard,

Area Manager.

[FR Doc. 97–2523 Filed 1–31–97; 8:45 am]

BILLING CODE 4310–40–M

[UT–020–07–1220–00]

Notice To Amend Pony Express Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to designate a Special Recreation Management Area which would amend a resource management plan.

SUMMARY: The Bureau of Land Management (BLM) is proposing an amendment to the Pony Express Resource Management Plan (RMP). The proposed amendment would designate certain public lands in Utah and Tooele Counties as a Special Recreation Management Area (SRMA). A Recreation Area Management Plan (RAMP) and environmental assessment

(EA) would be prepared which would address future cooperative management between BLM and the Utah Division of Parks and Recreation for the area known as Fivemile Pass. Public comment will be actively solicited throughout the RAMP/EA and amendment development process.

DATES: The comment period for the proposed plan amendment will commence with the date of publication of this notice. Comments must be submitted on or before March 5, 1997.

SUPPLEMENTARY INFORMATION: Under the Bureau Planning System, Special Recreation Management Areas (SRMA) are designated where significant public recreation issues or management concerns occur. Special or more intensive types of management are typically needed. Detailed recreation planning is required in these areas and greater managerial investment (e.g. facilities, supervision, etc.) is likely. Fivemile Pass was not listed as an SRMA in the 1988 Pony Express RMP. This amendment and planning process is needed to address current recreation use and management needs.

Fivemile Pass is an area encompassing the southern foothills of the Oquirrh Mountains on the Tooele/Utah County line. For years, Fivemile Pass has been one of the most popular areas for off highway vehicle (OHV) recreation in Northern Utah. A 1992 amendment to the Pony Express RMP designated 10,880 acres of public land at Fivemile Pass as ''Open'' to OHV use. ''Open'' areas are approved for all types of OHV use, including cross-country travel. Since that time recreation use in the area has increased dramatically. The area is undeveloped with no recreation facilities. Fivemile Pass received over 36,900 visits in 1996. The Utah ATV Association and other user groups have long advocated visitor developments at Fivemile Pass. In 1995, the Utah Division of Parks and Recreation and the Utah OHV Commission selected Fivemile Pass as a priority site for increased development and additional State OHV grants.

The Fivemile Pass SRMA would be defined as T6S, R3W, sec 13–36; T6S, R4W, sec 13, 24, 25, and 36; T7S, R3W, Sec 1–18; and T7S, R4W, sec 1, 12, and 13. The SRMA planning area would cover 31,360 acres which includes 19,020 acres of public lands, approximately 10,740 acres of private land, and 1,600 acres of State lands.

Although Fivemile Pass is heavily used for recreation, the area also has a long history of mining, farming, and grazing. The entire planning area contains numerous mine shafts and abandoned pits. These mines and pits constitute a serious hazard for the public. Public roads accessing public lands cross private lands. There is occasional trespass and vandalism from the public crossing farmlands or riding OHVs through plowed fields. Recreation use has also resulted in vandalism to public lands and facilities around Fivemile Pass. Besides being a popular OHV riding area, Fivemile Pass is also used by campers, horseback riders, mountain bikers, organized groups (Scouts, RV clubs, church groups, etc.), hunters, and target shooters.

Recreation development at Fivemile Pass would meet the following management objectives:

1. Provide a quality recreation experience for OHV and other recreation users in a safe and appropriate setting.
2. Mitigate safety hazards created by past mining operations.
3. Maintain access to public lands.
4. Protect natural and cultural resources on public lands and repair damaged resources.
5. Mitigate trespass and impacts to private lands in and around the planning area.
6. Maintain and enhance multiple use management for all resources in the planning area.
7. Educate visitors about safety, public land stewardship, and low impact recreation.

The RAMP will be prepared under 43 CFR part 1610 to meet the requirements of section 202 of the Federal Land Policy and Management Act, and section 102 of the National Environmental Policy Act. This revision is necessary to update and expand the decisions presented in the 1988 Pony Express RMP that affect lands within the Fivemile Pass planning area.

Public participation will be actively sought to ensure that the RAMP/EA addresses all issues, problems, and concerns from those interested in the management of the public lands within the proposed Fivemile Pass SRMA. The development of the RAMP/EA is a public process and the public is invited and encouraged to assist in the identification of issues and the scope of the RAMP/EA. Public meetings will be held to discuss planning issues. The date, time, and location of these scoping meetings will be announced in local newspapers and through other local media. Formal public participation will be requested for review of the preliminary RAMP/EA and final RAMP/EA in 1997. Notice of availability of these documents will be published at the appropriate times.

The RAMP/EA will be prepared by an interdisciplinary team which includes specialists in recreation, cultural resources, minerals, realty, wildlife, rangeland vegetation, and special status animal and plant species. Other disciplines may be represented as necessary.

FOR FURTHER INFORMATION CONTACT: Margaret Wyatt, Area Manager, Salt Lake Field Office, 2370 South 2300 West, Salt Lake City, Utah, telephone (801) 977–4300, fax (801) 977–4397. Existing planning documents and information are available at the above address. Comments on the proposed plan amendment should be sent to the above address.

G. William Lamb,

State Director, Utah.

[FR Doc. 97–2583 Filed 1–31–97; 8:45 am]

BILLING CODE 4310–DQ–P

National Park Service

Maine Acadian Culture Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463) that the Maine Acadian Culture Preservation Commission will meet on Friday, February 21, 1997. The meeting will convene at 7 p.m. in the gym of the Dr. Levesque School on U.S. Route 1 in Frenchville, Aroostook County, Maine.

The Maine Acadian Culture Preservation Commission was appointed by the Secretary of the Interior pursuant to the Maine Acadian Culture Preservation Act (Pub. L. 101–543). The purpose of the Commission is to advise the National Park Service with respect to:

- The development and implementation of an interpretive program of Acadian culture in the state of Maine; and
- The selection of sites for interpretation and preservation by means of cooperative agreements.

The Agenda for this meeting is as follows:

1. Review and approval of the summary report of the workshop held December 20, 1996.
2. A talk by Marielle Cormier-Boudreau on Acadian cuisine and herbology.
3. Reports of Maine Acadian Culture Preservation Commission working groups.
4. Report of the National Park Service project staff.
5. Opportunity for public comment.
6. Proposed agenda, place, and date of the next Commission meeting.

The meeting is open to the public. Further information concerning

Commission meetings may be obtained from the Superintendent, Acadia National Park. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made at least seven days prior to the meeting to: Superintendent, Acadia National Park, PO Box 177, Bar Harbor, ME 04609–0177; telephone (207) 288–5472.

Dated: January 23, 1997.

Paul F. Haertel,

Superintendent, Acadia National Park.

[FR Doc. 97–2620 Filed 1–31–97; 8:45 am]

BILLING CODE 4310–70–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Housing Guaranty Program; Notice of Investment Opportunity

The U.S. Agency for International Development (USAID) has authorized the guaranty of loans to the Banco General S.A., Panama (the ''Borrower'') as part of USAID's development assistance program. The proceeds of these loans will be used to finance shelter and shelter-related infrastructure for the benefit of low-income families in Panama. At this time, the Banco General S.A. has authorized USAID to request proposals from eligible lenders for a loan under this program of $5.0 Million U.S. Dollars (US$5,000,000). The name and address of the Borrower's representative to be contacted by interested U.S. lenders or investment bankers (each, a ''Lender''), the amount of the loan and project number are indicated below:

Banco General S.A., Panama

Project No.: 525–HG–13;
Housing Guaranty Loan No.: 525–HG–014 A03;
Amount: US$5,000,000;
Attention: Mr. Francisco Sierra, Vice President—Treasury Banco General S.A., Panama, (street address: Calle Aquilino de la Guardia y Ave. 5ta B Sur, Panama City, Panama);
Telex No.: 2733 General PG;
Telefax No.: 507/265–0215 (preferred communication);
Telephone Nos.: 507/265–0231 or 507/265–0234.

Interested Lenders should contact the Borrower as soon as possible and indicate their interest in providing financing for the Housing Guaranty Program. Interested Lenders should submit their bids to the Borrower's representative by *Tuesday, February 18, 1997, 12:00 noon Eastern Standard Time.* Bids should be open for a period of 48 hours from the bid closing date. Copies of all bids should be simultaneously sent to the following:

Mr. Joseph M. Carroll, Chief, Office of Democratic Governance, USAID, Unit 0949, APO AA 34002, c/o American Embassy, Panama City, Panama, (street address: Plaza Regency 2nd Floor, Avenida Via Espana #1);
Telefax No.: 507/264–0104 (preferred communication);
Telephone No.: 507/263–6011; and

Mr. Lawrence Doc Odle, Regional Housing and Urban Development Office, Central America USAID/RHUDO/Guatemala, Guatemala City, Guatemala, Unit 3323, APO AA 34024;
Telefax No.: 502/332–0663;
Telephone No.: 502/332–0603;
Address: Mr. Peter Pirnie, Sr. Financial Advisor, U.S. Agency for International Development, Office of Environment and Urban Programs, G/ENV/UP, Room 409, SA–18, Washington, D.C. 20523–1822;
Telex No.: 892703 AID WSA;
Telefax No.: 703/875–4639 or 875–4384 (preferred communication);
Telephone No.: 703/875–4300 or 875–4510.

For your information the Borrower is currently considering the following terms:

(1) *Amount:* U.S. $5.0 million.

(2) *Term:* 30 years.

(3) *Grace Period:* Ten years grace on repayment of principal. (During grace period, semi-annual payments of interest only). If *variable* interest rate, repayment of principal to amortize in equal, semi-annual installments over the remaining 20-year life of the loan. If *fixed* interest rate, semi-annual level payments of principal and interest over the remaining 20-year life of the loan.

(4) *Interest Rate:* Alternatives of *fixed rate* and *variable rate* are requested.

(a) *Fixed Interest Rate:* If rates are to be quoted based on a spread over an index, the Lender should use as its index a long bond, specifically the 6½% U.S. Treasury Bond due November 15, 2026. Such rate is to be set at the time of acceptance.

(b) *Variable Interest Rate:* To be based on the six-month British Bankers Association LIBOR, preferably with terms relating to the Borrower's right to convert to fixed. The rate should be adjusted weekly.

(5) *Prepayment:*

(a) Offers should include an option for prepayment and mention prepayment premiums, if any.

(b) Federal statutes governing the activities of USAID require that the proceeds of USAID-guaranteed loans be used to provide affordable shelter and related infrastructure and services to below median-income families. In the extraordinary event that the Borrower materially breaches its obligation to comply with this requirement, USAID reserves the right, among its other rights and remedies, to accelerate the loan at par. It should be noted that since the inception of the USAID Housing Guaranty Program in 1962, USAID has not exercised its right of acceleration.

(6) *Fees:* Offers should specify the placement fees and other expenses, including USAID fees, Paying and Transfer Agent fees, out of pocket expenses, etc. Lenders are requested to include all legal fees in their placement fee. Such fees and expenses shall be payable at closing from the proceeds of the loan.

(7) *Closing Date:* Approximately 30 days from selection of investor, if possible, but not to exceed 60 days from date of selection of Lender.

Selection of a Lender and the terms of the loan are initially subject to the individual discretion of the Borrower, and thereafter, subject to approval by USAID. Disbursements under the loan will be subject to certain conditions required of the Borrower by USAID as set forth in agreements between USAID and the Borrower.

The full repayment of the loans will be guaranteed by USAID. The USAID guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the ''Act'').

Lenders eligible to receive the USAID guaranty are those specified in Section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for the USAID guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by USAID.

Information as to the eligibility of investors and other aspects of the USAID housing guaranty program can be obtained from:

Ms. Viviann Gary, Director, Office of Environment and Urban Programs,

U.S. Agency for International Development, Room 409, SA–18, Washington, D.C. 20523–1822;
Fax Nos: 703/875–4384 or 875–4639;
Telephone: 703/875–4300.

Dated: January 27, 1997.

Michael G. Kitay,

Assistant General Counsel, Bureau for Global Programs, Field Support and Research, U.S. Agency for International Development.

[FR Doc. 97–2525 Filed 1–31–97; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Final Judgment and Competitive Impact Statement; United States of America and the State of Colorado v. Vail Resorts, Inc., Ralston Resorts, Inc., and Ralston Foods, Inc.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Colorado in *United States and The State of Colorado* versus *Vail Resorts, Inc., Ralston Resorts, Inc., and Ralston Foods, Inc.*, Civ. Action No. 97–B–10. The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h).

On January 3, 1997, the United States and the State of Colorado filed a Complaint seeking to enjoin a transaction in which Vail Resorts, Inc. (''Vail'') agreed to acquire Ralston Resorts, Inc. (''Ralston''). Vail and Ralston are the two largest owner/operators of ski resorts in Colorado, and this transaction would have combined five ski resorts in Colorado. The Complaint alleged that the proposed acquisition would substantially lessen competition in providing skiing to Front Range Colorado skiers in violation of section 7 of the Clayton Act, 15 U.S.C. 18.

The proposed Final Judgment orders defendants to sell all of Ralston's rights, titles, and interests in the Arapahoe Basin resort in Summit County, Colorado to a purchaser who has the capability to compete effectively in the provision of skiing to Front Range Colorado skiers at Arapahoe Basin. The Stipulation also imposes a hold separate agreement that, in essence, requires the parties to ensure that, until the divestiture mandated by the Final Judgment has been accomplished, Ralston's Arapahoe Basin operations will be held separate and apart from, and operated independently of, Vail's assets and businesses. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and remedies available to private litigants.

Public comment is invited within the statutory 60-day comment period. Such comments, and the responses thereto, will be published in the Federal Register and filed with the Court. Written comments should be directed to Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, 1401 H Street, NW., Suite 4000, Washington, DC. 20530 (telephone: (202) 307–0001). Copies of the Complaint, Stipulation, proposed Final Judgment and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW., Washington, DC 20530 (telephone: (202) 514–2481) and at the office of the Clerk of the United States District court for the District of Colorado, 1929 Stout Street, Room C–145, Denver, Colorado 80294.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

In the United States District Court for the District of Colorado

United States of America and the State of Colorado, Plaintiffs, v. *Vail Resorts, Inc., Ralston Resorts, Inc., and Ralston Foods, Inc.,* Defendants.

Civil Action No. 97–B–10

Stipulation and Order

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the District of Colorado;

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court;

3. Defendants Vail and Ralston (as defined in paragraphs II (A) & (B) of the proposed Final Judgment attached hereto) shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment, and shall, from the date of the filing of this Stipulation, comply with all the terms and provisions of the proposed Final Judgment as through the same were in full force and effect as an order of the Court; provided, however, that Ralston shall not be obligated to comply with Section IV(A) of the proposed Final Judgment unless and until the closing of any transaction in which Vail directly or indirectly acquires all or any part of the assets or capital stock of Ralston; and provided, further, that Ralston shall be relieved of its obligation to comply with Sections IX (A) through (K) of the proposed Final Judgment in the event that the Stock Purchase Agreement among Vail Resorts, Inc., Ralston Foods, Inc. and Ralston Resorts, Inc., dated July 22, 1996 (the ''Stock Purchase Agreement''), is terminated without consummation of the transaction contemplated therein or any variant of it; and provided, further, that Ralston Foods, Inc. shall be relieved of its obligation to comply with Sections IV (A) through (G) and IX (A) through (K) of the proposed Final Judgment upon consummation of the transaction contemplated by the Stock Purchase Agreement.

4. Defendants shall not consummate their transaction before the Court has signed this Stipulation and Order;

5. Vail shall prepare and deliver affidavits in the forms required by the provisions of paragraphs A and B of Section VII of the proposed Final Judgment commencing no later than January 23, 1997 and every thirty days thereafter pending entry of the Final Judgment;

6. In the event plaintiff United States withdraws its consent, as provided in paragraph 2 above, or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding;

7. The defendants represent that the divestiture ordered in the proposed Final Judgment can and will be made, and that the defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

8. All parties agree that this agreement can be signed in multiple counterparts.

Dated: January 2, 1997.

For the United States:
Craig W. Conrath,
Chief.
Reid B. Horwitz,
Assistant Chief.
John W. Van Lonkhuyzen,
Anne M. Purcell,*
James K. Foster,
Barry L. Creech,
John M. Lynch,
Susan Wittenberg,
Trial Attorneys.
U.S. Department of Justice, Antitrust Division, Merger Task Force, 1401 H Street NW., Suite 4000, Washington, DC 20530, (202) 307–0001.
For the State of Colorado:
Gale A. Norton,
Attorney General.
Stephen K. ErkenBrack,
Chief Deputy Attorney General.
Richard A. Westfall,
Solicitor General.
Garth C. Lucero,
Deputy Attorney General.
Jan Michael Zavislan, 11636,*
First Assistant Attorney General.
Maria E. Berkenkotter, 16781,*
Assistant Attorney General, Civil Litigation Section, Antitrust Unit.
1525 Sherman Street, 5th Floor, Denver, Colorado 80203, DC Box No. 20, (303) 866–3613.
For Defendant Vail Resorts, Inc.:
Bruce F. Black,*
Holme, Roberts & Owen, LLP,
1700 Lincoln, Suite 4100,
Denver, CO 80203,
(303) 861–7000.
Robert S., Schlossberg,
Peter E. Halle,
Jonathan M. Rich,
Robert B. Wiggens,
Harry T. Robins,
Anthony E. Bell,
Morgan, Lewis & Bockius LLP,
1800 M Street NW.,
Washington, DC 20036.
(202) 467–7000.
Attorneys for Vail Resorts, Inc.

* Counsel of Record.

For Defendants Ralston Resorts, Inc. and Ralston Foods, Inc.:
Paul C. Daw,*
Sherman & Howard, LLC, 633 17th Street, Suite 3000, Denver, CO 80202, (303) 299–8124.
E. Perry Johnson, Rebecca A. Nelson,
Bryan Cave, LLP, One Metropolitan Square, 211 No. Broadway, Suite 3600, St. Louis, MO 63102, (314) 259–2000
J. Michael Cooper, Daniel C. Schwartz,
Bryan Cave, LLP, 700 13th Street, NW, Washington, DC 20004, (202) 508–6000.
Attorneys for Ralston Resorts, Inc. and Ralston Foods, Inc.

Dated: January 3, 1997.

So ordered:

United States District Judge.
Dated: January 3, 1997.

In the United States District Court for the District of Colorado

United States of America and the State of Colorado, Plaintiffs, v. *Vail Resorts, Inc., Ralston Resorts, Inc. and Ralston Foods, Inc., Defendants.*

Civil Action No. 97–B–10

Final Judgment

Whereas plaintiffs United States of America (hereinafter ''United States'') and the State of Colorado, having filed their Complaint herein on January 3, 1997, and plaintiffs and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And Whereas defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas the essence of this Final Judgment is prompt and certain divestiture of assets to assure that competition is not substantially lessened;

And Whereas plaintiffs require defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And Whereas defendants have represented to plaintiffs that the divestiture ordered herein can and will be made and that defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *Ordered, Adjudged,* and *Decreed* as follows:

I. Jurisdiction

This Court has jurisdiction over each of the parties hereto and the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. *Ralston* means defendants Ralston Resorts, Inc., a Colorado corporation headquartered in Keystone, Colorado; and Ralston Foods, Inc., a Nevada corporation headquartered in St. Louis, Missouri, and includes their successors and assigns, and their parents, subsidiaries, directors, officers, managers, agents, and employees acting for or on behalf of any of them.

B. *Vail* means defendant Vail Resorts, Inc., a Delaware corporation headquartered in Avon, Colorado, and includes its successors and assigns, and its parents, subsidiaries, directors, officers, managers, agents, and employees acting for or on behalf of any of them.

C. *Divestiture Assets* means all rights, titles and interests, including all fee and all leasehold, permit and renewal rights, in Ralston's Arapahoe Basin resort in Summit County, Colorado, including, but not limited to, all real property (including but not limited to property owned in fee or used through a lease or special use permit from the United States Forest Service), deeded development rights to real property, capital equipment (including but not limited to lifts, grooming and snowmaking equipment), buildings, fixtures, inventories, contracts (including but not limited to customer contracts), customer lists, marketing or consumer surveys relating to Arapahoe Basin, permits (including but not limited to environmental permits and all permits from the United States Forest Service), all work in progress on permits or studies undertaken in order to obtain permits, plans for design or redesign of ski trails, trucks, snowcats and other vehicles, water rights sufficient to implement the snowmaking already approved by the U.S. Forest Service for Arapahoe Basin and the snowmaking outlined in Arapahoe Basin's pending submission to the U.S. Forest Service, and all other interests, assets or improvements related to the provision of skiing services to customers at the Arapahoe Basin resort (collectively ''Arapahoe Basin'').

*Counsel of Record.

D. *Skiing services* means all services related to providing access to downhill skiing and snowboarding, including, but not limited to, providing lifts, skiing lessons, ski patrol, snowmaking, design, building, and grooming of trails, and ancillary services such as food service, entertainment, and lodging.

III. Applicability

A. The provisions of this Final Judgment apply to defendants, their successors and assigns, parents, subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of the assets of their ski operations in Colorado, that the purchaser of such assets agree to be bound by the provisions of this Final Judgment; provided, however, that the defendants need not obtain such an agreement from the acquirer of the Divestiture Assets in the divestiture contemplated herein.

IV. Divestiture

A. Defendants are hereby ordered and directed, in accordance with the terms of this Final Judgment, within one hundred and fifty (150) calendar days after the filing of the Stipulation settling this action, or within five (5) business days after notice of entry of this Final Judgment, whichever is later, to divest the Divestiture Assets to a purchaser acceptable to the United States, in its sole discretion, after consulting with Colorado.

B. Divestiture of defendants' leasehold interests, if any, in the Divestiture Assets shall be by transfer of the entire leasehold interest, which shall be for the entire remaining term of such leasehold, including all renewal or option rights.

C. Defendants agree to use their best efforts to accomplish the divestiture as expeditiously as possible. The United States, after consulting with Colorado, in its sole discretion, may extend the time period for any divestiture for two additional periods of time not to exceed ninety (90) calendar days in toto.

D. In accomplishing the divestiture ordered by this Final Judgment, defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendants shall make known to any person making an inquiry regarding a possible purchase of the Divestiture Assets that the assets described in Section II (C) are being offered for sale. Defendants shall also offer to furnish to all bona fide prospective purchasers, subject to customary confidentiality assurances, all information regarding the Divestiture Assets customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Defendants shall make available such information to plaintiffs at the same time that such information is made available to any other person.

E. Defendants shall not interfere with any negotiations by any purchaser to employ any employee of the defendants who works at Arapahoe Basin, or whose employment substantially relates to the provision of skiing services at Arapahoe Basin, or whose responsibilities include the management of or marketing for Arapahoe Basin.

F. Defendants shall permit prospective purchasers of the Divestiture Assets to have access to personnel and to make such inspection of the Divestiture Assets, and any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

G. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV (A), or by the trustee appointed pursuant to Section V of this Final Judgment, shall include all of the Divestiture Assets and be accomplished by selling or otherwise conveying the Divestiture Assets to a purchaser in such a way as to satisfy the United States, in its sole discretion, after consulting with Colorado, that the Divestiture Assets can and will be used by the purchaser as part of a viable, ongoing business engaged in the provision of skiing services at Arapahoe Basin. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser for whom it is demonstrated to the United States' sole satisfaction, after consulting with Colorado, that: (1) the purchaser has the capability and intent of competing effectively in the provision of skiing services at Arapahoe Basin; (2) the purchaser has or soon will have the managerial, operational, and financial capability to compete effectively in the provision of skiing services at Arapahoe Basin; and (3) none of the terms of any agreement between the purchaser and defendants give defendants the ability unreasonably to raise the purchaser's costs, to lower the purchaser's efficiency, or otherwise to interfere in the ability of the purchaser to compete effectively in the provision of skiing services at Arapahoe Basin.

V. Appointment of Trustee

A. In the event that defendants have not divested the Divestiture Assets within the time specified in Section IV (A) or (C) of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States to effect the divestiture of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections V and VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V (C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of defendants any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestiture, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestiture at the earliest possible time to a purchaser acceptable to the United States, after consulting with Colorado, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by defendants must be conveyed in writing to plaintiffs and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of defendants, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Vail and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement

providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestiture. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of defendants, and defendants shall develop financial or other information relevant to such assets as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. If the trustee has not accomplished such divestiture within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, that the required divestiture has not been accomplished, and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the plaintiffs.

VI. Notification

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or V of this Final Judgment, defendants or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiffs of the proposed divestiture. If the trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the assets that are the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiffs of such notice, plaintiffs may request from defendants, the proposed purchaser, any other third party, or the trustee if applicable additional information concerning the proposed divestiture and the proposed purchaser. Defendants and the trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) days after receipt of the notice or within twenty (20) calendar days after plaintiffs have been provided the additional information requested from defendants, the proposed purchaser, any third party, and the trustee, whichever is later, the United States shall provide written notice to defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice to defendants and the trustee that it does not object, then the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V(B) of this Final Judgment. Absent written notice that the United States does not object to the proposed purchaser or upon objection by the United States, a divestiture proposed under Section IV shall not be consummated. Upon objection by the United States, or by defendants under the proviso in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Affidavits

A. Within twenty (20) calendar days of the filing of this Final Judgment and every thirty (30) calendar days thereafter until the divestiture has been completed whether pursuant to Section IV or Section V of this Final Judgment, Vail shall deliver to plaintiffs an affidavit as to the fact and manner of defendants' compliance with Sections IV or V of this Final Judgment. Each such affidavit shall include, inter alia, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period.

B. Within twenty (20) calendar days of the filing of this Final Judgment, Vail shall deliver to plaintiffs an affidavit which describes in detail all actions defendants have taken and all steps defendants have implemented on an on-going basis to preserve the Divestiture Assets pursuant to Section IX of this Final Judgment and describes the functions, duties and actions taken by or undertaken at the supervision of the individual(s) described at Section IX(F) of this Final Judgment with respect to defendants' efforts to preserve the Divestiture Assets. The affidavit also shall describe, but not be limited to, defendants' efforts to maintain and operate Arapahoe Basin as an active competitor, maintain the management, sales, marketing and pricing of Arapahoe Basin apart from that of defendants' other businesses that provide skiing services, maintain and increase sales of skiing services at Arapahoe Basin, maintain the Divestiture Assets in operable condition, continuing normal maintenance. Vail shall deliver to plaintiffs and affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall preserve all records of all efforts made to preserve and divest the Divestiture Assets.

VIII. Financing

Defendants shall not finance all or any part of any divestiture made pursuant to Sections IV or V of this Final Judgment without the prior written consent of the United States, after consulting with Colorado.

IX. Preservation of Assets

Until the divestiture required by the Final Judgment has been accomplished:

A. Defendants shall take all steps necessary to ensure that the Divestiture Assets will be maintained and operated as an ongoing, economically viable and active competitor in the provision of skiing services; and that, except as necessary to comply with Sections IX(B) to IX(H) of this Final Judgment, the management of Arapahoe Basin shall be kept separate and apart from the management of defendants' other ski resorts and will not be influenced by defendants, and the books, records, and competitively sensitive sales, marketing and pricing information associated with Arapahoe Basin will be kept separate

and apart from that of defendants' other businesses that provide skiing services.

B. Defendants shall use all reasonable efforts to maintain and increase sales of skiing services at Arapahoe Basin, and defendants shall maintain at 1996 or previously approved levels, whichever are higher, promotional, advertising, sales, marketing, skier transportation, reservation and merchandising support for skiing services sold at Arapahoe Basin. Defendants' sales and marketing employees responsible for sales of skiing services at Arapahoe Basin shall not be transferred or reassigned to other ski resorts owned by defendant.

C. Defendants shall take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition and shall maintain and adhere to normal maintenance schedules for the Divestiture Assets.

D. Defendants shall provide and maintain sufficient lines of sources of credit to maintain the Divestiture Assets as viable, ongoing businesses.

E. Defendants shall provide and maintain sufficient working capital to maintain the Divestiture Assets as viable ongoing businesses.

F. Defendants shall not, except as part of a divestiture approved by the United States, after consulting with Colorado, remove, sell, or transfer any of the Divestiture Assets, other than sales in the ordinary course of business.

G. Unless they have obtained the prior approval of the United States, after consulting with Colorado, defendants shall not terminate or reduce the current employment, salary, housing, or benefit arrangements for any personnel employed by defendants who work at, or have managerial responsibility for, Arapahoe Basin, except in the ordinary course of business.

H. Defendants shall continue all efforts in progress to obtain permits for Arapahoe Basin, including, but not limited to, efforts to obtain permits relating to water rights or access or snowmaking.

I. Defendants shall take no action that would jeopardize their ability to divest the Divestiture Assets as viable, ongoing businesses.

J. Defendants shall appoint a person or persons to oversee the Divestiture Assets, and who will be responsible for defendant's compliance with Section IX of this Final Judgment.

K. (a) Within five (5) days after the closing pursuant to the Stock Purchase Agreement amongst defendants, defendants shall hire, subject to the prior approval of the United States after consulting with Colorado, a person with the requisite experience and ability to serve as chief executive officer of Arapahoe Basin (the ''A-Basin CEO''). The A-Basin CEO shall have complete authority to manage and operate Arapahoe Basin in the ordinary course of business as a separate and independent business entity, including mountain operations, guest services, food and beverage operations, marketing, sales, lift ticket operations and pricing; provided, however, that the A-Basin CEO may continue A-Basin's participation in Ralcorp's previously announced marketing (e.g., Ski-3), skier transportation and reservations programs; and provided, further that, consistent with their obligations under Sections IX(B) to IX(H) of this Final Judgment, defendants shall provide the A-Basin CEO with whatever resources the A-Basin CEO requests. The A-Basin CEO may help facilitate the timely sale of the Divestiture Assets (e.g., by assisting in the due diligence process). In no circumstances shall defendants provide to, or receive from, the A-Basin CEO competitively sensitive marketing, sales and pricing information relating to their respective ski operations, and, further, except as is necessary for defendants to comply with Sections IX(B) to IX(H) of this Final Judgment or to effect the divestiture contemplated by Section IV(A), defendants shall not communicate with, or attempt to influence the business decisions of, the A-Basin CEO. The A-Basin CEO shall report directly in writing to the plaintiffs on the operation of A-Basin every thirty (30) days from the date he or she is hired until the divestiture required by this Final Judgment is completed.

(b) The appointment of the A–Basin CEO by defendants is for the purpose of facilitating defendants' compliance with Section IX(A) of this Final Judgment, and does not relieve defendants of whatever additional measures they may be required to take to comply fully with Section IX(A) of this Final Judgment. Furthermore, the appointment of the A–Basin CEO shall not be construed to relieve defendants of their obligations under Sections IX(B) to IX(J), VII and X of this Final Judgment.

(c) The A–Basin CEO's compensation shall not depend on A–Basin's revenues, profits, or profit margins, but may depend on a measure of output (e.g., skier days).

X. Compliance Inspection

Only for the purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the plaintiffs, including consultants and other persons retained by the United States or the State of Colorado , upon written request of the Assistant Attorney General in charge of the Antitrust Division, or the Attorney General of Colorado, and on reasonable notice to defendants made to their principal offices, shall be permitted:

(1) Access during office hours of defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of defendants, who may have counsel present, relating to enforcement of this Final Judgment; and

(2) Subject to the reasonable convenience of defendants and without restraint or interference from them, to interview their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division or the Attorney General of Colorado made to defendants' principal offices, defendants shall submit such written reports, under oath if requested, with respect to enforcement of this Final Judgment.

C. No information or documents obtained by the means provided in Section X of this Final Judgment shall be divulged by a representative of the plaintiffs to any person other than a duly authorized representative of the Executive Branch of the United States or of the State of Colorado, except in the course of legal proceedings to which the plaintiffs are a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiffs, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) calendar days notice shall be given by plaintiff to defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be

necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XII. Termination

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date of its entry.

XIII. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

_____

United States District Judge

In the United States District Court for the District of Colorado

United States of America and The State of Colorado, Plaintiffs, v. *Vail Resorts, Inc., Ralston Resorts, Inc., and Ralston Foods, Inc.*, Defendants.

Civil Action No. 97–B–10

Competitive Impact Statement

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The United States and the State of Colorado filed a civil antitrust Complaint on January 3, 1997, alleging that the proposed acquisition by Vail Resorts, Inc. (''Vail'') of the ski resort businesses of Ralston Resorts, Inc. (''Ralston'') would violate Section 7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that Vail and Ralston are the two largest owner/operators of ski resorts in Colorado, and that this transaction would combine several of the largest ski resorts in this region. In particular, this acquisition would increase substantially the concentration among ski resorts to which several hundred thousand skiers residing in the ''Front Range'' of Colorado—the geographic area lying just east of the Rocky Mountains, and including the metropolitan areas of Fort Collins, Boulder, Denver, Colorado Springs, and Pueblo and surrounding population areas—can practicably go for day or overnight ski trips. As a result, the acquisition would threaten to raise the price of, or reduce discounts for, weekend and day skiing to consumers living in these areas. The acquisition would thus violate Section 7 of the Clayton Act. The prayer for relief in the Complaint seeks: (1) A judgment that the proposed acquisition would violate Section 7 of he Clayton Act, 15 U.S.C. 18; and (2) a permanent injunction preventing Vail and Ralston from carrying out the Stock Purchase Agreement, dated July 22, 1996, or from entering into or carrying out any agreement, understanding or plan, the effect of which would be to combine the businesses or assets of Vail and Ralston.

At the same time the Complaint was filed, the United States and the State of Colorado also filed a proposed settlement that would permit Vail to complete its acquisition of Ralston's ski resorts, but requires a divestiture that would preserve competition for skiers in the Front Range. This settlement consists of a Stipulation and a proposed Final Judgment.

The proposed Final Judgment orders the parties to sell all of Ralston's rights, titles, and interests in the Arapahoe Basin resort in Summit County, Colorado to a purchaser who has the capability to compete effectively in the provision of skiing for Front Range Colorado skiers at Arapahoe Basin. The parties must complete the divestiture of these ski resorts and related assets before the later of one-hundred-and-fifty (150) calendar days after the filing of the Stipulation settling this action or five (5) business days after the entry of Final Judgment, in accordance with the procedures specified in the proposed Final Judgment. The stipulation and proposed Final Judgment also impose a hold separate agreement that requires defendants to ensure that, until the divestiture mandated by the Final Judgment has been accomplished, Ralston's Arapahoe Basin operations will be held separate and apart from, and operated independently of, Vail's and Ralston's other assets and businesses. Defendants must hire, subject to the prior approval of the United States, a person to serve as chief executive officer of Arapahoe Basin, who shall have complete authority to operate Arapahoe Basin in the ordinary course of business as a separate and independent business entity.

The United States, the State of Colorado, Vail, and Ralston have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Parties and the Proposed Transaction

Vail Resorts, Inc. (''Vail''), a Delaware corporation headquartered in Vail, Colorado, owns Vail Associates, Inc., which owns and operates two Colorado ski resorts: Vail and Beaver Creek Resorts. (Beaver Creek Resort includes the formerly independent Arrowhead Mountain.) During the 1995–96 ski season, Vail's resorts accounted for approximately 280,000 Front Range skier days. A ''skier day'' is one day or part of a day of skiing for one skier. This is about a 12 percent share of the Front Range market. Overall, Vail's resorts had over 2.2 million skier days and had revenues of over $140 million.

Ralston Resorts, Inc. (''Ralston''), a Colorado corporation headquartered in Keystone, Colorado, owns three Colorado ski resorts: Keystone, Breckenridge, and Arapahoe Basin. Ralston is a subsidiary of Ralcorp Holdings, Inc., a Missouri corporation headquartered in St. Louis, Missouri. Ralston Foods, Inc., a Nevada corporation, is also a subsidiary of Ralcorp Holdings, Inc., and is headquartered in St. Louis, Missouri. During the 1995–96 ski season, Ralston accounted for approximately 600,000 Front Range skier days, or over 26 percent of the Front Range market. Overall, Ralston's resorts had more than 2.6 million skier days and had revenues of more than $135 million.

Pursuant to a Stock Purchase Agreement among Vail Resorts, Inc., Ralston Foods, Inc., and Ralston Resorts Inc. dated July 22, 1996, Vail proposes to acquire all of the voting securities of Ralston, in return for which Ralston Foods, Inc. will receive voting securities of Vail valued at approximately $145 million. Vail will also assume or pay off debt of Ralston Foods amounting to at least $132 million and as much as $165 million under the Stock Purchase Agreement. The total consideration is valued at approximately $310 million. This proposed transaction combining the two largest owner/operators of ski resorts in Colorado precipitated the plaintiffs' antitrust suit.

B. The Skiing Market

The Complaint alleges that the provision of downhill skiing to residents of Colorado's Front Range constitutes a relevant market for antitrust purposes—that is, in the language of the Clayton Act, it is a ''line of commerce'' and is in a ''section of the country.'' The Complaint further alleges that the effect of Vail's acquisition

would be to lessen competition substantially in the provision of skiing to Front Range skiers.

The business of skiing comprises all services related to providing access to downhill skiing and snowboarding, including, but not limited to, providing lifts, ski patrol, snowmaking, design, building, and grooming of trails, skiing lessons, and ancillary services such as food service, entertainment, and lodging. Downhill skiing differs from other winter recreational activities, such as cross-country skiing, ice skating, snow-mobiling, sleigh riding, tobogganing, ice fishing, and taking cruises or vacationing in places with hot climates.[1] A small but significant and nontransitory increase in prices for skiing would not cause a significant number of downhill skiers to substitute other recreational activities for skiing.

Customers of defendants' ski resorts include two types of skiers: destination skiers and Front Range skiers.[2] Destination skiers come from outside Colorado, many from outside of the United States. These skiers ski for extended periods of time, typically for a week. Many destination skiers fly to their ski resort and are usually attracted to the resort by both the mountain (e.g., terrain, trails, lifts, and grooming) and resort amenities (e.g., lodging and night life). In contrast, Front Range skiers are day or overnight skiers. Most Front Range skiers drive to their ski resort and limit the resorts they use for day trips to those which fall within a radius of about two-and-one-half-hour travel time from where they live, and a somewhat larger radius for overnight trips. Front Range skiers are typically more interested in the mountain and skiing facilities than in the resort amenities.

The defendants market their ski resorts differently to skiers depending on whether they are destination or Front Range skiers. They advertise their ski resorts outside the Front Range area of Colorado for destination skiers, for example, in major metropolitan newspapers and in magazines sold throughout the United States. In marketing to destination skiers, the resorts emphasize package pricing, which typically includes one or more of lift tickets, lodging, airfare, and also emphasize resort amenities as well as mountain features. In contrast, the defendants market their resorts to Front Range skiers by advertising in the Front Range, e.g., using direct mail within certain zip codes, billboards, and local newspapers. Front Range advertising, in contrast to destination skier advertising, emphasizes discount prices on lift tickets to the Front Range skier. There is also less emphasis on resort amenities as opposed to qualities of the mountains themselves.

The defendants' ski resorts use different pricing strategies depending on whether they are selling tickets to destination skiers or Front Range skiers. These resorts sell single-day and multi-day lift tickets through the resort ticket window primarily to the destination skier. In selling to Front Range skiers, these ski resorts sell single-day lift tickets through off-mountain retailers located within the Front Range that are discounted below the window lift ticket price. These resorts also offer the Front Range skier coupons that discount off the window ticket price, as well as frequent skier cards that provide discounts from the window price and may also provide a free day of skiing after a Front Range skier has paid for a certain number of lift tickets. Promotions are targeted to Front Range skiers, and measures are taken successfully to limit the access of destination skiers to such promotions. Consequently, the lift ticket prices defendants charge to Front Range skiers are different from the prices they charge to destination skiers.

C. Competition Between Vail and Ralston

Vail and Ralston compete directly to provide skiing to Front Range Colorado day and overnight skiers.

As noted above, Front Range skiers typically drive to their ski resort and limit the resorts they use for day trips to those which fall within a radius of about two-and-one-half-hour travel time from where they live, and a somewhat larger radius for overnight trips. The most popular of these resorts are located off Interstate 70 west of Denver. The Vail and Ralston resorts are located within this radius. Front Range skiers would not turn to resorts that fall outside of this two-and-one-half-hour radius in sufficient numbers to defeat a small significant, non-transitory price increase imposed by resorts within this radius.

Resorts located farther away cannot, and after this transaction would not, constrain prices charged to skiers living in the Front Range. Although Front Range skiers occasionally choose to ski at more distant resorts, skiing at such resorts is not a practical or economic alternative for most Front Range skiers most of the time.

Ski resorts in Colorado that are within the distance which a Front Range resident will practically travel for a day or a weekend skiing trip can charge different prices to these skiers than they charge to customers coming from other parts of the country or the world.

Thus, the provision of downhill skiing to Front Range residents is a relevant market within the meaning of Section 7 of the Clayton Act (i.e., is a ''line of commerce'' and is in a ''section of the country''), and Vail and Ralston compete directly in this market.

D. Anticompetitive Consequences of the Acquisition

The Complaint alleges that the combination of Vail and Ralston would substantially increase concentration in the Front Range skier market, using the Herfindahl-Hirschman Index (''HHI'')[3] as a measure of market concentration. The post-merger HHI, based on Front Range skier days derived from surveys of skiers conducted in 1994, 1995, and 1996, would be approximately 2,228 with a change in HHI of about 643 points. During the 1995–96 skiing season, Vail's resorts accounted for about 12 percent and Ralston's resorts over 26 percent of Front Range skier days. If the proposed acquisition were consummated, the combined company would account for over 38 percent of skier days in the Front Range market.

The Complaint further alleges that the acquisition of Ralston by Vail would substantially lessen competition. The transaction would have the following effects, among others:

1. Competition generally in providing skiing to Front Range skiers would be lessened substantially;

2. Actual competition between Vail and Ralston in providing skiing to Front Range skiers would be eliminated;

[1] Skiing is a discretionary recreational activity, but this does not, in itself, affect the antitrust analysis of whether skiing constitutes a product market. The antitrust laws protect and respect consumers' choices for discretionary products as well as for nondiscretionary products.

[2] The Complaint does not allege a violation of the Clayton Act for destination skiers or for types of skiers other than Front Range skiers. The Division's investigation did not reveal any likely anticompetitive effect from the proposed merger in the destination skier market or in other relevant markets such as the local skier market.

[3] The Herfindahl-Hirschman Index, or ''HHI,'' is a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2+30^2+20^2+20^2=2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases. Markets in which the HHI is between 1000 and 1800 are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated.

3. Discounting to Front Range skiers by Vail and Ralston would likely be reduced;

4. Prices for skiing to Front Range Colorado skiers would likely be increased.

The Complaint also alleges that successful entry or expansion in the skiing business would be difficult, time consuming, and costly, as well as extremely unlikely. Entry or expansion therefore would not be timely, likely, or sufficent to prevent any harm to competition.

Prices charged to Front Range skiers are constrained by competition among ski resorts for these skiers' business. That is, each ski resort is limited in raising its price by the fact that when a resort raises its price, it can lose revenues because customers switch to other ski resorts. Thus, a resort's prices are constrained by other resorts' prices. Similarly, if prices increase, some customers would ski less frequently. This, too, constrains the prices a resort may charge.

Acting in light of these facts, a ski resort (like any business) attempts to set a price that will earn it the most profit. It does not want to charge a price so high that it loses too many customers, nor does it want to charge a price so low that it misses the opportunity for the revenue that a higher price would bring. For each resort, the price that will maximize profit balances these two conflicting goals—either a higher or a lower prices would be profitable. Businesses often cannot easily determine the profit-maximizing price, and may do so through trial and error. But the effort to find the profit-maximizing price—that is, the price that neither drives away too many customers because it is too high nor misses revenue opportunities because it is too low—is reflected in the day to day business decisions of ski resorts, as well as countless other businesses.

Economists have developed an analytical framework to explain how a merger can allow a firm to charge higher prices after acquiring a competitor, even if firms do not coordinate their behavior (such as by explicitly colluding with one another). Associated with this framework are standard tools that allow us to predict specific price effects. This framework has been called a unilateral effects'' mode. It is particularly useful in markets that have differentiated products, that is, where products of different firms are not identical[4] Each ski resort, for example, has characteristics, such as terrain and amenities, that different consumers value differently. This unilateral effects model is an additional tool to examine the accepted, common-sense notion that a merger is more likely to have a harmful effect if the merging firms are close competitors.

Before a merger, increases in price by two independent resorts are deterred by the loss of customers that would result from a price increase. If resorts are put under common ownership by a merger, however, they no longer constrain each other's prices in the same way. A merger can make a price increase profitable. In particular, before a merge, if two resorts are significant competitors to each other and one of these resorts increases its prices, a significant proportion of this resort's customers would be ''lost'' to the other resort. After merger between these two resorts, however, some customers who switch away from the resort that raises its price would no longer be lost, but rather would be ''recaptured'' at the newly-acquired resort. Price increases that would have been unprofitable to either firm alone, therefore, would become profitable to the merged entity.

As a result of this recapture phenomenon, a merged firm, acting independently to earn the most profits it can, will choose higher prices than its two component firms did before the merger, if those firms were significant competitors to each other before the merger. The loss of competition that arises as a result of this effect is what is meant by a ''unilateral'' anticompetitive effect, that is, an effect that does not depend on the firms in the market acting interdependently. This unilateral effect will be larger as the recapture rate (which is sometimes called the ''diversion ratio,'' see infra noted 4) is larger, as the margin earned on recaptured customers is higher, and as the customers who leave the merging firms in response to a price increase are fewer (in technical terms, the lower the ''own price elasticity'').

The Vail and Ralston resorts are close competitive alternatives for a number of Front Range skiers. Some of the customers who would switch away from Vail's resorts if Vail raised its price would instead go to Ralston resorts, and some customers who currently ski at Ralston's resorts would switch to Vail if Ralston raised its price. After the merger, Vail-Ralston would no longer lose revenues from these customers if it raised its price, because it would recapture the revenues from customers who would switch between Vail and Ralston in response to a price increase. The profit-maximizing price for the post-merger Vail-Ralston therefore would be higher than that for either firm before the merger. Moreover, once Vail and Ralston resorts charge higher prices, other resorts in the market have an incentive to raise their prices somewhat in response to less intense price competition for Front Range customers.

Economics allows us to estimate the likely unilateral effect of a merger if we have information on the elasticities, margins and recapture ratios. In this case, information about the Front Range Colorado skiing market permitted estimates of the relevant range of likely price increases. Existing surveys of Front Range skiers were used to estimate how many customers are likely to switch between Vail and Ralston resorts in response to a price change (the recapture ratios). Margin information was derived from accounting and marketing documents obtained from the parties. A range of likely elasticities was derived from a number of sources, including surveys, existing literature about the market, and market data on past price changes. In conjunction with other information about costs and demand in the market, this information permitted estimates of how much the profit-maximizing price for various resorts would increase as a result of the merger. It was estimated that, if the merger were allowed to take place without any divestiture, there would be an overall average increase in Front Range discounted lift ticket prices on the order of 4%, or about $1 per lift ticket on average to all Front Range customers, with higher price increases at the merging firms' resorts.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve competition for Front Range skiers in the operation of ski resorts in Colorado. Within one-hundred-and-fifty (150) calendar days after filing the proposed Final Judgment, defendants must sell all of Ralston's rights, titles, and interests in the Arapahoe Basin resort in Summit County, Colorado. The assets and interests will be sold to a purchaser who demonstrates to the sole satisfaction of the United States (which will consult with Colorado) that it will be an economically viable and effective competitor.

The divestiture ordered in the proposed Final Judgment resolves the anticompetitive problems raised by the proposed transaction. Since Ralston has jointly owned Arapahoe Basin, Keystone, and Breckenridge, these three resorts have not been competing against each other for customers. Divesting Arapahoe Basin restores significant competition among these mountains

[4] See, e.g., Carl Shapiro, *Mergers with Differentiated Products*, 10 Antitrust 23 (1996).

and, more generally, permits Arapahoe Basin to serve as an independent competitor for skiers throughout the Front Range. While Arapahoe Basin is smaller than the other Ralston resorts in absolute size, it has a high proportion of Front Range skiers (roughly one-quarter of Ralston's Front Range skier days last year were at Arapahoe Basin) and is thus relatively more competitively significant in the Front Range skiing market than its overall number of skier days might suggest. Furthermore, with a large percentage of its terrain attracting advanced intermediate and expert skiers, Arapahoe Basin competes directly with the bowl and glade skiing experience offered at a number of Vail's mountains. A relatively small shift in skier days to Arapahoe Basin would make any significant price increase by the merged firm unprofitable. The calculations of profit-maximizing behavior described above suggest that, after the merger, once Arapahoe Basin is divested, any increase in average discounted prices to Front Range skiers would be negligible.

With this divestiture, the post-merger HHI for the Colorado Front Range skiing market will be below 1800 and the defendants' post-merger market share in the Front Range will be less than 32%. Given the post-divestiture HHI level, the combined firm's post-divestiture market share, and the number and size of independent competing ski resorts remaining in the affected markets, the proposed transaction is not likely to lead to a significant anticompetitive effect—provided that Arapahoe Basin is divested.

Until the ordered divestiture takes place, defendants must take all reasonable steps necessary to accomplish the divestiture, and cooperate with any prospective purchaser. If defendants do not accomplish the ordered divestiture within the specified one-hundred-and-fifty (150) calendar day time period, which may be extended by the United States for two additional periods of time not to exceed (90) calendar days in toto, the proposed Final Judgment provides for procedures by which the Court shall appoint a trustee to complete the divestiture. In that case, defendants must cooperate fully with the trustee.

If a trustee is appointed, the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee. The trustee's compensation will be structured so as to provide an incentive for the trustee to obtain the highest price for the assets to be divested, and to accomplish the divestiture as quickly as possible. After the effective date of his or her appointment, the trustee shall serve under such other conditions as the Court may prescribe. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish the divestiture. At the end of six (6) months, if the divestiture has not been accomplished, the trustee shall file promptly with the Court a report that sets forth: (1) The trustee's efforts to accomplish the divestiture, (2) the reasons, in the trustee's judgment, why the divestiture has not been accomplished, and (3) the trustee's recommendations. The trustee's report will be furnished to the parties and shall be filed in the public docket, except to the extent the report contains information the trustee deems confidential. The parties each will have the right to make additional recommendations to the Court. The Court shall enter such orders as it deems appropriate to carry out the purpose of the trust.

The Stipulation and proposed Final Judgment also impose a hold separate agreement that requires defendants to ensure that, until the divestiture mandated by the Final Judgment has been accomplished, Ralston's Arapahoe Basin operations will be held separate and apart from, and operated independently of, defendants' other assets and businesses. Defendants must hire, subject to the prior approval of the United States, a person to serve as chief executive officer of Arapahoe Basin, who shall have complete authority to operate Arapahoe Basin in the ordinary course of business as a separate and independent business entity.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney's fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any substantial private lawsuit that may be brought against Vail or Ralston.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States, the State of Colorado, and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of APPA, provided that the United States has now withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days proceeding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty : 60) days of the date of publication of this Competitive Impact Statement in the Federal Register. The United States will evaluate and, after consultation with the State of Colorado, will respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to: Craig W. Conrath, Chief, Merger Task Force, Antitrust Division, United States Department of Justice, 1402 H Street, NW., Suite 4000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits of its Complaint against Vail or Ralston. The United States is satisfied, however, that the divestiture of the assets and other relief contained in the proposed Final Judgment will preserve competition in the operation of ski resorts that otherwise would be affected adversely by the acquisition. Thus, the proposed Final Judgment would achieve the relief the government would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the government's Complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject

to a sixty (60) day comment period, after which the could shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the coust *may* consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the United States Court of Appeals for the D.C. Circuit has held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific alleviations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft,* 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, ''the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [5] Rather,

absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-American Dairymen, Inc.,* 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988), *quoting United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir.), *cert. denied,* 454 U.S. 1083 (1981); *see also Microsoft,* 56 F.3d at 1460–62. Precedent requires that the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[6]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted).'' [7]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the ARPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: January 21, 1997.

Respectfully submitted,

Craig W. Conrath,

Chief.

Reid B. Horwitz,

Assistant Chief.

John W. Van Lonkhuyzen,

Anne M. Purcell,*

James K. Foster,

Barry L. Creech,

John M. Lynch,

Susan Wittenberg,

Trial Attorneys.

U.S. Department of Justice, Antitrust Division, Merger Task Force, 1401 H Street, NW, Suite 4000, Washington, DC 20530, (202) 307–0001.

In the United States District Court for the District of Colorado

United States of America and the State of Colorado, Plaintiffs, v. *Vail Resorts, Inc., Ralston Resorts, Inc., and Ralston Foods, Inc.* Defendants.

Case No. 97–B–10

Certificate of Service

I hereby certify that on this 21st day of January, 1997 a true and correct copy of the foregoing Competitive Impact Statement was delivered by overnight mail to the following persons:

Bruce F. Black,

Holme, Roberts & Owen, LLP, 1700 Lincoln, Suite 4100, Denver, Colorado 80203

and

Robert S. Schlossberg,

Peter E. Halle,

Morgan, Lewis & Bockius, LLP, 1800 M Street, N.W., Washington, D.C. 20036

Counsel for Vail Resorts, Inc.

Jan Michael Zavislan,

First Assistant Attorney General, 1525 Sherman Street, 5th Floor, Denver, Colorado 80203,

Counsel for State of Colorado

Paul C. Daw,

Sherman & Howard, LLC, 633 17th Street, Suite 3000, Denver, Colorado 80202

and

E. Perry Johnson,

Bryan Cave, LLP, One Metropolitan Square, 211 No. Broadway, Suite 3600, St. Louis, Missouri 63102

and

J. Michael Cooper,

Daniel C. Schwartz,

Bryan Cave, LLP, 700 13th Street, N.W., Washington, D.C. 20005

Counsel for Ralston Resorts, Inc. and Ralston Foods, Inc.

[FR Doc. 97–2522 Filed 1–31–97; 8:45 am]

BILLING CODE 4410–11–M

[5] 119 Cong. Rec. 24598 (1973) *See United States* v. *Gillette Co.,* 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9, *reprinted in* (1974) U.S. Code Cong. & Ad. News 6535, 6538.

[6] *United States* v. *Bechtel,* 648 F.2d at 666 (citations omitted) (emphasis added); *see United States* v. *BNS, Inc.,* 858 F.2d at 463; *United States* v. *National Broadcasting Co.,* 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.,* 406 F. Supp. at 716; *see also Microsoft,* 56 F.3d at 1461 (whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '') (citations omitted).

[7] *United States* v. *American Tel. and Tel. Co.,* 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom, Maryland* v. *United States,* 460 U.S. 1001 (1983), *quoting United States* v. *Gillette Co., supra,* 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985).

* Counsel of Record.

DEPARTMENT OF LABOR

Office of the Secretary

[Secretary's Order 01–97]

Authority and Responsibilities for Implementation of the Chief Financial Officers Act of 1990 and Related Legislation

January 10, 1997.

1. *Purpose.* To delegate authority and assign responsibilities for implementation of the Chief Financial Officers Act of 1990 and related legislation,[1] and to establish within the Department of Labor an Office of the Chief Financial Officer.

2. *Organization.* There is established in the Department of Labor (DOL) an Office of the Chief Financial Officer, headed by a Chief Financial Officer (CFO), who is appointed by the President and confirmed by the Senate, and a Deputy Chief Financial Officer, who is in the Senior Executive Service. The CFO shall report to the Secretary, but may receive day-to-day guidance and direction from the Deputy Secretary. The Office of the Chief Financial Officer shall have such component organization units, staffing a funding as may subsequently be authorized.

3. *Delegation of Authority.* The CFO is hereby delegated authority to act for and speak on behalf of the Secretary of Deputy Secretary on all matters relating to departmental financial management.

4. *Assignment of Responsibilities.*

a. Pursuant to the statute, the DOL CFO shall:

—Report directly to the Secretary and the Deputy Secretary regarding financial management matters;
—Oversee all financial management activities relating to the DOL's programs and operations.
—Develop and maintain an integrated departmental accounting and financial management system, including financial reporting and internal controls;
—Make recommendations to the Secretary regarding selection of the DOL Deputy CFO;
—Establish minimum, core standards for the recruitment, selection, development, training and performance review of financial management staff throughout DOL. Financial management staffs outside the immediate office of the CFO will operate in accordance with policies and procedures prescribed by the CFO;
—Prepare and transmit an annual report to the Secretary and the Director of OMB;
—Approve the allotment of obligational authority, related disbursements and guidelines on the application and uses of funds. The Office of the Assistant Secretary for Administration and Management will conduct initial reviews of request allotments under policies established by the CFO;
—Monitor the financial execution of the budget of the DOL and its component agencies in relation to actual expenditures, and prepare and submit to the Secretary timely performance reports in cooperation with the Office of the Assistant Secretary for Administration and Management; and
—Review, on a biennial basis, the fees, royalties, rents, and other charges imposed by the Department for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred by DOL in providing those services and things of value.

b. In furtherance of these statutory responsibilities and to assure conformance to applicable Office of Management and Budget, Department of the Treasury, Office of Personnel Management, General Services Administration and other central Federal agency standards and requirements, and, to the extent determined to be applicable, Federal Accounting Standards Advisory Board, Joint Financial Management Improvement Program, the Executive Branch Councils and other central Federal agency guidelines, the DOL CFO is also assigned the following responsibilities.

(1) Financial Policy

(a) Establish financial management policies for the DOL and its component agencies.

(b) Ensure compliance throughout the DOL, and its component parts, with applicable accounting standards and principles, and financial information and systems function standards including the standards promulgated by the Federal Accounting Systems Advisory Board, the Federal Government's Standard General Ledger, the core requirements for Financial Systems, and the financial statement form and content guidance issued by OMB.

(c) Establish, review and enforce throughout the DOL internal control policies, standards and compliance guidelines involving financial management including authority to require and ensure timely corrective actions regarding material weaknesses disclosed through audit findings and reports under the Federal Managers' Financial Integrity Act (FMFIA); establish, in coordination with program managers, agency-wide internal control processes; advise the Secretary on the accuracy and completeness of the annual FMFIA report; and participate in monitoring and prescribing corrective actions on reported material weaknesses.

(d) Provide oversight of and issue core requirements and standards related to component agency financial management personnel, financial systems, activities, and operations, including preparation and revision of agency financial management plans and performance reports. Financial management staffs outside the immediate office of the CFO will operate in accordance with policies and procedures prescribed by the CFO.

(e) Ensure adequate controls over asset management including cash management operations; credit management and debt collection operations; and real property, equipment and inventories.

(f) Ensure that component agencies gather timely and accurate financial information to manage and oversee major procurements, e.g. monitoring contract disbursements in relation to projected costs, actual commitments, deliverables and cost estimates.

(g) Participate with program Assistant Secretaries and other staff in the policy review of proposed legislative and program initiatives.

(h) Participate with program Assistant Secretaries and other staff at a policy and decision-making level in the departmental budget review process.

(i) Participate in the review and approval process of information systems that provide, at least in part, financial and/or program performance data.

(j) Serve on the CIO Capital Planning and Investment Board and participate in activities intended to assure conformance of proposed major systems to established standards for financial data integrity. Appeal to the Secretary IRM and budget decisions affecting financial management processes, systems and operations.

(k) Serve on the Procurement Review Board and participate in activities intended to assure conformance of proposed major acquisitions to established standards for financial and acquisition integrity.

(l) Provide policy advice and assistance to DOL executives including component agency heads on all

[1] Including The Chief Financial Officer's Act of 1990, Government Performance Results Act of 1993, Government Management Reform Act of 1994, Information Technology Management Reform Act of 1996, and the Federal Financial Management Improvement Act of 1996.

personnel matters (e.g., qualifications, recruitment, performance, training and retention) affecting financial management personnel throughout DOL and its component agencies, and on budget and staffing levels for component agency financial functions.

(m) Review and approve component agency financial policies, procedures and structures for consistency with the policies of the DOL and the central Federal agencies.

(2) External Reporting

(a) Prepare accurate and timely departmental accounting reports and financial statements (including where appropriate pertinent performance measures).

(b) Prepare the annual report required by the Federal Managers' Financial Integrity Act.

(c) Prepare the annual financial management report required by the Chief Financial Officers Act.

(d) Prepare the semi-annual audit resolution reports required by the Amendments to the Inspector General Act.

(e) Coordinate and manage financial management reporting requirements as may be imposed by Office of Management and Budget, the Department of the Treasury, other central Federal agencies, and the Congress.

(f) Provide assistance to agency heads in design and review the development of reporting mechanisms that integrate program performance and financial data; facilitate the display of such data in budget documents, financial statements, and other pertinent issuances.

(3) Financial Programs

(a) Manage DOL programs on internal controls, audit resolution, travel management, cash management, debt collection, asset management and other financial management activities.

(b) Manage centralized departmental accounting and payroll functions for fund and cost accounting; capitalized assets accounting; grant accounting; DOL employee compensation and benefits; and voucher, commercial bill and other payments.

(c) Exercise departmental approval authority over interagency transactions, involving component agency program funds e.g. for investment, transfer, etc., in cooperation with the Office of the Assistant Secretary for Administration and Management.

(d) Distribute equitable Working Capital fund charges to DOL components, provide WCF accounting statements to component agencies and oversee WCF operations.

(e) Provide technical review of finance offices in the DOL and its component agencies, and oversee component agency financial systems as defined in the Federal Financial Management Improvement Act of 1996.

(f) Appraise centralized and decentralized operations and organizations to determine more effective and cost-efficient methods of performing required financial functions.

(g) Compile and review timely and accurate information on major contract disbursements in relation to projected costs, commitments, obligations, expenditures, and deliveries of products and services; and evaluate component agency Annual Acquisition Plans in relation to official budget plans and levels.

(h) Chair the Department's Management Control Policy Board, which has broad management responsibility for planning and monitoring the component agencies' efforts to address internal control weaknesses and financial system non-conformance to the standards prescribed in the Federal Financial Management Improvement Act of 1996.

(4) Financial Systems

(a) Develop and maintain departmental central financial, accounting and asset systems.

(b) Review and approve the design and operation of component agency financial, accounting and asset systems, specifically including the financial aspects of grant management systems, debt collection systems and similar systems as defined by the Federal Financial Management Improvement Act of 1996.

(c) Establish policies, procedures, and other guidelines to prescribe the form, content and frequency of accounting and program performance information to be reported from component agency systems to meet DOL and central Federal agency information requirements.

(5) Budget

(1) Provide leadership, direction, coordination and related services concerning budget execution for the DOL and its component agencies.

(b) Manage and oversee the Department's administrative control of funds, and user fees in cooperation with the Office of the Assistant Secretary for Administration and Management.

(c) Ensure the development and reporting of cost information in accordance with Federal Accounting Standards Advisory Board requirements, and the systematic measurement of performance in appropriate budget documents in cooperation with the Office of the Assistant Secretary for Administration and Management.

(6) Administration Programs for Financial Management

(a) Review all proposed personnel selections, skill requirements, performance standards, performance appraisals, performance awards and position descriptions for financial management personnel at senior levels throughout the DOL and its component agencies; discuss any problems with the component agency head and, if any issues remain resolved, appeal any problem to the Secretary and Deputy Secretary.

(b) Manage a comprehensive training and development program for budget analysts, accountants, financial managers and financial technicians; assure that staff skills are commensurate with requirements; and following consultation with the component agencies' financial managers, implement a Continuing Professional Education (or similar) program, as recommended by the Joint Financial Management Improvement Program (JFMIP).

(c) Review the budget requests for all departmental and component agency financial management functions; recommend to the Secretary their modification as necessary to assure that sufficient resources are requested to effectively and efficiently perform necessary financial and related functions.

(d) Establish a CFO Advisory Council within the DOL to provide a forum for component organizations to advise and support the CFO in matters affecting the financial community. The Advisory Council will also facilitate the dissemination of financial policies established by the CFO to component agencies.

c. Unless modified by this Order the heads of component agencies retain previously delegated responsibilities and authorities. In the context of the Department's financial management program, they are specifically charged with the responsibility to:

(1) Perform transaction- and operational-level financial functions in accordance with policies, requirements and procedures established by the CFO.

(2) Direct financial staffs and functions in their respective component agencies consistent with those procedures.

(2) Facilitate the CFO's oversight responsibilities with respect to financial operations and component agency

program financial systems by providing and maintaining system documentation, audit trails, summary or detailed transaction data and such other information as the CFO may require.

(4) Fully solicit and consider the CFO's views in the component agency head's review of proposed appointment, promotion, appraisal and other personnel actions affecting financial management staff at senior levels,

(5) Manage grants, procurement, property, debt management/accounts receivable, and other management systems for their respective component agencies, in a manner consistent with the CFO's responsibilities prescribed herein.

d. In the Department's financial management program, the Office of the Assistant Secretary for Administration and Management is delegated the following authorities:

(1) Issue requests to the Office of Management and Budget for apportionments.

(2) Working under polices established by the CFO, administer allotments and interagency transactions, including reprogramming and transfer requests.

e. In addition to the above, the Assistant Secretary for Administration and Management will work to assure a mutually supportive relationship between the administrative management programs under his or her direction and the Department's financial management program including consultation with the Chief Financial Officer on the organization and functions of financial management staff prior to implementation of changes.

f. The Solicitor of Labor is responsible for providing legal advice and assistance to all officials of the Department who are responsible for activities under the Chief Financial Officers Act of 1990 and under this Order, except as provided in Secretary's Order 2–90 (January 31, 1990) with respect to the Office of the Inspector General.

g. The Inspector General:

(1) Retains full responsibility for previously delegated budget and financial management activities pertaining to its own office, but will participate with the CFO in integrating such delegated assignments with the overall financial management program of the Department.

(2) Will participate, where appropriate, in joint reviews with the CFO of selected financial management functions, operations and systems.

(3) Consistent with its statutory responsibilities for managing an audit program, will participate with the CFO in the resolution of audit issues, findings and recommendations, including those involved in the annual financial statements.

5. *Communications*. In consonance with the assignments of responsibility above, the Office of the Chief Financial Officer shall assure that the Agency Administrative Officers are apprised of communications to component agency financial staff. Similarly, component agencies shall keep the Chief Financial Officer apprised of directives and other communications affecting their financial staff.

6. *Directives Affected*. All references to the Office of the Comptroller, OASAM in Secretary's Orders, DLMS Chapters and other departmental issuances shall be considered to refer to the Office of the Chief Financial Officer. Directives inconsistent with this Order are rescinded to the extent of the inconsistency.

7. *Effective Date*. This Order is effective immediately.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 97–2428 Filed 1–31–97; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of December, 1996 and January, 1997.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–32,750; Ozark Quilt Supply, Winona, MO

TA–W–32,32771; Hollingsworth & Vose Co., Floyd, VA

TA–W–32,962; Rayonier, Inc., Port Angeles Mill, Port Angeles, WA

TA–W–32,824; Mueller Co., Decatur, IL

TA–W–32,867; OPT Industries, Inc., Phillipsburg, NJ

TA–W–32,792; Lansdale Semiconductor, Inc., Tempe, AZ

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–32,956; Cypress Chemical, El Paso, TX

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–32,757; Lockheed Martin, Ocean, Radar & Sensor System, Syracuse, NY

The investigation revealed that criteria (1) and criteria (3) have not been met. A significant number or proportion of the workers did not become totally or partially separated as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA–W–32,846; Litco Wood Products Co., Parkersburg, WV

TA–W–32,888; Magnetek, Huntington, IN

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–32,875; Truth Hardware, Owatonna, MN

The investigation revealed that criteria (2) and criteria (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA–W–32,928; Chicago Steel and Wire, a Division of MCM Enterprises, Inc., Chicago, IL

Layoffs at the plant were caused by consolidating production to a plant in Crawfordsville, In.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

TA–W–32,870; Sportswear Associates, Inc., Clay Sportswear Div (AKA About Sportswear), Moss, TN: October 16, 1995.

TA–W–32,912; Integrated Device Technology, Inc., Salinas, CA: October 29, 1995.

TA–W–32,915; Spring Industries, Springs Window Fashion, City of Industries, Ca: October 24, 1995.

TA–W–32,889; Motorola Ceramic Products, Albuquerque, NM: October 23, 1995.

TA–W–32,896; WTTC, Inc., El Paso, TX: September 23, 1995.

TA–W–32,874; Jobre Cap Co., Waycross, GA: October 9, 1995.

TA–W–32,920; Gerry Baby Products, Thornton, CO: November 4, 1995.

TA–W–32,922; Hecht Manufacturing Co., Inc., Milwaukee, WI: October 25, 1995.

TA–W–32,938; Ciba Speciality Chemicals Corp., Textile Products—Toms River Site, Toms River, NJ: November 7, 1995.

TA–W–32,944; Plaid Clothing Group, Inc., J. Schoeneman Div., Chambersburg, PA: November 8, 1995.

TA–W–32,934; Lawson Mardon Thermaplate, Piscataway, NJ: October 28, 1995.

TA–W–32,868; Duck Head Apparel Co., Monroe, GA: October 15, 1995.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of December, 1996 and January, 1997.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–01270; Lockheed Martin, Ocean Radar and Sensor Systems, Syracuse, NY

NAFTA–TAA–01323; Lucent Custom Manufacturing Services, Lucent Technologies, Whitsett, NC

NAFTA–TAA–01362; Trade Apparel, Inc., El Paso, TX WA

NAFTA–TAA–01356; Border Apparel, Inc., El Paso, TX

NAFTA–TAA–01308; Witco Corp., Kendall/Amalia Div., Bradford, PA

NAFTA–TAA–01277; U.S. Natural Resources, Inc., Irvington—Moore Div., Tigard, OR

NAFTA–TAA–01312; Warnaco, Inc., Olga Div., Van Nuys, CA

NAFTA–TAA–01361; Chicago Steel and Wire, A Div. of MCM Enterprises, Inc., Chicago, IL

NAFTA–TAA–01354; Ball Corp., Columbus, IN

NAFTA–TAA–01344; Agway, Inc., Country Products Group, Waverly, NY

NAFTA–TA–01406; Ball-Foster Glass Container Co., Laurens, SC

NAFTA–TAA–01288; E.W.I., Inc., Dover Products Div., Dover, TN

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–01243; Walker Information, Inc., Indianapolis Calling Center, Indianapolis, IN

NAFTA–TAA–01244; Walker Information, Inc., Tempe Calling Center, Tempe, AZ

NAFTA–TAA–01348; Cypress Chemical, El Paso, TX

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–01327; Connor Rubber Technologies, Connor Corp., Fort Wayne, IN: August 31, 1994.

NAFTA–TAA–01340; Gerber Childrenwear, Inc., Fort Kent, ME: November 8, 1995.

NAFTA–TAA–01349; Killark Electric Manufacturing Co., A Subsidiary of Hubbell, Inc., St. Louis, MO: November 14, 1996.

NAFTA–TAA–01376; General Textiles, Murphy, NC: November 25, 1995.

NAFTA–TAA–01371; Kenneth Fox Supply Co., Fox Packaging, McAllen, TX: November 25, 1995.

NAFTA–TAA–01353 & A; Dazey Corp., Osage City, KS and New Century, KS: November 18, 1995.

NAFTA–TAA–01318; Tasus Corp., Bloomington, IN: October 30, 1995.

NAFTA–TAA–01333; A.O. Smith Corp., Electrical Products Co., Tipp City, OH: November 6, 1995.

NAFTA–TAA–01402; Franklin Disposables, Columbus, OH: December 4, 1995.

NAFTA–TAA–01299; Advanced Metallurgy, Inc., McKeesport, PA: October 11, 1995.

NAFTA–TAA–01410; Madenform, Inc., Bayonne, NJ: December 27, 1995.

I hereby certify that the aforementioned determinations were issued during the month of December, 1996 and January, 1997. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: January 15, 1997.

Russell T. Kile,

Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 97–2533 Filed 1–31–97; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

[Application Number D–10078]

Proposed Class Exemption Relating to Certain Employee Benefit Plan Foreign Exchange Transactions Executed Pursuant to Standing Instructions

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Class Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed class exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from certain taxes imposed by the Internal Revenue Code of 1986 (the Code). If granted, the proposed exemption would permit certain foreign exchange transactions between employee benefit plans and certain banks and broker-dealers which are parties in interest with respect to such plans, pursuant to standing instructions. The proposed exemption, if granted, would affect participants and beneficiaries of employee benefit plans involved in such transactions, as well as banks and broker-dealers which act as dealers in foreign exchange.

DATES: Written comments and requests for a public hearing with regard to the substantive content of the proposed exemption shall be submitted to the Department before April 4, 1997.

ADDRESSES: All written comments and requests for a public hearing (preferably 3 copies) should be sent to: Pension and Welfare Benefits Administration, Room N–5649, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Foreign Exchange Class Exemption Proposal—Standing Instructions. The application and all comments received, will be available for public inspection in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Lyssa E. Hall, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210 (202) 219–8971 (not a toll-free number) or Susan E. Rees, Plan Benefits Security Division, Office of the Solicitor, (202) 219–9141 (not a toll-free number).

Paperwork Reduction Act Analysis

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, provides the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A) (1995) (PRA 95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed new collection of information under the Proposed Class Exemption Relating to Certain Employee Benefit Plan Foreign Exchange Transactions Executed Pursuant to Standing Instructions.

Dates: Written comments concerning the proposed collection of information must be submitted on or before April 4, 1997 to Mr. Gerald B. Lindrew, Department of Labor, Pension and Welfare Benefits Administration, Room N–5647, 200 Constitution Avenue, NW., Washington, DC 20210. The Department of Labor 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 clarify the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Title: Class Exemption Relating to Certain Foreign Exchange Transactions Pursuant to Standing Instructions.

Summary: The proposed exemption would permit certain foreign exchange transactions between employee benefit plans and certain banks, broker-dealers, and domestic affiliates thereof, which are parties in interest with respect to such plans, pursuant to standing instructions.

Needs and Uses: ERISA requires that the Department make a finding that the proposed exemption meets the statutory requirements of section 408(a) before granting the exemption. The Department therefore finds its necessary that certain information be provided to an independent fiduciary of each plan in advance of, and subsequent to, the proposed transaction, and that the independent fiduciary approve the proposed transaction.

Type of Review: New.

Respondents and Proposed Frequency of Response: The Department staff estimates that approximately *65* parties will seek to take advantage of the class exemption in any given year. The respondents will be banks and broker-dealers acting as fiduciaries of plans which engage in foreign exchange transactions with such plans.

Estimated Annual Burden: The Department staff estimates the annual burden for preparing the materials required under the proposed class exemption to be 5 hours per respondent for a total of *325* hours. The total annual burden cost (operating/maintenance) is estimated to be *$24,375.* These are estimated to be capital/start-up burden costs. Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

SUPPLEMENTARY INFORMATION: This document contains a notice of pendency before the Department of a proposed class exemption from the restrictions of section 406(a)(1) (A) through (D) and section 406 (b)(1) and (b)(2) of ERISA and from the taxes imposed by section 4975(a) and (b) of the Code by reason of certain transactions described in section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was initially requested in an application dated July 18, 1984 (Application No. D–5700) submitted by the American Bankers Association (ABA) pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Pursuant to the foregoing authority, the Department is proposing additional conditions with respect to the relief requested by the Applicant.

On February 17, 1994, the Department granted PTE 94–20 (59 FR 8022), a class exemption which permits purchases and sales of foreign currencies between employee benefit plans and certain banks, broker-dealers and affiliates

thereof which are parties in interest with respect to such plans provided that such transactions are directed by a plan fiduciary who is independent of the bank, broker-dealer or affiliate thereof and the other conditions of the exemption are met. PTE 94–20 provides an exemption from the prohibited transaction restrictions of section 406(a)(1) (A) through (D) of the Act and from the sanctions resulting from section 4975(a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the Code. PTE 94–20 did not provide relief for all of the transactions described in the 1984 ABA exemption request.

In response to the notice of proposed exemption for PTE 94–20,[1] a number of commenters (the Commenters) expressed concern regarding the lack of relief for foreign exchange transactions executed pursuant to standing instructions. As explained in greater detail in the preamble to PTE 94–20, the Commenters requested that the Department expand the exemption to include retroactive and prospective relief for foreign exchange transactions entered into pursuant to a ''standing authorization'' (hereinafter standing instruction). Many of the Commenters also requested that the Department amend the definition of the term ''directed transaction'' by modifying the requirement that the independent plan fiduciary effect the foreign exchange transaction at a specific exchange rate.

The Commenters represented that the utilization of standing instructions is an integral component in foreign exchange transactions involving employee benefit plans. In this regard, the Commenters indicated that, without the ability to execute foreign exchange transactions with plans pursuant to standing instructions, plans would lose investment income and incur higher exchange rates on small transactions.

The ABA requested relief for transactions entered into by a bank on behalf of a plan pursuant to standing instructions from an independent fiduciary in its application dated July 18, 1984. The Department did not include relief with respect to such transactions in the proposal to PTE 94–20 because it was unable, at that time, to make the findings required under section 408(a) of the Act. Specifically, the Department was unable to conclude that the conditions proposed by the ABA would effectively and consistently address the potential for abuse of discretion by party in interest banks in setting exchange rates for foreign exchange transactions. On the basis of the comments and additional information received following publication of the proposal to PTE 94–20,[2] the Department concluded that it might be appropriate, under limited circumstances, to provide relief from section 406(b)(1) and (b)(2) of the Act for foreign exchange transactions entered into pursuant to standing instructions.

However, pursuant to the requirements of section 408(a) of the Act, the Department is required to offer interested persons an opportunity to present their views and an opportunity to request a hearing before granting an exemption from section 406(b) of the Act. Therefore, in order not to have delayed the publication of PTE 94–20, the Department determined to separately consider exemptive relief from sections 406(a)(1) (A) through (D), 406(b)(1) and (b)(2) of the Act for foreign exchange transactions between a plan and a party in interest bank, broker-dealer or affiliate thereof where such transactions are engaged in pursuant to a standing instruction.

During the Department's consideration of the standing instruction issue, the ABA made a supplemental submission on September 1, 1992, in which they limited their request for relief for standing instruction transactions and suggested additional conditions regarding such transactions. Over the course of the following two years, the Department solicited further information from the ABA and other interested parties, the most recent of which was received on March 1, 1994, and September 12, 1994. As a result of the suggestions and comments received from those parties, as well as the imposition of additional conditions by the Department, the Department believes that a number of its concerns regarding standing instruction transactions have been addressed.

The Commenters also requested retroactive exemptive relief as of January 1, 1975, for foreign exchange transactions effected pursuant to standing instructions. In this regard, they suggested that the interests of participants and beneficiaries were adequately protected if the general arm's-length requirement and a good faith standard were met for standing instruction transactions effected prior to the publication of a final exemption.[3]

As the Department stated in the proposal to PTE 94–20, it does not believe that the conditions suggested by the Commenters for retroactive relief would effectively address the potential for abuse of discretion under circumstances where a bank or broker-dealer sets foreign exchange rates for foreign exchange transactions which have been executed pursuant to standing instructions. However, the Department has concluded that it is appropriate to provide limited relief, retroactive to June 18, 1991, for those banks and broker-dealers who effect foreign exchange transactions in accordance with the applicable conditions of Section II of this proposal.[4]

The Department believes that the following conditions, which are contained in PTE 94–20, are equally applicable with respect to the retroactive and prospective relief provided for transactions described in this proposed class exemption: the general and particular arm's length tests; the proscription against the bank or any of its affiliates having any discretionary authority or control with respect to the investment of plan assets involved in the transaction or rendering investment advice with respect to those assets; the requirements concerning confirmation statements; and the maintenance of written policies and procedures regarding the handling of foreign exchange transactions with plans that ensure that the person acting for the bank knows that he or she is acting for the plan.

The Department has further conditioned retroactive relief upon satisfaction of the following condition that addresses the discretion that was exercised by a bank or broker-dealer in setting foreign exchange rates for transactions executed pursuant to standing instructions. Thus, under this requirement, the specific exchange rate for a covered transaction could not have deviated by more than ten percent (above or below) from the interbank bid and asked rates as displayed on Reuters or another independent nationally recognized service in the foreign exchange market for the effected currencies at the time that the bank or broker-dealer executed the foreign exchange transaction. Notwithstanding this requirement, a prohibited transaction will not be considered to have occurred solely because the records necessary to demonstrate compliance with the ten percent requirement have been lost, destroyed or are not available to the bank or broker-dealer. Nonetheless, the bank or

[1] 56 FR 11757 (March 20, 1991).

[2] On October 3, 1991, the Department held a public hearing and received testimony regarding standing instructions. *See* 56 FR 46806, September 16, 1991.

[3] *See* 56 FR at 11760, for a discussion of the general arm's length test.

[4] June 18, 1991 is the effective date for prospective relief in PTE 94–20.

broker-dealer is not relieved of its responsibility to otherwise demonstrate compliance with the conditions of the proposed exemption. In this regard, the Department notes that there may be other objective pricing information that was readily available at the time of the transaction which could be provided by a bank or broker-dealer to demonstrate compliance with the ten percent requirement.

In response to the Department's concerns regarding the amount of discretion a bank can exercise under a standing instruction, the Commenters suggested, as a further safeguard, a limitation on the types of transactions for which the bank could exercise discretion. Specifically, it was suggested that relief could be limited to transactions which would result in the receipt of small amounts of foreign currency, or where, due to the uncertainty of foreign settlement dates, the exact timing of the receipt of the currency by the bank was uncertain. The Department has adopted this suggestion and proposed limited relief for the conversion of income receipts, such as interest and dividend payments, as well as for *de minimis* purchases and sales of foreign securities.[5]

According to the ABA, standing instructions are necessary to repatriate income receipts received on foreign investments into U.S. dollars so that interest can be earned on such funds. In this regard, the Department did not receive sufficient information regarding how the conversion of foreign denominated income receipts into other foreign currencies would operate under standing instructions. The Department also has concerns about the ability of the bank to maintain the converted funds in an interest-bearing account. Therefore, the Department has limited the scope of the proposed exemption to cover transactions involving the exchange of income conversion items into U.S. dollars.

The Commenters also requested relief for *de minimis* purchase and sale transactions involving foreign securities, i.e., foreign securities transactions requiring the purchase and sale of foreign currency in an amount not exceeding $500,000.[6] The ABA represents that many foreign markets outside the U.S. do not have firm settlement dates. Thus, it is difficult to anticipate when the proceeds from sales of plan owned foreign securities will be received by a bank's foreign custodian. In order to keep the funds invested, standing instructions are used so that the conversion can be done as soon as practicable and the plan can begin to earn interest on the sale proceeds. Under these circumstances, obtaining specific directions from an independent plan fiduciary for relatively small transactions is time consuming and not in the best interests of plans. In this regard, the Department has proposed relief for *de minimis* transactions but believes that a limitation of $100,000 is a more appropriate measure for transactions which are intended to be relatively small.[7]

The Commenters suggested several conditions that would have to be satisfied in order for a bank to enter into a prospective transaction involving the conversion of income receipts pursuant to a standing instruction. Upon review, the Department proposes to apply the same conditions to *de minimis* purchase and sale transactions. The ABA proposed that income item conversions be executed within no more than two business days following the time of receipt by the bank. In this regard, the Department believes that one business day following notice to the bank that ''good funds[8]'' have been received by the bank's foreign custodian[9] is a more appropriate limitation on a bank's exercise of discretion than the suggestion made by the ABA. Such notice must be provided to the bank within one business day following receipt of good funds by the foreign custodian if the custodian is an affiliate of the bank. If the foreign custodian is not an affiliate of the bank, the bank still must convert within one business day following notice to the bank that good funds have been received. However, the notice must be provided to the bank by the nonaffiliated custodian no later than two business days following receipt by the foreign custodian.

Under the requested exemption, the exchange rate(s) or a range of rates to be used for covered transactions would be established on a daily basis using objective criteria which would be disclosed to and approved by an independent plan fiduciary in advance of the transaction. More specifically, the written policies of the bank will state that the bank will set an exchange rate or range of rates at least once a day but no more than four times per day.[10] Once set, a rate or range of rates will remain in effect for all conversions that occur prior to the time that a new rate is set. The bank will disclose the time or times each day that it will convert income conversion items or execute *de minimis* purchase and sales transactions.[11] Income item conversions will be executed and *de minimis* purchase and sale transactions will be executed at the next scheduled time for conversions or executions following notice of receipt of ''good funds'', or a direction to acquire foreign currency, as applicable. However, if the bank's policy is to bundle or hold small foreign exchange items until a specified threshold amount is reached, then the conversion of such items may be delayed, but in no case may such delay be more than 24 hours after the receipt of notice that good funds were received or the direction to acquire foreign currency was received.

The bank's policies and procedures will describe the methodology used by the bank to determine the specific exchange rate or range of rates for covered transactions. If a range of rates is used, such range cannot deviate by more than three percent (above or below) from the interbank bid and asked rates as displayed on Reuters or another independent nationally recognized service in the foreign exchange market for the effected currencies at the time such range of rates is set by the bank. For example, pursuant to its written procedures, Bank A converts foreign

[5] The Department notes that this exemption does not provide relief for options contracts on foreign exchange transactions. See section IV(a) of PTE 94–20.

[6] No relief is provided where the bank or broker-dealer has investment discretion or provides investment advice (within the meaning of 29 CFR 2510.3–21) with respect to the investment of the plan assets involved in the transaction. In this regard, Part I of the class exemption would not be available for any foreign exchange transaction involving a bank or broker-dealer that has any discretionary authority or control over either the initial purchase or sale of foreign securities or the subsequent reinvestment of the proceeds.

[7] Similarly, the Department is proposing a limitation of $100,000 for income item conversions.

[8] Individual commenters have indicated that there may be governmental restrictions on the transfer of funds outside of some foreign countries. In general, ''good funds'' are defined for purposes of this class exemption as funds available in cash with no governmental restrictions on transfer. This concept was not a part of the ABA application but rather was suggested by individual commenters to ensure that the time period during which the bank must convert income from foreign securities did not begin to run until after the funds became available.

[9] According to an individual commenter, U.S. custodial banks may operate through their own foreign branches or may employ foreign banks as subcustodians so that foreign instruments can be held in the country of the issuer.

[10] The ABA application suggested that the bank set the rate only once per day. However, other Commenters noted that if the bank were allowed to set the rate more than once a day, the rate established would be more closely related to the current rates in the foreign exchange market. The Department has determined to modify the ABA proposal in order to provide flexibility to those financial institutions that intend to set rates more frequently than once per day.

[11] For example, a bank which converts income items only once a day may set the rate at 10:00 a.m. each day and convert such items at 10:30 a.m. each day. Both times would be disclosed in the bank's written policies.

exchange items at 7:30 a.m., 12:30 p.m. and 3:30 p.m. At 7:00 a.m. Bank A sets the range of rates to be used at 7:30 a.m. To determine the range, the Bank first determines the interbank bid and asked rates at 7:00 a.m. by checking a nationally recognized reporting service. Assume that at 7:00 a.m. the interbank rate for converting Great Britain Pounds into U.S. Dollars is 1.7025–1.7200. In order to determine the range of exchange rates for 7:30 am, the Bank would subtract a maximum of three percent from the bid quoted price and add a maximum of three percent to the asked price. The permissible range of rates under the exemption would be 1.6514–1.7716.

The Department believes that the conditions suggested by the Commenters regarding income item conversions reduce a great deal of the discretion exercised by a bank executing a foreign exchange transaction pursuant to a standing instruction. Accordingly, the Department has adopted their suggestions with the modifications discussed above, as conditions of the proposed exemption.

In addition to the above-noted conditions, the proposal also requires that the authorization to utilize a standing instruction must be in writing. With respect to a record maintenance requirement, the Commenters suggested that this condition should be deemed met if the records are maintained in foreign countries but were available by electronic access in the United States. As discussed in greater detail in PTE 94–20, the Commenters were not able to address the Department's concerns that access to such records could be restricted by foreign governments.[12]

Finaly, the Department has required that the confirmation statements for each covered transaction include the time of the exchange. The ABA as well as other Commenters indicated that the inclusion of time on the confirmation statements is not administratively feasible and in any case is unnecessary. The Commenters stated that it would be expensive to revise their computer programs to include the time of the covered transaction. In addition, they stated that such information would not be used by an independent fiduciary to determine the reasonableness of the foreign exchange rates charged to a plan.

In response to the Commenters, the Department notes that, under the proposal, the exchange rates established by a bank can vary depending upon the time of the transaction. In order to monitor covered transactions, an independent fiduciary would need to know when the transactions occurred in order to compare the rates used by the bank to rates charged in similar transactions executed at the same time. Accordingly, the Department continues to believe that this information is necessary to enable independent plan fiduciaries to monitor the reasonableness of the exchange rates established by the bank.

In light of the apparent industry concern regarding this issue, the Department invites comments and suggestions from interested parties regarding how an independent fiduciary could adequately monitor the exchange rates used for plan foreign exchange transactions if the time of the transaction is not included on the confirmation statements. Any such comments should include a discussion of the feasibility of the suggested alternative as well as how the alternative would be protective of plans.

The Department requests that interested persons, in addition to other comments, describe how an exemption would operate with respect to *de minimis* purchase and sale transactions and whether the conditions applicable to income item conversions are practical and appropriate to protect the interests of the participants and beneficiaries of plan engaging in *de minimis* foreign exchange transactions.

In response to the proposal that became PTE 94–20, the Securities Industry Association (SIA) requested that the Department include registered broker-dealers within the scope of that exemption.[13] The SIA further requested that the Department include broker-dealers within the scope of any additional relief which it contemplated providing to banks. After considering the SIA's comment, the Department determined that it was appropriate to include registered broker-dealers within the scope of the relief provided by PTE 94–20. For the same reasons, the Department has included registered broker-dealers within the scope of this proposed class exemption.

The Department wishes to point out that ERISA's general standards of fiduciary conduct would apply to the standing instruction arrangements permitted by this proposed class exemption. Section 404 of the Act requires, among other things, that a fiduciary discharge his duties with respect to a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion. Accordingly, the investment manager or other independent plan fiduciary must act prudently with respect to the decision to enter into such an arrangement, such as considering the effect of restrictions on funds transfers by foreign governments, as well as to the negotiation of the specific terms under which the bank or broker-dealer will engage in foreign exchange transactions on behalf of the plan. The Department further emphasizes that it expects an investment manager or other independent plan fiduciary, to fully understand the benefits and risks associated with engaging in foreign exchange transactions pursuant to standing instructions, following disclosure by the bank or broker-dealer of all relevant information. In addition, such investment manager or independent plan fiduciary must be capable of periodically monitoring the actions taken by the bank or broker-dealer in the course of its execution of foreign exchange transactions. Thus, in considering whether to authorize a bank or broker-dealer to execute foreign exchange transactions pursuant to standing instructions, a fiduciary should take into account its ability to provide adequate oversight of the bank or broker-dealer.

The Department further notes that the rates at which a plan's foreign exchange transactions are executed directly impact on the plan's overall rate of return with respect to its portfolio of foreign securities. Accordingly, the plan's investment manager has a continuing obligation to prudently maximize the plan's rate of return by ensuring that the plan's foreign exchange transactions are executed at prices that are fair and reasonable.

Finally, the Department wishes to note that, during periods of increased foreign exchange market volatility, it may not be consistent with ERISA's prudence and exclusive benefit requirements for an investment manager to permit foreign exchange transactions on behalf of a plan at prices established by the bank or broker-dealer pursuant to the procedures contained in the standing instruction agreement. Under those circumstances, the exchange rate established by the bank or broker-dealer may be significantly less favorable to the plan than market prices at the time that the transaction is executed. In such cases, it may be necessary for the bank or broker-dealer to comply with the requirements of PTE 94–20.

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 section 4975(c)(2)

[12] 59 FR 8024.

[13] For a discussion of the SIA comment, see 59 FR 8023 (Thursday, Feb. 17, 1994).

of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties respect the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of plans and their participants and beneficiaries and protective of the rights of participants and beneficiaries of plans;

(3) If granted, the proposed exemption will be applicable to a transaction only if the conditions specified in the class exemption are met; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and the code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Request

All interested persons are invited to submit written comments or requests for a public hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the referenced application at the above address.

Proposed Exemption

The Department has under consideration the grant of the following class exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32847, August 10, 1990.)

Section I Covered Transactions

(a) For the period from June 18, 1991 to May 5, 1997, the restrictions of sections 406(a)(1) (A) through (D) and 406 (b)(1) and (b)(2) of the Employee Retirement Security Act of 1974 (the Act) and the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1986 (the Code), by reason of Code section 4975(c)(1) (A) through (E), shall not apply to the following foreign exchange transactions, between a bank or broker-dealer and an employee benefit plan with respect to which the bank or broker-dealer, or any affiliate is a trustee, custodian, fiduciary or other party in interest, pursuant to a standing instruction, if the conditions set forth in section II below are met:

(1) an income item conversion; or

(2) a *de minimis* purchase or sale transaction.

(b) Effective after May 5, 1997, the restrictions of sections 406(a)(1) (A) through (D) and 406 (b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1986 (the Code), by reason of Code section 4975(c)(1) (A) through (E), shall not apply to the following foreign exchange transactions, between a bank or broker-dealer, and an employee benefit plan with respect to which the bank or broker-dealer, or any affiliate is a trustee, custodian, fiduciary or other party in interest, pursuant to a standing instruction, if the conditions set forth in section III below are met:

(1) an income item conversion; or

(2) a *de minimis* purchase or sale transaction.

Section II Retroactive Conditions

(a) At the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms generally available in comparable arm's length foreign exchange transactions between unrelated parties.

(b) At the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms afforded by the bank, the broker-dealer, (or any affiliate thereof) in comparable arm's length foreign exchange transactions involving unrelated parties.

(c) Neither the bank, the broker-dealer, (nor any affiliate thereof) has any discretionary authority or control with respect to the investment of the plan assets involved in the transaction or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to the investments of those assets.

(d) The bank or broker-dealer maintains at all times written policies and procedures regarding the handling of foreign exchange transactions for plans with respect to which the bank or broker-dealer is a trustee, custodian, fiduciary or other party in interest or disqualified person which assure that the person acting for the bank or broker-dealer knows that he or she is dealing with a plan.

(e) The exchange rate used by the bank or broker-dealer for a particular foreign exchange transaction did not deviate by more than 10% (above or below) the interbank bid and asked rates at the time of the transaction as displayed on Reuters or another independent service in the foreign currency market for such currency; provided, however, that a prohibited transaction shall not be deemed to have occurred solely because the records necessary to demonstrate compliance with this section have been lost, destroyed or are not available to the bank or broker-dealer. Nothing in this section shall be deemed to relieve the bank or broker-dealer of its responsibility to demonstrate compliance with the conditions of this proposed exemption.

(f) A written confirmation statement is furnished with respect to each covered transaction to the independent plan fiduciary. The confirmation statement shall include:

(A) Account name;

(B) Transaction date;

(C) Exchange rates;

(D) Settlement date;

(E) Currencies exchanged;

(i) identity of foreign currency sold;

(ii) amount sold;

(iii) identity of currency purchased; and

(iv) amount purchased.

The confirmation shall be issued in no event more than 5 business days after execution of the transaction.

Section III Prospective Conditions

(a) At the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the term generally available in comparable arm's-length foreign exchange transactions between unrelated parties.

(b) At the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms afforded by the bank or broker-dealer, (or any affiliate thereof) in comparable arm's-length foreign exchange transactions involving unrelated parties.

(c) Neither the bank, the broker-dealer, (nor any affiliate thereof) has any discretionary authority or control with respect to the investment of the plan assets involved in the transaction or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to the investments of those assets.

(d) The bank or broker-dealer maintains at all times written policies and procedures regarding the handling of foreign exchange transactions for plans with respect to which the bank or broker-dealer is a trustee, custodian, fiduciary or other party in interest or disqualified person which assure that the person acting for the bank or broker-dealer knows that he or she is dealing with a plan.

(e) The covered transaction is performed under a written authorization executed in advance by a fiduciary of the plan whose assets are involved in the transaction, which plan fiduciary is independent of the bank or broker-dealer engaging in the covered transaction. The written authorization must specify:

(1) The identities of the currencies in which covered transactions may be executed; and

(2) That the authorization may be terminated by either party without penalty on no more than ten days notice.

(f)(1) Income item conversions are executed within no more than one business day from the date of receipt of notice by the bank or broker-dealer that such items are good funds, and

(A) a foreign custodian which is an affiliate of the bank or broker-dealer, provides such notice to the bank or broker-dealer within ''one business day'' of its receipt of good funds; or

(B) in the case of a foreign custodian which is not an affiliate of the bank or broker-dealer, such notice is provided to the bank or broker-dealer within two business days of such custodian's receipt of good funds.

(2) *De minimis* purchase and sale transactions are executed within no more than one business day from the date that either the bank or broker-dealer receives notice from a foreign custodian that the proceeds of a sale of foreign securities denominated in foreign currency are good funds, or the direction to acquire foreign currency was received by the bank or broker-dealer, and

(A) a foreign custodian which is an affiliate of the bank or broker-dealer, provides such notice to the bank or broker-dealer within one business day of its receipt of good funds from a sale; or

(B) in the case of a foreign custodian which is not an affiliate of the bank or broker-dealer, such notice is provided to the bank or broker-dealer within two business days of such custodian's receipt of good funds from a sale.

(g)(1) At least once each day, at the time(s) specified in its written policies and procedures, but no more than four times per day, the bank or broker-dealer establishes either a rate of exchange or a range of rates to be used for income item conversions and *de minimis* purchase and sale transactions covered by this exemption.

(2) Income item conversions items are executed at the next scheduled time for conversions following receipt of notice by the bank or broker-dealer from the foreign custodian that such funds are good funds. If it is the policy of the bank or broker-dealer to aggregate small amounts of foreign currency until a specified minimum threshold amount is received, then the conversion may take place at a later time but in no event more than 24 hours after receipt of notice.

(3) *De minimis* purchase and sale transactions are executed at the next scheduled time for such transactions following receipt of either notice that the sales proceeds denominated in foreign currency are good funds, or a direction to acquire foreign currency. If it is the policy of the bank or broker-dealer to aggregate small transactions until a specified threshold amount is received, then the execution may take place at a later time but in no event more than 24 hours after receipt of either notice that the sales proceeds, have been received by the foreign custodian as good funds, or a direction to acquire foreign currency.

For purposes of this paragraph (g), the range of exchange rates established by the bank or broker-dealer for a particular foreign currency cannot deviate by more than three percent [above or below] the interbank bid and asked rates as displayed on Reuters or another nationally recognized independent service in the foreign exchange market, for such currency at the time such range of rates is established by the bank or broker-dealer.

(h) Prior to the execution of the authorization referred to in paragraph (e), the bank or broker-dealer provides the authorizing fiduciary with a copy of the bank's or broker-dealer's written policies and procedures regarding the handling of foreign exchange transactions involving income item conversions and *de minimis* purchase and sale transactions. The policies and procedures must, at a minimum, contain the following information:

(1) Disclosure of the time(s) each day that the bank or broker-dealer will establish the specific rate of exchange or the range of exchange rates for the covered transactions to be executed and the time(s) that such covered transactions will take place. The bank or broker-dealer shall include a description of the methodology that the bank or broker-dealer uses to determine the specific exchange rate or range of exchange rates;

(2) Disclosure that income items conversions and *de minimis* purchase and sale transactions will be executed at the first scheduled transaction time after notice that good funds from an income conversion or a sale have been received, or a direction to purchase foreign currency has been received. To the extent that the bank or broker-dealer aggregates small amounts of foreign currency until a specified minimum threshold amount is met, a description of this practice and disclosure of the threshold amount; and

(3) A description of the process by which the bank's or broker-dealer's foreign exchange policies and procedures for income item conversions and *de minimis* purchase and sale transactions may be amended and disclosed to plans.

(1) The bank or broker-dealer engaging in the covered transaction furnishes to the authorizing fiduciary a written confirmation statement with respect to each covered transaction not more than five business days after execution of the transaction.

1. With respect to income item conversions, the confirmation shall disclose the following information:

(A) Account name;

(B) Date of notice that good funds were received;

(C) Transaction date;

(D) Exchange rate;

(E) Settlement date;

(F) Identity of foreign currency;

(G) Amount of foreign currency sold;

(H) Amount of U.S. dollars credited to the plan; and

(I) Time of the transaction.

2. With respect to *de minimis* purchase and sale transactions, the confirmation shall disclose the following information:

(A) Account name;

(B) Date of notice that sales proceeds denominated in foreign currency are received as good funds or direction to acquire foreign currency was received.

(C) Transaction date;

(D) Exchange rates;

(E) Settlement date;

(F) Currencies exchanged:

i. identity of the currency sold;

ii. the amount sold;

iii. identity of the currency purchased;

iv. the amount purchased;

(G) Time of the transaction.

With respect to section (i)(1)(I) and (i)(2)(G) above, the requirement for disclosure of the time of the exchange shall be deemed to be met, if income item conversions and/or *de minimis* purchase and sale transactions by a bank or broker-dealer take place once per day and the time of such conversions is set forth in the bank's or broker-dealer's written policies and procedures which are provided to the independent plan fiduciary as required under section II(h)(1) of this exemption.

(j) The bank or broker-dealer, or its affiliate, maintains, within territories under the jurisdiction of the United States Government, for a period of six years from the date of the transaction, the records necessary to enable the persons described in paragraph (1) of this section to determine whether the applicable conditions of this exemption have been met, including a record of the specific exchange rate or range of exchange rates the bank or broker-dealer established each day for foreign exchange transactions effected under standing instructions for income item conversions and *de minimis* purchase and sale transactions. However, a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the bank's or broker-dealer's control, the records are lost or destroyed prior to the end of the six-year period, and no party in interest other than the bank or broker-dealer, or its affiliate shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained by the bank or broker-dealer, or its affiliate, or are not made available for examination by the bank or broker-dealer, or its affiliate as required by paragraph (h) below.

(k)(1) Except as provided in subparagraph (2) of this paragraph and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (j) of this Section are available at their customary location for examination, upon reasonable notice, during normal business hours by:

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service.

(B) Any fiduciary of a plan who has authority to acquire or dispose of the assets of the plan involved in the foreign exchange transaction or any duly authorized employee or representative of such fiduciary.

(C) Any contributing employer to the plan involved in the foreign exchange transaction or any duly authorized employee or representative of such employer.

(2) None of the persons described in subparagraphs (B) and (C) shall be authorized to examine a bank's or broker-dealer's trade secrets or commercial or financial information of a bank or broker-dealer, or an affiliate thereof which is privileged or confidential.

Section IV Definitions and General Rules

For purposes of this exemption,

(a) A ''foreign exchange transaction'' means the exchange of the currency of one nation for the currency of another nation.

(b) The term ''standing instruction'' means a written authorization from a plan fiduciary, who is independent of the bank or broker-dealer engaging in the foreign exchange transaction and any affiliate thereof, to the bank or broker-dealer to effect the transactions specified therein pursuant to the instructions provided in such authorization.

(c) A ''bank'' means a bank which is supervised by the United States or a State thereof, or any domestic affiliate thereof.

(d) A ''broker-dealer'' means a broker-dealer registered under the Securities Exchange Act of 1934, or any domestic affiliate thereof.

(e) A ''domestic affiliate'' of a bank or broker-dealer means any entity which is supervised by the United States or a state thereof and which is directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such bank or broker-dealer.

(f) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(g) An ''income item conversion'' means the conversion into U.S. dollars of an amount which is the equivalent of no more than 100,000 U.S. dollars of interest, dividends or other distributions or payments with respect to a security, tax reclaims, proceeds from dispositions of rights, fractional shares or other similar items denominated in the currency of another nation that are received by the bank or broker-dealer on behalf of the plan from the plan's foreign investment portfolio.

(h) A ''*de minimis* purchase or sale transaction'' means the purchase or sale of foreign currencies in an amount of no more than 100,000 U.S. dollars or the equivalent thereof in connection with the purchase or sale of foreign securities by a plan.

(i) For purposes of this exemption the term ''employee benefit plan'' refers to a pension plan described in 29 CFR § 2510.3–2 and/or a welfare benefit plan described in 29 CFR § 2510.3–1.

(j) For purposes of this exemption, the term ''good funds'' means funds immediately available in cash with no sovereign or other governmental impediments or restrictions to the exchange or transfer of such funds.

(k) For purposes of this exemption, the term ''business day'' means a banking day as defined by federal or state banking regulations.

Signed at Washington, DC, this 28th day of January, 1997.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 97–2556 Filed 1–31–97; 8:45 am]

BILLING CODE 4510–29–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 96–4 CARP DPRA]

Digital Phonorecord Delivery Rate Adjustment Proceeding

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice vacating precontroversy discovery schedule and notice of meeting.

SUMMARY: The Library of Congress is vacating the current precontroversy discovery schedule and the date for initiating the proceeding to determine reasonable rates and terms for digital transmissions that constitute a digital phonorecord delivery to allow further negotiations. On April 1, 1997, the parties will meet with members of the Copyright Office and report on the status of these negotiations.

DATES: The schedule for the digital phonorecord delivery rate adjustment proceeding is vacated as of February 3, 1997. On April 1, 1997, at 10:00 a.m., the Copyright Office will conduct a status meeting with all interested parties.

ADDRESSES: The meeting will be held at the Library of Congress, James Madison Building, Room LM–414, First and Independence Avenue, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: William Roberts, Senior Attorney for Compulsory Licenses, or Tanya M.

Sandros, Attorney Advisor, Copyright Arbitration Royalty Panels, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380.

SUPPLEMENTARY INFORMATION: The Digital Performance Right in Sound Recordings Act of 1995 (''Digital Performance Act''), Public Law No. 104–39, 109 Stat. 336., confirms and clarifies that the scope of the compulsory license to make and distribute phonorecords of nondramatic musical compositions includes digital transmissions which constitute ''digital phonorecord deliveries.'' 17 U.S.C. 115(c)(3). A ''digital phonorecord delivery'' is each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient. 17 U.S.C. 115(d), 37 CFR 255.4.

The rate for all digital phonorecord deliveries made or authorized under a compulsory license on or before December 31, 1997, is the same as the current rate for the making and distribution of physical phonorecords: 6.95 cents for each work embodied in a phonorecord, or 1.3 cents per minute of playing time or fraction thereof, whichever amount is larger. 37 CFR 255.5.

The current rate for digital phonorecord deliveries expires on December 31, 1997. Accordingly, in the Digital Performance Act, Congress established a two-step process for adjusting the royalty rate, a negotiation period wherein the owners and the users attempt to reach their own voluntary licenses, and then if necessary, and upon the filing of a petition in 1997, the convening of a copyright arbitration royalty panel (CARP) to establish rates and terms for those persons who are not covered by such voluntary licenses. 17 U.S.C. 115(c)(3) (C) and (D).

On July 17, 1996, the Copyright Office published a notice initiating a period for the users and owners to negotiate reasonable rates and terms for digital transmissions that constitute a digital phonorecord delivery. 61 FR 37213 (July 17, 1996). In that notice, the Office acknowledged that the Digital Performance Act specified neither a date for initiating the negotiation period, nor a date for concluding the negotiations and instituting an arbitration proceeding. Nevertheless, the expiration of the current rates on December 31, 1997, prompted the Office to create a schedule which would have new effective rates in place by January 1, 1998. *Id*.

The parties with an interest in negotiating the rates and terms for the digital phonorecord delivery license established in the Digital Performance Act, however, believed that the Office's proposed schedule did not provide sufficient time for negotiating a voluntary set of rates and terms. Therefore, on November 8, 1996, the Recording Industry Association of America, the National Music Publishers' Association, Inc., and the Harry Fox Agency, Inc. (collectively, ''the Parties'') filed a joint motion with the Library to vacate the scheduled dates appearing in the July 17, 1996, Federal Register notice. The Parties informed the Office that adherence to the proposed schedule would prematurely terminate their efforts to reach a voluntary license. The Office announced a new schedule for this proceeding, 61 FR 65243 (December 11, 1996), which moved the date for the filing of direct cases from January 31, 1997, to April 1, 1997.

In response to the new schedule, the parties requested a meeting with the Register of Copyrights to discuss the problems associated with negotiating rates and terms for the digital phonorecord delivery compulsory license within the proposed time frame. The Copyright Office met with representatives of the Recording Industry of America, the National Music Publishers' Association, and the Harry Fox Agency, Inc. on January 9, 1997. At this meeting, the Parties outlined the difficulties in determining rates and terms for use of a new technology in a marketplace with little definition or clear direction. The Parties indicated that they fully expected to reach a voluntary agreement through negotiations over the next few months; however, they believe it is not possible to conclude negotiations before April 1, nor to prepare adequate direct cases for presentation to an arbitration panel by this date in the event the Office chose to proceed with its schedule. At the conclusion of the meeting, the Parties asked the Office to reconsider their original motion to vacate the schedule and to refrain from setting a new schedule while the Parties continue their negotiations.

Upon further consideration, the Office is granting the Parties' request to vacate the announced schedule for this proceeding, thereby removing any impediment for constructive negotiations between the users and the owners. The setting of the rates and terms for the delivery of digital phonorecords is not an open ended process; therefore, the Office will continue to monitor the progress of the negotiations through periodic status meetings, the first of which is scheduled for April 1, 1997.

Dated: January 27, 1997.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 97–2539 Filed 1–31–97; 8:45 am]

BILLING CODE 1410–33–P

NATIONAL COMMUNICATIONS SYSTEM

Telecommunications Service Priority System Oversight Committee

AGENCY: National Communications System (NCS).

ACTION: Notice of meeting.

A meeting of the Telecommunications Service Priority (TSP) System Oversight Committee will convene Thursday March 6, 1997 from 9 a.m. to 12:00 a.m. The meeting will be held at Booz-Allen & Hamilton 8283 Greensboro Drive, McLean VA.

—Opening/Administrative Remarks
—Status of the TSP Program
—Preview of the TSP and CPAS Home Page
—Status of the CPAS Program

Anyone interested in attending or presenting additional information to the Committee, please contact LCDR Angela Abrahamson, Manager, TSP Program Office, (703) 607–4930, or Betty Hoskin (703) 607–4932 by March 1, 1997.

Dr. Dennis Bodson,

Federal Register Liaison Officer, National Communications System.

[FR Doc. 97–2602 Filed 1–31–97; 8:45 am]

BILLING CODE 5003–25–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Change in Subject of Meeting

The National Credit Union Administration Board determined that its business required the deletion of the following items from the previously announced open meeting (Federal Register, Vol. 62, No. 17, page 3922, January 27, 1997) scheduled for Wednesday, January 29, 1997.

3. Chartering and Field of Membership Issues.
7. Final Rule: Amendments to Part 704, NCUA's Rules and Regulations, Corporate Credit Unions.

The Board voted unanimously that Agency business required that these items be deleted from the open agenda and earlier announcement of these changes was not possible.

The previously announced items were:
1. Approval of Minutes of Previous Open Meeting.
2. Proposed Revision to the Operating Fee Scale.

3. Chartering and Field of Membership Issues.
4. Requests from Federal Credit Unions to Convert to a Community Charter.
5. Request to Charter a Low-Income Community Federal Credit Union.
6. Requests from Corporate Federal Credit Unions for Field of Membership Amendments.
7. Final Rule: Amendments to Part 704, NCUA's Rules and Regulations, Corporate Credit Unions.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 97–2760 Filed 1–30–97; 2:54 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. 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:* Revision.
2. *The title of the information collection:* 10 CFR Part 55, ''Operators' Licenses.''
3. *The form number if applicable:* Not applicable.
4. *How often the collection is required:* As necessary in order for NRC to meet its responsibilities to determine the eligibility of applicants for operators' licenses and perform a review of applications and reports for simulation facilities submitted to the NRC.
5. *Who will be required or asked to report:* Holders of and applicants for facility (i.e., nuclear power, research, and test reactor) operating licenses and individual operators' licenses.
6. *An estimate of the number of responses:* 135.
7. *The estimated number of annual respondents:* 135.
8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 3,556 (approximately 964 hours of reporting burden and approximately 2,592 hours of recordkeeping burden).
9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.
10. *Abstract:* 10 CFR Part 55 of the NRC's regulations, ''Operators' Licenses,'' specifies information and data to be provided by applicants and facility licensees so that the NRC may make determinations concerning the licensing of operators for nuclear power plants necessary to promote the health and safety of the public. The reporting and recordkeeping requirements contained in 10 CFR Part 55 are mandatory for the licensees and applicants affected.

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 Advanced 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 March 5, 1997: Edward Michlovich, Office of Information and Regulatory Affairs (3150–0018), 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 28th day of January 1997.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 97–2538 Filed 1–31–97; 8:45 am]

BILLING CODE 7590–01–P

[IA 97–004]

James C. Nelson, Order Prohibiting Involvement In NRC-Licensed Activities (Effective Immediately)

I

Mr. James C. Nelson owns and operates Nelson Excavating, Inc. in Thomas, West Virginia. Nelson Excavating, Inc. (Licensee) holds By-product License No. 47–24923–02, issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 30. The License was initially issued on June 24, 1987, and last renewed on September 17, 1992. The License authorizes the Licensee to use a Troxler Electronic Model 3400 series portable moisture density gauge for soil compaction measurements in accordance with the conditions specified therein. The License was extended for a period of five years on March 1, 1996, and will expire on September 30, 2002. On August 15, 1996, the Licensee discontinued licensed activities and transferred its gauge containing nominally 11 millicuries (mCi) of Cesium-137 and 44 mCi of Americium-241 to an authorized recipient. On August 15, 1996, the Licensee formally requested termination of its NRC License. The License is being terminated separately in accordance with this request.

II

On October 24, 1995, the NRC's Office of the Controller issued an Order Suspending License (Effective Immediately) to Nelson Excavating, Inc. suspending its License for the non-payment of fees in the amount of $2,873.48, including late penalties of $753.48. The Order required, among other things, that the Licensee immediately restrict its activities involving licensed material to safe, secure storage or appropriate disposal until notified by the NRC in writing that the License had been terminated. The Order became final on November 24, 1995, following the Licensee's failure to respond to the NRC or pay the fees within the 30 days specified in the Order.

During the period March 19 through April 1, 1996, NRC Region II conducted a special safety inspection of licensed activities to determine the status of the gauge and compliance with the October 24, 1995 Order. The inspection determined the following: (1) The Licensee used the gauge containing by-product material on November 6, 1995, and January 4, 1996, contrary to the requirements of the October 24, 1995,

Order; (2) The Licensee was using a different Radiation Protection Officer than that identified in Condition 11 of the License. The Licensee also represented to the NRC in a letter, dated September 17, 1992, that the individual named in the License was still acting as Radiation Protection Officer, when in fact the individual was not, contrary to the requirements of 10 CFR 30.9; and (3) The Licensee failed to test the licensed material for leakage at the required frequency contrary to Condition 14 of the License.

On May 15, 1996, NRC Region II management contacted the Licensee to discuss compliance with the October 24, 1995 Order. Mr. Nelson indicated that his licensed material had been used for the work conducted on November 6, 1995, and January 4, 1996, under another license and not that issued to Nelson Excavating, Inc. Additionally, he affirmed that he understood the provisions of the Order that the gauge was to be placed in storage and not used.

On June 11, 1996, a Demand for Information (DFI) was issued to the Licensee in order to obtain a written response regarding the two apparent uses of licensed material and the potential submittal of inaccurate information to the NRC on September 17, 1992. The Licensee's response was due on July 11, 1996.

Since the licensee was unresponsive to NRC's request in the DFI and numerous telephone inquiries, NRC Region II conducted another inspection at the Licensee's facility in Thomas, West Virginia, on August 14 and 15, 1996. During that inspection, eleven additional uses of the Licensee's gauge after issuance of the Order were identified through a review of gauge utilization records. Ten of the uses occurred following the May 15, 1996, discussions between NRC Region II and the Licensee confirming the Licensee's understanding of the Order. As a result of this inspection, the Licensee transferred the gauge to an authorized recipient and documented the transfer appropriately on August 15, 1996.

As a result of the NRC inspection and prompting by the NRC, the Licensee also submitted a written response to the DFI on August 15, 1996. The response admitted that the gauge was used on 13 occasions during the prohibition period. As an explanation, Mr. Nelson stated that he had reading and comprehension difficulties, and following his March 19, 1996, payment of backfees and receipt of a March 1, 1996, notice from NRC extending his license until September 30, 2002, he felt that he could use his license material. In addition, he stated that he paid for it [the gauge], he owned it, and would use it accordingly. The DFI response further provided statements by two employees of the Licensee that they had not been instructed by Mr. Nelson not to use the gauge.

By letter, dated September 25, 1996, the Licensee and Mr. Nelson were requested to attend a predecisional enforcement conference to discuss the apparent violations, their root causes, and the corrective actions to preclude recurrence. As of the date of this Order, NRC has not received any response from Mr. Nelson, despite numerous attempts to contact him. Contact with the Office Manager for Nelson Excavating, Inc, however, indicated that due to personal problems, Mr. Nelson did not intend to respond.

Despite the lack of a response to NRC's September 25, 1996, letter, based on the information gathered during the inspections and in the response to the DFI, the following was concluded regarding Mr. Nelson's activities: (1) He deliberately provided information that he knew was inaccurate to the NRC regarding the identity of the Radiation Protection Officer in a September 17, 1992, letter; and (2) he deliberately permitted the use of the gauge containing licensed material on 13 occasions during the period that use of the gauge was prohibited by the October 24, 1995 Order. In addition, Mr. Nelson has failed to respond to numerous requests from the NRC regarding oversight of his NRC license. This failure caused the NRC to perform two onsite inspections to assure licensed activities were conducted in accordance with NRC regulations.

III

Based on the above, it appears that James C. Nelson, the owner and operator of the Nelson Excavating, Inc., has engaged in deliberate misconduct in violation of 10 CFR 30.10(a)(1), in that he deliberately caused the Licensee to be in violation of 10 CFR 30.34 (a), Terms and Conditions of License, by permitting the use of the gauge containing licensed material on 13 occasions following the October 24, 1995 Order prohibiting use of the gauge, and in violation of 10 CFR 30.10(a)(2) in that he deliberately submitted information to the NRC regarding the identity of the RPO in a September 17, 1992 letter that he knew was inaccurate. Mr. Nelson's disregard for and failure to adhere to NRC regulations and an Order strongly suggests a lack of integrity which cannot be tolerated. As owner and operator of Nelson Excavating, Inc., Mr. Nelson was responsible for ensuring that Nelson Excavating, Inc. conducted activities safely and in accordance with NRC requirements and the October 24, 1995, Order. The NRC must be able to rely on the Licensee, its officials, and employees to comply with NRC requirements and the terms of NRC Orders prohibiting the use of licensed materials, and to communicate to the NRC with candor and honesty.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Nelson were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Nelson be prohibited from any oversight of or involvement in NRC-licensed activities for a period of five years from the date of this Order. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Nelson's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, it is hereby ordered, effective immediately, that:

A. For a period of five years from the date of this Order, James C. Nelson is prohibited from any involvement in or exercising control over NRC-licensed activities. NRC-licensed activities are those activities which are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20. This prohibition includes, but is not limited to: (1) using licensed materials or conducting licensed activities in any capacity within the jurisdiction of the NRC; and (2) supervising or directing any licensed activities conducted within the jurisdiction of the NRC.

B. Following the five-year period of prohibition outlined in Section IV.A above, at least five days prior to the first time that James C. Nelson engages in, or exercises control over, NRC-licensed activities, he shall notify the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, of the name, address, and telephone number of the NRC or Agreement State licensee and the location where the licensed activities will be performed. The notice shall be accompanied by a statement that James C. Nelson is committed to compliance with NRC requirements and the basis why the Commission should have confidence that he

will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Nelson of good cause.

V

In accordance with 10 CFR 2.202, James C. Nelson must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which James C. Nelson or any other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Chief, Docketing and Service Section, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region II, 101 Marietta Street N.W., Suite 2900, Atlanta, GA 30323, and to James C. Nelson if the answer or hearing request is by a person other than James C. Nelson. If a person other than James C. Nelson requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by James C. Nelson or any other person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), James C. Nelson, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be effective and final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated at Rockville, Maryland this 27th day of January 1997.

For the Nuclear Regulatory Commission.

Edward L. Jordan,

Deputy Executive Director for Regulatory Effectiveness, Program Oversight, Investigations and Enforcement.

[FR Doc. 97–2536 Filed 1–31–97; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–266 and 50–301]

Wisconsin Electric Power Company (Point Beach Nuclear Plant, Unit Nos. 1 and 2); Exemption

I

Wisconsin Electric Power Company (the licensee) is the holder of Facility Operating License Nos. DRP–24 and DRP–27, which authorize operation of the Point Beach Nuclear Plant, Units 1 and 2, respectively. The licenses provide, 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 two pressurized-water reactors located at the licensee's site in Manitowoc County, Wisconsin.

II.

In its letter dated July 1, 1996, as supplemented November 18, 1996, the licensee requested an exemption from the Commission's regulations. Title 10 of the *Code of Federal Regulations,* Part 50, Section 60 (10 CFR 50.60), ''Acceptance Criteria for Fracture Prevention Measures for Lightwater Nuclear Power Reactors for Normal Operation,'' states that all lightwater nuclear power reactors must meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary as set forth in Appendices G and H to 10 CFR Part 50. Appendix G to 10 CFR Part 50 defines pressure/temperature (P/T) limits during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests to which the pressure boundary may be subjected over its service lifetime. It is specified in 10 CFR 50.60(b) that alternatives to the described requirements in Appendices G and H to 10 CFR Part 50 may be used when an exemption is granted by the Commission under 10 CFR 50.12.

To prevent low-temperature overpressure transients that would produce pressure excursions exceeding the P/T limits of Appendix G to 10 CFR Part 50 while the reactor is operating at low temperatures, the licensee installed a low-temperature overpressure protection (LTOP) system. The system includes pressure-relieving devices called power-operated relief valves (PORVs). The PORVs are set at a pressure low enough so that if an LTOP transient occurred, the mitigation system would prevent the pressure in the reactor vessel from exceeding the P/T limits of Appendix G to 10 CFR Part 50. To prevent the PORVs from lifting as a result of normal operating pressure surges (e.g., reactor coolant pumps starting or stopping) with the reactor coolant system in a water solid condition, the operating pressure must be maintained below the PORV setpoint. The maximum LTOP setpoint of 425 psig was approved May 20, 1980, with the issuance of Amendments 45 (DPR–24) and 60 (DPR–27) to the Point Beach operating licenses. This LTOP system received pressure input from the sensing taps located in the reactor coolant system hot leg and at the pressurizer. Subsequent evaluation determined that the methodology used to determine the LTOP system setpoint did not account for the differential pressure across the core during reactor coolant pump operation. A recent Westinghouse calculation (NSAL 93–005) indicated that with both reactor coolant pumps operating, the pressure at core midplane may be as much as 63 psig higher than at the pressure sensing points. To account for this differential pressure, which could cause the reactor vessel midplane pressure to exceed the ASME Section XI, Appendix G limits, the licensee implemented an administrative requirement in 1993 allowing only one reactor coolant pump in operation when reactor coolant temperature is below 160 oF. Plant operation with this restriction places an

unnecessary burden on plant operators to ensure safety limits are maintained.

The licensee has requested the use of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) Case N–514, ''Low Temperature Overpressure Protection,'' which allows exceeding the pressure of the P/T limits of 10 CFR Part 50, Appendix G, by 10 percent. ASME Code Case N–514, the proposed alternate methodology, is consistent with guidelines developed by the ASME Working Group on Operating Plant Criteria to define pressure limits during LTOP events that avoid certain unnecessary operational restrictions, provide adequate margins against failure of the reactor pressure vessel, and reduce the potential for unnecessary activation of pressure-relieving devices used for LTOP. ASME Code Case N–514 has been approved by the ASME Code Committee. The content of this code case has been incorporated into Appendix G of Section XI of the ASME Code and published in the 1993 Addenda to Section XI.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security and (2) when special circumstances are present. Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), ''Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.''

The underlying purpose of 10 CFR 50.60, Appendix G, is to establish fracture toughness requirements for ferritic materials of pressure-retaining components of the reactor coolant pressure boundary to provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences, to which the pressure boundary may be subjected over its service lifetime. Section IV.A.2 of this appendix requires that the reactor vessel be operated with P/T limits at least as conservative as those obtained by following the methods of analysis and the required margins of safety of Appendix G of the ASME Code, Section XI.

Appendix G of Section XI of the ASME Code requires that the P/T limits be calculated (a) using a safety factor of 2 on the principal membrane (pressure) stresses, (b) assuming a flaw at the surface with a depth of one-quarter (¼) of the vessel wall thickness and a length of 6 times its depth, and (c) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the Point Beach reactor vessel material.

In determining the setpoint for LTOP events, the licensee proposed to use safety margins based on an alternate methodology consistent with the ASME Code Case N–514 guidelines. The ASME Code Case N–514 allows determination of the setpoint for LTOP events such that the maximum pressure in the vessel would not exceed 110 percent of the P/T limits of the existing ASME Code, Section XI, Appendix G. This approach results in a safety factor of 1.8 on pressure. All other factors, including assumed flaw size and fracture toughness, remain the same. Although this methodology would reduce the safety factor on pressure, it was demonstrated in the Bases of the ASME Code Case N–514 that due to the isothermal nature of LTOP events, the margin with respect to toughness for LTOP transients is within the range provided by ASME, Section XI, Appendix G for normal heatup and cooldown in the low temperature range. Thus, applying Code Case N–514 will satisfy the underlying purpose of 10 CFR 50.60 for fracture toughness requirements. Further, by relieving the operational restrictions, the potential for undesirable lifting of the PORV would be reduced, thereby improving plant safety.

IV

For the foregoing reasons, the NRC staff has concluded that the licensee's proposed use of the alternate methodology in determining the acceptable setpoint for LTOP events will not present an undue risk to public health and safety and is consistent with the common defense and security. The NRC staff has determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2)(ii), in that application of 10 CFR 50.60 is not necessary in order to achieve the underlying purpose of this regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption is authorized by law, will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants an exemption from the requirements of 10 CFR 50.60 such that in determining the setpoint for LTOP events, the Appendix G curves for P/T limits are not exceeded by more than 10 percent. This exemption is applicable only to LTOP conditions during normal operation.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (61 FR 66062).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 27th day of January 1997.

Frank J. Miraglia

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–2537 Filed 1–31–97; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on Wednesday, February 5, 1997.

The meeting will start at 10:45 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of

its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street NW., Washington, DC 20415 (202) 606–1500.

Dated: January 27, 1997.

Phyllis G. Foley,

Chair, Federal Prevailing Rate Advisory Committee.

[FR Doc. 97–2614 Filed 1–31–97; 8:45 am]

BILLING CODE 6325–01–M

The National Partnership Council; Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

TIME AND DATE: 1 p.m., February 12, 1997.

PLACE: OPM Conference Center, Room 1350, Theodore Roosevelt Building, 1900 E Street, NW., Washington, DC 20415–0001. The conference center is located on the first floor.

STATUS: This meeting will be open to the public. Seating will be available on a first-come, first-served basis. Individuals with special access needs wishing to attend should contact OPM at the number shown below to obtain appropriate accommodations.

MATTERS TO BE CONSIDERED: The National Partnership Council (NPC) will receive a briefing on the status of career transition services to Federal employees. Also, there will be a presentation of the NPC Project Team plan for working with labor-management partnerships that are facing difficulties, and a presentation on the findings of the Senior Executives Association survey of senior executives in the Federal Government.

CONTACT PERSON FOR MORE INFORMATION: Michael Cushing, Director, Center for Partnership and Labor-Management Relations, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 7H28, Washington, DC 20415–0001, (202) 606–0010.

SUPPLEMENTARY INFORMATION: We invite interested persons and organizations to submit written comments. Mail or deliver your comments to Michael Cushing at the address shown above. To be considered at the February 12 meeting, written comments should be received by February 7.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 97–2615 Filed 1–31–97; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–9307]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Gundle/SLT Environmental, Inc., Common Stock, $0.01 Par Value)

January 28, 1997.

Gundle/SLT Environmental, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'').

The reasons alleged in the application for withdrawing the Security from listing and registration include the following:

According to the Company, it has complied with Rule 18 of the Amex by filing with such Exchange a certified copy of preambles and resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its security from listing on the Amex and by setting forth in detail to such Exchange the reasons for such proposed withdrawal, and the facts in support thereof. The Security of the Company has been listed on the New York Stock Exchange, Inc. (''NYSE'') as of December 10, 1996. In making the decision to withdraw the Security from listing on the Amex, the Company considered the sufficient liquidity provided by its listing on the NYSE and the corresponding reduction in benefits provided by the costs associated with maintaining the Amex listing.

Any interested person may, on or before February 19, 1997, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–2560 Filed 1–31–97; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–38211; File No. SR–CSE–96–05]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the Cincinnati Stock Exchange Relating to Day Trading Margin Requirements

January 28, 1997.

On August 15, 1996, the Cincinnati Stock Exchange (''CSE'' 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 16b–4 thereunder,[2] a proposed rule change to implement Rule 6.2, Day Trading Margin. Notice of the proposed rule change was published for comment and appeared in the Federal Register on September 12, 1996.[3] One comment letter was received on the proposal.[4] In response to the comment letter, the Exchange filed Amendment No. 1 to the proposal which was published in the Federal Register on December 19,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 37653 (September 6, 1996), 61 FR 48185 (September 12, 1996).

[4] *See* letter from James E. Buck, Senior Vice President and Secretary, New York Stock Exchange, Inc. (''NYSE''), to Jonathan G. Katz, Secretary, Commission, dated October 10, 1996.

1996.[5] No additional comment letters were received regarding the proposal. This order approves the CSE proposal as amended.

I. Description of the Proposal

The Exchange is proposing to adopt Rule 6.2 (''Day Trading Margin''), make a conforming amendment to Rule 6.1(b), and adopt Rule 6.1(c). The CSE has stated that the purpose of the proposed rules is to enhance the financial protections and therefore the integrity of the Exchange's markets by ensuring that customers maintain adequate margin reserves in their accounts. More specifically, the proposed rule changes, as amended by Amendment No. 1, require day traders [6] to maintain margin on the ''long'' or ''short'' transaction, whichever occurred first, in the same amount as required for initial margin by Regulation T of the Board of Governors of the Federal Reserve System (''Regulation T''),[7] or as required pursuant to Exchange Rule 6.1(c),[8] whichever amount is greater. By contrast, when day trading occurs in the margin account of a ''non-day trader,'' proposed Rule 6.2(b) provides that the margin to be maintained shall be the margin on the ''long'' or ''short'' transaction, whichever occurred first, as required pursuant to Exchange Rule 6.1(c). Accordingly, with respect to maintenance margin, the ''non-day trader'' never will be subject to the margin level of Regulation T, which in some instances is higher than that required by proposed Rule 6.1(c).[9]

In addition, Amendment No. 1 revises the Exchange's margin rules to conform with more recent amendments to Regulation T. Specifically, Amendment No. 1 amends Rule 6.1(b) to make clear that the Exchange is only permitted to grant extensions of time under Regulation T for those firms for which the Exchange is the designated examining authority.[10]

II. Comment Letter

As mentioned above, the NYSE filed a written comment to the proposed rule change by letter dated October 10, 1996.[11] The NYSE comment letter sated that proposed CSE Rule 6.2 was deficient because the CSE's rules did not contain any maintenance margin requirements. The NYSE further contended that absent specific maintenance margin requirements, the CSE rule would be unenforceable.

III. Discussion

The Commission finds that, as amended, 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, the requirements of Section 6(b)(5)[12] in that they are designed to facilitate transactions in securities, promote just and equitable principles of trade, and protect investors and the public interest. Specifically, the Commission finds that the new maintenance margin requirements set forth in CSE Rule 6.1(c)[13] are appropriate levels at which to require additional cash (or securities as collateral) to replenish a margin account when the value of the existing collateral is declining.[14] In this regard, the maintenance margin levels should help to reduce credit risk, and, thereby, provide stability to the CSE's markets by ensuring that customers maintain adequate margin reserves in their accounts. Additionally, the Commission believes that distinguishing between ''day traders'' and ''non-day traders'' for purposes of required maintenance margin levels is reasonable and consistent with the Act in light of the greater credit risks associated with frequent day trading.[15]

Moreover, the Commission believes that the amendment to CSE Rule 6.1(b) conforms the rule to recent amendments to Regulation T and, therefore, is appropriate. With respect to new CSE Rule 6.2(c), which prohibits a customer from making a practice of paying for a security by selling the same security on an intra-day basis (*i.e.* ''free riding''), the Commission finds that the Rule serves to provide further stability to the market and, as such, is consistent with the Act.

Finally, with regard to the NYSE comment letter, the Commission finds that Amendment No. 1 adequately addresses the concerns raised by the NYSE. As noted above, Amendment No. 1 added specific maintenance margin levels into the CSE's Rules, and these levels are identical to those set forth in NYSE Rule 431(c). Further, Amendment No. 1 was published for the full statutory comment period, and the Commission has received no additional comment letters. Accordingly, the Commission believes the NYSE's concerns have been addressed.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–CSE–96–05) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–2559 Filed 1–31–97; 8:45 am]

BILLING CODE 8010–01–M

[5] In Amendment No. 1 the Exchange adds proposed Rule 6.1(c), which sets forth specific required maintenance margin for margin accounts. In addition, Amendment No. 1 amends Rule 6.1(b) to make clear that the Exchange is only permitted to grant extensions of time under Regulation T of the Board of Governors of the Federal Reserve System for those firms for which the Exchange is the designated examining authority. *See* Securities Exchange Act Release No. 38046 (December 13, 1996), 61 FR 67086 (December 19, 1996) (Notice of Filing of Amendment No. 1).

[6] Pursuant to proposed Rule 6.2(a), the term ''day trading'' means the purchasing and selling of the same security on the same day. A ''day trader'' is any customer whose trading shows a pattern of day trading. This definition of day trader is identical to that used by the NYSE in Rule 431(f)(8)(B).

[7] 12 CFR 220.1–220.18.

[8] Proposed CSE Rule 6.1(c) provides that the margin which must be maintained in margin accounts of customers shall be as follows: (1) 25% of the current market value of all securities ''long'' in the account; plus (2) $2.50 per share or 100% of the current market value, whichever amount is greater, of each stock ''short'' in the account selling at less than $5.00 per share; plus (3) $5.00 per share or 30% of the current market value, whichever amount is greater, of each stock ''short'' in the account selling at $5.00 per share or above; plus (4) 5% of the principal amount or 30% of the current market value, whichever amount is greater, of each bond ''short'' in the account.

[9] *See* note 8, *supra.*

[10] The Commission notes that presently there are no firms for which the CSE is the designated examining authority.

[11] *See* note 4, *supra.*

[12] 15 U.S.C. 78f(b)(5).

[13] *See* note 8, *supra.*

[14] The Commission notes that the CSE's new maintenance margin levels are identical to those of the NYSE. *See* NYSE Rule 431(c).

[15] The Commission notes that the NYSE makes this same distinction between day traders and non-day traders for purposes of required maintenance margin. *See* NYSE rule 431(f)(B)(8).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Collection Request

The Social Security Administration publishes a list of information collection packages that will require submission to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection(s) listed below require(s) extension of the current OMB approval(s):

Social Security Non-Applicant, Applicant and Advisor Surveys on the Supplemental Security Income and Social Security Disability Programs—0960-NEW. SSA will conduct a pilot study to obtain information on the factors that motivate individuals to file for benefits. The purpose of this project is to provide SSA with an appropriate methodology to conduct a scientific survey of disability applicants, non-applicants and

disability advisors to determine the types and sources of information that disabled and impaired individuals utilize in making their decisions to apply or not to apply for benefits. The data will be used to determine the appropriateness and accuracy of the information provided to potential applicants and to identify the social networks through which information about the disability programs is disseminated.

	Screener survey	Pilot survey
Number of Respondents.	1,000	200
Frequency of Response.	1	1
Average Burden Per Response.	12 minutes.	60 minutes.
Estimated Annual Burden.	200 hours.	180 hours.

To receive a copy of the form(s) or clearance packages (s), call the SSA Reports Clearance Officer on (410) 965–4125 or write to her at the address listed below. Written comments and recommendations regarding the information collection(s) should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Judith T. Hasche, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The information collection listed below, which was published in the Federal Register on November 20, 1996, has been submitted to OMB.

1. Report to the United States Social Security Administration By

Person Receiving Benefits for A Child or for An Adult Unable to Handle Funds; Report to the United States Social Security Administration—0960–0049. The information collected on forms SSA–7161 and SSA–7162 is needed to determine continuing entitlement to Social Security Benefits and the proper benefit amount for beneficiaries living outside the United States. The information is used to prevent underpayments or overpayments of Benefits.

	SSA–7161	SSA–7162
Number of Respondents.	50,000	225,000.
Frequency of Response.	Annually	Annually/ Biennially.
Average Burden Per Response.	15 minutes	5 minutes.
Estimated Annual Burden.	12,500 hours ...	18,750 hours.

Social Security Administration

To receive a copy of the form(s) or clearance packages(s), call the SSA Reports Clearance Officer on (410) 965–4125 or write to her at the address listed below. Written comments and recommendations regarding the information collection(s) should be sent within 30 days of the date of this publication. Comments may be directed to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses:

(OMB), Office of Management and Budget, OIRA, Attn: Laura Oliven, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, DC 20503.

(SSA), Social Security Administration, DCFAM, Attn: Judith T. Hasche, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

Dated: January 28, 1997.

Judith T. Hasche,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 97–2623 Filed 1–31–97; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Department of Transportation (DOT), Office of the Secretary (OST).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces one information collection request coming up for renewal. Before submitting the renewal package to the Office of Management and Budget (OMB), the Department of Transportation is soliciting comments on specific aspects of the collection as described below. The ICR describes the nature of the information collection and its expected cost and burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 15, 1996 [FR 61, page 6056].

DATES: Comments must be submitted on or before April 4, 1997.

ADDRESSES: Submit written comments identified by the OMB Control Number 2105–0517, by mail to: Mr. Dave Jordan, M–61, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Jordan, (202) 366–4265, and refer to OMB Control Number, 2105–0517.

SUPPLEMENTARY INFORMATION:

Office of the Secretary (OST)

Title: Amendment to the Transportation Acquisition Regulation (TAR).

Form(s): DOT F 4220.4, DOT F 4220.7, DOT F 4220.43, DOT F 4220.44, DOT F 4220.45, DOT F 4220.46, and Form DD 882.

OMB Control Number: 2105–0517.

Affected Public: Individuals or households and business or other for-profit organizations.

Abstract: The requested extension of the approved control number covers forms DOT F 4220.4, DOT F 4220.7, DOT F 4220.43, DOT F 4220.44, DOT F 4220.45, DOT F 4220.46, and Form DD 882. In addition, the control number includes an amended request to obtain data associated with acquisitions for training services. The Transportation Acquisition Regulation (TAR) 48 CFR 1213.70, 1237.70, 1252.237–71, and 1252.237–72 requires contracting officers to obtain and evaluate, qualification data and other pertinent information when it is necessary to determine whether offerors have the capability to perform services under a proposed contract.

Annual Estimated Burden: The annual estimated burden is 57,167 hours.

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention OST Desk Officer.

Comments are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval.

Issued in Washington, DC, on January 29, 1997.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–2604 Filed 1–31–97; 8:45 am]

BILLING CODE 4910–62–P

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary (DOT).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 23, 1996 [FR 61, page 55067].

DATES: Comments must be submitted on or before March 5, 1997.

FOR FURTHER INFORMATION CONTACT: Richard Weaver, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2811.

SUPPLEMENTARY INFORMATION:

Maritime Administration

Title: 46 CFR Part 298—Title XI Obligation Guarantees.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0018.

Form Number(s): MA–163.

Affected Public: Individuals/businesses interested in obtaining loan guarantees for construction/reconstruction of vessels satisfying criteria under the Act.

Abstract: Under title XI of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1271–1279) (the Act), the Maritime Administration (MARAD) is authorized to execute a full faith and credit guarantee by the United States of debt obligations issued to finance or refinance the construction or reconstruction of vessels. In November 1994, the title XI program was expanded to permit issuance of loan guarantees for financing export vessels built in the United States and for shipyard modernization and improvement projects.

Need and Use of the Information: Prior to execution of a loan guarantee, the Act requires the Secretary of Transportation must, among other things, make determinations of economic soundness of the project and financial and operating capability of the applicant. The Secretary of Transportation has delegated this authority (See 49 CFR 1.66(e)) to the Maritime Administrator. The information collected is necessary to evaluate the project and capabilities, make the required determinations, and administer any agreements executed upon approval of loan guarantees.

Annual Burden: 2,000 hours.

Address: Send all comments to the Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention DOT Desk Officer.

Comments: Send all comments regarding whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected to the Office of Information and Regulatory Affairs.

Issued in Washington, DC, on January 28, 1997.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–2550 Filed 1–31–97; 8:45 am]

BILLING CODE 4910–62–P

Partnership Council Meeting

AGENCY: Office of the Secretary (DOT).

ACTION: Notice of meeting.

SUMMARY: The Department of Transportation (DOT) announces a meeting of the DOT Partnership Council (the Council). Notice of this meeting is required under the Federal Advisory Committee Act.

TIME AND PLACE: The Council will meet on Wednesday, February 26, 1997, at 2:00 p.m., at the Department of Transportation, Nassif Building, rooms 10234–10238, 400 Seventh Street, SW., Washington, DC 20590. The rooms are located on the 10th floor.

TYPE OF MEETING: These meetings will be open to the public. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact DOT to obtain appropriate accommodations.

POINT OF CONTACT: John E. Budnik or Jean B. Lenderking, Corporate Effectiveness Division, M–13, Department of Transportation, Nassif Building, 400 Seventh Street, SW., room 9425, Washington, DC 20590, (202) 366–9439 or (202) 366–8085, respectively.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to provide an overview of diversity within the Department of Transportation and to provide updates on ongoing Partnership Council activities.

PUBLIC PARTICIPATION: We invite interested persons and organizations to submit comments. Mail or deliver your comments or recommendations to Mr. John Budnik or Ms. Jean Lenderking at the address shown above. Comments should be received by February 18, 1997 in order to be considered at the February 26 meeting.

Issued in Washington, DC, on January 29, 1997.

For the Department of Transportation.

John E. Budnik,

Associate Director, Corporate Effectiveness Division.

[FR Doc. 97–2603 Filed 1–31–97; 8:45 am]

BILLING CODE 4910–62–P

National Highway Traffic Safety Administration

[Docket No. 97–004–Notice 1]

Motor Vehicle Bystander Care Survey; Proposed Information Collection

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

ACTION: Notice and request for comments on data collection.

SUMMARY: NHTSA will conduct a telephone survey as a major component of a two-site evaluation of its *Bystander Care* program. In accordance with the agency's mandate to reduce fatalities and economic loss resulting from motor vehicle crashes, the Bystander Care program was established to encourage passerby to stop at rural crash sites, render life-saving assistance, and summon emergency medical services (EMS). The program is designed to raise public awareness of the importance of bystander care, and to teach the few basic skills necessary to recognize an emergency, start victims' breathing, stop victims' bleeding, and contact EMS. The data from the survey will be used to evaluate the extent to which the bystander care messages have reached the public in targeted areas, the extent to which these messages were successful in changing attitudes towards providing emergency care, and the extent to which the program improved knowledge needed to successfully provide emergency care.

DATES: Written comments must be submitted April 4, 1997.

ADDRESSES: Direct all written comments to National Highway Safety Administration, Docket Section, Room 5109, Docket #97–004, No. 1, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Ms. Helen Dear, Contracting Officer's Technical Representative, Office of Traffic Injury Control Programs, (NTS–14), National Highway Safety Administration, 400 Seventh Street, S.W., Room 5119, Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION:

I. Abstract

NHTSA will conduct a survey as a major component of a two-site evaluation of its Bystander Care program. The other components of this evaluation include a review of existing EMS records, and a review of attendance records from providers of Bystander Care training. In accordance with the agency's mandate to reduce fatalities and economic loss resulting from motor vehicle crashes, the Bystander Care program was established to encourage passerbys to stop at rural crash sites, render life-saving assistance, and summon emergency medical services (EMS). The program is designed to raise public awareness of the importance of bystander care, and to teach the few basic skills necessary to recognize an emergency, start victims' breathing, stop victims' bleeding, and contact EMS. The program focuses on rural areas because a disproportionate number of fatalities occur there, possibly because of longer EMS response times, and fewer passerbys.

The data from the survey will be used to evaluate the extent to which the bystander care messages have reached the public in targeted areas, the extent to which these messages were successful in changing attitudes towards providing emergency care, and the extent to which the program improved knowledge needed to successfully provide emergency care.

The longitudinal telephone survey will be conducted in two waves: prior to the public campaign the first survey will gather baseline data. The second survey, approximately one year after the inception of the program, will assess changes from that baseline.

Data from the evaluation will be used by NHTSA in judging the efficacy of the bystander care program. The design of the study will enable NHTSA to measure the impact of the program and improve the program by diagnosing any problem areas.

II. Method of Data Collection

The survey will be conducted by telephone in two program sites. The baseline survey will interview a sample of approximately 400 individuals over the age of 15, and the follow-up survey will attempt reinterviews with all baseline respondents. Reinterview rates of 75–80 percent are expected. In addition, the follow-up survey will interview an additional 300 respondents to control for the potential sensitizing effects of the baseline survey on the panel respondents. The interviews will be aided by a computerized system to minimize interviewing and recording errors. The survey will be anonymous and confidential, and participation will be voluntary.

The instruments will consist of three modules. The first module will gather information indicating the respondents' familiarity with the Bystander Care messages. This information will provide a gauge of the breadth of dissemination. The second module will gather information about respondent attitudes towards, and knowledge about, providing emergency care. Comparisons of this information before and after the campaign will provide a measure of the program's impact. The third and final module will gather demographic information about the respondents. The follow-up instrument will include only the first two modules for panel respondents. The modules for the follow-up survey will include a small number of items not asked of baseline respondents.

III. Use of Findings

The findings will be used to judge the efficacy of the Bystander Care program. NHTSA will draw on this information when considering continuation, refinement, and expansion of the Bystander Care program.

IV. Data

OMB Number: None.
Form Number: None.
Type of Review: Regular submission.
Affected Public: The population of two rural sites age 16 and older living in households with telephones.
Estimated Number of Respondents: 400 first wave, 560 second wave.
Estimated Time Per Respondent: 10–15 minutes.
Estimated Total Burden: 160–240 total hours.
Estimated Total Cost: $17.50 per survey (baseline); $19.75 per survey (follow-up).

V. Requests for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the estimated burden (including hours and cost) of the proposed data collection; (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.

Comments submitted in response to this notice will be summarized and/or included in the request for approval by the Office of Management and Budget (OMB) of this information collection. Copies of all comments will be placed in Docket 97–004, Notice 1, in the NHTSA Docket Section in Room 5109, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590, and will become a matter of public record.

James H. Hedlund,
Associate Administrator for Traffic Safety Programs.

[FR Doc. 97–2252 Filed 1–31–97; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 97–006; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1992 Mercedes-Benz 230CE Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1992 Mercedes-Benz 230CE 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 a 1992 Mercedes-Benz 230CE 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 importation into 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 March 3, 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.

Champagne Imports, Inc. of Lansdale, Pennsylvania (Registered Importer No. R–90–009) has petitioned NHTSA to decide whether 1992 Mercedes-Benz 230CE passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1992 Mercedes-Benz 300CE. Champagne has submitted information indicating that Daimler Benz, A.G., the company that manufactured the 1992 Mercedes-Benz 300CE, certified that vehicle as conforming to all applicable Federal motor vehicle safety standards and offered it for sale in the United States.

The petitioner contends that it carefully compared the 1992 Mercedes-Benz 230CE to the 1992 Mercedes-Benz 300CE, and found the two models to be substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the 1992 Mercedes-Benz 230CE, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1992 Mercedes-Benz 300CE that was offered for sale in the United States, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the 1992 Mercedes-Benz 230CE is identical to the certified 1992 Mercedes-Benz 300CE 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,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Protection for the Driver From the Steering Control System,* 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,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that the 1992 Mercedes-Benz 230CE complies with the Bumper Standard found in 49 CFR Part 581.

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 an noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) 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 headlamp assemblies which incorporate U.S.-model headlamps; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (c) installation of a high mounted stop lamp.

Standard No. 110 Tire Selection and Rims: installation of a tire information placard.

Standard No. 111 Rearview Mirrors: replacement of the convex passenger side rear view mirror.

Standard No. 114 Theft Protection: installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

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. 208 Occupant Crash Protection: (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) replacement of the driver's side air bag and knee bolster with U.S.-model components. The petitioner states that the vehicle is equipped with a combination lap and shoulder restraint that adjusts by means of an automatic retractor and releases by means of a single push button in each front designated seating position, and with combination lap and shoulder restraints with a single button release in both rear outboard seating positions.

Standard No. 214 Side Impact Protection: installation of reinforcing beams.

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.

Additionally, the petitioner states that a vehicle identification number (VIN) plate must be affixed to the vehicle to comply with 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: January 29, 1997.

Marilynne Jacobs,

Director,

Office of Vehicle Safety Compliance.

[FR Doc. 97–2605 Filed 1–31–97; 8:45 am]

BILLING CODE 4910–59–P

Surface Transportation Board

Agency Information Collection Under OMB Review

The following proposal for collection of information under the provisions of

the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the form and supporting documents may be obtained from the Agency Clearance Officer, Ellen Keys, (202) 927–5673. Comments regarding this information collection should be addressed to Ellen Keys, Surface Transportation Board, Room 2221, Washington, DC 20423 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Desk Officer for STB, Washington, DC 20503. When submitting comments, refer to the OMB number or the title of the form.

Type of Clearance: Reinstatement, without change of a previously approved collection for which approval has expired.

Office: Office of Economics, Environmental Analysis, and Administration.

Title of Form: Annual Report Form R–1, Class I Railroads.

OMB Form Number: 3120–0029.

Agency Form Number: R–1.

Frequency: Annually.

No. of Respondents: 10.

Total Burden Hours: 8,000.

Vernon A. Williams,

Secretary.

[FR Doc. 97–2545 Filed 1–31–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

January 27 , 1997.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

DATES: Written comments should be received on or before March 5, 1997 to be assured of consideration.

OMB Number: 1550–0061.

Form Number: Not Applicable.

Type of Review: Extension of an approved collection.

Title: Outside Borrowings.

Description: This information is collected from savings associations that do not meet capital requirements. These institutions must give ten days prior notification before making long-term borrowings. This information is used to monitor the safety and soundness of institutions that do not meet their capital requirements.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Respondent: 4 hours.

Frequency of Response: 1.

Estimated Total Reporting Burden: 4 hours.

Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, D.C. 20503.

Catherine C.M. Teti,

Director, Records Management and Information Policy.

[FR Doc. 97–2529 Filed 1–31–97; 8:45 am]

BILLING CODE 6720–01–P

UNITED STATES INFORMATION AGENCY

Submission for OMB Review; Comment Request

AGENCY: United States Information Agency.

ACTION: Submission for OMB Review; comment request.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that the following information collection activity has been forwarded to the Office of Management and Budget (OMB) for review and comment. USIA is requesting approval for a revision and three-year extension of an information collection entitled ''Surveys, Interviews, and other Audience Research for Radio and TV Marti'' under OMB control number 3116–0197 which expires February 28, 1997. Estimated burden hours per response is 1.15 hours. Respondents are required to respond only one time.

DATES: Comments are due on or before March 5, 1997.

COPIES: Copies of the Request for Clearance (OMB 83–I), supporting statement, and other documents that have been submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Jeannette Giovetti, United States Information Agency, M/ADD, 301 Fourth Street, S.W., Washington, D.C. 20547, telephone (202) 619–4408, internet address JGiovett USIA.GOV; and OMB review: Ms. Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 1002, NEOB, Washington, D.C. 20503, Telephone (202) 395–5871.

SUPPLEMENTARY INFORMATION: An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The Federal Register Notice with a 60-day comment period soliciting comments on this collection of information was published on December 3, 1996 (Vol. 61, No. 233).

Public reporting burden for this collection of information (Paper Work Reduction Project: OMB No. 3116–0211) is estimated to average 1.15 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the United States Information Agency, M/ADD, 301 Fourth Street, S.W., Washington, D.C. 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, D.C. 20503.

Title: ''Surveys, Interviews, and other Audience Research for Radio and TV Marti''

Abstract: Data from this information collection are used by USIA's Office of Cuba Broadcasting (OCB) in fulfillment of its mandate to evaluate effectiveness of Radio and TV Marti operations by estimating the audience size and composition for broadcasts; and assess signal reception, credibility and relevance of programming through this research.

Proposed Frequency of Responses:

No. of Respondents—1788.

Recordkeeping Hours—1.15.

Total Annual Burden—2052.

Dated: January 29, 1997.

Rose Royal,

Federal Register Liaison.

[FR Doc. 97–2569 Filed 1–31–97; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Proposed Information Collection Activity; Public Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Veterans Benefits Administration (VBA) invites the general public and other Federal agencies to comment on this information collection. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)). Comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection.

DATES: Written comments and recommendations on the proposal for the collection of information should be received on or before April 4, 1997.

ADDRESSES: Direct all written comments to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. All comments will become a matter of public record and will be summarized in the VBA request for Office of Management and Budget (OMB) approval. In this document VBA is soliciting comments concerning the following information collection:

OMB Control Number: 2900–0051.

Title and Form Number: Quarterly Report of State Approving Agency Activities, VA Form 22–7398.

Type of Review: Revision of a currently approved collection.

Need and Uses: The information to ensure that the reimbursement to the States is proper and accurate. Without this report, the VA would have no means to compare the efficiency and effectiveness of the State agencies.

Current Actions: The VA has authority to reimburse State Approving Agencies (SAAs) for necessary salary, fringe, and travel expenses incurred in the approval and supervision of education and training programs under Chapters 30, 32, 35, and 36 of Title 38, U.S.C., and Chapter 1606 of Title 10, U.S.C. Reimbursement is made on a monthly or quarterly basis after SAAs submit an itemized invoice with supporting statements (visit reports and program approvals). VA Form 22–7398 serves as the report of activity (in specified categories) of the work for approving and supervising by the SAAs.

Affected Public: State, Local or Tribal Government.

Estimated Annual Burden: 240 hours.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: Quarterly.

Estimated Annual Responses: 240.

Estimated Number of Respondents: 60.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the form should be directed to Department of Veterans Affairs, Attn: Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, Telephone (202) 273–7079 or FAX (202) 275–4884.

Dated: January 13, 1997.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 97–2510 Filed 1–31–97; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0353.

Title and Form Number: Certification of Lessons Completed, VA Form 22–6553b.

Type of Review: Extension of a currently approved collection.

Need and Uses: The information collected on the form is used to determine the number of lessons completed by the student and serviced by the school, and if necessary to determine the date of completion or termination of correspondence training. Without this information, the VA would be unable to determine the proper payment or the student's status.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,186 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: 3.02 (Average Individual Response Per Year.).

Estimated Total Number of Responses: 19,117.

Estimated Total Number of Respondents: 6,330.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning this submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by March 5, 1997.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: January 13, 1997.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service

[FR Doc. 97–2511 Filed 1–31–97; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0114.

Title and Form Number: Statement of Marital Relationship, VA Form 21–4170.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is used to develop the evidence necessary to make

a determination as to whether a claimed common law marriage can be recognized by the VA.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 3,000 hours.

Estimated Total Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Number of Respondents: 6,000.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning this submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by March 5, 1997.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: January 13, 1997.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 97–2512 Filed 1–31–97; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0105.

Title and Form Number: Statement of Witness to Accident, VA Form Letter 21–806.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form letter is used in support of claims for disability benefits based on disability which is the result of an accident. The information given by a witness to the accident is used as a source to gather specific data regarding the accident and to obtain from the witness opinions as well as facts based on his or her own knowledge and beliefs regarding the accident.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 4,400 hours.

Estimated Total Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Total Number of Respondents: 13,200.

Comments and recommendations concerning this submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by March 5, 1997.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: January 13, 1997.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 97–2513 Filed 1–31–97; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0191.

Title and Form Number: Application for Designation as Management Broker, VA Form 26–6685.

Type of Review: Extension of a currently approved collection.

Need and Uses: It is the general policy of the VA to utilize the services of local brokers in the sale and management of VA-owned properties. Generally management activities are conducted by staff personnel only when the property is in close proximity to a VA field station and no reputable local brokers are willing to represent the VA. Each management broker wishing to represent the VA must submit a signed VA Form 26–6685. The information collected on the form, as well as other relevant material, such as a credit report, is used to determine the qualifications and acceptability of those management brokers who apply to participate in this program.

Affected Public: Business or other for-profit.

Estimated Total Annual Burden: 63 hours.

Estimated Total Average Burden Per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Total Number of Respondents: 250.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning this submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by March 5, 1997.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: January 13, 1997.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 97–2514 Filed 1–31–97; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0067.

Title and Form Number: Application for Automobile or Other Conveyance

and Adaptive Equipment, VA Form 21–4502.

Type of Review: Extension of a currently approved collection.

Need and Uses: The form is used to gather the necessary information to determine if the veteran has established entitlement to an automobile allowance or adaptive equipment.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 375 hours.

Estimated Total Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Number of Respondents: 1,500.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 8l0 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning this submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by March 5, 1997.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: January 13, 1997.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 97–2515 Filed 1–31–97; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Office of Small and Disadvantaged Business Utilization, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Small and Disadvantaged Business Utilization (OSDBU), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0444.

Title and Form Number: VAAR Subpart 819.70, Veteran-Owned and Operated Small Business, (Exceptions to SF 18 and SF 129).

Type of Review: Reinstatement with change, of a previously approved collection for which approval has expired.

Need and Uses: Public Law 93–237, amended the Small Business Act by directing the U.S. Small Business Administration (SBA) to give ''special consideration'' to veterans of the U.S. Armed Forces in all SBA programs. The VA adopted the ''special consideration'' philosophy and has directed all VA contracting activities to take affirmative action to solicit and assist Vietnam Era and disabled veteran-owned small businesses to participate in the VA acquisition process. This action established the VA Vietnam Era and Disabled Veteran-Owned Small Business Outreach Program. The VA did receive OMB approval to modify SF 18, Request for Quotations, and SF 129, Solicitation Mailing List Application, to include Vietnam Era and disabled veteran-owned information. The Secretary approved an initiative to expand the Vietnam Era and Disabled Veteran-Owned Small Business Outreach Program to include all veteran-owned small businesses. Title 38 U.S.C., vests the Secretary with broad authority and responsibility to assist veterans. Therefore, the VA requests that OMB approval be granted to include veteran-owned businesses in addition to Vietnam Era and disabled veteran-owned businesses information on SF 18 and SF 129. The information requested will be a self certification that a firm is veteran-owned. It allows the VA to ensure that eligible veteran-owned firms are given an opportunity to participate in the VA acquisition process and to monitor our success in implementing these regulatory provisions. The information requested on the SF 18 and SF 129 will be solicited from the respondents on a voluntary basis and will be used by the VA to identify veteran-owned businesses to ensure eligible veteran-owned firms are given an opportunity to participate in VA solicitations for good and services. Without this information there would be no way for the VA to properly monitor this program.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 4,727 hours.

Estimated Average Burden Per Respondent: Additional burden imposed on SF 18 and SF 129 is 5 seconds.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,403,500.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning this submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by March 5, 1997.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: January 13, 1997.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 97–2516 Filed 1–31–97; 8:45 am]

BILLING CODE 8320–01–P

Agency Information Collection: Submission for OMB Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

OMB Control Number: 2900–0156.

Titles and Form Numbers: Notice of Change in Student Status, VA Forms 22–1999b and 22–1999b–1.

Type of Review: Extension of a currently approved collection.

Need and Uses: The information collected on the forms is used by the VA to determine if a claimant's educational benefits are to be increased, decreased, or terminated. Without this information, the VA might underpay or overpay benefits.

Affected Public: State, Local or Tribal Government—Business or other for-profit—Not-for-profit institutions.

Estimated Total Annual Burden: 73,181 hours.

Estimated Total Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Total Number of Responses: 878,174.

Estimated Total Number of Respondents: 7,481.

ADDRESSES: A copy of this submission may be obtained from Ron Taylor, VA Clearance Officer (045A4), Department of Veterans Affairs, 8l0 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015.

Comments and recommendations concerning this submission should be directed to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. DO NOT send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by March 5, 1997.

FOR FURTHER INFORMATION CONTACT: Ron Taylor, VA Clearance Officer (045A4), (202) 273–8015.

Dated: January 13, 1997.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 97–2517 Filed 1–31–97; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 62, No. 22
Monday, February 3, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL-5664-8]

RIN 2060-AE-86

National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production

Correction

In proposed rule document 96–32237 beginning on page 68406 in the issue of Friday, December 27, 1996, make the following corrections:

§ 63.1292 [Corrected]

1. On page 68419, in the first column, in § 63.1292, in the 25th line from the bottom, ''Hap'' should read ''HAP''.

2. On the same page, in the second column, in the same section, in the sixth line from the bottom, the first ''absorbers'' should read ''adsorbers''.

§ 63.1296 [Corrected]

3. On page 68420, in the second column, in § 63.1296(a)(2)(iii)(B), in the last line, ''applicable'' should read ''practicable''.

§ 63.1300 [Corrected]

4. On page 68424, in the first column, in § 63.1300(b), in the third line, before ''foam'' insert ''polyurethane''.

§ 63.1303 [Corrected]

5. On the same page, in the second column, in § 63.1303(b)(1)(i), in the fifth line, ''and'' should read ''through''.

§ 63.1307 [Corrected]

6. On page 68428, in the second column, under § 63.1307(c)(2)(v), paragraphs (vi), (vii) and (d) were inadvertently removed and should read as follows:

''(vi) Records of all calibrations for each device used to measure the amount of HAP ABA in the storage vessel, conducted in accordance with § 63.1303(d)(3).

(vii) Records to verify that all scales used to measure the amount of HAP ABA added to the storage vessel meet the requirements of § 63.1303(e)(2). For scales meeting the criteria of § 63.1303(e)(2)(i), this documentation shall be in the form of written confirmation of the State or local approval. For scales meeting the criteria of § 63.1303(e)(2)(ii), this documentation shall be in the form of a report provided by the registered scale technician.

(d) *Records for sources with enforceable emission limitations below major source levels.* Processes exempted from this subpart through a federally enforceable emission limitation in accordance with § 63.1290(b)(1), and that have notified the Administrator of this self-imposed limitation through § 63.1306(c)(9), shall maintain records to support the emission estimates provided in the annual emission reports, submitted in accordance with § 63.1306(f)(3). These emission estimates may be based on inventory records, material balance calculations, emission tests, or other engineering analyses.''

BILLING CODE 1505-01-D

FEDERAL COMMUNICATION COMMISSION

47 CFR Part 53

[CC Docket No. 96-149; FCC 96-489]

Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended

Correction

In rule document 97–1390 beginning on page 2927 in the issue of Tuesday, January 21, 1997, make the following correction:

On page 2927, in the third column, in the 26th line from the bottom, ''(60 days from date of publication in the Federal Register.)'' should read ''March 24, 1997.''.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38104; File No. SR-PHLX-96-51]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to an Extension of the Automated Options Market Pilot Program

Correction

In notice document 97–235 beginning on page 1017 in the issue of Tuesday, January 7, 1997, make the following correction:

On page 1018, in the second column, in the fourth line from the bottom, ''[insert date 21 days after the date of this publication]'' should read ''January 28, 1997''.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ASO–40]

Proposed Amendment to Class D and E2 Airspace; Orlando, FL.

Correction

In proposed rule document 97–786 beginning on page 1698 in the issue of Monday, January 13, 1997, make the following correction:

§ 71.1 [Corrected]

On page 1699, in the first column, under ASO FL D Orlando, FL [Revised], in the sixth line, ''1,500 feet'' should read ''1,600 feet''.

BILLING CODE 1505-01-D

federal register

Monday
February 3, 1997

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 21, et al.

Operating Requirements: Domestic, Flag, Supplemental, Commuter, and On-Demand Operations; Editorial and Other Changes; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 25, 91, 119, 121, 125 and 135

[Docket No. 28154; Notice No. 97–1]

RIN 2120–AG26

Operating Requirements: Domestic, Flag, Supplemental, Commuter, and On-Demand Operations: Editorial and Other Changes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes changes that are mostly editorial or typographical in nature in parts 21, 25, 91, 119, 121, 125, and 135. Most of the proposed changes are necessary to correct errors, make terminology consistent, or clarify the intent of the regulations published on December 20, 1995 (60 FR 65832). A few changes are to clarify existing rules or to deal with other long-standing issues not involving major substantive change (e.g. codifying long-standing exemptions). A new Special Federal Aviation Regulation is proposed to address three problems that relate to compliance with requirements for communications facilities and aircraft dispatchers by operators in Alaska and other areas.

DATES: Comments must be received on or before March 5, 1997.

ADDRESSES: Comments on this notice should be mailed or delivered in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–20), Docket No. 28154, 800 Independence Avenue, SW., Washington, DC 20591. Comments may also be submitted to the Rules Docket by using the following Internet address: nprmcmts@faa.dot.gov. Comments must be marked Docket No. 28154. Comments may be examined in the Rules Docket, Room 915–G on weekdays between 8:30 a.m. and 5:00 p.m., except on Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Katherine Hakala, Flight Standards Service (AFS); Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–8166 or 267–3760.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments.

Comments should carry the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received and a report summarizing any substantive public contact with FAA personnel on this rulemaking will be filed in the docket. The docket is available for public inspection both before and after the closing date for receiving comments.

Before taking any final action on this proposal, the Administrator will consider the comments made on or before the closing date for comments, and the proposal may be changed in light of the comments received.

The FAA will acknowledge receipt of a comment if the commenter includes a self-addressed, stamped postcard with the comment. The postcard should be marked ''Comments to Docket No. 28154.'' When the comment is received by the FAA, the postcard will be dated, time stamped, and returned to the commenter.

Availability of the NPRM

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the Federal Register's electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov or the Federal Register's webpage at http://www.access.gpo.gov/su__docs for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by mail by submitting a request to the Federal Aviation Administration, Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9677. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the FAA's Office of Rulemaking a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Background

On December 20, 1995, new part 119, Certification: Air Carriers and Commercial Operators, was published in the Federal Register (60 FR 65832; December 20, 1995). Part 119 reorganizes, into one part, certification and operations specifications requirements that formerly existed in SFAR 38–2 and in parts 121 and 135. The final rule for new part 119 also deleted or changed certain sections in part 121, Subparts A through D, and part 135, Subpart A, because the requirements in those subparts have been recodified in part 119. On January 26, 1996, another final rule was published (61 FR 2608) affecting parts 119, 121, and 135. That amendment made editorial and terminology changes in the remaining subparts of parts 121 and 135 to conform those parts to the language of part 119 and to make certain other changes. Additional documents making editorial changes and corrections were published on March 11, 1996 (61 FR 9612), and June 14, 1996 (61 FR 30432).

Part 119 was issued as part of a large rulemaking effort, known as the ''commuter rule,'' to upgrade the requirements that apply to scheduled operations conducted in airplanes that have a passenger seat configuration of 10 to 30 passengers. These operations will in the future be conducted under the requirements of part 121, in accordance with the final rule published on December 20, 1995.

The changes proposed in this NPRM are important because, as a result of the implementation of part 119 and the beginning of the transition process for commuter operations affected by the final rule published on December 20, 1995, a number of questions of interpretation have been raised and errors in previous final rules have been identified. The changes in this document would make necessary corrections, would help to clarify the intent of part 119 and the commuter rule, and would make other minor changes that are not directly related to the commuter rule. In addition, a new Special Federal Aviation Regulation (SFAR) is needed to address three problems that relate to compliance with requirements for communications facilities and for aircraft dispatchers by operators in Alaska and other areas.

Proposed changes

A number of changes are necessary in parts 21, 25, 91, 119, 121, 125, and 135 to correct typographical errors, to make minor editorial changes that help clarify the intent of the rules, or to make editorial changes that make related rules consistent with each other. These types of changes are not individually explained. However, a number of changes are being proposed that require some explanation, which follows:

1. The definitions of ''on-demand operation,'' ''scheduled operation,'' and

''supplemental operation'' would be revised to make it clear that public charter operations conducted under 14 CFR part 380 are not considered scheduled operations.

2. Section 119.5 would be amended to add new paragraph (k), which incorporates former § 135.31 into part 119. The distribution table published with the part 119 final rule stated that § 135.31 had been replaced by § 119.5, but the text was inadvertently omitted. As proposed, this section would prohibit advertising or otherwise offering to perform any operation unauthorized by the FAA, and it would apply to any person, including certificate holders operating under part 121, as well as those operating under part 135. The FAA believes this is an appropriate extension since no person should be allowed to offer to perform operations that it has not proven to the FAA that it can perform safely. The FAA does not want an operator to carry people or property for compensation or hire unless that operator is appropriately certificated and unless it operates under the appropriate regulations. The proposed rule would be a useful enforcement tool that could be employed before a compensation or hire operation occurs by an operator that is not appropriately certificated and not in compliance with rules applicable for most compensation or hire operations.

This proposed amendment also adds §§ 119.5(1). When former sections 135.5 and 121.3 were recodified into one part 119, it was the FAA's intention that all of the situations covered by those sections would be covered in new sections 119.5(g) and 119.33. In June 1996, the FAA reinstated (effective July 15, 1996) the provisions of former sections 135.5 and 121.3 by adding a new paragraph 1(d) to SFAR 38–2. See 61 FR 30432.

One situation that was not adequately covered in the current provisions of part 119—but which was covered by former sections 135.5 and 121.3 and is covered by the soon-to-expire SFAR 38–2 paragraph 1(d)—is the situation where an employee of a certificate holder, with or without the certificate holder's knowledge, violates the provisions of the certificate holder's operations specifications. For example, a certificate holder only has all-cargo operations specifications. A flight crewmember employee brings along a friend as a passenger on the commercial flight. No compensation is paid for the carriage of the passenger, whose presense is not necessary for the cargo-only flight. Because the flight crewmember did not act as a direct air carrier or commercial operator, the prohibitions in section 119.5(g) are inapplicable. However, under former sections 135.5 and 121.3 (and under paragraph 1(d) of SFAR 38–2), the flight crewmember could be charged for violating limitations in the certificate holder's operations specifications. In other words, if the certificate was only authorized to carry cargo, the carriage of passengers would be contrary to the limitations in the operations specifications. The FAA believes that safety requires that people who operate aircraft under parts 121 and 135 must comply with the provisions in a certificate holder's operations specifications.

3. Section 119.9 would be amended to add language that would allow displaying the air carrier or operating certificate number on an aircraft instead of the name of the certificate holder. By letter dated June 28, 1996 the National Air Transportation Association (NATA) petitioned the FAA in accordance with 14 CFR 11.25 to amend 14 CFR 119.9(b). NATA requested that the requirement of that section that the name of the certificate holder who is operating the aircraft must be ''legibly displayed on the aircraft'' be changed ''to allow displaying the air carrier or operating certificate number on the aircraft in lieu of the name of the certificate holder.'' In its petition NATA stated that it ''represents a very diverse and large number of part 135 on-demand operators who are affected by the new requirement in part 119 to display the name of the certificate holder on all aircraft operated under part 135.'' NATA pointed out that it had in its comments to the commuter rule NPRM (which included part 119) opposed this new requirement and requested an exclusion for part 135 on-demand aircraft. NATA's petition contained supporting arguments for the change it requested which were primarily based on protecting the security and privacy of certain on-demand operations.

A summary of the petition was published in the Federal Register on July 31, 1996; the comment period closed on September 30, 1996. Seventy-nine comments were received. Most of the comments received were from on-demand operations who agreed with NATA that the FAA should not require that the name of the operator be displayed on the aircraft for reasons of security, the expense of repainting the aircraft whenever it is leased or operated by another operator, and the confusion that may result from being identified as a scheduled carrier. Commenters pointed out that their clientele are business executives, entertainment personalities, and political figures who choose their particular type of travel to maintain privacy and to ensure greater security than travel on scheduled airlines would afford. These operators point out that posting the name of the operator on the aircraft would make it easier for business competitors, media representatives, and those with criminal intentions to track their clients and thus violate both privacy and security. Comments also point out that the nature of the on-demand industry, where aircraft may change operators on a daily basis, make repainting the name of the operator on the aircraft an expensive and time-consuming requirement. Some operators note that contracts would have to be re-negotiated with owners who do not want the name of a leasor displayed on the aircraft. Finally, these operators comment that if a name is displayed on the side of an aircraft, international operations may be subjected to tariffs and fees charged to scheduled airlines as they may be confused as such. The National Business Aircraft Association (NBAA) comments that an aircraft may be listed on several air carrier certificates, lending confusion to the FAA and public alike if all are displayed on the aircraft. The NBAA supports the proposal, saying that it facilitates privacy and security. Likewise, Helicopter Association International supports the proposal and urges the FAA to amend § 119.9(b) before its effective date. The Airline Pilots Association comments that the proposed rule should have no effect on the requirement for aircraft owned and operated in scheduled air carrier service.

While the FAA does not necessarily agree with all of NATA's justification, the FAA agrees that display of an air carrier or operating certificate number will meet the intent of this requirement, which is to provide a ready means of identifying a responsible certificate holder when an aircraft is parked and the FAA has reason to identify or contact the certificate holder. Therefore, the FAA proposes to amend § 119.9(b)(4) as requested by NATA.

It is proposed that the provision allowing the Assistant Administrator for Civil Aviation Security to grant deviations from the requirements of this section would be deleted. The FAA has reassessed the need for deviations from this section and does not believe deviations are necessary.

4. Section 119.21(a)(1) allows certificate holders conducting domestic operations from the Aleutian Islands to other points in the State of Alaska to request permission to comply with the dispatching requirements of subpart U

of part 121 applicable to flag operations. The FAA proposes to allow domestic operations conducted from the Pribilof Islands and the Shumagin Islands to request this authority as well. In the final rule for this NPRM, the FAA may include other Alaskan island locations in this provision, if requested to do so by commenters and if adding the names of those islands is consistent with safety considerations.

5. Section 119.35, as published in December 1995, contains the application procedures for persons applying for either an Air Carrier Operating Certificate or an Operating Certificate. Paragraph (c) through (h) of that section contain additional financial and contract reporting requirements for commercial operators conducting intrastate operations. The FAA has received a number of inquiries about § 119.35, reflecting confusion over whether paragraphs (c) through (h) contain additional requirements for air carriers. To make it clear that the additional financial and contract reporting requirements apply only to commercial operators, § 119.35 is being split into 2 sections: Section 119.35 would contain just the certificate application procedures that apply to all applicants, and new § 119.36 would contain the additional requirements for commercial operators. Section 121.713 would be corrected to incorporate new cross references to § 119.36.

Section 119.35 (c) through (h), as published in December 1995, contained requirements that formerly appeared in §§ 121.47 through 121.49. When these requirements were moved to part 119, they applied to all commercial operators, including those intending to operate only under part 135.

Section 135.64 was added to require contract retention and financial reporting by commercial operators conducting operations under part 135. The FAA believes that the extension of the financial reporting requirements to part 135 commercial operators may not be needed.

Proposed § 119.36 distinguishes between requirements for all commercial operators and those applicable only to commercial operators under part 121. In addition, the financial reporting requirements of § 135.64(b) would be deleted; however, the contract retention requirements in § 135.64(a) would be retained.

6. Several changes are being proposed for the management qualification requirements in §§ 119.67 and 119.71.

Section 119.67 (c) and (d) would be revised to amend the qualification requirements applicable to Directors of Maintenance and Chief Inspectors under part 121. Section 119.71(e) would be revised to amend the qualification and experience requirements applicable to the Director of Maintenance under part 135. Both proposals establish requirements for a person becoming the Director of Maintenance or Chief Inspector for the first time. The FAA recognizes that one of the primary functions and responsibilities of persons holding these required positions is to provide management oversight and control for the maintenance program as well as the quality assurance function. The FAA believes these amendments will ensure that persons holding these required management positions have the measure of experience and the demonstrated capability of effectively managing these programs. Under sections 119.67(c)(1) and 119.71(e)(1), the Director of Maintenance must have held the airframe and powerplant ratings for 3 years. The FAA believes that this is a reasonable amount of experience for the position of Director of Maintenance and is consistent with current section 119.67(d)(1) as well as usual industry practice. In addition, the 1 year of maintenance experience in a supervisory capacity in maintaining the category and class of airplane used by the certificate holder, presently in the current rule, is now changed to a proposed requirement for 3 years of supervisory experience within the last 6 years in a position that exercised operational control over maintenance program functions. The FAA's use of the term ''operational control'' is consistent with the current requirement for Director of Operations and recognizes that the primary function of a Director is to manage the overall program, whether it be a maintenance program or aircraft operations. In addition, since certificate holders are required to collect and analyze data relative to the performance and effectiveness of the maintenance program and to correct deficiencies in that maintenance program when deemed necessary, the FAA must ensure that persons exercising control over the maintenance program have the level of qualification and experience that will allow those persons to carry out their duties and responsibilities with the degree of expertise consistent with the certificate holder's responsibility to operate with the highest possible degree of safety in the public interest. Under section 119.67(c)(4)(B), the FAA proposes to replace the word ''repairing'' with the word ''maintaining'', as the latter is consistent with the definition of maintenance as defined in section 1.1. In addition, the word ''maintaining'' reflects the broader experience level more appropriate to the Director position.

For the Chief Inspector position, the proposed change in section 119.67(d)(2) to have 3 years of supervisory or managerial experience within the last 6 years is consistent with current section 119.67(c)(4). The justification for this proposed change is the same as the justification for the similar proposed change for Directors of Maintenance. For both positions, the FAA finds it reasonable and prudent to recognize the experience of those persons who have had previous experience as Director of Maintenance or Chief Inspector by proposing different experience requirements for persons who are new to the positions versus those who have had previous experience.

Section 119.67(e) would be revised to clarify that certificate holders may request a deviation from the experience requirements of the section, but not from the airman certificate requirements of the section. Therefore, a certificate holder would not be allowed to employ a person who does not hold the required airman certificate (e.g., ATP certificate, commercial pilot certificate, mechanic certificate).

Section 119.71 contains the management qualification requirements that formerly appeared in § 135.39. Section 119.71 (b) and (d) require that the Director of Operations and the Chief Pilot, respectively, must hold at least a commercial pilot certificate with an instrument rating. However, under former § 135.39 the instrument rating was required only if any pilot in command for that certificate holder was required to have an instrument rating. For operations such as a VFR only helicopter operation, the pilot in command is not required to hold an instrument rating. Therefore § 119.71 (b) and (d) would be revised to match the intent of former § 135.39.

Section 119.71(e) would be revised to clarify the qualification requirements to Directors of Maintenance under part 135 and to establish requirements for a person becoming the Director of Maintenance for the first time.

7. A new Special Federal Aviation Regulation would be added to part 121 to address two problems that relate to compliance with § 121.99 and a third problem that relates to compliance with § 121.395. The first involves certain communications problems that exist in Alaska and other areas that affect certificate holders who are required by § 121.99 to ''show that a two-way air/ground communication system is available at all points that will ensure reliable and rapid communications

under normal operating conditions over the entire route (either direct or via approved point circuits) between each airplane and the appropriate dispatch office and between each airplane and the appropriate air traffic control unit.'' In certain areas the lack of infrastructure or appropriate technology currently prevents certificate holders from establishing such systems. For other certificate holders, the nature of their operations (e.g., flying at low altitudes or in mountainous terrain) prevents them from using current communication systems that may be reliable only at higher altitudes. The proposed SFAR would require such certificate holders to comply with the ''over the entire route'' language of § 121.99 to the maximum extent feasible. However, a certificate holder who shows to the Administrator that communications gaps exist due to such reasons as lack of infrastructure, ATC operating restrictions, the terrain, operating altitude, or feasibility of a certain kind of communications system, would be allowed to continue to operate over that route if the certificate holder establishes alternative procedures for prompt re-establishment of communication, for establishment that the airplane arrived at its destination, and for flight locating purposes. Relief would only be granted after the certificate holder shows that it will meet the requirements to the maximum extent possible. In granting such approval, the Administrator would consider the following:

a. The operator has an established dispatch communication system.

b. Gaps in communication are not over the entire route, but only over portions of the route.

c. When communication gaps occur, they occur due to lack of infrastructure, geographical considerations, or assigned operating altitude.

d. Procedures are established for the prompt re-establishment of communications.

e. The operator has presented a plan or schedule for coming into compliance with the communications requirements in § 121.99.

The certificate holder would obtain the approval of the Administrator, coordinated through the FAA's Air Transportation Division (AFS–200), in its operations specifications. This type of alternative compliance approval would only be available for scheduled operations with airplanes having a passenger-seat configuration of 30 seats or fewer, excluding each crewmember seat, and a payload capacity of 7,500 pounds or less under part 121 of this chapter.

The second § 121.99 related problem involves certificate holders who conducted or who might in the future conduct scheduled intrastate operations in Alaska. Under the pre-commuter rule amendments these operations operated under the rules applicable to flag air carriers and thus, under the last sentence of § 121.99, were not prohibited from using a communications system operated by the United States. For certificate holders operating intrastate in Alaska, whether certificated before or after January 19, 1996, it is impractical at the present time to require that the required communications system be independent of any system operated by the United States. Therefore even though these certificate holders will otherwise be required to comply with the operating rules for domestic operations, under the proposed SFAR they would be allowed to use systems operated by the United States, when there is no practical alternative, for the effective period of the SFAR. The FAA further proposes to amend § 121.99 to require that, concurrent with the expiration of the SFAR, all flag operations in Alaska, not just those affected by the commuter rule change mentioned above, have communications systems that are independent of any system operated by the United States.

The third issue addressed by the proposed SFAR relates to the use of aircraft dispatchers by former commuter operations in Alaska who are required by the commuter rule to conduct those operations under the rules for domestic operations in part 121. Normally the FAA requires that each certificate holder subject to § 121.395 have aircraft dispatchers that work solely for that certificate holder. However, small operations located in remote areas find it hard to attract qualified, certificated aircraft dispatchers to work and live in those areas. Furthermore the workload often does not justify devoting a staff position to that function. Therefore the FAA proposes to allow certificate holders conducting scheduled operations in Alaska with airplanes having a passenger-seat configuration of 30 seats or fewer, excluding each crewmember seat, and a payload capacity of 7,500 pounds or less under part 121 of this chapter, to share aircraft dispatchers if they are authorized to do so by the Administrator. Before granting such an authorization, the Administrator would consider:

i. The operators' joint plans for complying with the aircraft dispatcher training rules in subpart N of part 121 of this chapter and the aircraft dispatcher qualification and duty time limitation rules in subpart P of part 121 of this chapter.

ii. The number of flights that the aircraft dispatcher would be responsible for.

iii. Whether the responsibilities of the dispatcher would be beyond the capability of a single dispatcher.

The SFAR would expire 4 years after it is issued because the FAA expects that adequate communications facilities will become available in all parts of Alaska and other areas within that time.

8. Section 121.99 would also be amended to allow for ''other means of communication approved by the Administrator'' as an alternative to the two-way radio communication system required by that section. This would allow certificate holders to use other types of technology, such as datalink or telephonic communication systems, to comply with this section.

9. In the commuter rule, § 121.133 was revised to allow a certificate holder to prepare its maintenance manual in any form acceptable to the Administrator. Previously, certificate holders were limited to printed form or microfilm. The FAA proposes to amend the manual requirements in §§ 121.137 121.139, 125.71, 135.21, and 135.427 to include the ''any form acceptable to the Administrator'' language. In addition, these sections would be amended to clarify that, regardless of the form of the maintenance manual, it must be retrievable in the English language. Certificate holders who purchase equipment from foreign manufacturers or previous foreign owners must ensure that the maintenance instructions to be followed by their employees and reviewed by the FAA are in English.

10. Section 121.305(j), as published in December 1995, contained two new provisions requiring third attitude indicators in turbopropeller powered airplanes having a passenger seat configuration of 30 seats or fewer. However, the new rule language made it unclear what the continuing requirements are for turbopropeller powered airplanes with more than 30 seats. These airplanes have been required to have third attitude indicators since October 1994. Therefore § 121.305(j) would be revised to clarify the requirements for each size of airplane.

11. Two changes are necessary to address compliance with the emergency lighting and marking requirements in § 121.310 by operators of 10–19 seat aircraft that are affected by the commuter rule.

First, paragraph (b)(1) of § 121.310 requires that the identity and location of each passenger emergency exit must be

marked so that the exit is recognizable from a distance equal to the width of the cabin and that the location of the exit must be indicated by a sign visible to occupants approaching along the main passenger aisle. (A passenger is considered to be ''approaching along the main aisle'' when that passenger rises from the seat and steps into the aisle.) Paragraph (b)(1)(i) requires that one of the locating signs must be on the ceiling of the cabin. Most of the 10–19 seat airplanes used by operators subject to the commuter rule do not have locating signs on the ceiling, but have been allowed to use two-dimensional signs mounted flush to the cabin sidewalls. The FAA did not specifically address this issue in the preamble to the commuter rule, but has recently learned that compliance with the requirements of § 121.310(b)(1) by March 20, 1997, will be impossible, because complying signs have not been designed or manufactured for those airplanes. Therefore the FAA proposes to allow 2 years from the date of the final rule for this NPRM for the affected operators to install emergency exit locating signs that comply with § 121.310(b)(1). The additional 2 years for compliance would be granted to both in-service 10–19 seat airplanes and newly manufactured 10–19 seat airplanes. The simplest means of complying would be to replace the two-dimensional signs with beveled or three-dimensional signs that can be read easily at the cabin extremes; that type of sign would function to both identify and locate the corresponding exit.

Second, § 121.310(b)(2) identifies the certification requirements for passenger emergency exit marking and locating signs. The FAA intended that the airplanes used by commuter operators who are transitioning to part 121 would continue to meet the certification standards in the type certificate for each airplane. However, the requirements of § 121.310(b)(2) were based on the dates of the application for airplane type certification as they related to requirements for transport category airplanes; therefore it is necessary to add a new subparagraph that provides for the 10–19 seat nontransport category airplanes that will be operated under part 121. The proposal would add a subparagraph (b)(2)(iii) to address the 10–19 passenger seat nontransport category airplanes. Similar to subparagraph (b)(2)(i), it would mandate the sign luminescence be 160 microlamberts at the time of manufacture; it would also prohibit the use of a sign in service if the luminescence decreases to below 100 microlamberts. Proposed subparagraph (b)(2)(iii) should provide adequate levels of luminescence; the signs would have the same brightness as signs in some transport category airplanes currently manufactured and currently operated under part 121, which have longer distances between exits than the 10–19 passenger seat airplanes.

The final rule for this NPRM will contain references to these changes to § 121.310 in a revised version of ''Table 1—Summary of New Equipment and Performance Modifications for Affected Commuters'' from the commuter rule and in a revised version of Appendix L to part 121.

12. Section 121.333(c) would be amended to correct an omission concerning the use of quick-donning oxygen masks at flight levels above 250 as a substitute for having one pilot at the controls wear and use an oxygen mask at all times. For pressurized turbine engine powered airplanes, § 121.333(c) has allowed the availability of a quick-donning mask to be a substitute for wearing and using a mask at all times at or below flight level 410. However, under § 135.89(b)(3) at least one pilot at the controls of a pressurized airplane is required at altitudes above flight level 350 to wear and use an oxygen mask at all times. For those 10–30 passenger aircraft that will be operating under part 121 as a result of the commuter rule amendments, flight level 350 rather than flight level 410 would continue to be the appropriate altitude at which at least one pilot at the controls would be required to wear an oxygen mask at all times. Since the commuter rule was not intended to relax this requirement, the FAA proposes to amend § 121.333(c) to incorporate the requirements of § 135.89(b)(3) for airplanes with less than 31 seats, excluding any required crewmember seat and a payload capacity of 7,500 pounds. Since affected operators are already complying with the part 135 requirement, this proposed change would not impose any additional burden.

13. Section 121.437 would be amended to eliminate a redundancy that was created by an earlier corrective amendment and by adding a new sentence that would have the effect of codifying an existing exemption that has been in effect since 1980.

By letter dated January 28, 1980, the Air Transport Association petitioned the FAA for an exemption from § 121.437(b) to allow its members and pilots to continue to be issued category and class ratings by presenting proof of compliance with the training requirements of subpart N of part 121 and the proficiency check requirements of § 121.441 after July 1, 1980. A summary of the petition was published in the Federal Register on February 28, 1980, and no comments were received. Grant of Exemption No. 2965 was signed on April 23, 1980, allowing a pilot employed by a part 121 certificate holder as a flight crewmember to be issued additional category and class ratings to the pilot's certificate if the pilot has satisfactorily completed the appropriate training requirements of subpart N and the proficiency check requirements of § 121.441 by presenting proof of this to the Administrator. Exemption No. 2965 has been extended 9 times; the current exemption is No. 2965I which expires on July 31, 1997.

By letter dated August 15, 1983, the ATA petitioned the FAA to codify the relief provided in Exemption No. 2965 by amending § 121.437. A summary of the petition was published in the Federal Register on September 29, 1983, and one comment was received. The Air Line Pilots Association commented that if additional category and class ratings are obtained in this way, that the proficiency check should be administered by an FAA inspector or designated examiner.

The FAA partially agrees with ALPA that FAA inspectors or designees should either observe or conduct a portion of all required proficiency checks. In fact, as a matter of day to day operation, FAA approved work programs mandate that a certain percentage of those proficiency checks be observed by FAA inspectors during routine training program surveillance. Over the 16 years that the exemption has been in effect, the FAA has noted no derogation of safety. In this light and since the FAA does not have the resources to conduct each proficiency check required by the rule, the FAA proposes to codify Exemption 2965 into § 121.437.

Corrections to Tables

Table 2, *Comparable Sections in Parts 121 and 135*, originally published in the Federal Register on December 20, 1995 (60 FR 65850), and January 26, 1996 (61 FR 2618), is corrected and republished below.

Tables 3 and 4, the Derivation and Distribution Tables for Part 119, originally published in the Federal Register on December 20, 1995 (60 FR 65888–91), and January 26, 1996 (61 FR 2619), are corrected and republished below.

TABLE 2.—COMPARABLE SECTIONS IN PARTS 121 AND 135

[This table shows the comparable sections in parts 121 and 135 by issue. Affected commuters, however, must comply with all sections in part 121 that are applicable to their operations, not just the ones listed in this table or discussed in this preamble.]

Subject	135 Section	121 Section
Part 121, Subparts E and F—Approval of Routes: Domestic, Flag, and Supplemental Operations.	135.213	121.97, 121.99, 121.101, 121.107.
Part 121, Subpart G—Manual Requirements:		
Contents and personnel	135.21, .23	121.133, .135, 121.137
Airplane flight manual		121.141
Part 121, Subpart I—Airplane Performance Operating Limitations	135.365–.387	121.175–.197.
Part 121, Subpart J—Special Airworthiness Requirements:		
Internal doors		121.217.
Cargo carried in the passenger compartment	135.87	121.285.
Landing gear aural warning device	135 APP A, Sec. 30	121.289.
Emergency evacuation and ditching demonstration		121.291.
New special airworthiness requirements (retrofit) and requirements applicable to future manufactured airplanes:		
Ditching emergency exits		121.293(a) (new).
Takeoff warning system		121.293(b) (new).
Part 121, Subpart K—Instrument and Equipment Requirements	135.149	121.305(j).
Third attitude indicator		121.308.
Lavatory fire protection	135.177(b)	121.309(b).
Emergency equipment inspection	135.155	121.309(c).
Hand-held fire extinguishers	135.177(a)(1)	121.309(d).
First aid kits and medical kits	135.177(a)(2)	121.309(e).
Crash ax	135.178(c)–(h)	121.310(c)–(h).
Emergency evacuation lighting and marking requirements	135.117	121.311(e).
Seatbacks	135.171	121.311(f).
Seatbelt and shoulder harnesses on the flight deck	135.169(a)	121.312(b).
Interior materials and passenger seat cushion flammability		121.313(c).
Miscellaneous equipment		121.313(f)–(g), 121.587.
Cockpit doors and door keys		121.314, .221.
Cargo and baggage compartments		121.316.
Fuel tank access covers	135.127	121.317.
Passenger information	135.159	121.323.
Instruments and equipment for operations at night	135.157	121.327–.335.
Oxygen requirements		121.333(d).
Portable oxygen for flight attendants		121.337.
Protective breathing equipment (PBE)	135.167	121.339.
Emergency equipment for extended overwater operations		121.340.
Flotation devices	135.158	121.342.
Pitot heat indication system	135.161	121.345–.351.
Radio equipment	135.177, .178	121.353.
Emergency equipment for operations over uninhabited terrain	135.180	121.356.
TCAS	135.152	121.343.
Flight data recorders	135.173, .175	121.357.
Airborne weather radar	135.151	121.359.
Cockpit voice recorders		121.358.
Low-altitude windshear systems	135.153	121.360.
Ground proximity warning system (GPWS)		
Part 121, Subpart L—Maintenance, Preventive Maintenance, and Alterations:		
Applicability	135.411(a)(2)	121.361.
Responsibility for Airworthiness	135.413	121.363.
Maintenance, preventive maintenance, and alteration organization	135.423, .425	121.365, .367.
Manual requirements	135.427	121.369.
Required inspection personnel	135.429	121.371.
Continuing analysis and surveillance	135.431	121.373.
Maintenance and preventative maintenance training programs	135.433	121.375.
Maintenance and preventative maintenance personnel duty time limitations.		121.377.
Certificate requirements	135.435	121.378.
Authority to perform and approve maintenance, preventative maintenance, and alterations.	135.437	121.379.
Maintenance recording requirements	135.439	121.380.
Transfer of maintenance records	135.441	121.380a.
Part 121, Subpart M—Airman and Crewmember Requirements:		
Flight attendant complement	135.107	121.391.
Flight attendants being seated during movement on the surface	135.128(a)	121.391(d).
Flight attendants or other qualified personnel at the gate		121.391(e), 121.417, 121.393 (new).
Part 121, Subparts N and O—Training Program and Crewmember Requirements.	135.291–135.353	121.400–121.459.

TABLE 2.—COMPARABLE SECTIONS IN PARTS 121 AND 135—Continued

[This table shows the comparable sections in parts 121 and 135 by issue. Affected commuters, however, must comply with all sections in part 121 that are applicable to their operations, not just the ones listed in this table or discussed in this preamble.]

Subject	135 Section	121 Section
Part 121, Subpart P—Aircraft Dispatcher Qualifications and Duty Time Limitations: Domestic and Flag Air Carriers.		121.461–121.465.
Part 121, Subparts Q, R, and S—Flight Time Limitations and Rest Requirements: Domestic, Flag, and Supplemental Operations.	135.261–135.273	121.470–121.525.
Part 121, Subpart T—Flight Operations:		
Operational control	135.77, .79	121.533, .535, 121.537.
Admission to the flight deck	135.75	121.547.
Emergency procedures	135.19, .69	121.551, .553, 121.557, .559 121.565 (new).
Passenger information	135.117, .127	121.571(a), 121.573, 121.585.
Oxygen for medical use by passengers	135.91	121.574.
Alcoholic beverages	135.121	121.575.
Retention of items of mass	135.87, .122	121.576, .577.
Cabin ozone concentration		121.578(b).
Minimum altitudes for use of autopilot	135.93	121.579.
Forward observer's seat	135.75	121.581.
Authority to refuse transportation	135.23(q)	121.586.
Carry-on baggage	135.87	121.589.
Airports	135.229	121.590.
Part 121, Subpart U—Dispatching and Flight Release Rules:		
Flight release authority		121.597.
Dispatch or flight release under VFR		121.611.
Operations in icing conditions	135.227	121.629.
Fuel reserves	135.209, .223	121.639, .641, 121.643, .645.
Part 121, Subpart V—Records and Reports:		
Maintenance log: Airplane	135.65(c)	121.701(a).
Mechanical reliability reports	135.415	121.703.
Mechanical interruption summary report	135.417	121.705(b).
Alteration and repair reports	135.439(a)(2)	121.707.
Airworthiness release or airplane log entry	135.443	121.709.
Other recordkeeping requirements		121.711, .713, 121.715.

TABLE 3.—DERIVATION TABLE FOR PART 119

New Section	Based on
Subpart A:	
119.1(a)	New language.
119.1(b)	SFAR 38–2, Section 1(a).
119.1(c)	New language.
119.1(d)	New language.
119.1(e)	New language.
119.2	New language.
119.3	SFAR 38–2, Section 6 and new language.
119.5(a)	SFAR 38–2, Section 2(a).
119.5(b)	SFAR 38–2, Section 2(b).
119.5(c)	New language.
119.5(d)	SFAR 38–2, Section 1(a)(3).
119.5(e)	SFAR 38–2, Section 1(a)(3).
119.5(f)	SFAR 38–2, Section 1(b).
119.5(g)	SFAR 38–2, Section 1(c), 121.4, 135.7.
119.5(h)	SFAR 38–2, Flush paragraph following Section 1(a)(3) and new language.
119.5(i)	121.27(a)(1), 121.51(a)(1), 135.13(a)(3).
119.5(j)	135.33.
119.5(k)	135.31.
119.7(a)	SFAR 38–2, Section 3.
119.7(b)	121.23, 121.43.
119.9(a)	135.29.
119.9(b)	New language.
Subpart B:	
119.21(a)	SFAR 38–2, Section 4(a), 121.3, 121.5.
119.21(b)	SFAR 38–2, Section 4(b).
119.21(c)	New language.
119.23(a)	SFAR 38–2, Section 5(a).
119.23(b)	SFAR 38–2, Section 5(b).
119.25(a)	SFAR 38–2, Section 4(c), 5 (c), and (d) and new language.
119.25(b)	SFAR 38–2, Section 4(c), 5 (c), and (d) and new language.
Subpart C:	
119.31	SFAR 38–2, Section 1(c), 2 (a) and (b), 121.3, and 135.5.

TABLE 3.—DERIVATION TABLE FOR PART 119—Continued

New Section	Based on
119.33(a)	SFAR 38–2, Section 1(c), 2 (a) and (b), 3, 121.3, 135.5, 135.13(a).
119.33(b)	SFAR 38–2, Section 1(c), 2 (a) and (b), 3, 121.3, 135.5, 135.13(a).
119.33(c)	SFAR 38–2, Section 1(c), 2 (a) and (b), 3, 121.3, 135.5, 135.13(a).
119.35(a)	121.26, 121.47(a), 135.11(a).
119.35(b)	121.26, 121.47(a), 135.11(a).
119.36(a)	121.47(a).
119.36(b)	121.47(b).
119.36(c)	121.47(c).
119.36(d)	121.47(d).
119.36(e)	121.48.
119.36(f)	121.49.
119.37(a)	121.25(a), 121.45(a), 135.11(b)(1) and new language.
119.37(b)	121.25(a), 121.45(a), 135.11(b)(1) and new language.
119.37(c)	121.25(a), 121.45(a), 135.11(b)(1) and new language.
119.37(d)	121.25(a), 121.45(a), 135.11(b)(1) and new language.
119.37(e)	121.25(a), 121.45(a), 135.11(b)(1) and new language.
119.39(a)	121.27(a)(2), 121.51(a)(3), 135.11(b)(1).
119.39(b)	121.27(a)(2), 121.51, 135.13 (a)(2) and (b).
119.41(a)	121.77(a), 135.15(a).
119.41(b)	New language.
119.41(c)	121.77(b), 135.15(b).
119.41(d)	121.77(c), 135.15(b).
119.43(a)	121.75(b), 135.63(a)(2).
119.43(b)	121.75(b), 135.63(a)(2).
119.43(c)	121.75(a), 135.81.
119.47(a)	135.27(a).
119.47(b)	121.83, 135.27(b).
119.49(a)	121.5, 121.25(b), 121.45(b), 135.11(b), and new language.
119.49(b)	121.45(b), 135.11(b)(1) and new language.
119.49(c)	135.11(b)(1) and new language.
119.51(a)	121.79(a), 135.17(a).
119.51(b)	121.79(b), 135.17(d).
119.51(c)	121.79(c), 135.17(b), and new language.
119.51(d)	121.79(d), 135.17 (c) and (d).
119.51(e)	121.79(b), 135.17 (c) and (d).
119.53(a)	121.6(a).
119.53(b)	New language.
119.53(c)	121.6(b).
119.53(d)	121.6(c).
119.53(e)	New language.
119.53(f)	New language.
119.55(a)	121.57 (a) and (b).
119.55(b)	121.57 (a) and (b).
119.55(c)	121.57 (a) and (b).
119.55(d)	121.57 (a) and (b).
119.55(e)	121.57 (a) and (b).
119.57(a)	121.57(c).
119.57(b)	New language.
119.58(a)	135.19(b).
119.58(b)	135.19(a).
119.58(c)	135.19(c).
119.59(a)	121.81(a), 135.73, and new language.
119.59(b)	121.73, 121.81(a), 135.63(a), 135.73, and new language.
119.59(c)	121.81(a).
119.59(d)	New language.
119.59(e)	New language.
119.59(f)	New language.
119.61(a)	121.29(a), 121.53 (a), (c), and (d), 135.9(a).
119.61(b)	121.29(a), 121.53(c), and new language.
119.61(c)	135.35.
119.63(a)	New language.
119.63(b)	New language.
119.65(a)	121.59(a).
119.65(b)	121.59(b).
119.65(c)	121.59(b).
119.65(d)	121.61 and new language.
119.65(e)	121.59(c).
119.67(a)	121.61(a) and new language.
119.67(b)	121.61(b) and new language.
119.67(c)	121.61(c), 135.39(c) and new language.
119.67(d)	121.61(d) and new language.
119.67(e)	121.61(b), 135.39(d).

TABLE 3.—DERIVATION TABLE FOR PART 119—Continued

New Section	Based on
119.69(a)	135.37(a).
119.69(b)	121.59(b), 135.37(b).
119.69(c)	121.59(b).
119.69(d)	135.39 and new language.
119.69(e)	121.59, 135.37(c).
119.71(a)	135.39(a)(1) and new language.
119.71(b)	135.39(a)(2) and new language.
119.71(c)	135.39(b)(1) and new language.
119.71(d)	135.39(b)(2) and new language.
119.71(e)	135.39(c) and new language.
119.71(f)	135.39(d) and new language.

TABLE 4.—DISTRIBUTION TABLE FOR PART 121, PART 135, AND SFAR 38–2 SECTIONS BEING REPLACED BY PART 119

Part 121:	*Replaced by:*
121.3	119.21(a); 119.31; 119.33.
121.4	119.5(g).
121.5	119.21(a).
121.6(a)	119.53(a).
121.6(b)	119.53(c).
121.6(c)	119.53(d).
121.7	119.21.
121.9	Deleted.
121.13	119.25.
121.21	119.1.
121.23	119.7(b).
121.25(a)	119.37 (a), (b), (c), (d), (f), and (g).
121.25(b)	119.49(a).
121.26	119.35 (a) and (b).
121.27(a)(1)	119.5(i).
121.27(a)(2)	119.39 (a) and (b)
121.29(a)	119.61 (a) and (b).
121.41	119.1.
121.43	119.7(b).
121.45(a)	119.37 (a), (b), (c), (d), (e), (f), and (g).
121.45(b)	119.49 (a) and (b).
121.47(a)	119.35(a), (b); 119.36(a).
121.47(b)	119.36(b).
121.47(c)	119.36(c).
121.47(d)	119.36(d).
121.48	119.36(e).
121.49	119.36(f).
121.51	119.39(b).
121.51(a)(1)	119.5(i).
121.51(a)(3)	119.39(a).
121.53(a)	119.61(a).
121.53(c)	119.61 (a) and (b).
121.53(d)	119.61(a).
121.55	Deleted.
121.57(a)	119.55 (a), (b), (c), (d), and (e).
121.57(b)	119.55 (a), (b), (c), (d), and (e).
121.57(c)	119.57(a).
121.59	119.69(e).
121.59(a)	119.65(a).
121.59(b)	119.65 (b) and (c); 119.69 (b) and (c).
121.59(c)	119.65(e).
121.61	119.65(d).
121.61(a)	119.67(a).
121.61(b)	119.67 (b) and (e).
121.61(c)	119.67(c).
121.61(d)	119.67(d).
121.71	119.1.
121.73	119.59(b).
121.75(a)	119.43(c).
121.75(b)	119.43 (a) and (b).
121.77(a)	119.41(a).
121.77(b)	119.41(c).
121.77(c)	119.41(d).
121.79(a)	119.51(a).
121.79(b)	119.51 (b) and (e).
121.79(c)	119.51(c).

TABLE 4.—DISTRIBUTION TABLE FOR PART 121, PART 135, AND SFAR 38–2 SECTIONS BEING REPLACED BY PART 119—Continued

121.79(d)	119.51(d).
121.81(a)	119.59 (a), (b), and (c).
121.83	119.47(b).
Part 135:	*Replaced by:*
135.5	119.31; 119.33 (a), (b), and (c).
135.7	119.5(g).
135.9(a)	119.61(a).
135.11(a)	119.35 (a) and (b).
135.11(b)	119.49(a).
135.11(b)(1)	119.37 (a), (b), (c), (d), (e), (f), and (g); 119.39(a); 119.49 (b) and (c).
135.13(a)	119.33 (a), (b), and (c).
135.13(a)(2)	119.39(b).
135.13(a)(3)	119.5(i).
135.13(b)	119.39(b).
135.15(a)	119.41(a).
135.15(b)	119.41(b).
135.15(d)	119.41(d).
135.17(a)	119.51(a).
135.17(b)	119.51(c).
135.17(c)	119.51 (d) and (e).
135.17(d)	119.51 (b), (d), and (e).
135.19	119.58.
135.27(a)	119.47(a).
135.27(b)	119.47(b).
135.29	119.9(a).
135.31	119.5(k).
135.33	119.5(j).
135.35	119.61(c).
135.37(a)	119.69(a).
135.37(b)	119.69(b).
135.37(c)	119.69(e).
135.39	119.69(d).
135.39(a)(1)	119.71(a).
135.39(a)(2)	119.71(b).
135.39(b)(1)	119.71(c).
135.39(b)(2)	119.71(d).
135.39(c)	119.67(c); 119.71(e).
135.39(d)	119.67(e); 119.71(f).
121.63(a)	119.59(b).
121.63(a)(2)	119.43 (a) and (b).
121.73	119.59 (a) and (b).
121.81	119.43(c).
SFAR 38–2:	*Replaced by:*
Section 1(a)	119.1(b).
Section 1(a)(3)	119.5 (d) and (e); 119.5(h).
Section 1(b)	119.5(f).
Section 1(c)	119.5(g); 119.31; 119.33 (a), (b), and (c).
Section 2(a)	119.5(a); 119.31; 119.33 (a), (b), and (c).
Section 2(b)	119.5(b); 119.31; 119.33 (a), (b), and (c).
Section 2(c)	129.1.
Section 3	119.7(a); 119.33 (a), (b), and (c).
Section 4(a)	119.21(a).
Section 4(b)	119.21(b).
Section 4(c)	119.25 (a) and (b).
Section 4(d)	119.25 (a) and (b).
Section 5(a)	119.23(a).
Section 5(b)	119.23 (b).
Section 5(c)	119.25 (a) and (b).
Section 5(d)	119.25 (a) and (b).
Section 6	119.3.

Federalism Implications

The proposed regulations do not have substantial direct effects on the states, on the relationship between national government and the states, or on the distribution of power and responsibilities among various levels of government. Thus, in accordance with Executive Order 12612, it is determined that such a regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), there are no new requirements for information collection associated with this proposed rule.

Conclusion

The FAA has determined that this proposed regulation would impose no additional burden on any person. Accordingly, it has been determined that the action: (1) Is not a significant

rule under Executive Order 12866; and (2) is not a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). No cost impact is expected to result and a full regulatory evaluation is not required. In addition, the FAA certifies that the proposed rule would not have a significant cost impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects

14 CFR Part 21

Aircraft, Aviation safety, Exports, Imports, Reporting and recordkeeping requirements.

14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety, Gusts.

14 CFR Part 91

Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Noise control, Political candidates, Reporting and recordkeeping requirements.

14 CFR Part 119

Administrative practice and procedures, Air carriers, Air taxis, Aircraft, Aviation safety, Charter flights, Commuter operations, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

14 CFR Part 125

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 135

Aircraft, Airplanes, Airworthiness, Air transportation.

The Proposed Amendments

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Title 14 CFR parts 21, 25, 91, 119, 121, 125, and 135 as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

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

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44707, 44709, 44711, 44713, 44715, 45303.

§ 21.431 [Amended]

2. Section 21.431 is amended in paragraph (b) by removing the parenthetical ''(except air taxi operators)''.

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

3. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, and 44704.

§ 25.1303 [Amended]

4. Section 25.1303(b)(4) is amended by removing the reference to ''§ 121.305(j)'' and adding in place thereof a reference to ''§ 121.305(k).''

PART 91—GENERAL OPERATING AND FLIGHT RULES

5. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

6. Section 91.23 is amended by revising paragraph (b)(i)(ii) to read as follows:

§ 91.23 Truth-in-leasing clause requirement in leases and conditional sales contracts.

* * * * * *

(b) * * *

(1) * * *

(ii) the party furnishing the aircraft is a foreign air carrier or a person operating under part 121, 125, and 141 of this chapter, or a person operating under part 135 of this chapter having authority to engage in on-demand operations with large aircraft.

7. Section 91.323 is amended by revising paragraph (a)(1) to read as follows:

§ 91.323 Increased maximum certificated weights for certain airplanes operated in Alaska.

(a) * * *

(1) A certificate holder conducting operations under part 121 or part 135 of this chapter; or

* * * * * *

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

8. The authority citation for part 119 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

9. Section 119.3 is amended by revising paragraph (1) introductory text of the definition for ''on-demand operation,'' by revising the definition for ''scheduled operation,'' and by revising paragraph (2) of the definition of ''supplemental operation'' to read as follows:

§ 119.3 Definitions.

* * * * * *

On-demand operation means * * *

(1) Passenger-carrying operations conducted as a public charter under part 380 of this title or any operations in which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative that are any of the following types of operations:

* * * * * *

Scheduled operation means any common carriage passenger-carrying operation for compensation or hire conducted by an air carrier or commercial operator for which the certificate holder or its representative offers in advance the departure location, departure time, and arrival location. It does not include any passenger-carrying operation that is conducted as a public charter operation under part 380 of this title.

* * * * * *

Supplemental operation * * *

(2) Types of operation:

(i) Operations for which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative;

(ii) All-cargo operations; or

(iii) Passenger-carrying public charter operations conducted under part 380 of this title.

* * * * * *

10. Section 119.5 is amended by adding paragraph (k) and (l) to read as follows:

§ 112.5 Certifications, authorizations, and prohibitions.

* * * * * *

(k) No person may advertise or otherwise offer to perform an operation subject to this part unless that person is authorized by the Federal Aviation Administration to conduct that operation.

(l) No person may operate an aircraft under this part, part 121 of this chapter, or part 135 or this chapter in violation of an air carrier operating certificate, operating certificate, or appropriate operations specifications issued under this part.

11. Section 119.9(b) is revised to read as follows:

§ 119.9 Use of business names.

* * * * * *

(b) No person may operate an aircraft under part 121 or part 135 of this chapter unless that name of the certificate holder who is operating the aircraft, or the air carrier or operating certificate number of the certificate holder who is operating the aircraft, is legibly displayed on the aircraft and is clearly visible and readable from the outside of the aircraft to a person standing on the ground at any time except during flight time. The means of displaying the name on the aircraft and its readability must be acceptable to the Administrator.

12. Section 119.21 is amended by revising the heading and paragraph (a)(1) to read as follows:

§ 119.21 Commercial operators engaged in intrastate common carriage and direct air carriers.

(a) * * *

(1) Domestic operations in accordance with the applicable requirements of part 121 of this chapter, and shall be issued operations specifications for those operations in accordance with those requirements. However, based on a showing of safety in air commerce, the Administrator may permit persons who conduct domestic operations between any point located within any of the following Alaskan islands and any point in the State of Alaska to comply with the requirements applicable to flag operations contained in subpart U of part 121 of this chapter;

(i) The Aleutian Islands.

(ii) The Pribilof Islands.

(iii) The Shumagin Islands.

* * * * *

13. Section 119.35 is revised to read as follows:

§ 119.35 Certificate application: All operators.

(a) A person applying to the Administrator for an Air Carrier Certificate or Operating Certificate under this part (applicant) must submit an application—

(1) In a form and manner prescribed by the Administrator; and

(2) Containing any information the Administrator requires the applicant to submit.

(b) Each applicant must submit the application to the Administrator at least 90 days before the date of intended operation.

14. Section 119.36 is added to read as follows:

§ 119.36 Additional certificate application requirements for commercial operators.

(a) Each applicant for the original issue of an operating certificate for the purpose of conducting intrastate common carriage operations under part 121 or part 135 of this chapter must submit an application in a form and manner prescribed by the Administrator to the Flight Standards District Office in whose area the applicant proposes to establish or has established his or her principal base of operations.

(b) Each application submitted under paragraph (a) of this section must contain a signed statement showing the following:

(1) For corporate applicants:

(i) The name and address of each stockholder who owns 5 percent or more of the total voting stock of the corporation, and if that stockholder is not the sole beneficial owner of the stock, the name and address of each beneficial owner. And individual is considered to own the stock owned, directly or indirectly, by or for his or her spouse, children, grandchildren, or parents.

(ii) The name and address of each director and each officer and each person employed or who will be employed in a management position described in §§ 119.65 and 119.69, as applicable.

(iii) The name and address of each person directly or indirectly controlling or controlled by the applicant and each person under direct or indirect control with the applicant.

(2) For non-corporate applicants:

(i) The name and address of each person having a financial interest therein and the nature and extent of that interest.

(ii) The name and address of each person employed or who will be employed in a management position described in §§ 119.65 and 119.69, as applicable.

(c) In addition, each applicant for the original issue of an operating certificate under paragraph (a) of this section must submit with the application a signed statement showing—

(1) The nature and scope of its intended operation, including the name and address of each person, if any, with whom the applicant has a contract to provide services as a commercial operator and the scope, nature, date, and duration of each of those contracts; and

(2) For applicants intending to conduct operations under part 121 of this chapter, the financial information listed in paragraph (e) of this section.

(d) Each applicant for, or holder of, a certificate issued under paragraph (a) of this section, shall notify the Administrator within 10 days after—

(1) A change in any of the persons, or the names and addresses of any of the persons, submitted to the Administrator under paragraph (b)(1) or (b)(2) of this section; or

(2) For applicants intending to conduct operations under part 121 of this chapter, a change in the financial information submitted to the Administrator under paragraph (e) of this section that occurs while the application for the issue is pending before the FAA and that would make the applicant's financial situation substantially less favorable than originally reported.

(e) Each applicant for the original issue of an operating certificate under paragraph (a) of this section who intends to conduct operations under part 121 of this chapter must submit the following financial information:

(1) A balance sheet that shows assets, liabilities, and net worth, as of a date not more than 60 days before the date of application.

(2) An itemization of liabilities more than 60 days past due on the balance sheet date, if any, showing each creditor's name and address, a description of the liability, and the amount and due date of the liability.

(3) An itemization of claims in litigation, if any, against the applicant as of the date of application showing each claimant's name and address and a description and the amount of the claim.

(4) A detailed projection of the proposed operation covering 6 complete months after the month in which the certificate is expected to be issued including—

(i) Estimated amount and source of both operating and nonoperating revenue, including identification of its existing and anticipated income producing contracts and estimated revenue per mile or hour of operation by aircraft type;

(ii) Estimated amount of operating and nonoperating expenses by expense objective classification; and

(iii) Estimated net profit or loss for the period.

(5) An estimate of the cash that will be needed for the proposed operations during the first 6 months after the month in which the certificate is expected to be issued, including—

(i) Acquisition of property and equipment (explain);

(ii) Retirement of debt (explain);

(iii) Additional working capital (explain);

(iv) Operating losses other than depreciation and amortization (explain); and

(v) Other (explain).

(6) An estimate of the cash that will be available during the first 6 months

after the month in which the certificate is expected to be issued, from—

(i) Sale of property or flight equipment (explain);

(ii) New debt (explain);

(iii) New equity (explain);

(iv) Working capital reduction (explain);

(v) Operations (profits) (explain);

(vi) Depreciation and amortization (explain); and

(vii) Other (explain).

(7) A schedule of insurance coverage in effect on the balance sheet date showing insurance companies; policy numbers; types, amounts, and period of coverage; and special conditions, exclusions, and limitations.

(8) Any other financial information that the Administrator requires to enable him or her to determine that the applicant has sufficient financial resources to conduct his or her operations with the degree of safety required in the public interest.

(f) Each financial statement containing financial information required by paragraph (e) of this section must be based on accounts prepared and maintained on an accrual basis in accordance with generally accepted accounting principles applied on a consistent basis, and must contain the name and address of the applicant's public accounting firm, if any. Information submitted must be signed by an officer, owner, or partner of the applicant or certificate holder.

15. Section 119.67 is amended by revising paragraphs (c), (d), and (e) to read as follows:

§ 119.67 Management personnel: Qualifications for operations conducted under part 121 of this chapter.

* * * * *

(c) To serve as Director of Maintenance under § 119.65(a) a person must—

(1) Hold a mechanic certificate with airframe and powerplant ratings; and have held these ratings for at least 3 years;

(2) Have at least 3 years supervisory or managerial experience within the last 6 years in a position that exercised operational control over maintenance program functions within maintenance operations conducted under part 121 or 135 of this chapter.

(3) Have at least 1 year of experience in a position in which normal duties included returning airplanes to service;

(4) In the case of a person becoming a Director of Maintenance—

(i) For the first time ever, have at least 3 years experience within the past 6 years in one or a combination of the following—

(A) Maintaining large airplanes with 10 or more passenger seats under part 121 or 135 of this chapter, including at the time of appointment as Director of Maintenance, experience in maintaining the same category and class of airplane as the certificate holder uses; or

(B) Maintaining large airplanes in an airframe repair station, certificated under part 145 of this chapter, that is rated to maintain airplanes in the same category and class of airplane as the certificate holder uses.

(ii) With previous experience as a Director of maintenance, have at least 3 years experience in one or a combination of the qualification standards under paragraph (c)(4)(i) (A) or (B) of this section.

(d) To serve as Chief Inspector under § 119.65(a) a person must—

(1) Hold a mechanic certificate with both airframe and powerplant ratings, and have held these ratings for at least 3 years;

(2) Have at least 3 years supervisory or managerial experience within the last 6 years in a position that exercised operational control over the inspection, quality control, or quality assurance functions within maintenance operations conducted under part 121 or 135 of this chapter.

(3) Have at least 1 year of experience in a position in which the normal duties included returning airplanes to service;

(4) In the case of a person becoming a Chief Inspector—

(i) For the first time ever, have at least 3 years experience within the past 6 years in one or a combination of the following—

(A) Maintaining large airplanes with 10 or more passenger seats under part 121 or 135 of this chapter, including at the time of appointment as Chief Inspector, experience in inspection, quality control, or quality assurance functions for the same category and class of airplane as the certificate holder uses; or

(B) Maintaining large airplanes in an airframe repair station certificated under part 145 of this chapter that is rated to maintain airplanes in the same category and class of airplane as the certificate holder uses.

(ii) With previous experience as a Chief Inspector, have at least 3 years experience in one or a combination of the qualification standards under paragraph (d)(4)(i) (A) or (B) of this section.

(e) A certificate holder may request a deviation to employ a person who does not meet the appropriate airman experience, managerial experience, or supervisory experience requirements of this section if the Manager of the Air Transportation Division or the Manager of the Aircraft Maintenance Division of the FAA Flight Standards Service finds that the person has comparable experience, and can effectively perform the functions associated with the position in accordance with the Federal Aviation Regulations and the procedures outlined in the certificate holder's manual. Grants of deviation under this paragraph may be granted after consideration of the size and scope of the operation and the qualifications of the intended personnel. The Administrator may, at any time, terminate any grant of deviation authority issued under this paragraph.

16. Section 119.71 is amended by revising the introductory text of paragraph (b), the introductory text of paragraph (d), paragraph (e), and the first sentence of paragraph (f) to read as follows:

§ 119.71 Management personnel: Qualifications for operations conducted under part 135 of this chapter.

* * * * *

(b) To serve as Director of Operations under § 119.69(a) for a certificate holder that only conducts operations for which the pilot in command is required to hold a commercial pilot certificate, a person must hold at least a commercial pilot certificate. If an instrument rating is required for any pilot in command for that certificate holder, the Director of Operations must also hold an instrument rating. In addition, the Director of Operations must either—

* * * * *

(d) To serve as Chief Pilot under § 119.69(a) for a certificate holder that only conducts operations for which the pilot in command is required to hold a commercial pilot certificate, a person must hold at least a commercial pilot certificate. If an instrument rating is required for any pilot in command for that certificate holder, the Chief Pilot must also hold an instrument rating. The Chief Pilot must be qualified to serve as pilot in command in at least one aircraft used in the certificate holder's operation. In addition, the Chief Pilot must:

* * * * *

(e) To serve as Director of Maintenance under § 119.69(a) a person must—

(1) Hold a mechanic certificate with airframe and powerplant ratings, and have held these ratings for at least 3 years;

(2) Have at least 3 years supervisory or managerial experience within the last 6 years in a position that exercised operational control over maintenance program functions within maintenance

operations conducted under part 121 or 135 of this chapter;

(3) Have at least 1 year of experience in a position in which normal duties included returning airplanes to service;

(4) In the case of a person becoming a Director of Maintenance—

(i) For the first time ever, have at least 3 years experience within the past 6 years in one or a combination of the following—

(A) Maintaining airplanes under part 121 or 135 of this chapter, including at the time of appointment as Director of Maintenance, experience maintaining the same category and class of airplane as the certificate holder uses; or

(B) Maintaining airplanes in an airframe repair station, certificated under part 145 of this chapter, that is rated to maintain airplanes in the same category and class of airplane as the certificate holder uses.

(ii) With previous experience as a Director of Maintenance, have at least 3 years experience in one or a combination of the qualification standards under paragraph (c)(4)(i) (A) or (B) of this section.

(f) A certificate holder may request a deviation to employ a person who does not meet the appropriate airmen experience requirements, managerial experience requirements, or supervisory experience requirements of this section if the Manager of the Air Transportation Division or the Manager of the Aircraft Maintenance Division of the FAA Flight Standards Service finds that the person has comparable experience, and can effectively perform the functions associated with the position in accordance with 14 CFR Chapter I and the procedures outlined in the certificate holder's manual.* * *

PART 121—OPERATING REQUIREMENTS; DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

17. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

18. SFAR ____ is added to read as follows:

SFAR ____—Alternative Communications and Dispatching Procedures

1. *Applicability.* This Special Federal Aviation Regulation applies to each holder of an air carrier or operating certificate (hereafter, certificate holder) that meets one of the following eligibility requirements:

a. The certificate holder conducts scheduled operations with airplanes having a passenger-seat configuration of 30 seats or fewer, excluding each crewmember seat, and a payload capacity of 7,500 pounds or less under part 121 of this chapter.

b. The certificate holder conducts domestic operations in Alaska under part 121 of this chapter.

2. *Alternative requirements.*

a. If an operator described in paragraph 1.a. of this SFAR is conducting a flight with an airplane described in 1.a. and if communications cannot be maintained over the entire route (which would be contrary to the requirements of § 121.99 of this chapter), such an operator may continue to operate over such a route subject to approval by the Administrator. In granting such approval the Administrator considers the following:

i. The operator has an established dispatch communication system.

ii. Gaps in communication are not over the entire route, but only over portions of the route.

iii. When communication gaps occur, they occur due to one or more of the following:

A. Lack of infrastructure.

B. Geographical considerations.

C. Assigned operating altitude.

iv. Procedures are established for the prompt re-establishment of communications.

v. The operator has presented a plan or schedule for coming into compliance with the requirement in § 121.99 of this chapter.

b. A certificate holder who conducts domestic operations in Alaska may, notwithstanding the requirements of § 121.99 of this chapter, use a communications system operated by the United States for those operations.

c. An operator described in paragraph 1.a. of this SFAR who conduct operations in Alaska may share the aircraft dispatcher required by § 121.395 with another operator described in paragraph 1.a. of this SFAR who conducts operations in Alaska if authorized to do so by the Administrator. Before granting such an authorization, the Administrator considers:

i. The operators' joint plans for complying with the aircraft dispatcher training rules in subpart N of part 121 of this chapter and the aircraft dispatcher qualification and duty time limitation rules in subpart P of part 121 of this chapter.

ii. The number of flights for which the aircraft dispatcher would be responsible.

iii. Whether the responsibilities of the dispatcher would be beyond the capability of a single dispatcher.

3. *Expiration.* This Special Federal Aviation Regulation terminates on [date 4 years after issuance] unless sooner terminated.

19. Section 121.2 is amended by adding paragraphs (d)(1)(iv) and (e)(1)(iv) to read as follows:

§ 121.2 Compliance schedule for operators that transition to part 121; certain new entrant operators.

* * * * *

(d) * * *

(1) * * *

(iv) [date 2 years after final rule is issued]: Section 121.310(b)(1), Interior emergency exit locating sign.

* * * * *

(e) * * *

(1) * * *

(iv) Manufactured on or after [date 2 years after issue of final rule]: Section 121.310(b)(1), Interior emergency exit locating sign.

* * * * *

20. Section 121.99 is revised to read as follows:

§ 121.99 Communication facilities.

(a) Each certificate holder conducting domestic or flag operations must show that a two-way radio communication system or other means of communication approved by the Administrator is available at points that will ensure reliable and rapid communications, under normal operating conditions over the entire route (either direct or via approved point-to-point circuits) between each airplane and the appropriate dispatch office, and between each airplane and the appropriate air traffic control unit, except as specified in § 121.351(c).

(b) For the following types of operations, the communications systems between each airplane and the dispatch office must be independent of any system operated by the United States:

(1) All domestic operations;

(2) Flag operations in the 48 contiguous States and the District of Columbia; and

(3) After [date 4 years after issuance], flag operations outside the 48 contiguous States and the District of Columbia.

21. Section 121.137(c) is revised to read as follows:

§ 121.137 Distribution and availability.

* * * * *

(c) For the purpose of complying with paragraph (a) of this section, a certificate holder may furnish the persons listed therein the maintenance part of the manual in printed form or other form, acceptable to the Administrator, that is retrievable in the English language.

22. In § 121.139, the heading and paragraph (a) are revised to read as follows:

§ 121.139 Requirement for manual aboard aircraft: Supplemental operations.

(a) Except as provided in paragraph (b) of this section, each certificate holder conducting supplemental operations shall carry appropriate parts of the manual on each airplane when away from the principal base of operations. The appropriate parts must be available for use by ground or flight personnel. If the certificate holder carries aboard an aircraft all or any portion of the maintenance part of its manual in other than printed form, it

must carry a compatible reading device that produces a legible image of the maintenance information and instructions or a system that is able to retrieve the maintenance information and instructions in the English language.

* * * * *

23. Section 121.305 is amended by removing the words ''paragraph (j) of this section'' in paragraph (f) and adding, in their place, the words ''paragraph (k) of this section;'' and by revising paragraph (j) to read as follows:

§ 121.305 Flight and navigational equipment.

* * * * *

(j) On the airplanes described in this paragraph, in addition to two gyroscopic bank and pitch indicators (artificial horizons) for use at the pilot stations, a third such instrument is installed in accordance with paragraph (k) of this section:

(1) On each turbojet powered airplane.

(2) On each turbopropeller powered airplane having a passenger-seat configuration of more than 30 seats, excluding each crewmember seat, or a payload capacity of more than 7,500 pounds.

(3) On each turbopropeller powered airplane having a passenger-seat configuration of 30 seats or fewer, excluding each crewmember seat, and a payload capacity of 7,500 pounds or less that is manufactured on or after March 20, 1997.

(4) After December 20, 2010, on each turbopropeller powered airplane having a passenger seat configuration of 10–30 seats and a payload capacity of 7,500 pounds or less that was manufactured before March 20, 1997.

* * * * *

24. Section 121.310 is amended by adding the words ''Except as provided in paragraph (b)(2)(iii) of this section,'' to the beginning of paragraph (b)(2)(i); by revising the words ''For an airplane'' to read ''For a transport category airplane'' in paragraph (b)(2)(ii); and by adding a new paragraph (b)(2)(iii) to read as follows:

§ 121.310 Additional emergency equipment.

* * * * *

(b) * * *

(2) * * *

(iii) For a nontransport category turbopropeller powered airplane type certificated after December 31, 1964, each passenger emergency exit marking and each locating sign must be manufactured to meet the requirements of § 23.811(b) of this chapter. On these airplanes, no sign may continue to be used if its luminescence (brightness) decreases to below 100 microlamberts.

* * * * *

25. Section 121.333 is amended by revising paragraph (c)(2) to read as follows:

§ 121.333 Supplemental oxygen for emergency descent and for first aid; turbine engine powered airplanes with pressurized cabins.

* * * * *

(c) * * *

(2) When operating at flight altitudes above flight level 250, one pilot at the controls of the airplane shall at all times wear and use an oxygen mask secured, sealed, and supplying oxygen, in accordance with the following:

(i) The one pilot need not wear and use an oxygen mask at or below the following flight levels if each flight crewmember on flight deck duty has a quick-donning type of oxygen mask that the certificate holder has shown can be placed on the face from its ready position, properly secured, sealed, and supplying oxygen upon demand, with one hand and within five seconds:

(A) For airplanes having a passenger seat configuration of more than 30 seats, excluding any required crewmember seat, or a payload capacity of more than 7,500 pounds, at or below flight level 410.

(B) For airplanes having a passenger seat configuration of less than 31 seats, excluding any required crewmember seat, and a payload capacity of 7,500 pounds or less, at or below flight level 350.

(ii) Whenever a quick-donning type of oxygen mask is to be used under this section, the certificate holder shall also show that the mask can be put on without disturbing eye glasses and without delaying the flight crewmember from proceeding with his assigned emergency duties. The oxygen mask after being put on must not prevent immediate communication between the flight crewmember and other crewmembers over the airplane intercommunication system.

* * * * *

26. Section 121.437 is amended by removing paragraph (b), by redesignating current paragraph (c) as paragraph (b) and by adding a new sentence to redesignated paragraph (b) to read as follows:

§ 121.437 Pilot qualification: Certificates required.

(a) * * *

(b) * * * Notwithstanding the requirements of § 61.63 (b) and (c) of this chapter, a pilot who is currently employed by a certificate holder and meets applicable training requirements of subpart N of this part, and the proficiency check requirements of § 121.444, may be issued the appropriate category and class ratings by presenting proof of compliance with those requirements to a Flight Standards District Office.

§ 121.590 [Amended]

27. Section 121.590 is amended in paragraph (a) by removing the words ''operate an aircraft into a land airport'' and adding, in their place, the words ''operate an airplane designed for at least 31 passenger seats into a land airport.''

28. Section 121.713 is amended by revising paragraph (b)(2) to read as follows:

§ 121.713 Retention of contracts and amendments: Commercial operators who conduct intrastate operations for compensation or hire.

* * * * *

(b) * * *

(2) The information required by § 119.36(e)(2), (e)(7), and (e)(8) of this chapter.

* * * * *

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

29. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

30. Section 125.71(f) is revised to read as follows:

§ 125.71 Preparation.

* * * * *

(f) For the purpose of complying with paragraph (d) of this section, a certificate holder may furnish the persons listed therein with the maintenance part of its manual in printed form or other form, acceptable to the Administrator, that is retrievable in the English language. If the certificate holder furnishes the maintenance part of the manual in other than printed form, it must ensure there is a compatible reading device available to those persons that provides a legible image of the maintenance information and instructions or a system that is able to retrieve the maintenance information and instructions in the English language.

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

31. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

32. Section 135.2 is amended in paragraphs (d)(1)(i), (d)(2)(i), and (e)(1)(ii) by removing the words ''December 22, 1997'' and adding, in their place, the words ''December 20, 1997;'' and by adding paragraphs (d)(1)(iv) and (e)(1)(iv) to read as follows:

§ 135.2 Compliance schedule for operators that transition to part 121 of this chapter; certain new entrant operators.

* * * * *

(d) * * *

(1) * * *

(iv) [Date 2 years after final rule is issued]: Section 121.310(b)(1), Interior emergency exit locating sign.

* * * * *

(e) * * *

(1) * * *

(iv) Manufactured on or after [Date 2 years after issue of final rule]: Section 121.310(b)(1), Interior emergency exit locating sign.

* * * * *

33. Section 135.21(f) is revised to read as follows:

§ 135.21 Manual requirements.

* * * * *

(f) For the purpose of complying with paragraph (d) of this section, a certificate holder may furnish the persons listed therein with the maintenance part of its manual in printed form or other form, acceptable to the Administrator, that is retrievable in the English language. If the certificate holder furnishes the maintenance part of the manual in other than printed form, it must ensure there is a compatible reading device available to those persons that provide a legible image of the maintenance information and instructions, or a system that is able to retrieve the maintenance information and instructions in the English language.

* * * * *

§ 135.25 [Amended]

34. Section 135.25 is amended in paragraph (b) by removing the words ''air taxi or commercial operations'' and adding, in their place, the words ''operations under this part.''

§ 135.64 [Amended]

35. Section 135.64 is amended by removing paragraph (b) and removing the paragraph designation ''(a)'' from the remaining paragraph.

36. Section 135.153 is amended by revising paragraph (a) and removing and reserving paragraph (b) to read as follows:

§ 135.153 Ground proximity warning system.

(a) No person may operate a turbine-powered airplane having a passenger seat configuration of 10 seats or more, excluding any pilot seat, unless it is equipped with an approved ground proximity warning system.

(b) [Reserved]

* * * * *

37. Section 135.427 is amended by adding a new paragraph (d) to read as follows:

§ 135.427 Manual requirements.

* * * * *

(d) For the purposes of this part, the certificate holder must prepare that part of its manual containing maintenance information and instructions, in whole or in part, in printed form or other form, acceptable to the Administrator, that is retrievable in the English language.

Issued in Washington, D.C., on January 22, 1997.

Thomas C. Accardi,

Director, Flight Standards Service.

[FR Doc. 97–2024 Filed 1–29–97; 9:08 am]

BILLING CODE 4910–13–M

federal register

Monday
February 3, 1997

Part III

Department of Transportation

Office of the Secretary

14 CFR Parts 300 and 302

Rules of Practice in Proceedings; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 300 and 302

[Docket No. OST–97–2090; Notice No. 97–2]

RIN 2105–AC48

Rules of Practice in Proceedings

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: In his Regulatory Reinvention Initiative Memorandum of March 4, 1995, President Clinton directed Federal agencies to conduct a page-by-page review of all of their regulations and to ''eliminate or revise those that are outdated or otherwise in need of reform.'' In response to that directive, the Department has undertaken a review of its aviation economic regulations as contained in 14 CFR Chapter II. We have thus far identified a number of regulations that were outdated or contained references that were obsolete. This rulemaking proposes to modify various provisions in 14 CFR part 302—Rules of Practice in Proceedings by eliminating redundancies, excess verbiage, and obsolete provisions; by making technical changes necessary to make the rules current; and by reorganizing and renumbering subparts in a more logical order and to place a greater emphasis on procedures used in written as opposed to oral proceedings. As part of the reorganization, one provision in part 302 would be relocated to part 300 of this chapter—Rules of Conduct in DOT Proceedings under this Chapter, and all currently reserved subparts would be removed. The rulemaking also proposes to shorten some of the time periods for filing responsive documents in licensing cases, and to include procedures for slot exemptions at high density airports.

DATES: Comments must be received on or before April 4, 1997.

ADDRESSES: Comments should be directed to Department of Transportation Dockets, Docket OST–97–2090, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Patricia L. Thomas or Carol A. Woods, Office of Aviation Analysis, X–56, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590, (202) 366–9721.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking action by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket number and be submitted in duplicate to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on Docket No. OST–97–2090. The postcard will be date/time stamped and returned to the commenter. All communications on or before the specified closing date will be considered by the Assistant Secretary for Aviation and International Affairs before taking action on any further rulemaking. Also, this proposal may be changed in light of comments received. All comments submitted will be available for examination in Docket OST–97–2090. A report summarizing each substantive public contact with DOT personnel concerned with this rulemaking will be filed in the docket.

Background

The Department of Transportation has reviewed its existing regulations in order to determine whether changes should be made to promote economic growth, create jobs, or eliminate unnecessary costs or other burdens on the economy. In the course of this review, the Department determined that references in various regulations were obsolete and that technical and editorial changes to the regulations are necessary to make them current.

Title 14 CFR part 302—Rules of Practice in Proceedings contains the regulations that govern the conduct of all aviation economic proceedings before the Department of Transportation. These rules have not been comprehensively reviewed and updated since 1985 when the aviation economic functions of the Civil Aeronautics Board (CAB) were transferred to the Department as a result of the CAB's ''sunset.'

The Changes

General. Part 302 is extensive, with different subparts governing different types of proceedings. Because of the extent and number of changes being made, we propose to reissue part 302 in its entirety. The particular provisions proposed to be eliminated, relocated, or revised, and the reasons therefor are discussed for each subpart separately below. In general, however, the changes would include reorganizing and renumbering of subparts; eliminating redundancies, obsolete provisions or excess verbiage; and resequencing sections within subparts to place them in a more logical order to ''track'' the course of a particular type of proceeding and to place a greater emphasis on procedures used in written proceedings (*i.e.*, non-oral evidentiary proceedings) which are used in the majority of cases handled. Thus, some sections would be rewritten to indicate that written procedures, such as show-cause procedures, would generally be employed, and that *if* an administrative law judge were assigned to a case, the judge would preside over or have responsibility for various decisions, but that in all other cases the DOT decisionmaker would have such powers and responsibilities. Some sections would be separated or combined and titles added or revised for clarity and ease in locating specific provisions.

A number of the subparts would be reordered so that the rules of general applicability (new Subpart A) would, as now, come first, followed by rules pertaining to the Department's ''permanent'' licensing functions, *i.e.*, issuance of U.S. air carrier certificates and foreign air carrier permits (new Subpart B, current Subparts I and Q), rules pertaining to ''temporary'' licensing functions, *i.e.*, exemptions (new Subpart C, current Subpart D), rules on enforcement of those licenses and other Department regulations (new Subpart D, current Subpart B), and rules on rates, fares, and charges, *i.e.*, prices for foreign air transportation (revised Subpart E), airport fees (Subpart F), and mail rates and contracts (new Subpart G, current Subparts C and O).

Current Subpart J (Rules Applicable to Proceedings Involving Charter Air Carriers) would be removed. This subpart contains procedural rules for the immediate suspension of a charter air carrier's certificate. To our knowledge, this rule has never been used. Moreover, the procedures prescribed in Subpart J, if utilized, would subject a charter air carrier that failed to comply with the insurance and/or continuing fitness requirements of sections 41110(e) and 41112 of the Statute to more severe treatment than an air carrier with scheduled passenger or scheduled cargo authority that failed to comply with these same sections of the Statute. In the interest of treating all certificated air carriers equally, Subpart J should be eliminated. We will

continue to have powers under the provisions of §§ 204.7 and 302.211 of this chapter, and sections 41104, 41110, and 41112 of the Statute to suspend a charter carrier's certificate when necessary.

Subparts G, H, K, L, M, N, and P, which are currently ''reserved,'' would be removed.

Two technical changes would be applicable to all subparts: (1) the correction of definitions and other terminology necessitated by the revision and recodification of the Federal Aviation Act within Subtitle VII of Title 49 of the United States Code (Transportation) (''the Statute'') by action of Pub. L. 103–272, enacted July 5, 1994; and (2) the correction of the obsolete title ''Assistant Secretary for Policy and International Affairs'' to read ''Assistant Secretary for Aviation and International Affairs'.

At the time we issue a final rule in this rulemaking proceeding, we will also amend all rules in Chapter II containing what will then be incorrect references to sections in part 302.

Subpart A—Rules of General Applicability currently sets forth the general rules that apply to all proceedings before the Department. The changes to Subpart A would include the addition of a definitions section (§ 302.2) which would include definitions drawn from other sections of the current rule (*e.g.*, DOT decisionmaker) as well as new definitions (*e.g.*, party, non-hearing case) or revised definitions. Thus, the definition of ''administrative law judge'' is changed to remove the reference to presiding officers to avoid confusion as to whether a presiding officer is an administrative law judge appointed pursuant to 5 U.S.C. 3105. The Secretary may appoint, on an *ad hoc* basis, presiding officers to govern proceedings that do not require administrative law judges. Appointment of a presiding officer could be made in an order instituting a proceeding. The definition of ''hearing case'' is changed to remove reference to 5 U.S.C. 556 and 557, since an official who is not an administrative law judge might preside over an oral evidentiary hearing that is not conducted pursuant to the Administrative Procedure Act (5 U.S.C. 551 *et seq.*).

Some sections in Subpart A would be reorganized. For example, requirements for filing documents (§ 302.3) would contain provisions on the prohibition and dismissal of certain documents and on motions for leave to file otherwise unauthorized documents that are presently contained in the general requirements for documents (§ 302.4).

Provisions would be added to specify when an application may be amended when the application has not been set for hearing—*e.g.*, prior to the issuance of an order establishing further procedures or disposing of the application (§ 302.5).

Service of documents (new § 302.7) would allow for service by facsimile.

The definition of ''party'' would be expanded to include any DOT staff designated to participate in the proceeding in an oral evidentiary hearing (new §§ 302.2 and 302.10(a)).

A provision would be added in the section on objections to the public disclosure of information (new § 302.12) to allow limited disclosure of such information to the parties in a proceeding upon submission of affidavits by those parties swearing to protect the confidentiality of the documents at issue during the pendency of a motion to withhold.

All of the paragraphs that pertain only to oral evidentiary hearings would be moved to the end of the subpart (§§ 302.17–302.37) to alleviate confusion over the procedures that are applicable only to those types of proceedings and those applicable to non-hearing cases, which now comprise the bulk of the proceedings that the Department handles.

The section on administrative law judges (new § 302.17) would be revised to specify the powers of each judge and to include the delegation of authority to each judge to make decisions in hearing proceedings (current § 302.27(a)).

The section on the DOT decisionmaker (new § 302.18) would be revised to reflect the change in title of the Assistant Secretary for Policy and International Affairs to Assistant Secretary for Aviation and International Affairs, and to reorder the text to eliminate duplication and to reflect that the majority of cases are decided by the Assistant Secretary using non-hearing proceedings.

New sections on evidence (§ 302.24) and transcripts of hearings (§ 302.28) would contain provisions from current § 302.24. The list of officially noticeable documents, included in the evidence section, would be updated and reorganized so that documents filed with or compiled by the Department, including the Federal Aviation Administration, would be listed first followed by documents filed with or compiled by other government agencies and then private organizations (§ 302.24(g)).

The provisions now contained in the section on subpoenas (current § 302.19(g)) governing the attendance of DOT employees and the production of documentary evidence in their custody at a hearing would be revised to state that such matters would be governed by 49 CFR Parts 9 and 7 (new § 302.25(g)).

Provisions relating to the amount of attendance and mileage fees payable to witnesses in hearing cases (new § 302.27(c)) would be simplified to remove specific dollar amounts and to specify that such witnesses will be paid in accordance with regulations in effect at the time for U.S. courts or government per diem rates. Text on the payment of such fees to witnesses as well as other rights of witnesses (currently found in paragraphs (b) and (c) of § 302.11) would be combined in new § 302.27. In addition, a separate section on appearances (currently in § 302.11(a)) would be established (new § 302.21).

A provision would be added stating that one of the considerations for determining whether to order a ''daily transcript'' of a hearing, in lieu of an ''ordinary transcript'', is cost to the Department (new § 302.29(b)(3)).

A new section specifying the actions that can be taken by administrative law judges after a hearing, including issuing initial or recommended decisions (which would be defined in the rule) or certifying the record to the DOT decisionmaker would be established (§ 302.31). A provision would be added stating that, in the case of a recommended decision, unless a petition for discretionary review, exceptions, or a notice by the DOT decisionmaker taking review was filed, the judge's decision would be forwarded to the President for review under 49 U.S.C. 41307 as the Department's final order.

Some sections would be removed from this subpart if they pertain only to specific types of cases (*e.g.*, § 302.13, joinder of complaints or complainants, has been moved to new Subpart D concerning enforcement proceedings), or if they more logically belong in other rules (*e.g.*, § 302.18(a–1)—motions to disqualify DOT employees in review of hearing matters—would be redesignated § 300.18 in part 300 of this chapter, which covers rules of conduct in DOT proceedings).

Subpart B—Rules Applicable to U.S. Air Carrier Certificate and Foreign Air Carrier Permit Licensing Proceedings would replace and revise current Subparts I and Q with respect to licensing procedures for new U.S. certificated and foreign air carriers and the conduct of international route proceedings.

Current Subpart I (Rules Applicable to Route Proceedings under Sections 401 and 402 of the Federal Aviation Act) would be eliminated. These rules set

forth procedures under which the Department may initiate route proceedings under sections 41102 and 41302 of the Statute (formerly sections 401 and 402 of the Federal Aviation Act). These procedures were used by the former CAB prior to the promulgation of current Subpart Q of this part. Today, these types of route cases are handled under the expedited provisions of Subpart Q rather than Subpart I procedures. Thus, a special set of rules applicable to route proceedings initiated by the Department is no longer needed.

Current Subpart Q (Expedited Procedures for Processing Licensing Cases) would also be removed. These rules contain the procedures used for the filing and processing of applications requesting action (*e.g.,* issuance, modification, transfer) involving certificates of public convenience and necessity or foreign air carrier permits.

The new Subpart B would be organized to indicate more clearly what evidence requirements and filing and review procedures would be followed in each type of licensing case. Thus, current § 302.1720, which applies to certificate cases in general, contains provisions on filing conforming applications or motions to modify the scope of a proceeding that are applicable to international route cases but not typically applicable to initial fitness certification cases. Provisions pertaining solely to international route cases would be contained in § 302.212; those pertaining to initial or continuing fitness cases for U.S. carriers would be found in § 302.211; and those pertaining to foreign air carrier permit cases would be located in § 302.213.

A provision would be added (§ 302.202(a)) stating that in those cases involving the initial or continuing fitness of a U.S. air carrier, any application filed should also contain the supporting fitness information required by part 204 of this chapter.

The requirement to serve copies of pleadings on other parties would be revised for proceedings involving foreign air carrier permit applications to conduct scheduled operations to include the airport authority of any U.S. airport that the applicant initially proposes to serve (new § 302.203(b)(2)(C)). Service on such parties is already required in U.S. air carrier certificate application proceedings (new § 302.203(b)(1)).

We are also proposing to eliminate the separate regulatory procedures and time periods for responsive pleadings for certificate restriction removal cases (current § 302.1730). Such cases are rare and can be handled under the same rules and timeframes as international route award cases. If different procedures or timetables are required in a specific case, the Department can establish those in a procedural order at the outset of such proceeding.

We are adding a provision to specifically allow for the filing of replies to answers in licensing cases (new § 302.204(b)). Replies are routinely filed in such cases (accompanied by a motion for leave to file), are permitted in response to answers to show cause orders issued in such proceedings, and are of benefit to the Department in analyzing the information and allegations in any filed answer.

In most cases, the time periods for filing responsive pleadings would be decreased in an effort to expedite the processing of licensing cases (new §§ 302.204 and 302.212) (see chart below). In this regard, answers to U.S. air carrier certificate applications (both initial fitness and international route award) and foreign air carrier permit applications or amendments to any of those types of applications would be due in 21 days, rather than 28 days. Petitions for oral hearing of the application would be due at the same time that answers to the application would be due (*i.e.,* within 21 days), rather than 14 days later as is currently the case for foreign air carrier permits (current § 302.1712(c)(3)) or 24 days later (*i.e.,* 52 days after the original application) as is the case for certificate cases (current § 302.1712(c)(1)). In international route cases, conforming applications and/or motions to modify the scope of the proceeding would be due at the same time that answers are filed—within 21 days after the original application. Answers to conforming applications or motions would be due 14 days later, *i.e.,* 35 days after the original application, rather than 42 days.

PROPOSED CHANGES IN TIME PERIODS FOR FILING RESPONSIVE PLEADINGS

	Number of days from date original application filed	
	Current	Proposed
U.S. air carrier certificate applications (both initial fitness and international route award) and foreign air carrier permit applications, or amendments to any of these:		
Answers to the application	28	21
Replies to answers	NA	35
Conforming applications or motions to modify scope	28	21
Answers to conforming applications or motions to modify scope	42	35
Petitions for oral hearing of application:		
Certificate cases	52	21
Foreign air carrier permits	42	21
Restriction removal cases:		
Answers to application	14	21
Conforming applications	14 days	21
Answers to conforming applications	XL28	35
Petitions for oral hearing of application	35	21

The time period for the Department to defer further processing of an incomplete application (current § 302.1713) would be increased from 21 to 28 days to allow for the review of any answers filed in response to the application (new § 302.209).

With respect to DOT's issuance of an order establishing further procedures, the only change would be to specify that, in U.S. air carrier certificate cases, the order would be issued in 90 days after a *complete* application is filed (new §§ 302.211(b) and 302.212(e)). This clarification, which reflects the provision in current § 302.1713 (as contained in new § 302.209) that the time periods contained in the subpart would not begin to run until the application is complete, is intended to alleviate any confusion over when a

DOT order taking action on an application would be issued, since many certificate applications are not complete when submitted and must be deferred pending receipt of supplementary information.

The section on the disposition of applications (new § 302.210) would be reorganized to reflect the current practices employed in the majority of application cases of using show-cause procedures or dismissing the application by final order, rather than instituting an oral evidentiary hearing.

A provision would be added to current § 302.1757 to clarify that if the DOT decisionmaker did not act within 90 days of the issuance of an initial decision by an administrative law judge, that decision would become the final decision of the Department (new § 302.220(b)(2)).

In addition, current § 302.1760, which pertains to internal procedures of the Department, would be eliminated as unnecessary.

Subpart C—Rules Applicable to Exemption Proceedings would replace and revise current Subpart D, which sets forth procedural standards for U.S. and foreign air carriers to follow in applying for exemption authority under section 40109 of the Statute. It adds proceedings for slot exemptions at high density airports under section 41714 of the Statute to its scope. It also gives needed guidance to U.S. and foreign air carrier applicants on the specific information they must file.

In new Subpart C, new § 302.302(b) would revise the names of the offices where exemption applications are to be filed to the U.S. Air Carrier Licensing Division or Foreign Air Carrier Licensing Division, as appropriate, in the Office of International Aviation. New § 302.302(b)(4) would permit the filing of exemption requests by facsimile and electronic mail (when available), and new § 302.302(e) (current § 302.401(e)) would be revised to reflect our present practice of omitting applicants' addresses when publishing notices of exemption applications filed. Also, the word ''undue'' would be changed to ''unreasonable'' in paragraphs (3) and (4) of new § 302.303(d) to reflect a change in this language in section 40109(g)(1)(C) of the Statute.

Subpart D—Rules Applicable to Enforcement Proceedings would replace and revise current Subpart B, which contains the specific rules governing enforcement actions, or proceedings by which the Department enforces the aviation economic provisions of the Statute and the rules, regulations, orders, and other requirements the Department issues under those provisions. These rules also inform the public how to lodge complaints and detail the procedures that the Department and the parties will follow in the event the Department takes enforcement action.

A definitions section would be added to new Subpart D (new § 302.402).

In addition, various sections would be combined, separated or retitled for purposes of clarity. Thus, a separate section on informal complaints would be established (new § 302.403), and the section on formal complaints would be expanded to include current §§ 302.203 and 302.13 and separated into paragraphs pertaining to, among others things, the filing, amendment, and service of such complaints (new § 302.404). A section on responsive documents (new § 302.405) would contain provisions from current § 302.204, and a section on procedure for responding to formal complaints (new § 302.406) would contain provisions from current §§ 302.205 and 302.206.

The requirement that action must be taken on a formal complaint within 60 days of its filing would be eliminated, leaving in place the provision that such action would be taken ''within a reasonable time'' (new § 302.406).

The section on commencement of enforcement proceedings (new § 302.407) would include provisions from current §§ 302.206 and 302.206a; the section on answers and replies (new § 302.408) would contain provisions from current §§ 302.207 and 302.209; and current § 302.212 on admissions as to facts and motions to dismiss would be divided into two sections (new §§ 302.411 and 302.412).

The term ''third-party complaint'' used throughout would be replaced with ''formal complaint,'' and the ''saving clause'' from Subpart A (current § 302.40) would be moved to this subpart as new § 302.420 and modified to include provisions of the Statute and orders and other requirements of the Department.

Subpart E—Rules Applicable to Proceedings with Respect to Rates, Fares and Charges for Foreign Air Transportation would revise current Subpart E, which contains special rules for proceedings relating to prices and their related rules, classifications and practices applied in foreign air transportation. These proceedings are instituted at the Department's discretion in response to a third-party complaint, or upon the Department's own initiative. Historically, most such proceedings involved complaints against tariffs by competitors.

The title of the Subpart E would be amended to add ''for Foreign Air Transportation'' to clarify that these rules do not apply to rates, fares and charges in interstate transportation.

New § 302.506(d) would permit, in emergency situations, the filing of complaints requesting the suspension of a tariff by facsimile and electronic mail (when available), but would require that the filing be confirmed in writing within three business days.

Current § 302.506 would be eliminated. That section places the burden of going forward with the evidence (*i.e.*, making at least a *prima facie* case of lawfulness) upon the carrier proposing a tariff change. Under deregulation pricing policies and procedures, fare decreases or rule liberalizations do not need any justification. Similarly, complainants challenging tariffs on the ground of ''unjust discrimination'' now must make a *prima facie* case of unlawfulness. Thus, the subsection is misleading and should be eliminated entirely because specific evidentiary burdens are normally discussed at prehearing conferences, and nonhearing evidentiary matters can be resolved in an instituting order.

Subpart F—Rules Applicable to Proceedings Concerning Airport Fees contains the specific rules that apply to a complaint filed by one or more U.S. or foreign carriers for a determination of the reasonableness of a fee increase or a newly established fee imposed upon the carrier by the owner or operator of an airport. This subpart also applies to requests by the owner or operator of an airport for such a determination.

Since Subpart F was only recently adopted (in February 1995), it would not be revised at this time except to make the provisions internally consistent with the rest of revised part 302, such as by changing section reference numbers (*e.g.*, in § 302.617, the reference to § 302.28(a) would be changed to § 302.32(a), and in § 302.603 an additional reference to § 302.4 concerning the form of documents would be added). In addition, since at the time of the adoption of Subpart F, references to that subpart were not added to the index in Appendix A, those references would be added at this time.

Subpart G—Rules Applicable to Mail Rate Proceedings and Contracts would combine, replace and revise subparts C and O.

Current Subpart C (Rules Applicable to Mail Rate Proceedings) sets forth the special rules applicable to proceedings for the establishment of mail rates by the Department in accordance with

section 41901 of the Statute. These are the rates paid by the United States Postal Service to U.S. carriers for the transportation of U.S. mail within Alaska and between the U.S. and foreign countries.

Current Subpart O (Procedure for Processing Contracts for Transportation of Mail by Air in Foreign Air Transportation) sets forth procedures applicable to certain contractor arrangements for the carriage of mail by air between the U.S. Postal Service and certificated air carriers pursuant to 39 U.S.C. 5402(a).

In new Subpart G, current references to actions by ''the Department'' or ''DOT'' would be changed to ''DOT decisionmaker'' to differentiate from actions by an administrative law judge in an oral evidentiary hearing, and current §§ 302.304 and 302.309 would be combined into new § 302.703 to reflect that the DOT decisionmaker may either issue an order to show cause or set a matter for oral hearing before an administrative law judge.

Certain sections also would be revised to allow the DOT decisionmaker additional flexibility in dealing with specific cases. Thus, current § 302.305(a) would be revised to allow for answers to show cause orders within 10 days ''or within such other period as the order may specify'' (new § 302.704(a)); and current § 302.307 would be revised to allow the decisionmaker to authorize the filing of additional pleadings or establish further procedural steps in lieu of instituting an oral hearing (new § 302.705(b)) and to allow the issues at any hearing that is instituted to be formulated by the instituting order (new § 302.706(a)).

The provisions of current §§ 302.306 and 302.307 would be combined into new § 302.705 covering further procedures, and current §§ 302.301, 302.302, 302.307, and 302.308 would be combined into new § 302.706 entitled Hearing.

Current §§ 302.311 and 302.321 would be combined into new § 302.708. The provisions of paragraphs (a) and (b) of current § 302.1503 would be eliminated as unnecessary, and new § 302.719 would refine and condense the data required to reflect current practice.

The subject index contained in Appendix A—Index to Rules of Practice would be updated to include additional references (such as to Fitness Cases and Airport Fee cases), and to eliminate obsolete references. Also, to assist users in locating the newly renumbered sections, the revised Appendix would list for each subject both the current section number(s) and the corresponding new section number(s).

Executive Order 12866 (Regulatory Planning and Review)

The Department has analyzed the economic and other effects of the proposed amendment and has determined that they are not ''significant'' within the meaning of Executive Order 12866. The amendment will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. It will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, and it will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Nor does it raise any novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

DOT Regulatory Policies and Procedures

The proposed amendment is not significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because it does not involve important Departmental policies; rather, it is being made solely for the purposes of eliminating or correcting obsolete requirements and reorganizing the presentation of the regulations used by the Department to administer its aviation economic regulatory functions. The Department has also determined that the economic effects of the amendment are so minimal that a full regulatory evaluation is not required.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, the Department has evaluated the effects of this proposed action on small entities, i.e., those air carriers operating small aircraft (60 seats or less or 18,000 pounds maximum payload or less) in strictly domestic service. The proposed changes to the Department's Rules of Practice in Proceedings would merely eliminate unnecessary and obsolete verbiage, reorganize the provisions and bring them up to date with our current practice, and would not place any new requirements on applicants. Moreover, these rules generally are not applicable to proceedings involving such small entities. Therefore, the Department certifies that the amendment would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism)

This proposed amendment has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The Department has determined that the amendment does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This amendment will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

National Environmental Policy Act

The Department has also analyzed this proposed amendment for the purpose of the National Environmental Policy Act. The amendment will not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

There are no reporting or recordkeeping requirements associated with the proposed amendment.

List of Subjects

14 CFR Part 300

Administrative practice and procedure, Conflict of interests.

14 CFR Part 302

Administrative practice and procedure, Air carriers, Foreign air carriers.

Proposed Rule

For the reasons set out in the preamble, Title 14, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 49 U.S.C. subtitle I and chapters 401, 411, 413, 415, 417, 419, 421, 449, 461, 463, and 465.

2. Paragraph (a–1) of § 302.18 is redesignated as § 300.18 and revised to read as follows:

§ 300.18 Motions to disqualify DOT employee in review of hearing matters.

In cases to be determined on an evidentiary record, a party desiring that a concerned DOT employee disqualify himself or herself from participating in a DOT decision must file a motion supported by an affidavit setting forth the grounds for such disqualification in

the form and within the periods prescribed in § 302.11. Where review of the administrative law judge's decision can be obtained only upon the filing of a petition for discretionary review, such motions must be filed on or before the date answers are due pursuant to § 302.32. In cases where exceptions are filed to recommended, initial, or tentative decisions or where the DOT decisionmaker orders review of an initial or recommended decision on his or her own initiative, such motions must be filed on or before the date briefs are due pursuant to § 302.35 or § 302.218, as applicable. Failure to file a timely motion will be deemed a waiver of disqualification. Applications for leave to file an untimely motion seeking disqualification of a concerned DOT employee must be accompanied by an affidavit setting forth in detail why the facts relied upon as grounds for disqualification were not known and could not have been discovered with reasonable diligence within the prescribed time.

PART 302—[REVISED]

3. Part 302 is revised to read as follows:

PART 302—RULES OF PRACTICE IN PROCEEDINGS

Sec.
302.1 Applicability and description of part.
302.2 Definitions.

Subpart A—Rules of General Applicability

302.3 Filing of documents.
302.4 General requirements as to documents.
302.5 Amendment of documents.
302.6 Responsive documents.
302.7 Service of documents.
302.8 Computation of time.
302.9 Continuances and extensions of time.
302.10 Parties.
302.11 Motions.
302.12 Objections to public disclosure of information.
302.13 Consolidation of proceedings.
302.14 Petitions for reconsideration.

Non-Hearing Proceedings

302.15 Non-hearing procedures.

Rulemaking Proceedings

302.16 Petitions for rulemaking.

Oral Evidentiary Hearing Proceedings

302.17 Administrative law judges.
302.18 DOT decisionmaker.
302.19 Participation by persons not parties.
302.20 Formal intervention.
302.21 Appearances.
302.22 Prehearing conference.
302.23 Hearing.
302.24 Evidence.
302.25 Subpoenas.
302.26 Depositions.
302.27 Rights of witnesses; attendance fees and mileage.
302.28 Transcripts of hearings.
302.29 Argument before the administrative law judge.
302.30 Briefs to the administrative law judge.
302.31 Initial and recommended decisions; certification of the record.
302.32 Petitions for discretionary review of initial decisions or recommended decisions; review proceedings.
302.33 Tentative decision of the DOT decisionmaker.
302.34 Exceptions to tentative decisions of the DOT decisionmaker.
302.35 Briefs to the DOT decisionmaker.
302.36 Oral argument before the DOT decisionmaker.
302.37 Waiver of procedural steps after hearing.
302.38 Final decision of the DOT decisionmaker.

Subpart B—Rules Applicable to U.S. Air Carrier Certificate and Foreign Air Carrier Permit Licensing Proceedings

302.201 Applicability.
302.202 Contents of applications.
302.203 Service of documents.
302.204 Responsive documents.
302.205 Economic data and other facts.
302.206 Verification.

Disposition of Applications

302.207 Cases to be decided on written submissions.
302.208 Petitions for oral presentation or judge's decision.
302.209 Procedures for deferral of applications.
302.210 Disposition of applications; orders establishing further procedures.
302.211 Procedures in certificate cases involving initial or continuing fitness.
302.212 Procedures in certificate cases involving international routes.
302.213 Procedures in foreign air carrier permit cases.
302.214 Oral evidentiary hearing.
302.215 Briefs to the administrative law judge.
302.216 Administrative law judge's initial or recommended decision.
302.217 Exceptions to administrative law judge's initial or recommended decision.
302.218 Briefs to the DOT decisionmaker.
302.219 Oral argument before the DOT decisionmaker.
302.220 Final decision of the Department.

Subpart C—Rules Applicable to Exemption Proceedings

302.301 Applicability.
302.302 Filing of applications.
302.303 Contents of applications.
302.304 Service of documents.
302.305 Posting of applications.
302.306 Dismissal or rejection of incomplete applications.
302.307 Answers to applications.
302.308 Replies to answers.
302.309 Requests for hearing.
302.310 Exemptions on the Department's initiative.
302.311 Emergency exemptions.

Subpart D—Rules Applicable to Enforcement Proceedings

302.401 Applicability.
302.402 Definitions.
302.403 Informal complaints.
302.404 Formal complaints.
302.405 Responsive documents.
302.406 Procedure for responding to formal complaints.
302.407 Commencement of enforcement proceeding.
302.408 Answers and replies.
302.409 Default.
302.410 Consolidation of proceedings.
302.411 Motions to dismiss and for summary judgment.
302.412 Admissions as to facts and documents.
302.413 Evidence of previous violations.
302.414 Prehearing conference.
302.415 Hearing.
302.416 Appearances by persons not parties.
302.417 Settlement of proceedings.
302.418 Motions for immediate suspension of operating authority pendente lite.
302.419 Modification or dissolution of enforcement actions.
302.420 Saving clause.

Subpart E—Rules Applicable to Proceedings With Respect to Rates, Fares and Charges for Foreign Air Transportation

302.501 Applicability.
302.502 Institution of proceedings.
302.503 Contents and service of petition or complaint.
302.504 Dismissal of petition or complaint.
302.505 Order of investigation.
302.506 Complaints requesting suspension of tariffs; answers to such complaints.
302.507 Computing time for filing complaints.

Subpart F—Rules Applicable to Proceedings Concerning Airport Fees

302.601 Applicability.
302.603 Complaint by an air carrier or foreign air carrier; request for determination by an airport owner or operator.
302.605 Contents of complaint or request for determination.
302.607 Answers to a complaint or request for determination.
302.609 Replies.
302.611 Review of complaints.
302.613 Review of requests for determination.
302.615 Decision by administrative law judge.
302.617 Petitions for discretionary review.
302.619 Completion of proceedings.
302.621 Final order.

Subpart G—Rules Applicable to Mail Rate Proceedings and Contracts

302.701 Applicability.

Final Mail Rate Proceedings

302.702 Institution of proceedings.
302.703 Order to show cause or instituting a hearing.
302.704 Objections and answers to order to show cause.
302.705 Further procedures.

302.706 Hearing.

Provision for Temporary Rate

302.707 Procedure for fixing temporary mail rates.

Informal Mail Rate Conference Procedure

302.708 Invocation of procedure.
302.709 Scope of conferences.
302.710 Participants in conferences.
302.711 Conditions upon participation.
302.712 Information to be requested from an air carrier.
302.713 DOT analysis of data for submission of answers thereto.
302.714 Availability of data to the U.S. Postal Service.
302.715 Post-conference procedure.
302.716 Effect of conference agreements.
302.717 Waiver of participant conditions.

Processing Contracts for the Carriage of Mail in Foreign Air Transporation

302.718 Filing.
302.719 Explanation and data supporting the contract.
302.720 Service.
302.721 Complaints.
302.722 Answers to complaints.
302.723 Further procedures.
302.724 Petitions for reconsideration.

Appendix A—Index to Rules of Practice

Authority: 5 U.S.C. 551 *et seq.*, 39 U.S.C. 5402; 42 U.S.C., 4321, 49 U.S.C. Subtitle I and Chapters 401, 411, 413, 415, 417, 419, 461, 463, 471.

§ 302.1 Applicability and description of part.

(a) *Applicability.* This part governs the conduct of all aviation economic proceedings before the Department whether instituted by order of the Department or by the filing with the Department of an application, complaint, petition, motion, or other authorized or required document. This part also contains delegations to administrative law judges and to the DOT decisionmaker of the Department's function to render the agency decision in certain cases and the procedures for review of those decisions. This part applies unless otherwise specified by order of the Department.

(b) *Description.* Subpart A of this part sets forth general rules applicable to all types of proceedings. Each of the other subparts of this part sets forth special rules applicable to the type of proceedings described in the title of the subpart. Therefore, for information as to applicable rules, reference should be made to subpart A and to the rules in the subpart relating to the particular type of proceeding, if any. In addition, reference should be made to Subtitle VII of Title 49 of the United States Code (Transportation) (''the Statute''), and to the substantive rules, regulations and orders of the Department relating to the proceeding. Wherever there is any conflict between one of the general rules in subpart A and a special rule in another subpart applicable to a particular type of proceeding, the special rule will govern.

(c) *Reference to part and method of citing rules.* This part may be referred to as the ''Rules of Practice''. Each section, and any paragraph or subparagraph thereof, may be referred to as a ''Rule''. The number of each rule need include only the numbers and letters at the right of the decimal point. For example, ''302.7 *Service of documents*'', may be referred to as ''Rule 7''.

§ 302.2 Definitions.

Administrative law judge as used in this part means an administrative law judge appointed pursuant to 5 U.S.C. 3105.

DOT Decisionmaker as used in this part is the official authorized to issue final decisions of the Department as set forth in § 302.18. This includes the Assistant Secretary for Aviation and International Affairs, the senior career official in the Office of the Assistant Secretary for Aviation and International Affairs, the Deputy Secretary, and the Secretary.

Hearing case or *oral hearing case* means any proceeding that the Department has determined will be conducted on the record using oral evidentiary procedures.

Non-hearing case means any proceeding not involving oral evidentiary procedures.

Party as used in this part includes the person initiating a proceeding, such as an applicant, complainant, or petitioner; any person filing an answer to such filing; and any other persons as set forth in § 302.10.

Statute when used in this chapter means Subtitle VII of Title 49 of the United States Code (Transportation).

Subpart A—Rules of General Applicability

§ 302.3 Filing of documents.

(a) *Filing address, date of filing, hours.* (1) Documents required by any section of this part to be filed with the Department must be filed with Department of Transportation Dockets at the Department's offices in Washington, DC.

(2) Such documents will be deemed to be filed on the date on which they are actually received by the Department. Documents must be filed between the hours of 10:00 a.m. and 5:00 p.m., Monday to Friday, inclusive, except on legal holidays.

(b) *Formal specifications of documents.* (1) Documents filed under this part must be on white paper not larger than 8½ by 11 inches, including any tables, charts and other documents that may be included. Ink must be black to provide substantial contrast for scanning and photographic reproduction. Text must be double-spaced (except for footnotes and long quotations which may be single-spaced) using type not smaller than 12 point. The left margin must be at least 1½ inches; all other margins must be at least 1 inch. The title page and first page must bear a clear date and all subsequent pages must bear a page number and abbreviated heading. In order to facilitate automated processing in document sheet feeders, documents of more than one page should be held together with removable metal clips or similar retainers. Original documents may not be bound in any form or include tabs, except in cases assigned by order to an Administrative Law Judge for hearing, in which case the filing requirements will be set by order. Section 302.35 contains additional requirements as to the contents and style of briefs.

(2) Papers may be reproduced by any duplicating process, provided all copies are clear and legible. Appropriate notes or other indications must be used, so that the existence of any matters shown in color on the original will be accurately indicated on all copies.

(c) *Number of copies.* (1) Unless otherwise specified, an executed original, along with the number of true copies set forth in this paragraph for each type of proceeding, must be filed with Department of Transportation Dockets. The copies filed need not be signed, but the name of the person signing the original document, as distinguished from the firm or organization he or she represents, must also be typed or printed on all copies below the space provided for signature.

	Copies
Airport Fees	9
Agreements:	
International Air Transport Association (IATA)	6

	Copies
Other (under 49 U.S.C. 41309)	9
Complaints:	
Enforcement	5
Mail Contracts	4
Rates, Fares and Charges in Foreign Air Transportation	6
Unfair Practices in Foreign Air Transportation	7
Employee Protection Program (14 CFR 314)	7
Exemptions:	
Computer Reservations Systems (14 CFR 255)	8
Slot Exemptions (under 49 U.S.C. 41714)	7
Tariffs (under 49 U.S.C. Chapter 415 or 14 CFR 221)	5
Other (under 49 U.S.C. 40109)	7
Foreign Air Carrier Permits/Exemptions	7
International Authority for U.S. Air Carriers (certificates, exemptions, allocation of limited frequencies or charters)	7
Mail Rate Proceedings	4
Name Change/Trade Name Registrations	4
Suspension of Service (14 CFR 323)	4
Tariff Justifications to exceed Standard International Fare Level	6
U.S. Air Carrier Certificates (involving Initial or Continuing Fitness)	6
Other matters	3

(2) Filers are encouraged to submit one of the required true copies (except for counterparts of Agreement CAB 18900) in electronic form on a 3½ inch floppy disk, labeled to show the filer's and representative's names, docket number (if known) or space for it, and document title. The electronic submission must be in one of the following formats: Microsoft Word (or RTF), WordPerfect, Excel, Lotus 123, or ASCII text. The disk must be accompanied by a signed certification that it is a true copy of the executed original document.

(d) *Prohibition and dismissal of certain documents.* (1) No document that is subject to the general requirements of this subpart concerning form, filing, subscription, service or similar matters will be accepted for filing by the Department, and will not be physically incorporated in the docket of the proceeding, unless:

(i) Such document and its filing by the person submitting it have been expressly authorized or required in the Statute, any other law, this part, other Department regulations, or any order, notice or other document issued by the DOT decisionmaker, the Chief Administrative Law Judge or an administrative law judge assigned to the proceeding, and

(ii) Such document complies with each of the requirements of this paragraph and § 302.7, and is submitted as a formal application, complaint, petition, motion, answer, pleading, or similar paper rather than as a letter, telegram, or other informal written communication; *Provided, however,* That for good cause shown, pleadings of any public body or civic organization or comments concerning tariff agreements that have not been docketed, may be submitted in the form of a letter.

(2) If any document initiating, or filed in, a proceeding is not in substantial conformity with the applicable rules or regulations of the Department as to the contents thereof, or is otherwise insufficient, the Department, on its own initiative, or on motion of any party, may reject, strike or dismiss such document, or require its amendment.

(e) *Motions for leave to file otherwise unauthorized documents.* (1) The Department will accept otherwise unauthorized documents for filing only if leave has been obtained from the DOT decisionmaker or, if applicable, the administrative law judge, on written motion and for good cause shown.

(2) Such motions shall contain a concise statement of the matters relied upon as good cause and shall be attached to the pleading or other document for which leave to file is sought, or the written motion may be incorporated into the otherwise unauthorized document for which admission is sought. In such event, the document filed shall be titled to describe both the motion and the underlying documents.

(3) Such motions must be filed within seven (7) days after service of any document, order, or ruling to which the proposed filing is responsive and must be served on all parties to the proceeding.

(f) *Official docket copy.* With respect to all documents filed under this part that are scanned, the electronic scanned record produced by the Department shall thereafter be the official docket copy of the document and any subsequent copies generated by the Department's electronic records system will be usable for admission as record copies in any proceeding before the Department.

(g) *Retention of documents by the Department.* All documents filed with or presented to the Department may be retained in the files of Department of Transportation Dockets. However, the Department may permit the withdrawal of original documents by motion upon the submission of properly authenticated copies to replace such documents.

§ 302.4 General requirements as to documents.

(a) *Contents.* (1) In case there is no rule, regulation, or order of the Department that prescribes the contents of a formal application, petition, complaint, motion or other authorized or required document, such document shall contain a proper identification of the parties concerned, a concise but complete statement of the facts relied upon and the relief sought, and, where required, such document shall be accompanied by an Environmental Assessment, in conformity with the provisions of part 313 of this chapter.

(2)(i) Each document must include with or provide on its first page:

(A) The docket title and subject;

(B) The relevant operating administration before which the application or request is filed;

(C) The identity of the filer and its filing agent, if applicable;

(D) The name and mailing address of the designated agent for service of any documents filed in the proceeding, along with the telephone and facsimile numbers and, if available, electronic mail address of that person; and

(E) The title of the specific action being requested.

Department of Transportation Dockets has an Expedited Processing Sheet that

filers can use to assist in preparing this index.

(3) All documents filed under this part consisting of twenty (20) or more pages must contain a subject index of the matter in such document, with page references.

(b) *Subscription*. Every application, petition, complaint, motion or other authorized or required document must be signed by the party filing the same, or by a duly authorized officer or the attorney-at-law of record of such party, or by any other person so authorized. The signature of the person signing the document constitutes a certification that he or she has read the document; that to the best of his or her knowledge, information, and belief every statement contained in the document is true and no such statements are misleading; and that the document is not interposed for delay.

§ 302.5 Amendment of documents.

(a) An application may be amended prior to the filing of answers thereto, or, if no answer is filed, prior to the issuance of an order establishing further procedures, disposing of the application, or setting the case for hearing. Thereafter, applications may be amended only if leave is granted pursuant to the procedures set forth in § 302.11.

(b) Except as otherwise provided, if properly amended, a document and any statutory deadline shall be made effective as of the date of original filing but the time prescribed for the filing of an answer or any further responsive document directed towards the amended document shall be computed from the date of the filing of the amendment.

§ 302.6 Responsive documents.

(a) *Answers*. Answers to applications, complaints, petitions, motions or other documents or orders instituting proceedings may be filed by any person. In hearing cases, answers may be filed by any party to such proceedings or any person who has a petition for intervention pending. Except as otherwise provided, answers are not required.

(b) *Further responsive documents*. Except as otherwise provided, no reply to an answer, reply to a reply, or any further responsive document shall be filed. Where such further responsive documents are not permitted, all new matter contained in an answer filed pursuant to paragraph (a) of this section shall be deemed controverted.

(c) *Time for filing*. Except as otherwise provided, an answer or any further responsive document shall be filed within seven (7) days after service of the document to which such responsive filing is directed.

§ 302.7 Service of documents.

(a) *Who makes service*—(1) *The Department*. Formal complaints, notices, orders, and similar documents issued by the Department will be served by the Department upon all parties to the proceeding.

(2) *The parties*. Answers, petitions, motions, briefs, exceptions, notices, protests, or memoranda, or any other documents filed by any party or other person with the Department shall be served by such party or other person upon all parties to the proceeding in which it is filed; including, where applicable, all persons who have petitioned for intervention in, or consolidation of applications with, such proceeding. Proof of service shall accompany all documents when they are filed. The Department may require additional service of any document(s).

(b) *How service may be made*. Service may be made by first class mail, express mail, priority mail, registered or certified mail, facsimile transmission, personal delivery, or by electronic mail. The Department may prescribe other means of service by order or notice. The means of service selected must be such as to permit compliance with section 46103 of the Statute, which provides for service of notices and processes in a proceeding by personal service or registered or certified mail.

(c) *Who may be served*. Service upon a party or person may be made upon an individual, or upon a member of a partnership or firm to be served, or upon the president or other officer of the corporation, company, firm, or association to be served, or upon the assignee or legal successor of any of the foregoing, or upon any attorney of record for the party, or upon the agent designated by an air carrier or foreign air carrier under section 46103 of the Statute, but it shall be served upon a person designated by a party to receive service of documents in a particular proceeding in accordance with § 302.4(a)(2)(iv) once a proceeding has been commenced.

(d) *Where service may be made*. Service shall be made at the principal place of business of the party to be served, or at his or her usual residence if he or she is an individual, or at the office of the party's attorney of record, or at the office or usual residence of the agent designated by an air carrier or foreign air carrier under section 46103 of the Statute, or at the post office or electronic address or facsimile number stated for a person designated to receive service pursuant to § 302.4(a)(2)(iv).

(e) *Proof of service*. Proof of service of any document shall consist of one of the following:

(1) A certificate of mailing executed by the person mailing the document.

(2) A certificate of successful transmission executed by the person transmitting the document by facsimile or electronic mail, listing the facsimile numbers or electronic mail address to which the document was sent.

(3) An acknowledgment of service signed by a person receiving service personally, or a certificate of the person making personal service.

(f) *Date of service*. Whenever proof of service by post office or electronic mail is made, the date of mailing shall be the date of service. Whenever proof of service by personal delivery or facsimile transmission is made, the date of such delivery or facsimile transmission shall be the date of service.

(g) *Freely Associated State Proceedings*. In any proceeding directly involving air transportation to the Federated States of Micronesia, the Marshall Islands, or Palau, the Department and any party or participant in the proceeding shall serve all documents on the President and the designated authorities of the government(s) involved. This requirement shall apply to all proceedings where service is otherwise required, and shall be in addition to any other service required by this chapter.

(h) *Alaska Proceedings*. In any proceeding that affects a point in Alaska, the person filing shall send an additional copy to: U.S. Department of Transportation, Alaska Field Office, 801 B Street, Suite 506, Anchorage, Alaska 99501–3657.

§ 302.8 Computation of time.

In computing any period of time prescribed or allowed by this part, by notice, order or regulation or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday for the Department, in which event the period runs until the end of the next day that is neither a Saturday, Sunday, nor holiday. When the period of time prescribed is seven (7) days or fewer, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation, unless otherwise specified by the DOT decisionmaker or the administrative law judge assigned to the proceeding, as the case may be.

§ 302.9 Continuances and extensions of time.

(a) Whenever a party has the right or obligation to take action within a period prescribed by this part, by a notice given thereunder, or by an order or regulation, the DOT decisionmaker or the administrative law judge assigned to the proceeding, as appropriate, may:

(1) Before the expiration of the prescribed period, with or without notice, extend such period, or

(2) upon motion, permit the act to be done after the expiration of the specified period, where good cause for the failure to act on time is clearly shown.

(b) Except where an administrative law judge has been assigned to a proceeding, requests for continuance or extensions of time, as described in paragraph (a) of this section, shall be directed to the DOT decisionmaker. Requests for continuances and extensions of time may be directed to the Chief Administrative Law Judge in the absence of the administrative law judge assigned to the proceeding.

§ 302.10 Parties.

(a) In addition to the persons set forth in § 302.2, in hearing cases, parties shall include appropriate Department staff designated to participate in the proceeding and any persons authorized to intervene or granted permission to participate in accordance with §§ 302.19 and 302.20. In any proceeding directly involving air transportation to the Federated States of Micronesia, the Marshall Islands or Palau, these governments or their designated authorities shall be a party.

(b) Upon motion and for good cause shown, the Department may order a substitution of parties, except that in case of the death of a party, substitution may be ordered without the filing of a motion.

(c) An association composed entirely or in part of direct air carriers may participate in any proceedings of the Department to which the Department's procedural regulations apply if the association represents members that are identified in any documents filed with the Department, and that have specifically authorized the positions taken by the association in that proceeding. The specific authorizations may be informal and evidence of them shall be provided only upon request of the Department. Upon motion of any interested person or upon its own initiative, the Department may issue an order requiring an association to withdraw from a case on the grounds of significant divergence of interest or position within the association.

§ 302.11 Motions.

(a) *Generally.* An application to the DOT decisionmaker or an administrative law judge for an order or ruling not otherwise specifically provided for in this part shall be by motion. If an administrative law judge is assigned to a proceeding and before the issuance of a recommended or initial decision or the certification of the record to the DOT decisionmaker, all motions shall be addressed to the administrative law judge. At all other times, motions shall be addressed to the DOT decisionmaker. All motions shall be made at an appropriate time depending upon the nature thereof and the relief requested therein. This paragraph should not be construed as authorizing motions in the nature of petitions for reconsideration.

(b) *Form and contents.* Unless made during a hearing, motions shall be made in writing in conformity with §§ 302.3 and 302.4, shall state their grounds and the relief or order sought, and shall be accompanied by any affidavits or other evidence desired to be relied upon. Motions made during hearings, answers to them, and rulings on them, may be made orally on the record unless the administrative law judge directs otherwise. Written motions shall be filed as separate documents, and shall not be incorporated in any other documents, except where incorporation of a motion in another document is specifically authorized by the Department, or where a document is filed that requests alternative forms of relief and one of these alternative requests is properly to be made by motion. In these instances the document filed shall be appropriately titled and identified to indicate that it incorporates a motion; otherwise, the motion will be disregarded.

(c) *Answers to motions.* Within seven (7) days after a motion is served, or such other period as the DOT decisionmaker or the administrative law judge may fix, any party to the proceeding may file an answer in support of or in opposition to the motion, accompanied by such affidavits or other evidence as it desires to rely upon. Except as otherwise provided, no reply to an answer, reply to a reply, or any further responsive document shall be filed.

(d) *Oral arguments; briefs.* No oral argument will be heard on motions unless the DOT decisionmaker or the administrative law judge otherwise directs. Written memoranda or briefs may be filed with motions or answers to motions, stating the points and authorities relied upon in support of the position taken.

(e) *Requests for expedition.* Any interested person may by motion request expedition of any proceeding or file an answer in support of or in opposition to such motions.

(f) *Effect of pendency of motions.* The filing or pendency of a motion shall not automatically alter or extend the time to take action fixed by this part or by any order of the Department or of an administrative law judge (or any extension granted thereunder).

(g) *Disposition of motions.* The DOT decisionmaker shall pass upon all motions properly submitted to him or her for decision. The administrative law judge shall pass upon all motions properly addressed to him or her, except that, if the administrative law judge finds that a prompt decision by the DOT decisionmaker on a motion is essential to the proper conduct of the proceeding, the administrative law judge may refer such motion to the DOT decisionmaker for decision.

(h) *Appeals to the DOT decisionmaker from rulings of administrative law judges.* Rulings of administrative law judges on motions may not be appealed to the DOT decisionmaker prior to his or her consideration of the entire proceeding except in extraordinary circumstances and with the consent of the administrative law judge. An appeal shall be disallowed unless the administrative law judge finds, either on the record or in writing, that the allowance of such an appeal is necessary to prevent substantial detriment to the public interest or undue prejudice to any party. If an appeal is allowed, any party may file a brief with the DOT decisionmaker within such period as the administrative law judge directs. No oral argument will be heard unless the DOT decisionmaker directs otherwise. The rulings of the administrative law judge on a motion may be reviewed by the DOT decisionmaker in connection with his or her final action in the proceeding or at any other appropriate time irrespective of the filing of an appeal or any action taken on it.

§ 302.12 Objections to public disclosure of information.

(a) *Generally.* Part 7 of the Office of the Secretary regulations, Public Availability of Information, governs the availability of records and documents of the Department to the public. (49 CFR 7)

(b) *Information contained in written documents.* Any person who objects to the public disclosure of any information filed in any proceeding, or pursuant to the provisions of the Statute, or any

Department rule, regulation, or order, shall segregate, or request the segregation of, such information into a separate submission and shall file it separately in a sealed envelope, bearing the caption of the enclosed submission, and the notation ''Classified or Confidential Treatment Requested Under § 302.12.'' At the time of filing such submission (or, when the objection is made by a person who is not the filer, within five (5) days after the filing of such submission), the objecting party shall file a motion to withhold the information from public disclosure, in accordance with the procedure outlined in paragraph (d) or (f) of this section, as appropriate. Notwithstanding any other provision of this section, copies of the filed submission and of the motion need not be served upon any other party unless so ordered by the Department.

(c) *Information contained in oral testimony.* Any person who objects to the public disclosure of any information sought to be elicited from a witness or deponent on oral examination shall, before such information is disclosed, make his or her objection known. Upon such objection duly made, the witness or deponent shall be compelled to disclose such information only in the presence of the administrative law judge or the person before whom the deposition is being taken, as the case may be, the official stenographer and such attorneys for and representative of each party as the administrative law judge or the person before whom the deposition is being taken shall designate, and after all present have been sworn to secrecy. The transcript of testimony containing such information shall be segregated and filed in a sealed envelope, bearing the title and docket number of the proceeding, and the notation ''Classified or Confidential Treatment Requested Under § 302.12 Testimony Given by (name of witness or deponent).'' Within five (5) days after such testimony is given, the objecting person shall file a motion in accordance with the procedure outlined in paragraph (d) of this section, to withhold the information from public disclosure. Notwithstanding any other provision of this section, copies of the segregated portion of the transcript and of the motion need not be served upon any other party unless so ordered by the Department.

(d) *Form of motion.* Motions to withhold from public disclosure information covered by paragraphs (b) and (c) of this section shall be filed with the Department in accordance with the following procedure:

(1) The motion shall include:

(i) A description of the information sought to be withheld, sufficient for identification of the same;

(ii) A statement explaining how and why the information falls within the exemptions from the Freedom of Information Act (5 U.S.C. 552(b) (1)–(9)); and

(iii) A statement explaining how and why public disclosure of the information would adversely affect the interests of the objecting persons and is not required in the interest of the public.

(2) Such motion shall be filed with the person conducting the proceeding, or with the person with whom said application, report, or submission is required to be filed. Such motion will be denied when the complete justification required by this paragraph is not provided.

(3) During the pendency of such motion, the ruling official may, by notice or order, allow limited disclosure to parties' representatives, for purposes of participating in the proceeding, upon submission by them of affidavits swearing to protect the confidentiality of the documents at issue.

(e) *Conditions of disclosure.* The order, notice or other action of the Department containing its ruling upon each such motion will specify the extent to which, and the conditions upon which, the information may be disclosed to the parties and to the public, which ruling shall become effective upon the date stated therein, unless, within five (5) days after the date of the entry of the Department's order with respect thereto, a petition is filed by the objecting person requesting reconsideration by the Department, or a written statement is filed indicating that the objecting person in good faith intends to seek judicial review of the Department's order.

(f) *Objection by Government departments or representative thereof.* In the case of objection to the public disclosure of any information filed by or elicited from any United States Government department or agency, or representative thereof, under paragraph (b) or (c) of this section, the department or agency making such objection shall be exempted from the provisions of paragraphs (b), (c), and (d) of this section insofar as said paragraphs require the filing of a written objection to such disclosure. However, any department, agency, or representative thereof may, if it so desires, file a memorandum setting forth the reasons why it is claimed that a public disclosure of the information should not be made. If such a memorandum is submitted, it shall be filed and handled as is provided by this section in the case of a motion to withhold information from public disclosure.

§ 302.13 Consolidation of proceedings.

(a) *Initiation of consolidations.* The Department, upon its own initiative or upon motion, may consolidate for hearing or for other purposes or may contemporaneously consider two or more proceedings that involve substantially the same parties, or issues that are the same or closely related, if it finds that such consolidation or contemporaneous consideration will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings. Although the Department may, in any particular case, consolidate or contemporaneously consider two or more proceedings on its own motion, the burden of seeking consolidation or contemporaneous consideration of a particular application shall rest upon the applicant and the Department will not undertake to search its docket for all applications that might be consolidated or contemporaneously considered.

(b) *Time for filing.* Unless the Department has provided otherwise in a particular proceeding, a motion to consolidate or contemporaneously consider an application with any other application shall be filed within 21 days of the original application in the case of international route awards under section 41102 (*see* § 302.212), or, where a proceeding has been set for hearing before an administrative law judge, not later than the prehearing conference in the proceeding with which consolidation or contemporaneous consideration is requested. If made at such conference, the motion may be oral. All motions for consolidation or consideration of issues that enlarge, expand, or otherwise change the nature of the proceeding shall be addressed to the DOT decisionmaker, unless made orally at the prehearing conference, in which event the presiding administrative law judge shall present such motion to the DOT decisionmaker for his or her decision. A motion that is not timely filed, or that does not relate to an application pending at such time, shall be dismissed unless the movant shall clearly show good cause for failure to file such motion or application on time.

(c) *Answer.* If a motion to consolidate two or more proceedings is filed with the Department, any party to any of such proceedings, or any person who has a petition for intervention pending, may file an answer to such motion within such period as the DOT decisionmaker may permit. The

administrative law judge may require that answers to such motions be stated orally at the prehearing conference in the proceeding with which the consolidation is proposed.

§ 302.14 Petitions for reconsideration.

(a) *Department orders subject to reconsideration; time for filing.* (1) Unless an order or a rule of the Department specifically provides otherwise:

(i) Any interested person may file a petition for reconsideration of any interlocutory order issued by the Department that institutes a proceeding; and

(ii) Any party to a proceeding may file a petition for reconsideration, rehearing, or reargument of final orders issued by the Department (*See* § 302.38), or an interlocutory order that defines the scope and issues of a proceeding or suspends a provision of a tariff on file with the Department.

(2)Unless otherwise provided, petitions for reconsideration shall be filed, in the case of a final order, within twenty (20) days after service thereof, and, in the case of an interlocutory order, or a final decision described in § 302.220, within ten (10) days after service. However, neither the filing nor the granting of such a petition shall operate as a stay of such final or interlocutory order unless specifically so ordered by the DOT decisionmaker. Within ten (10) days after a petition for reconsideration, rehearing, or reargument is filed, any party to the proceeding may file an answer in support of or in opposition. Motions for extension of time to file a petition or answer, and for leave to file a petition or answer after the time for the filing has expired, will not be granted except on a showing of unusual and exceptional circumstances, constituting good cause for the movant's inability to meet the established procedural dates.

(b) *Contents of petition.* A petition for reconsideration, rehearing, or reargument shall state, briefly and specifically, the matters of record alleged to have been erroneously decided, the ground relied upon, and the relief sought. If a decision by the Secretary or Deputy Secretary is requested, the petition should describe in detail the reasons for such request and specify any important national transportation policy issues that are presented. If the petition is based, in whole or in part, on allegations as to the consequences that would result from the final order, the basis of such allegations shall be set forth. If the petition is based, in whole or in part, on new matter, such new matter shall be set forth, accompanied by a statement to the effect that petitioner, with due diligence, could not have known or discovered such new matter prior to the date the case was submitted for decision. Unless otherwise directed by the DOT decisionmaker upon a showing of unusual or exceptional circumstances, petitions for reconsideration, rehearing or reargument or answers thereto that exceed twenty-five (25) pages (including appendices) in length shall not be accepted for filing by Department of Transportation Dockets.

(c) *Successive petitions.* A successive petition for rehearing, reargument, reconsideration filed by the same party or person, and upon substantially the same ground as a former petition that has been considered or denied will not be entertained.

Non-Hearing Proceedings

§ 302.15 Non-hearing procedures.

In cases where oral evidentiary hearing procedures will not be used, §§ 302.17 through 302.37, relating to hearing procedures, shall not be applicable except to the extent that the DOT decisionmaker shall determine that the application of some or all of such rules in the particular case will be conducive to the proper dispatch of its business and to the ends of justice. References in these and other sections of this part to powers or actions by administrative law judges shall not apply.

Rulemaking Proceedings

§ 302.16 Petitions for rulemaking.

Any interested person may petition the Department for the issuance, amendment, modification, or repeal of any regulation, subject to the provisions of part 5, Rulemaking Procedures, of the Office of the Secretary regulations (49 CFR 5):

Oral Evidentiary Hearing Proceedings

§ 302.17 Administrative law judges.

(a) *Powers and delegation of authority.* (1) An administrative law judge shall have the following powers, in addition to any others specified in this part:

(i) To give notice concerning and to hold hearings;

(ii) To administer oaths and affirmations;

(iii) To examine witnesses;

(iv) To issue subpoenas and to take or cause depositions to be taken;

(v) To rule upon offers of proof and to receive relevant evidence;

(vi) To regulate the course and conduct of the hearing;

(vii) To hold conferences before or during the hearing for the settlement or simplification of issues;

(viii) To rule on motions and to dispose of procedural requests or similar matters;

(ix) To make initial or recommended decisions as provided in § 302.31;

(x) To take any other action authorized by this part or by the Statute.

(2) The administrative law judge shall have the power to take any other action authorized by part 385 of this chapter or by the Administrative Procedure Act.

(3) The administrative law judge assigned to a particular case is delegated the DOT decisionmaker's function of making the agency decision on the substantive and procedural issues remaining for disposition at the close of the hearing in such case, except that this delegation does not apply in cases where the record is certified to the DOT decisionmaker, with or without an initial or recommended decision by the administrative law judge, or in cases requiring Presidential approval under section 41307 of the Statute. This delegation does not apply to the review of rulings by the administrative law judge on interlocutory matters that have been appealed to the DOT decisionmaker in accordance with the requirements of § 302.11.

(4) The administrative law judge's authority in each case will terminate either upon the certification of the record in the proceeding to the DOT decisionmaker, or upon the issuance of an initial or recommended decision, or when he or she shall have withdrawn from the case upon considering himself or herself disqualified.

(b) *Disqualification.* An administrative law judge shall withdraw from the case if at any time he or she deems himself or herself disqualified. If, prior to the initial or recommended decision in the case, there is filed with the administrative law judge, in good faith, an affidavit of personal bias or disqualification with substantiating facts and the administrative law judge does not withdraw, the DOT decisionmaker shall determine the matter, if properly presented by exception or brief, as a part of the record and decision in the case. The DOT decisionmaker shall not otherwise consider any claim of bias or disqualification. The DOT decisionmaker, in his or her discretion, may order a hearing on a charge of bias or disqualification.

§ 302.18 DOT decisionmaker.

(a) *Assistant Secretary for Aviation and International Affairs.* Except as provided in paragraphs (b) and (c) of

this section, the Assistant Secretary for Aviation and International Affairs is the DOT decisionmaker. The Assistant Secretary shall have all of the powers set forth in § 302.17(a)(1) and those additional powers delegated by the Secretary. The Assistant Secretary may delegate this authority in appropriate non-hearing cases to subordinate officials.

(b) *Oral hearing cases assigned to the senior career official.* Carrier selection proceedings for international route authority that are set for oral hearing and such other oral hearing cases as the Secretary deems appropriate will be assigned to the senior career official in the Office of the Assistant Secretary for Aviation and International Affairs, who will serve as the DOT decisionmaker. In all such cases, the administrative law judge shall render a recommended decision to the senior career official, who shall have all of the powers set forth in § 302.17(a)(1) and those additional powers delegated by the Secretary.

(1) Decisions of the senior career official are subject to review by, and at the discretion of, the Assistant Secretary for Aviation and International Affairs. Petitions for discretionary review of decisions of the senior career official will not be entertained. A notice of review by the Assistant Secretary will establish the procedures for review and will be issued within 14 days after the decision of the senior career official is adopted. Unless a notice of review is issued, the decision of the senior career official will be issued as a final decision of the Department.

(2) Final decisions of the senior career official may be reviewed upon a petition for reconsideration filed pursuant to § 302.14. Such a petition shall state clearly the basis for requesting reconsideration and shall specify any questions of national transportation policy that may be involved. The Assistant Secretary will either grant or deny the petition.

(3) Upon review or reconsideration, the Assistant Secretary may either affirm the decision or remand the decision to the senior career official for further action consistent with such order of remand.

(4) Subject to the provisions of paragraphs (b) (2) and (3) of this section, final decisions of the senior career official will be transmitted to the President of the United States when required under 49 U.S.C. 41307.

(c) *Secretary and Deputy Secretary.* The Secretary or Deputy Secretary may exercise any authority of the Assistant Secretary whenever he or she believes a decision involves important questions of national transportation policy.

§ 302.19 Participation by persons not parties.

Any person, including any State, subdivision thereof, State aviation commission, or other public body, may appear at any hearing, other than in an enforcement proceeding, and present any evidence that is relevant to the issues. With the consent of the administrative law judge or the DOT decisionmaker, such person may also cross-examine witnesses directly. Such persons may also present to the administrative law judge a written statement on the issues involved in the proceeding. Such written statements shall be filed and served on all parties prior to the close of the hearing.

§ 302.20 Formal intervention.

(a) *Who may intervene.* Any person who has a statutory right to be made a party to an oral evidentiary hearing proceeding shall be permitted to intervene. Any person whose intervention will be conducive to the ends of justice and will not unduly delay the conduct of such proceeding may be permitted to intervene.

(b) *Considerations relevant to determination of petition to intervene.* In passing upon a petition to intervene, the following factors, among other things, will be considered and will be liberally interpreted to facilitate the effective participation by members of the public in Department proceedings:

(1) The nature of the petitioner's right under the statute to be made a party to the proceeding;

(2) The nature and extent of the property, financial or other interest of the petitioner;

(3) The effect of the order that may be entered in the proceeding on petitioner's interest;

(4) The availability of other means whereby the petitioner's interest may be protected;

(5) The extent to which petitioner's interest will be represented by existing parties;

(6) The extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record; and

(7) The extent to which participation of the petitioner will broaden the issues or delay the proceeding.

(c) *Petition to intervene*—(1) *Contents.* Any person desiring to intervene in a proceeding shall file a petition in conformity with this part setting forth the facts and reasons why he or she thinks he or she should be permitted to intervene. The petition should make specific reference to the factors set forth in paragraph (b) of this section.

(2) *Time for filing.* Unless otherwise ordered by the Department:

(i) A petition to intervene shall be filed with the Department prior to the first prehearing conference, or, in the event that no such conference is to be held, not later than fifteen (15) days prior to the hearing.

(ii) A petition to intervene filed by a city, other public body, or a chamber of commerce shall be filed with the Department not later than the last day prior to the beginning of the hearing.

(iii) A petition to intervene that is not timely filed shall be dismissed unless the petitioner shall clearly show good cause for his or her failure to file such petition on time.

(3) *Answer.* Any party to a proceeding may file an answer to a petition to intervene, making specific reference to the factors set forth in paragraph (b) of this section, within seven (7) days after the petition is filed.

(4) *Disposition.* The decision granting, denying or otherwise ruling on any petition to intervene may be issued without receiving testimony or oral argument either from the petitioner or other parties to the proceeding.

(d) *Effect of granting intervention.* A person permitted to intervene in a proceeding thereby becomes a party to the proceeding. However, interventions provided for in this section are for administrative purposes only, and no decision granting leave to intervene shall be deemed to constitute an expression by the Department that the intervening party has such a substantial interest in the order that is to be entered in the proceeding as will entitle it to judicial review of such order.

§ 302.21 Appearances.

(a) Any party to a proceeding may appear and be heard in person or by a designated representative.

(b) No register of persons who may practice before the Department is maintained and no application for admission to practice is required.

(c) Any person practicing or desiring to practice before the Department may, upon hearing and good cause shown, be suspended or barred from practicing.

§ 302.22 Prehearing conference.

(a) *Purpose and scope of conference.* At the discretion of the administrative law judge, a prehearing conference may be called prior to any hearing. Written notice of the prehearing conference shall be sent by the administrative law judge to all parties to a proceeding and to other persons who appear to have an interest in such proceeding. The

purpose of such a conference is to define the issues and the scope of the proceeding, to secure statements of the positions of the parties and amendments to the pleadings, to schedule the exchange of exhibits before the date set for hearing, and to arrive at such agreements as will aid in the conduct and disposition of the proceeding. For example, consideration will be given to:

(1) Matters that the DOT decisionmaker can consider without the necessity of proof;

(2) Admissions of fact and of the genuineness of documents;

(3) Requests for documents;

(4) Admissibility of evidence;

(5) Limitation of the number of witnesses;

(6) Reducing of oral testimony to exhibit form;

(7) Procedure at the hearing; and

(8) Use of electronic media as a basis for exchange of briefs, hearing transcripts and exhibits, etc., in addition to the official record copy.

(b) *Actions during prehearing conference.* The administrative law judge may require a further conference, or responsive pleadings, or both. If a party refuses to produce documents requested by another party at the conference, the administrative law judge may compel the production of such documents prior to a hearing by subpoena issued in accordance with the provisions of § 302.25 as though at a hearing. Applications for the production prior to hearing of documents in the Department's possession shall be addressed to the administrative law judge, in accordance with the provisions of § 302.25(g), in the same manner as provided therein for production of documents at a hearing. The administrative law judge may also, on his or her own initiative or on motion of any party, direct any party to the proceeding (air carrier or non-air carrier) to prepare and submit exhibits setting forth studies, forecasts, or estimates on matters relevant to the issues in the proceeding.

(c) *Report of prehearing conference.* The administrative law judge shall issue a report of prehearing conference, defining the issues, giving an account of the results of the conference, specifying a schedule for the exchange of exhibits and rebuttal exhibits, the date of hearing, and specifying a time for the filing of objections to such report. The report shall be served upon all parties to the proceeding and any person who appeared at the conference. Objections to the report may be filed by any interested person within the time specified therein. The administrative law judge may revise his or her report in the light of the objections presented. The revised report, if any, shall be served upon the same persons as was the original report. Exceptions may be taken on the basis of any timely written objection that has not been met by a revision of the report if the exceptions are filed within the time specified in the revised report. Such report shall constitute the official account of the conference and shall control the subsequent course of the proceeding, but it may be reconsidered and modified at any time to protect the public interest or to prevent injustice.

§ 302.23 Hearing.

The administrative law judge to whom the case is assigned or the DOT decisionmaker shall give the parties reasonable notice of a hearing or of the change in the date and place of a hearing and the nature of such hearing.

§ 302.24 Evidence.

(a) Evidence presented at the hearing shall be limited to material evidence relevant to the issues as drawn by the pleadings or as defined in the report of prehearing conference, subject to such later modifications of the issues as may be necessary to protect the public interest or to prevent injustice, and shall not be unduly repetitious. Evidence shall be presented in such form by all parties as the administrative law judge may direct.

(b) *Objections to evidence.* Objections to the admission or exclusion of evidence shall be in short form, stating the grounds of objections relied upon, and the transcript shall not include argument or debate except as ordered by the administrative law judge. Rulings on such objections shall be a part of the transcript.

(c) *Exhibits.* When exhibits are offered in evidence, one copy must be furnished to each of the parties at the hearing, and two copies to the administrative law judge, unless the parties previously have been furnished with copies or the administrative law judge directs otherwise. If the administrative law judge has not fixed a time for the exchange of exhibits, the parties shall exchange copies of exhibits at the earliest practicable time, preferably before the hearing or, at the latest, at the commencement of the hearing. Copies of exhibits may, at the discretion of the administrative law judge or the DOT decisionmaker, be furnished by use of electronic media in addition to an official record copy.

(d) *Substitution of copies for original exhibits.* In his or her discretion, the administrative law judge may permit a party to withdraw original documents offered in evidence and substitute true copies in lieu thereof.

(e) *Designation of parts of documents.* When relevant and material matter offered in evidence by any party is embraced in a book, paper, or document containing other matter not material or relevant, the party offering the same shall plainly designate the matter so offered. The immaterial and irrelevant parts shall be excluded and shall be segregated insofar as practicable. If the volume of immaterial or irrelevant matter would unduly encumber the record, such submission will not be received in evidence, but may be marked for identification, and, if properly authenticated, the relevant or material matter may be read into the record, or, if the administrative law judge so directs, a true copy of such matter, in proper form, shall be received as an exhibit, and like copies delivered by the party offering the same to opposing parties or their attorneys appearing at the hearing, who shall be afforded an opportunity to examine the submission, and to offer in evidence in like manner other portions of the exhibit.

(f) *Records in other proceedings.* In case any portion of the record in any other proceeding or civil or criminal action is offered in evidence, a true copy of such portion shall be presented for the record in the form of an exhibit unless:

(1) The portion is specified with particularity in such manner as to be readily identified;

(2) The party offering the same agrees unconditionally to supply such copies later, or when required by the DOT decisionmaker;

(3) The parties represented at the hearing stipulate upon the record that such portion may be incorporated by reference, and that any portion offered by any other party may be incorporated by like reference upon compliance with paragraphs (f) (1) and (2) of this section; and

(4) The administrative law judge directs such incorporation or waives the requirement in paragraph (f)(3) of this section with the consent of the parties.

(g) *Official notice of facts contained in certain documents.* (1) Without limiting, in any manner or to any extent, the discretionary powers of the DOT decisionmaker and the administrative law judge to notice other matters or documents properly the subject of official notice, facts contained in any document within the categories enumerated in this subdivision are officially noticed in all formal economic proceedings except those subject to subpart D of this part. Each such

category shall include any document antedating the final Department decision in the proceeding where such notice is taken. The matters officially noticed under the provisions of this paragraph are:

1. Air carrier certificates or applications therefor, together with any requests for amendment, and pleadings responding to applications when properly filed.
2. All Form 41 reports required to be filed by air carriers with the Department.
3. Reports of Traffic and Financial Data of all U.S. Air Carriers issued by the Civil Aeronautics Board (CAB) or the Department.
4. Airline Traffic Surveys and Passenger Origin-Destination Surveys, Domestic and International, compiled by the CAB or the Department and published and/or made available either to the public or to parties in proceedings.
5. Compilations of data relating to competition in the airline industry and made available to the public by the CAB or the Department, such as the 1990 Airline Competition Study.
6. Passenger, mail, express, and freight data submitted to the CAB or the Department as part of ER–586 Service Segment Data by U.S. carriers, or similar data submitted to the Department by U.S. air carriers (T–100) or by foreign air carriers (T–100F) that is not confidential.
7. All tariffs, including the electronic versions, and amendments thereof, of all air carriers, on file with the Department.
8. Service Mail Pay and Subsidy for U.S. Certificated Air Carriers published by the CAB and any supplemental data and subsequent issues published by the CAB or the Department.
9. Airport Activity Statistics of Certificated Air Carriers compiled and published by the Federal Aviation Administration (FAA) or the Department.
10. Air Traffic Activity Data issued by the FAA.
11. National Plan of Integrated Airport Systems (NPIAS) issued by the FAA.
12. Airport Facilities Directory, Form 5010, issued by the FAA.
13. The Airman's Information Manual issued by the FAA.
14. ICAO Statistical Summary, Preliminary Issues and Nos. 1 through 14, and Digest of Statistics, Nos. 15 through 71, prepared by ICAO, Montreal, Canada, with all changes and additions.
15. Monthly, quarterly and annual reports of the Immigration and Naturalization Service, U.S. Department of Justice.
16. All forms and reports required by the U.S. Postal Service to be filed by air carriers authorized to transport mail.
17. All orders of the Postmaster General designating schedules for the transportation of mail.
18. Publications of the Bureau of the Census of the U.S. Department of Commerce (DOC) relating, but not necessarily limited, to population, manufacturing, business, statistics, and any yearbooks, abstracts, or similar publications published by DOC.
19. ABC World Airways Guide and all Official Airline Guides, including the North American, Worldwide, All-Cargo and quick reference editions, including electronic versions.
20. Official Guide of the Railways and Russell's Official National Motor Coach Guide.
21. The Rand McNally Commercial Atlas and Marketing Guide, and the Rand McNally Road Atlas, United States, Canada, and Mexico.
22. Survey of Buying Power published by Sales Management Magazine.

(2) Any fact contained in a document belonging to a category enumerated in paragraph (g)(1) of this section shall be deemed to have been physically incorporated into and made part of the record in such proceedings. However, such taking of official notice shall be subject to the rights granted to any party or intervener to the proceeding under section 7(d) of the Administrative Procedure Act (5 U.S.C. 557(d)).

(3) The decisions of the Department and its administrative law judges may officially notice any appropriate matter without regard to whether or not such items are contained in a document belonging to the categories enumerated in paragraph (g)(1) of this section. However, where the decision rests on official notice of a material fact or facts, it will set forth such items with sufficient particularity to advise interested persons of the matters that have been noticed.

(h) *Receipt of documents after hearing.* No document or other writings shall be accepted for the record after the close of the hearing except in accordance with an agreement of the parties and the consent of the administrative law judge or the DOT decisionmaker.

(i) *Exceptions.* Formal exceptions to the rulings of the administrative law judge made during the course of the hearing are unnecessary. For all purposes for which an exception otherwise would be taken, it is sufficient that a party, at the time the ruling of the administrative law judge is made or sought, makes known the action he or she desires the administrative law judge to take or his or her objection to an action taken, and his or her grounds therefor.

(j) *Offers of proof.* Any offer of proof made in connection with an objection taken to any ruling of the administrative law judge rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence that counsel contends would be adduced by such testimony, and if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

§ 302.25 Subpoenas.

(a) An application for a subpoena requiring the attendance of a witness at a hearing or the production of documentary evidence may be made without notice by any party to the administrative law judge or, in the event that an administrative law judge has not been assigned to a proceeding or is not available, to the DOT decisionmaker or the Chief Administrative Law Judge, for action.

(b) An application for a subpoena shall be in duplicate except that if it is made during the course of a hearing, it may be made orally on the record with the consent of the administrative law judge.

(c) All such applications, whether written or oral, shall contain a statement or showing of general relevance and reasonable scope of the evidence sought, and shall be accompanied by two copies of a draft of the subpoena sought that, in the case of evidence, shall describe the documentary or tangible evidence to be subpoenaed with as much particularity as is feasible, or, in the case of a witness, the name of the witness and a general description of the matters concerning which the witness will be asked to testify.

(d) The administrative law judge or DOT decisionmaker considering any application for a subpoena shall issue the subpoena requested if the application complies with this section. No attempt shall be made to determine the admissibility of evidence in passing upon an application for a subpoena, and no detailed or burdensome showing shall be required as a condition to the issuance of a subpoena.

(e) Where it appears during the course of a proceeding that the testimony of a witness or documentary evidence is relevant to the issues in a proceeding, the administrative law judge, Chief Administrative Law Judge or DOT decisionmaker may issue on his or her own initiative a subpoena requiring such witness to attend and testify or requiring the production of such documentary evidence.

(f) Subpoenas issued under this section shall be served upon the person to whom directed in accordance with § 302.7(b). Any person upon whom a subpoena is served may within seven (7) days after service or at any time prior to the return date thereof, whichever is earlier, file a motion to quash or modify the subpoena with the administrative law judge or, in the event an administrative law judge has not been assigned to a proceeding or is not

available, to the DOT decisionmaker or the Chief Administrative Law Judge for action. If the person to whom the motion to modify or quash the subpoena has been addressed or directed, has not acted upon such a motion by the return date, such date shall be stayed pending his or her final action thereon. The DOT decisionmaker may at any time review, upon his or her own initiative, the ruling of an administrative law judge or the Chief Administrative Law Judge denying a motion to quash a subpoena. In such cases, the DOT decisionmaker may order that the return date of a subpoena be stayed pending action thereon.

(g) The provisions of this section are not applicable to the attendance of DOT employees or the production of documentary evidence in the custody thereof at a hearing. The attendance of DOT employees and the production of documentary evidence in their custody are governed by 49 CFR parts 9 and 7, respectively.

§ 302.26 Depositions.

(a) For good cause shown, the DOT decisionmaker or administrative law judge assigned to a proceeding may order that the testimony of a witness be taken by deposition and that the witness produce documentary evidence in connection with such testimony. Ordinarily an order to take the deposition of a witness will be entered only if:

(1) The person whose deposition is to be taken would be unavailable at the hearing,

(2) The deposition is deemed necessary to perpetuate the testimony of the witness, or

(3) The taking of the deposition is necessary to prevent undue and excessive expense to a party and will not result in an undue burden to other parties or in undue delay.

(b) Any party desiring to take the deposition of a witness shall make application therefor in duplicate to the administrative law judge or, in the event that an administrative law judge has not been assigned to a proceeding or is not available, to the DOT decisionmaker or Chief Administrative Law Judge, setting forth the reasons why such deposition should be taken, the name and residence of the witness, the time and place proposed for the taking of the deposition, and a general description of the matters concerning which the witness will be asked to testify. If good cause be shown, the administrative law judge, the DOT decisionmaker, or the Chief Administrative Law Judge, as the case may be, may, in his or her discretion, issue an order authorizing such deposition and specifying the witness whose deposition is to be taken, the general scope of the testimony to be taken, the time when, the place where, the designated officer (authorized to take oaths) before whom the witness is to testify, and the number of copies of the deposition to be supplied. Such order shall be served upon all parties by the person proposing to take the deposition a reasonable period in advance of the time fixed for taking testimony.

(c) Witnesses whose testimony is taken by deposition shall be sworn or shall affirm before any questions are put to them. Each question shall be recorded and the answers shall be taken down in the words of the witness.

(d) Objections to questions or evidence shall be in short form, stating the grounds of objection relied upon, but no transcript filed by the designated officer shall include argument or debate. Objections to questions or evidence shall be noted by the designated officer upon the deposition, but he or she shall not have power to decide on the competency or materiality or relevance of evidence, and he or she shall record the evidence subject to objection. Objections to questions or evidence not made before the designated officer shall not be deemed waived unless the ground of the objection is one that might have been obviated or removed if presented at that time.

(e) The testimony shall be reduced to writing by the designated officer, or under his or her direction, after which the deposition shall be signed by the witness unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign, and certified in usual form by the designated officer. If the deposition is not signed by the witness, the designated officer shall state on the record this fact and the reason therefor. The original deposition and exhibits shall be forwarded to Department of Transportation Dockets and shall be filed in the proceedings.

(f) Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examination. Ordinarily such procedure will be authorized only if necessary to achieve the purposes of an oral deposition and to serve the balance of convenience of the parties. The interrogatories shall be filed in quadruplicate with two copies of the application and a copy of each shall be served on each party. Within seven (7) days after service any party may file with the person to whom application was made two copies of his or her objections, if any, to such interrogatories and may file such cross-interrogatories as he or she desires to submit. Cross-interrogatories shall be filed in quadruplicate, and a copy thereof together with a copy of any objections to interrogatories, shall be served on each party, who shall have five (5) days thereafter to file and serve his or her objections, if any, to such cross-interrogatories. Objections to interrogatories or cross-interrogatories, shall be served on the DOT decisionmaker or the administrative law judge considering the application. Objections to interrogatories shall be made before the order for taking the deposition issues and if not so made shall be deemed waived. When a deposition is taken upon written interrogatories, and cross-interrogatories, no party shall be present or represented, and no person other than the witness, a reporter, and the designated officer shall be present at the examination of the witness, which fact shall be certified by the designated officer, who shall ask the interrogatories and cross-interrogatories to the witness in their order and reduce the testimony to writing in the witness's own words. The provisions of paragraph (e) of this section shall be applicable to depositions taken in accordance with this paragraph.

(g) All depositions shall conform to the specifications of § 302.3 except that the filing of three copies thereof shall be sufficient. Any fees of a witness, the reporter, or the officer designated to take the deposition shall be paid by the person at whose instance the deposition is taken.

(h) The fact that a deposition is taken and filed in a proceeding as provided in this section does not constitute a determination that it is admissible in evidence or that it may be used in the proceeding. Only such part or the whole of a deposition as is received in evidence shall constitute a part of the record in such proceeding upon which a decision may be based.

§ 302.27 Rights of witnesses; attendance fees and mileage.

(a) Any person appearing as a witness in any proceeding governed by this part, whether in response to a subpoena or by request or permission of the Department, may be accompanied, represented, and advised by counsel and may be examined by that counsel after other questioning.

(b) Any person who submits data or evidence in a proceeding governed by this part, whether in response to a subpoena or by request or permission of the Department, may retain, or, on payment of lawfully prescribed costs, procure, a copy of any document so

submitted or a copy of any transcript made of such testimony.

(c)(1) No person whose attendance at a hearing or whose deposition is to be taken shall be obliged to respond to a subpoena unless upon a service of the subpoena he or she is tendered attendance fees and mileage by the party at whose instance he or she is called in accordance with the requirements of paragraph (c)(2) of this section; *Provided*, That a witness summoned at the instance of the Department or one of its employees, or a salaried employee of the United States summoned to testify as to matters related to his or her public employment, need not be tendered such fees or mileage at that time.

(2)(i) Witnesses who are not salaried employees of the United States, or such employees summoned to testify on matters not related to their public employment, shall be paid the same per diem, subsistence, and mileage fees paid to witnesses for like service in the courts of the United States that are in effect at the time of travel; *Provided*, That no employee, officer, or attorney of an air carrier who travels under the free or reduced rate provisions of section 41511 of the Statute shall be entitled to any fees or mileage; *And provided further*, That such fees and mileage shall not be applicable for witnesses summoned to testify in Alaska, and that, in Alaska, where permitted by section 41511 of the Statute, the witness may, at his or her option, accept a pass for travel by air. Such witnesses shall be furnished appropriate forms and instructions for the submission of claims for attendance fees, subsistence, and mileage from the Government before the close of the proceedings that they are required to attend. Only persons summoned by subpoena shall be entitled to claim attendance fees, subsistence, or mileage from the Government.

(ii) Witnesses who are salaried employees of the United States and who are summoned to testify on matters relating to their public employment, irrespective of at whose instance they are summoned, shall be paid in accordance with applicable Government regulations.

§ 302.28 Transcripts of hearings.

(a) Hearings shall be recorded and transcribed under supervision of the administrative law judge, by a reporting firm under contract with the Department. Copies of the transcript that may, at the discretion of the administrative law judge, be furnished by use of electronic media in addition to the official copy, shall be supplied to the parties to the proceeding by said reporting firm, at the contract price for copies.

(b) The administrative law judge shall determine whether ''ordinary transcript'' or ''daily transcript'' (as those terms are defined in the contract) will be necessary and required for the proper conduct of the proceeding and the Department will pay the reporting firm the full cost of reporting its proceedings at the contract price for such type of transcript. If the administrative law judge has determined that ordinary transcript is adequate, and has notified the parties of such determination (in the notice of hearings, or otherwise), then any party may request reconsideration of such determination and that daily transcript be required. In determining what is necessary and required for the proper conduct of the proceeding, the administrative law judge shall consider, among other things:

(1) The nature of the proceeding itself;

(2) The DOT decisionmaker's needs as well as the reasonable needs of the parties;

(3) The cost to the Department; and

(4) The requirements of a fair hearing.

(c) If the administrative law judge has determined that ordinary transcript is adequate, or, upon reconsideration, has adhered to such determination, then any party may request the reporting firm to provide daily transcript. In that case, pursuant to its contract with the Department, the reporting firm will be obligated to furnish to the Department daily transcript upon the agreement by the requesting party to pay to the reporting firm an amount equal to the difference between the contract prices for ordinary transcript and daily transcript, provided that the requesting party makes such agreement with the reporting firm at least twenty-four (24) hours in advance of the date for which such transcript is requested.

(d) Any party may obtain from the Office of the Assistant Secretary for Administration, the name and address of the private reporting company with which the Department currently has a contract for transcripts and copies, as well as the contract prices then in effect for such services.

(e) Copies of transcripts ordered by parties other than the Department shall be prepared for delivery to the requesting person at the reporting firm's place of business, within the stated time for the type of transcript ordered. The requesting party and the reporting firm may agree upon some other form or means of delivery (mail, messenger, electronic media, etc.) and the reporting firm may charge for such special service, provided that such charge shall not exceed the reasonable cost of such service.

(f) Changes in the official transcript may be made only when they involve errors affecting substance. A motion to correct a transcript shall be filed with Department of Transportation Dockets, within ten (10) days after receipt of the completed transcript by the Department. If no objections to the motion are filed within ten (10) days thereafter, the transcript may, upon the approval of the administrative law judge, be changed to reflect such corrections. If objections are received, the motion and objections shall be submitted to the official reporter by the administrative law judge together with a request for a comparison of the transcript with the reporter's record of the hearing. After receipt of the report of the official reporter an order shall be entered by the administrative law judge settling the record and ruling on the motion.

§ 302.29 Argument before the administrative law judge.

(a) The administrative law judge shall give the parties to the proceeding adequate opportunity during the course of the hearing for the presentation of arguments in support of or in opposition to motions, and objections and exceptions to rulings of the administrative law judge.

(b) When, in the opinion of the administrative law judge, the volume of the evidence or the importance or complexity of the issues involved warrants, he or she may, either on his or her own motion or at the request of a party, permit the presentation of oral argument, and may impose such time limits on the argument as he or she may determine appropriate. Such argument shall be transcribed and bound with the transcript of testimony and will be available to the Department decisionmaker for consideration in deciding the case.

§ 302.30 Briefs to the administrative law judge.

Within such limited time after the close of the reception of evidence fixed by the administrative law judge, any party may, upon request and under such conditions as the administrative law judge may prescribe, file for his or her consideration briefs which may include proposed findings of fact and conclusions of law that shall contain exact references to the record and authorities relied upon.

§ 302.31 Initial and recommended decisions; certification of the record.

(a) *Action by administrative law judge after hearing.* Except where the DOT decisionmaker directs otherwise, after

the taking of evidence and the receipt of briefs which may include proposed findings of fact and conclusions of law, if any, the administrative law judge shall take the following action:

(1) *Initial decision.* If the proceeding does not involve foreign air transportation, the administrative law judge shall render an ''initial decision.'' Such decision shall encompass the administrative law judge's decision on the merits of the proceeding and on all ancillary procedural issues remaining for disposition at the close of the hearing.

(2) *Recommended decision.* In cases where the action of the Department involves foreign air transportation and is subject to review by the President of the United States pursuant to section 41307 of the Statute, the administrative law judge shall render a ''recommended decision.'' Such decision shall encompass the administrative law judge's decision on the merits of the proceeding and on all ancillary procedural issues remaining for disposition at the close of the hearing.

(b) *Certification to the DOT decisionmaker for decision.* At any time prior to the close of the hearing, the DOT decisionmaker may direct the administrative law judge to certify any question or the entire record in the proceeding to the DOT decisionmaker for decision. In cases where the record is thus certified, the administrative law judge shall not render a decision but shall make a recommendation to the DOT decisionmaker as required by section 8(a) of the Administrative Procedure Act (5 U.S.C. 558(a)) unless advised by the DOT decisionmaker that he or she intends to issue a tentative decision.

(c) Every initial or recommended decision issued shall state the names of the persons who are to be served with copies of it, the time within which exceptions to, or petitions for review of, such decision may be filed, and the time within which briefs in support of the exceptions may be filed. In addition, every such decision shall recite that it is made under delegated authority, and contain notice of the provisions of paragraph (d) of this section. In the event the administrative law judge certifies the record to the DOT decisionmaker without an initial or recommended decision, he or she shall notify the parties of the time within which to file with the DOT decisionmaker briefs which may include proposed findings of fact and conclusions of law.

(d) Unless a petition for discretionary review is filed pursuant to § 302.32, exceptions are filed pursuant to § 302.217, or the DOT decisionmaker issues an order to review upon his or her own initiative, the initial decision shall become effective as the final order of the Department thirty (30) days after service thereof; in the case of a recommended decision, that decision shall be transmitted to the President of the United States under 49 U.S.C. 41307. If a petition for discretionary review or exceptions are timely filed or action to review is taken by the DOT decisionmaker upon his or her own initiative, the effectiveness of the initial decision or the transmission of the recommended decision is stayed until the further order of the DOT decisionmaker.

§ 302.32 Petitions for discretionary review of initial or recommended decisions; review proceedings.

(a) *Petitions for discretionary review.* (1) Review by the DOT decisionmaker pursuant to this section is not a matter of right but is at the sole discretion of the DOT decisionmaker. Any party may file and serve a petition for discretionary review by the DOT decisionmaker of an initial decision or recommended decision within twenty-one (21) days after service thereof, unless the DOT decisionmaker sets a different period for filing.

(2) Petitions for discretionary review shall be filed only upon one or more of the following grounds:

(i) A finding of a material fact is erroneous;

(ii) A necessary legal conclusion is without governing precedent or is a departure from or contrary to law, the Department's rules, or precedent;

(iii) A substantial and important question of law, policy or discretion is involved; or

(iv) A prejudicial procedural error has occurred.

(3) Each issue shall be separately numbered and plainly and concisely stated. Petitioners shall not restate the same point in repetitive discussions of an issue. Each issue shall be supported by detailed citations of the record when objections are based on the record, and by statutes, regulations or principal authorities relied upon. Any matters of fact or law not argued before the administrative law judge, but that the petitioner proposes to argue on brief to the DOT decisionmaker, shall be stated.

(4) Petitions for discretionary review shall be self-contained and shall not incorporate by reference any part of another document. Except by permission of the DOT decisionmaker, petitions shall not exceed twenty (20) pages including appendices and other papers physically attached to the petition.

(5) Requests for oral argument on petitions for discretionary review will not be entertained by the DOT decisionmaker.

(b) *Answers.* Within fifteen (15) days after service of a petition for discretionary review, any party may file and serve an answer of not more than fifteen (15) pages in support of or in opposition to the petition. If any party desires to answer more than one petition for discretionary review in the same proceeding, he or she shall do so in a single document of not more than twenty (20) pages.

(c) *Orders declining review.* The DOT decisionmaker's orders declining to exercise the discretionary right of review will specify the date upon which the administrative law judge's decision shall become effective as the final decision of the Department. A petition for reconsideration of a Department order declining review will be entertained only when the order exercises, in part, the DOT decisionmaker's discretionary right of review, and such petition shall be limited to the single question of whether any issue designated for review and any issue not so designated are so inseparably interrelated that the former cannot be reviewed independently or that the latter cannot be made effective before the final decision of the Department in the review proceeding.

(d) *Review proceedings.* (1) The DOT decisionmaker may take review of an initial or recommended decision upon petition or on his or her own initiative or both. The DOT decisionmaker will issue a final order upon such review without further proceedings on any or all the issues where he or she finds that matters raised do not warrant further proceedings.

(2) Where the DOT decisionmaker desires further proceedings, he or she will issue an order for review that will:

(i) Specify the issues to which review will be limited. Only those issues specified in the order shall be argued on brief to the DOT decisionmaker, pursuant to § 302.35, and considered by the DOT decisionmaker;

(ii) Specify the portions of the administrative law judge's decision, if any, that are to be stayed as well as the effective date of the remaining portions thereof; and

(iii) Designate the parties to the review proceeding.

§ 302.33 Tentative decision of the DOT decisionmaker.

(a) Except as provided in paragraph (b) of this section, whenever the

administrative law judge certifies the record in a proceeding directly to the DOT decisionmaker without issuing an initial or recommended decision in the matter, the DOT decisionmaker shall, after consideration of any briefs submitted by the parties, prepare a tentative decision and serve it upon the parties. Every tentative decision of the DOT decisionmaker shall state the names of the persons who are to receive copies of it, the time within which exceptions to such decision and briefs, if any, in support of or in opposition to the exceptions may be filed, and the date when such decision will become final in the absence of exceptions thereto. If no exceptions are filed to the tentative decision of the DOT decisionmaker within the period fixed, it shall become final at the expiration of such period unless the DOT decisionmaker orders otherwise.

(b) The DOT decisionmaker may, in his or her discretion, omit a tentative decision in proceedings under subpart B. The DOT decisionmaker may also, in rulemaking proceedings, omit a tentative decision in any case in which he or she finds upon the record that due and timely execution of the Department's functions imperatively and unavoidably so requires. Final decisions of the DOT decisionmaker are subject to review as provided in § 302.18.

§ 302.34 Exceptions to tentative decisions of the DOT decisionmaker.

(a) *Time for filing.* Within ten (10) days after service of any tentative decision of the DOT decisionmaker, any party to a proceeding may file exceptions to such decision with the DOT decisionmaker.

(b) *Form and contents of exceptions.* Each exception shall be separately numbered and shall be stated as a separate point, and appellants shall not restate the same point in several exceptions. Each exception shall state, sufficiently identify, and be limited to, an ultimate conclusion in the decision to which exception is taken (such as, selection of one carrier rather than another to serve any point or points; points included in or excluded from a new route; imposition or failure to impose a given restriction; determination of a rate at a given amount rather than another). No specific exception shall be taken with respect to underlying findings or statements, but exceptions to an ultimate conclusion shall be deemed to include exceptions to all underlying findings and statements pertaining thereto; *Provided, however,* That exceptions shall specify any matters of law, fact, or policy that were not argued before the administrative law judge but will be set forth for the first time on brief to the DOT decisionmaker.

(c) *Effect of failure to file timely and adequate exceptions.* No objection may be made on brief or at a later time to an ultimate conclusion that is not expressly made the subject of an exception in compliance with the provisions of this section; *Provided, however,* That any party may file a brief in support of the decision and in opposition to the exceptions filed by any other party.

§ 302.35 Briefs to the DOT decisionmaker.

(a) *Time for filing.* Within such period after the date of service of any tentative decision by the DOT decisionmaker as may be fixed therein, any party may file a brief addressed to the DOT decisionmaker in support of his or her exceptions to such decision or in opposition to the exceptions filed by any other party. Briefs to the DOT decisionmaker on initial or recommended decisions of administrative law judges shall be filed only in those cases where the DOT decisionmaker grants discretionary review and orders further proceedings, pursuant to § 302.32(d)(2), and only upon those issues specified in the order. Such briefs shall be filed within thirty (30) days after date of service of the order granting discretionary review unless otherwise specified in the order. In cases where, because of the limited number of parties and the nature of the issues, the filing of opening, answering, and reply briefs will not unduly delay the proceeding and will assist in its proper disposition, the DOT decisionmaker may direct that the parties file briefs at different times rather than at the same time.

(b) *Effect of failure to restate objections in briefs.* In determining the merits of an appeal, the DOT decisionmaker will not consider the exceptions or the petition for discretionary review but will consider only the brief. Each objection contained in the exceptions or each issue specified in the DOT decisionmaker's order exercising discretionary review must be restated and supported by a statement and adequate discussion of all matters relied upon, in a brief filed pursuant to and in compliance with the requirements of this section.

(c) *Formal specifications of briefs*—(1) *Contents.* Each brief shall discuss every point of law, fact, or precedent that the party submitting it is entitled to raise and that it wishes the DOT decisionmaker to consider. Each brief shall include a summary of the argument not to exceed five (5) pages. Support and justification for every point raised shall include itemized references to the pages of the transcript of hearing, exhibit or other matter of record, and citations of the statutes, regulations, or principal authorities relied upon. If a brief or any point discussed in the brief is not in substantial conformity with the requirement for such support and justification, no motion to strike or dismiss such document shall be made but the DOT decisionmaker may disregard the points involved. Copies of briefs may be furnished by use of electronic media in a format acceptable to the Department and the parties.

(2) *Incorporation by reference.* Briefs to the DOT decisionmaker shall be completely self-contained and shall not incorporate by reference any portion of any other brief or pleading; *Provided, however,* That instead of submitting a brief to the DOT decisionmaker a party may adopt by reference specifically identified pages or the whole of his or her prior brief to the administrative law judge if the latter complies with all requirements of this section. In such cases, the party shall file with Department of Transportation Dockets a letter exercising this privilege and serve all parties in the same manner as a brief to the DOT decisionmaker.

(3) *Length.* Except by permission or direction of the DOT decisionmaker, briefs shall not exceed fifty (50) pages including pages contained in any appendix, table, chart, or other document physically attached to the brief, but excluding maps and the summary of the argument. In this case ''map'' means only those pictorial representations of routes, flight paths, mileage, and similar ancillary data that are superimposed on geographic drawings and contain only such text as is needed to explain the pictorial representation.

§ 302.36 Oral argument before the DOT decisionmaker.

(a) If any party desires to argue a case orally before the DOT decisionmaker, he or she shall request leave to make such argument in his or her exceptions or brief. Such request shall be filed no later than the date when briefs before the DOT decisionmaker are due in the proceeding. The DOT decisionmaker will rule on such request, and, if oral argument is to be allowed, all parties to the proceeding will be advised of the date and hour set for such argument and the amount of time allowed to each party. Requests for oral argument on petitions for discretionary review will not be entertained.

(b) Pamphlets, charts, and other written data may be offered to the DOT

decisionmaker at oral argument only in accordance with the following rules: All such material shall be limited to facts in the record of the case being argued and shall be served on all parties to the proceeding with four (4) copies transmitted to Department of Transportation Dockets at least five (5) calendar days in advance of the argument.

§ 302.37 Waiver of procedural steps after hearing.

The parties to any proceeding may agree to waive any one or more of the procedural steps provided in §§ 302.29 through 302.36.

§ 302.38 Final decision of the DOT decisionmaker.

When a case stands submitted to the DOT decisionmaker for final decision on the merits, he or she will dispose of the issues presented by entering an appropriate order that will include a statement of the reasons for his or her findings and conclusions. Such orders shall be deemed ''final orders'' within the purview of § 302.14(a), in the manner provided by § 302.18.

Subpart B—Rules Applicable to U.S. Air Carrier Certificate and Foreign Air Carrier Permit Licensing Proceedings

§ 302.201 Applicability.

(a) This subpart sets forth the specific rules applicable to proceedings on:

(1) U.S. air carrier certificates of public convenience and necessity and U.S. all-cargo air service certificates under Chapter 411 of the Statute, including renewals, amendments, modifications, suspensions and transfers of such certificates.

(2) Foreign air carrier permits under Chapter 413 of the Statute, including renewals, amendments, modifications, suspensions, and transfers of such permits.

(b) Except as modified by this subpart, the provisions of subpart A of this part apply.

§ 302.202 Contents of applications.

(a) Certificate applications filed under this subpart shall contain the information required by part 201 of this chapter and, where applicable, part 204 of this chapter, and foreign air carrier permit applications shall contain the information required by part 211 of this chapter, along with any other information that the applicant desires the Department to notice officially.

(b) Applications shall include a notice on the cover page stating that any person may support or oppose the application by filing an answer and serving a copy of the answer on all persons served with the application. The notice shall also state the due date for answers. Amendments to applications will be considered new applications for the purpose of calculating the time limitations of this subpart.

(c) Applications shall include a list of the names and addresses of all persons who have been served in accordance with § 302.203.

(d) Where required, each application shall be accompanied by an Environmental Evaluation in conformity with part 313 of this chapter.

§ 302.203 Service of documents.

(a) *General requirements.* (1) Applicants shall serve on the persons listed in paragraph (b) of this section a notice that an application has been filed, and upon request shall promptly provide those persons with copies of the application and supporting documents. The notice must clearly state the authority sought and the due date for other pleadings.

(2) Applicants shall serve a complete copy of the application on the Manager of the FAA Flight Standards District Office responsible for processing the application for any FAA authority needed to conduct the proposed operations.

(3) After an order under § 302.210 has been issued, parties need only serve documents on those persons listed in the service list accompanying the order.

(4) In the case of an application sought to be consolidated, the applicant shall serve the notice required in paragraph (a)(1) of this section on all persons served by the original applicant.

(b) *Persons to be served*—(1) *U.S. air carriers.* (i) In certificate proceedings, except for those proceedings that involve charter-only authority under section 41102(a)(3) of the Statute:

(A) Applicants for certificates to engage in interstate air transportation and other persons who file a pleading in the docket shall serve:

(1) The airport authority of each airport that the applicant initially proposes to serve, and

(2) Any other person who has filed a pleading in the docket.

(B) Applicants for certificates to engage in foreign air transportation and other persons who file a pleading in the docket shall serve:

(1) All U.S. air carriers (including commuter air carriers) that publish schedules in the *Official Airline Guide* or in the *Air Cargo Guide* for the country-pair market(s) specified in the application,

(2) The airport authority of each U.S. airport that the applicant initially proposes to serve, and

(3) Any other person who has filed a pleading in the docket.

(ii) In certificate proceedings involving charter-only authority under 41102(a)(3) of the Statute, applicants and other persons who file a pleading in the docket shall serve any other person who has filed a pleading in the docket.

(2) *Foreign air carriers.* (i) In permit proceedings, except for those proceedings involving charter-only authority, applicants and other persons who have filed a pleading in the docket shall serve:

(A) All U.S. air carriers (including commuter air carriers) that publish schedules in the *Official Airline Guide* or the *Air Cargo Guide* for the country-pair market(s) specified in the application,

(B) The U.S. Department of State,

(C) The airport authority of each U.S. airport that the applicant initially proposes to serve, and

(D) Any other person who has filed a pleading in the docket.

(ii) In foreign air carrier permit proceedings for charter-only authority, applicants and other persons who file a pleading in the docket shall serve the U.S. Department of State and any other person who has filed a pleading in the docket.

(c) *Additional service.* The Department may, at its discretion, order additional service upon such persons as the facts of the situation warrant. Where only notices are required, parties are encouraged to serve copies of their actual pleadings where feasible. In any proceeding directly involving air transportation to the Federated States of Micronesia, the Marshall Islands or Palau, the Department and any party or participant in the proceeding shall serve all documents on the President and the designated authorities of the government(s) involved. In any proceeding that affects a point in Alaska, the person filing shall send an additional copy to: U.S. Department of Transportation, Alaska Field Office, 801 B Street, Suite 506, Anchorage, Alaska 99501–3657.

§ 302.204 Responsive documents.

(a) Any person may file an answer in support of or in opposition to any application. Answers shall set forth the basis for the position taken, including any economic data or other facts relied on. Except as otherwise provided in § 302.212(d), answers shall be filed within twenty-one (21) days of the original or amended application and shall be served in accordance with § 302.203.

(b) Replies to answers shall be filed within fourteen (14) days after the filing of the answer.

(c) Persons having common interests shall, to the extent practicable, arrange for the joint preparation of pleadings.

§ 302.205 Economic data and other facts.

Whenever economic data and other facts are provided in any pleading, such information shall include enough detail so that final results can be obtained without further clarification. Sources, bases, and methodology used in constructing exhibits, including any estimates or judgments, shall be provided.

§ 302.206 Verification.

The following certification shall be included with any pleading filed under this subpart: ''Pursuant to Title 18 United States Code Section 1001, I [*the individual signing the pleading, who shall be someone who will appear as a witness to substantiate the facts asserted if an oral hearing becomes necessary*] in my individual capacity and as the authorized representative of the submitter, have not in any manner knowingly or willfully falsified, concealed, or covered up any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents that contain such statements in connection with the preparation, filing, or prosecution of this pleading. I understand that a submitter who violates the provisions of 18 U.S.C. 1001 shall be fined not more than $10,000 or imprisoned not more than five years, or both.''

Disposition of Applications

§ 302.207 Cases to be decided on written submissions.

(a) Applications under this subpart will be decided on the basis of written submissions unless the DOT decisionmaker, on petition as provided in § 302.208 or on his or her own initiative, determines that an oral presentation or an administrative law judge's decision is required because:

(1) Use of written procedures will prejudice a party;

(2) Material issues of decisional fact cannot adequately be resolved without oral evidentiary hearing procedures; or

(3) Assignment of an application for oral evidentiary hearing procedures or an initial or recommended decision by an administrative law judge is otherwise required by the public interest.

(b) The standards employed in deciding cases under § 302.210(a) (1) or (5) shall be the same as the standards applied in cases decided under § 302.210(a)(4). These are the standards set forth in the Statute as interpreted and expanded upon under that Statute.

§ 302.208 Petitions for oral presentation or judge's decision.

(a) Any person may file a petition for oral evidentiary hearing, oral argument, an initial or recommended decision, or any combination of these. Petitions shall demonstrate that one or more of the criteria set forth in § 302.207 are applicable to the issues for which an oral presentation or judge's decision is requested. Such petitions shall be supported by a detailed explanation of the following:

(1) Why the evidence or argument to be presented cannot be submitted in the form of written evidence or briefs;

(2) Which issues should be examined by an administrative law judge and why such issues should not be presented directly to the DOT decisionmaker for decision;

(3) An estimate of the time required for the oral presentation and the number of witnesses whom the petitioner would present; and

(4) If cross-examination of any witness is desired, the name of the witness, if known, the subject matter of the desired cross-examination or the title or number of the exhibit to be cross-examined, what the petitioner expects to establish by the cross-examination, and an estimate of the time needed for it.

(b) Petitions for an oral hearing, oral argument, or an administrative law judge's decision shall be filed no later than the due date for answers in proceedings governed by §§ 302.211, 302.212 and 302.213.

(c) Where a stipulation of disputed facts would eliminate the need for an oral presentation or an administrative law judge's decision, parties shall include in their petitions an offer to withdraw the request should the stipulation be made.

§ 302.209 Procedures for deferral of applications.

Within twenty-eight (28) days after the filing of an application under this subpart, the DOT decisionmaker may defer further processing of the application until all of the information necessary to process that application is submitted. The time periods contained in this subpart with respect to the disposition of the application shall not begin to run until the application is complete. In addition, the DOT decisionmaker may defer action on a foreign air carrier permit application for foreign policy reasons.

§ 302.210 Disposition of applications; orders establishing further procedures.

(a) *General requirements.* The DOT decisionmaker will take one of the following actions with respect to all or any portion of each application:

(1) Issue an Order to Show Cause why the application should not be granted, denied or dismissed, in whole or in part.

(2) Issue a Final Order granting the application if the Department determines that there are no material issues of fact that warrant further procedures for their resolution.

(3) Issue a Final Order dismissing or rejecting the application for lack of prosecution or if the application does not comply with this subpart or is otherwise materially deficient.

(4) Issue an order setting the application for oral evidentiary hearing. The order will establish the scope of the issues to be considered and the procedures to be employed, and will indicate whether one or more attorneys from the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings will participate as a party. All of the procedures set forth in §§ 302.214 through 302.218 will apply unless the DOT decisionmaker decides otherwise.

(5) Begin to make a determination with respect to the application under simplified procedures without oral evidentiary hearing. In this event, the DOT decisionmaker may indicate which, if any, of the procedural steps set forth in § 302.215 through § 302.219 will be employed. The DOT decisionmaker may also indicate that other non-oral evidentiary hearing procedures will be employed.

(b) *Additional evidence.* An order establishing further procedures under paragraph (a) (1), (4) or (5) of this section may provide for the filing of additional evidence.

(c) *Petitions for reconsideration.* Petitions for reconsideration of an order issued under this section will not be entertained except to the extent that the order dismissed or rejected all or part of an application. If a petition for reconsideration results in the reinstatement of all or part of an application, the deadline for final Department decision established in § 302.220 will be calculated from the date of the order reinstating the application.

§ 302.211 Procedures in certificate cases involving initial or continuing fitness.

(a) *Applicability.* This section applies to cases involving certificate authority under sections 41102 and 41103 of the Statute, including applications for new

authority, renewals, amendments, modifications, suspensions, and transfers of such certificates, where the issues involve a determination of the applicant's fitness to operate. Where such applications propose the operation of scheduled service in limited entry international markets, the provisions of § 302.212 also apply.

(b) *Order establishing further procedures.* Within 90 days after a complete application is filed, the DOT decisionmaker will take action as provided in § 302.210.

§ 302.212 Procedures in certificate cases involving international routes.

(a) *Applicability.* This section applies to cases involving certificates under section 41102 of the Statute that involve international routes, including applications to obtain, renew, amend, transfer, or remove restrictions in such certificates.

(b) *Answers to applications.* Answers shall be filed within twenty-one (21) days after the filing of the original application.

(c) *Conforming applications or motions to modify scope.* Any person may file an application for the same authority as sought in an application to obtain, renew, amend, or transfer a certificate filed under paragraph (a) of this section. Requests to modify the issues to be decided and to consolidate applications filed in other dockets shall be filed as a ''motion to modify scope.'' Motions and applications under this section shall include economic data, other facts, and any argument in support of the person's position and must be filed within twenty-one (21) days after the original application is filed. Later-filed competing applications shall conform to the base and forecast years used by the original applicant and need not contain traffic and financial data for markets for which data have already been submitted by another person.

(d) *Answers to conforming applications or motions to modify scope.* Answers to conforming applications and motions to modify scope filed in accordance with paragraph (b) of this section shall be filed within fourteen (14) days after the filing of the conforming application or motion. Answers may argue that an application should be dismissed. Answers may also seek to consolidate an application filed in another docket if that application conforms to the scope of the proceeding proposed in the motion to modify scope and includes the information prescribed in § 302.202. Answers and applications shall not, however, propose the consideration of additional markets.

(e) *Order establishing further procedures.* Within 90 days after a complete application is filed, the DOT decisionmaker will issue an order as provided in § 302.210.

§ 302.213 Procedures in foreign air carrier permit cases.

(a) *Applicability.* This section applies to cases involving foreign air carrier permits under section 41302, including applications for new authority, renewals, amendments, modifications, suspensions, and transfers of such permits.

(b) *Executive departments.* In addition to the standards set forth in § 302.207(b), the views of the Department of State and the Federal Aviation Administration's evaluation of the applicant's operational fitness shall be relied upon in determining the appropriate action on applications filed under this section.

(c) *Order establishing further procedures.* As soon as possible after the date that answers are due and all information needed to reach a decision is filed, the DOT decisionmaker will issue an order as provided in § 302.210.

§ 302.214 Oral evidentiary hearing.

If the Department determines under § 302.210(a)(4) that an oral evidentiary hearing should be held, the application or applications will be set for oral hearing before an administrative law judge. The issues will be those set forth in the order establishing further procedures. The procedures in §§ 302.17 through 302.38 governing the conduct of oral evidentiary hearings will apply.

§ 302.215 Briefs to the administrative law judge.

Briefs to the administrative law judge shall be filed within the following periods, as applicable:

(a) Fourteen (14) days after the close of the oral evidentiary hearing, unless the administrative law judge determines that, under the circumstances of the case, briefs are not necessary or that the parties will require more time to prepare briefs; or

(b) Fourteen (14) days after the filing of additional evidence called for in the order establishing further procedures if no oral evidentiary hearing is called for, unless the Department determines that some other period should be allowed.

§ 302.216 Administrative law judge's initial or recommended decision.

(a) In a case that has been set for oral evidentiary hearing under § 302.210(a)(4), the administrative law judge shall adopt and serve an initial or recommended decision within one hundred thirty-six (136) days after the issuance of the order establishing further procedures unless:

(1) The DOT decisionmaker, having found extraordinary circumstances, has by order delayed the initial or recommended decision by a period of not more than thirty (30) days; or

(2) An applicant has failed to meet the procedural schedule adopted by the judge or the DOT decisionmaker. In this case, the administrative law judge may, by notice, extend the due date for the issuance of an initial or recommended decision for a period not to exceed the period of delay caused by the applicant.

(b) In a case in which some of the issues have not been set for oral hearing under § 302.210(a)(4), the administrative law judge shall adopt and serve an initial or recommended decision within the time established by the DOT decisionmaker in the order establishing further procedures, except that that due date may be extended in accordance with paragraph (a)(2) of this section.

(c) The initial or recommended decision shall be issued by the administrative law judge fourteen (14) days after it is adopted and served. Unless exceptions are filed under § 302.217 or the DOT decisionmaker issues an order to review on his or her own initiative, an initial decision shall become effective as the final order of the Department the day it is issued. Where exceptions are timely filed or the DOT decisionmaker takes action to review on his or her own initiative, the effectiveness of the initial decision is stayed until further order of the DOT decisionmaker.

(d) In all other respects, the provisions of § 302.31 shall apply.

§ 302.217 Exceptions to administrative law judge's initial or recommended decision.

(a) Within seven (7) days after service of any initial or recommended decision of an administrative law judge, any party may file exceptions to the decision with the Department.

(b) If timely and adequate exceptions are filed, review of the initial or recommended decision is automatic.

(c) In all other respects, the provisions of § 302.34 shall apply.

§ 302.218 Briefs to the DOT decisionmaker.

(a) In a case in which an initial or recommended decision has been adopted and served and exceptions have been filed, any party may file a brief in support of or in opposition to any exceptions. Such briefs shall be filed within fourteen (14) days after service of the initial or recommended decision.

(b) In a case in which no exceptions have been filed, briefs shall not be filed

unless the DOT decisionmaker has taken review of the initial or recommended decision on his or her own initiative and has specifically provided for the filing of such briefs.

(c) In all other respect, the provisions of § 302.35 shall apply.

§ 302.219 Oral argument before the DOT decisionmaker.

If the order establishing further procedures provides for an oral argument, or if the DOT decisionmaker otherwise decides to hear oral argument, all parties will be advised of the date and hour set for that argument and the amount of time allowed each party. The provisions of § 302.36(b) shall also apply.

§ 302.220 Final decision of the Department.

In addition to the provisions of § 302.38, the following provisions shall apply:

(a) In the case of a certificate application that has been set for oral evidentiary hearing under § 302.210(a)(4), the Department will issue its final order within ninety (90) days after the initial or recommended decision is issued. If an application has failed to meet the procedural schedule established by the Department, the DOT decisionmaker may, by notice, extend the date for a final decision for a period equal to the period of delay caused by the applicant.

(b) If the DOT decisionmaker does not act in the time period established in paragraph (a) of this section:

(1) In the case of an application for a certificate to engage in foreign air transportation, the recommended decision shall be transmitted to the President of the United States under 49 U.S.C. 41307; or

(2) In the case of an application not subject to review by the President of the United States, the initial decision shall become effective as the final order of the Department.

(c) In the case of a certificate application that has been processed under § 302.210(a) (1) or (5), the Department will issue its final order within one hundred eighty (180) days after the order establishing further procedures. If an applicant has failed to meet the procedural schedule established by the Department, the DOT decisionmaker may, by notice, extend the due date for a final decision for a period equal to the period of delay caused by the applicant.

Subpart C—Rules Applicable to Exemption Proceedings

§ 302.301 Applicability.

(a) This subpart sets forth the specific rules applicable to proceedings for exemptions under sections 40109 and 41714 of the Statute, including the granting of emergency exemptions. Except as modified by this subpart, the provisions of subpart A of this part apply.

(b) Proceedings for the issuance of exemptions by regulation are subject to the provisions governing rulemaking.

§ 302.302 Filing of applications.

(a) Except as provided in paragraphs (b) and (c) of this section, applications for exemption shall conform to the requirements of §§ 302.3 and 302.4.

(b) Applications for exemption from section 41101 or 41301 of the Statute (including those that incorporate an exemption from section 41504) that involve ten (10) or fewer flights may be submitted to the U.S. Air Carrier Licensing Division or the Foreign Air Carrier Licensing Division (as appropriate), Office of International Aviation, on OST Form 4536. However, that form may not be used for:

(1) Applications filed under section 40109(g) of the Statute;

(2) Applications by persons who do not have either:

(i) An effective air carrier certificate or foreign air carrier permit from the Department, or

(ii) A properly completed application for such a certificate or permit, and an effective exemption from the Department for operations similar to those proposed;

(3) Successive applications for the same or similar authority that would total more than ten (10) flights; or

(4) Any other application for which the Department decides the requirements of §§ 302.3 and 302.4 are more appropriate. Upon a showing of good cause, an application may be filed by cablegram, telegram, facsimile, electronic mail (when available), or telephone; all such requests must be confirmed by written application within three (3) business days of the original request.

(c) Applications for exemption from Chapter 415 of the Statute, from tariffs (except for waivers filed under subpart Q of part 221 of this chapter), or from Department regulations concerning tariffs (part 221 of this chapter) may be submitted by letter. Three copies of such applications shall be sent to Department of Transportation Dockets. Upon a showing of good cause, the application may also be filed by cablegram, telegram, facsimile, electronic mail (when available), or telephone; all such requests must be confirmed by written application within three (3) business days of the original request.

(d) Applications filed under paragraph (a) of this section shall be docketed and any additional documents filed shall be identified by the assigned docket number.

(e) Applications filed under paragraph (b) or (c) of this section will normally not be docketed. The Department may require such applications to be docketed if appropriate. The Department will publish a notice of such applications in its Weekly List of Applications Filed.

§ 302.303 Contents of applications.

(a) *Title.* An application filed under § 302.302(a) shall be entitled ''Application for Exemption,'' and shall state if the application involves renewal and/or amendment of existing exemption authority.

(b) *Factual statement.* Each application shall state:

(1) The section(s) of the Statute or the rule, regulation, term, condition, or limitation from which the exemption is requested;

(2) The proposed effective date and duration of the exemption;

(3) A description of how the applicant proposes to exercise the authority (for example, applications for exemption from section 41101 or 41301 of the Statute should include at least: places to be served; equipment types, capacity and source; type and frequency or service; and other operations that the proposed service will connect with or support); and

(4) Any other facts the applicant relies upon to establish that the proposed service will be consistent with the public interest.

(c) *Supporting evidence.* (1) Each application shall be accompanied by:

(i) A statement of economic data, or other matters or information that the applicant desires the Department to officially notice;

(ii) Affidavits, or statements under penalty of perjury, establishing any other facts the applicant wants the Department to rely upon; and

(iii) Information showing the applicant is qualified to perform the proposed services.

(2) In addition to the information required by paragraph (c)(1) of this section, an application for exemption from section 41101 or 41301 of the Statute (except exemptions under section 40109(g)) shall state whether the authority sought is governed by a bilateral agreement or by principles of

comity and reciprocity. Applications by foreign carriers shall state whether the applicant's homeland government grants U.S. carriers authority similar to that requested. If so, the application shall state whether the fact of reciprocity has been established by the Department and cite the pertinent finding. If the fact of reciprocity has not been established by the Department, the application shall include documentation to establish such reciprocity.

(d) *Emergency cabotage.* Applications under section 40109(g) of the Statute shall, in addition to the information required in paragraphs (b) and (c) of this section, contain evidence showing that:

(1) Because of an emergency created by unusual circumstances not arising in the normal course of business, traffic in the markets requested cannot be accommodated by air carriers holding certificates under section 41102 of the Statute;

(2) All possible efforts have been made to accommodate the traffic by using the resources of such air carriers (including, for example, the use of foreign aircraft, or sections of foreign aircraft, under lease or charter to such air carriers, and the use of such air carriers' reservation systems to the extent practicable);

(3) The authority requested is necessary to avoid unreasonable hardship for the traffic in the market that cannot be accommodated by air carriers; and

(4) In any case where an inability to accommodate traffic in a market results from a labor dispute, the grant of the requested exemption will not result in an unreasonable advantage to any party in the dispute.

(e) *Renewal applications.* An application requesting renewal of an exemption that is intended to invoke the automatic extension provisions of 5 U.S.C. 558(c) shall comply with, and contain the statements and information required by part 377 of this chapter.

(f) *Record of service.* An application shall list the parties served as required by § 302.304.

§ 302.304 Service of documents.

(a) *General requirements.* (1) An application for exemption and responsive pleadings shall be served as provided by § 302.7.

(2) Except for an application for exemption from chapter 415 of the Statute, an applicant shall serve on the persons listed in paragraph (b) of this section a notice that the application has been filed, and, upon request, shall promptly provide those persons with copies of the application and any supporting documents. (Applicants filing OST Form 4536 may serve a copy of the form instead of a notice.) The notice must clearly state the authority sought, the due date for responsive pleadings, and that copies of the application will be supplied upon request. Responsive pleadings shall be filed in the same manner and served on the same persons as applications.

(b) *Persons to be served.* (1) Applicants for scheduled interstate air transportation authority shall serve

(i) All U.S. air carriers (including commuter air carriers) that publish schedules in the *Official Airline Guide* or the *Air Cargo Guide* for the city-pair market(s) specified in the application,

(ii) The airport authority of each U.S. airport that the applicant proposes to serve, and

(iii) Any other person who has filed a pleading in a related proceeding under section 41102, 41305 or 40109 of the Statute.

(2) Applicants for scheduled foreign air transportation authority shall serve

(i) All U.S. air carriers (including commuter air carriers) that publish schedules in the *Official Airline Guide* or in the *Air Cargo Guide* for the country-pair market(s) specified in the application,

(ii) The airport authority of each U.S. airport that the applicant proposes to serve, and

(iii) Any other person who has filed a pleading in a related proceeding under section 41102, 41302, or 40109 of the Statute.

(3) Applicants for charter-only or nonscheduled-only authority shall serve any person who has filed a pleading in a related proceeding under section 41102, 41302, or 40109 of the Statute. However, applicants that file fewer than sixteen (16) days prior to the proposed start of service must also serve

(i) Those U.S. carriers (including commuter carriers) that are known to be operating in the general market(s) at issue and

(ii) Those persons who may be presumed to have an interest in the subject matter of the application.

(4) Applicants for slot exemptions under section 41714 of the Statute shall serve the manager of the affected airport, the mayor of the city that it serves, and the Governor of the State in which it is located.

(5) *Additional service.* The Department may, in its discretion, order additional service upon any other person.

§ 302.305 Posting of applications.

A copy of every docketed application for exemption shall be posted in Department of Transportation Dockets and listed in the Department's Weekly List of Applications Filed. A copy of every undocketed application shall be posted in the Licensing Division's lobby of the Office of International Aviation.

§ 302.306 Dismissal or rejection of incomplete applications.

(a) *Dismissal or rejection.* The Department may dismiss or reject any application for exemption that does not comply with the requirements of this part.

(b) *Additional data.* The Department may require the filing of additional data with respect to any application for exemption, answer, or reply.

§ 302.307 Answers to applications.

Within fifteen (15) days after the filing of an application for exemption, any person may file an answer in support of or in opposition to the grant of a requested exemption. Such answer shall set forth in detail the reasons why the exemption should be granted or denied. An answer shall include a statement of economic data or other matters the Department is requested to officially notice, and shall be accompanied by affidavits establishing any other facts relied upon.

§ 302.308 Replies to answers.

Within seven (7) days after the last day for filing an answer, an applicant may file a reply to one or more answers.

§ 302.309 Requests for hearing.

The Department will not normally conduct oral evidentiary hearings concerning applications for exemption. However, the Department may, in its discretion, order such a hearing on an application. Any applicant, or any person opposing an application, may request an oral evidentiary hearing. Such a request shall set forth in detail the reasons why the filing of affidavits or other written evidence will not permit the fair and expeditious disposition of the application. A request relying on factual assertions shall be accompanied by affidavits establishing such facts. If the Department orders an oral evidentiary hearing, the procedures in subpart A of this part shall apply.

§ 302.310 Exemptions on the Department's initiative.

The Department may grant exemptions on its own initiative when it finds that such exemptions are required by the circumstances and consistent with the public interest.

§ 302.311 Emergency exemptions.

(a) *Shortened procedures.* When required by the circumstances and

consistent with the public interest, the Department may take action, without notice, on exemption applications prior to the expiration of the normal period for filing answers and replies. When required in a particular proceeding, the Department may specify a lesser time for the filing of answers and replies, and notify interested persons of this time period.

(b) *Applications.* (1) Applications for emergency exemption need not conform to the requirements of this subpart or of subpart A of this part (except as provided in this section and in § 302.303(d) concerning emergency cabotage requests). However, an application for emergency exemption must normally be in writing and must state in detail the facts and evidence that support the application, the grounds for the exemption, and the public interest basis for the authority sought. In addition, the application shall state specific reasons that justify departure from the normal exemption application procedures. The application shall also identify those persons notified as required by paragraph (c) of this section. The Department may require additional information from any applicant before acting on an application.

(2) *Oral requests.* The Department will consider oral requests, including telephone requests, for emergency exemption authority under this section in circumstances that do not permit the immediate filing of a written application. All oral requests must, however, provide the information required in paragraph (b)(1) of this section, except that actual evidence in support of the application need not be tendered when the request is made. All oral requests must be confirmed by written application, together with all supporting evidence, within three (3) business days of the original request.

(c) *Notice.* Except when the Department decides that no notice need be given, applicants for emergency exemption shall notify, as appropriate, those persons specified in § 302.304(b) of this subpart. Such notification shall be made in the same manner, contain the same information, and be dispatched at the same time, as the application made to the Department.

Subpart D—Rules Applicable to Enforcement Proceedings

§ 302.401 Applicability.

This subpart contains the specific rules that apply to Department proceedings to enforce the provisions of Subtitle VII of the Statute, and the rules, regulations, orders and other requirements issued by the Department, as well as the filing of informal and formal complaints. Except as modified by this subpart, the provisions of subpart A of this part apply.

§ 302.402 Definitions.

Assistant General Counsel, when used in this subpart, refers to the Assistant General Counsel for Aviation Enforcement and Proceedings.

Complainant refers to the person filing a complaint.

Parties, when used in this subpart, include the Office of the Assistant General Counsel, the respondent, the complainant, and any other person permitted to intervene under § 302.20.

Respondent refers to the person against whom a complaint is filed.

§ 302.403 Informal complaints.

Any person may submit in writing to the Assistant General Counsel an informal complaint with respect to anything done or omitted to be done by any person in contravention of any provision of the Statute or any requirement established thereunder. Such informal complaints need not otherwise comply with the provisions of this part. Matters so presented may, if their nature warrants, be handled by correspondence or conference with the appropriate persons. Any matter not disposed of informally may be made the subject of an enforcement proceeding pursuant to this subpart. The filing of an informal complaint shall not bar the subsequent filing of a formal complaint.

§ 302.404 Formal complaints.

(a) *Filing.* Any person may make a formal complaint to the Assistant General Counsel about any violation of the economic regulatory provisions of the Statute or of the Department's rules, regulations, orders, or other requirements. Every formal complaint shall conform to the requirements of §§ 302.3 and 302.4, concerning the form and filing of documents. The filing of a complaint shall result in the institution of an enforcement proceeding only if the Assistant General Counsel issues a notice instituting such a proceeding as to all or part of the complaint under § 302.406(a) or the Deputy General Counsel does so under § 302.406(c).

(b) *Amendment.* A formal complaint may be amended at any time before service of an answer to the complaint. After service of an answer but before institution of an enforcement proceeding, the complaint may be amended with the permission of the Assistant General Counsel. After institution of an enforcement proceeding, the complaint may be amended only on grant of a motion filed under § 302.12.

(c) *Insufficiency of formal complaint.* In any case where the Assistant General Counsel is of the opinion that a complaint does not sufficiently set forth matters required by any applicable rule, regulation or order of the Department, or is otherwise insufficient, he or she may advise the complainant of the deficiency and require that any additional information be supplied by amendment.

(d) *Joinder of complaints or complainants.* Two or more grounds of complaints involving substantially the same purposes, subject or state of facts may be included in one complaint even though they involve more than one respondent. Two or more complainants may join in one complaint if their respective causes of complaint are against the same party or parties and involve substantially the same purposes, subject or state of facts. The Assistant General Counsel may separate or split complaints if he or she finds that the joinder of complaints, complainants, or respondents will not be conducive to the proper dispatch of the Department's business or the ends of justice.

(e) *Service.* A formal complaint, and any amendments thereto, shall be served by the person filing such documents upon each party complained of, upon the Deputy General Counsel, and upon the Assistant General Counsel.

§ 302.405 Responsive documents.

(a) *Answers.* Within fifteen (15) days after the date of service of a formal complaint, each respondent shall file an answer in conformance with and subject to the requirements of § 302.408(b). Extensions of time for filing an answer may be granted by the Assistant General Counsel for good cause shown.

(b) *Offers to satisfy.* A respondent in a formal complaint may offer to satisfy the complaint through submission of facts, offer of settlement or proposal of adjustment. Such offer shall be in writing and shall be served, within fifteen (15) days after service of the complaint, upon the same persons and in the same manner as an answer. The submittal of an offer to satisfy the complaint shall not excuse the filing of an answer.

(c) Motions to dismiss a formal complaint shall not be fileable prior to the filing of a notice instituting an enforcement proceeding with respect to such complaint or a portion thereof.

§ 302.406 Procedure for responding to formal complaints.

(a) Within a reasonable time after an answer to a formal complaint is filed,

the Assistant General Counsel shall either issue a notice instituting a formal enforcement proceeding in accordance with § 302.407, or issue an order dismissing the complaint in whole or in part, stating the reasons for such dismissal.

(b) An order dismissing a complaint issued pursuant to paragraph (a)(2) of this section shall become effective as a final order of the Department thirty (30) days after service thereof.

(c) Whenever the Assistant General Counsel has failed to act on a formal complaint within a reasonable time after an answer is due, the following motions may be addressed to the Deputy General Counsel:

(1) By the complainant to institute an enforcement proceeding by docketing the complaint upon a showing that it is in the public interest to do so; and

(2) By the respondent to dismiss the complaint upon a showing that it is in the public interest to do so.

(d) The Deputy General Counsel may grant, deny, or defer any of the motions, in whole or in part, and take appropriate action to carry out his or her decision.

§ 302.407 Commencement of enforcement proceeding.

(a) Whenever in the opinion of the Assistant General Counsel there are reasonable grounds to believe that any economic regulatory provision of the Statute, or any rule, regulation, order, limitation, condition, or other requirement established pursuant thereto, has been or is being violated, that efforts to satisfy a complaint as provided by § 302.405 have failed, and that the investigation of any or all of the alleged violations is in the public interest, the Assistant General Counsel may issue a notice instituting an enforcement proceeding before an administrative law judge.

(b) The notice shall incorporate by reference the formal complaint submitted pursuant to § 302.404 or shall be accompanied by a complaint by an attorney from the Office of the Assistant General Counsel. The notice and accompanying complaint, if any, shall be formally served upon each respondent and each complainant.

(c) The proceedings thus instituted shall be processed in regular course in accordance with this part. However, nothing in this part shall be construed to limit the authority of the Department to institute or conduct any investigation or inquiry within its jurisdiction in any other manner or according to any other procedures that it may deem necessary or proper.

(d) Whenever the Assistant General Counsel seeks an assessment of civil penalties in an enforcement proceeding, he or she shall serve on all parties to the proceeding a notice of the violations alleged and the amount of penalties for which the respondent may be liable. The notice may be included in the notice instituting a formal enforcement proceeding or in a separate document.

(e) In any proceeding in which civil penalties are sought, any decisions issued by the Department shall state the amount of any civil penalties assessed upon a finding of violation, and the time and manner in which payment shall be made to the United States.

§ 302.408 Answers and replies.

(a) Within fifteen (15) days after the date of service of a notice issued pursuant to § 302.407, the respondent shall file an answer to the complaint attached thereto or incorporated therein unless an answer has already been filed in accordance with § 302.405. Any requests for extension of time for filing of an answer to such complaint shall be filed in accordance with § 302.11.

(b) All answers shall be served in accordance with § 302.7 and shall fully and completely advise the parties and the Department as to the nature of the defense and shall admit or deny specifically and in detail each allegation of the complaint unless the respondent is without knowledge, in which case, his or her answer shall so state and the statement shall operate as a denial. Allegations of fact not denied or controverted shall be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered and shall, in the absence of a reply, be deemed to be controverted. Any answer to a complaint, or response to a notice, proposing the assessment of civil penalties shall specifically present any matters that the respondent intends to rely upon in opposition to, or in mitigation of, such civil penalties.

(c) The DOT decisionmaker or the administrative law judge may, in his or her discretion, require or permit the filing of a reply in appropriate cases; otherwise, no reply may be filed.

§ 302.409 Default.

Failure of a respondent to file and serve an answer within the time and in the manner prescribed by § 302.408 shall be deemed to authorize the DOT decisionmaker or administrative law judge, as a matter of discretion, to find the facts alleged in the complaint incorporated in or accompanying the notice instituting a formal enforcement proceeding to be true and to enter such orders as may be appropriate without notice or hearing, or, as a matter of discretion, to proceed to take proof, without notice, of the allegations or charges set forth in the complaint or order; *Provided*, that the DOT decisionmaker or administrative law judge may permit late filing of an answer for good cause shown.

§ 302.410 Consolidation of proceedings.

The DOT decisionmaker or Chief Administrative Law Judge may, upon his or her own initiative, or upon motion of any party, consolidate for hearing or for other purposes, or may contemporaneously consider, two or more enforcement proceedings that involve substantially the same parties or issues that are the same or closely related, if he or she finds that such consolidation or contemporaneous hearing will be conducive to the dispatch of business and to the ends of justice and will not unduly delay the proceedings.

§ 302.411 Motions to dismiss and for summary judgment.

(a) At any time after an answer has been filed, any party may file with the DOT decisionmaker or the administrative law judge a motion to dismiss or a motion for summary judgment, including supporting affidavits. The procedure on such motions shall be in accordance with the Federal Rules of Civil Procedure (28 U.S.C.), particularly Rules 6(d), 7(b), 12, and 56, except that answers and supporting papers to a motion to dismiss or for summary judgment shall be filed within seven (7) days after service of the motion.

(b) Parties may petition the DOT decisionmaker to review any action by the administrative law judge granting summary judgment or dismissing an enforcement proceeding under the procedure established for review of an initial decision in § 302.32.

§ 302.412 Admissions as to facts and documents.

(a) At any time after an answer has been filed, any party may file with the DOT decisionmaker or administrative law judge and serve upon the opposing side a written request for the admission of the genuineness and authenticity of any relevant documents described in and exhibited with the request or for the admission of the truth of any relevant matters of fact stated in the request with respect to such documents.

(b) Each of the matters of which an admission is requested shall be deemed admitted unless within a period designated in the request, not less than ten (10) days after service thereof, or within such further time as the DOT decisionmaker or the administrative law

judge may allow upon motion and notice, the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he or she cannot truthfully either admit or deny such matters.

(c) Service of such request and answering statement shall be made as provided in § 302.7. Any admission made by a party pursuant to such request is only for the purposes of the pending proceeding, or any proceeding or action instituted for the enforcement of any order entered therein, and shall not constitute an admission by him or her for any other purpose or be used against him or her in any other proceeding or action.

§ 302.413 Evidence of previous violations.

Evidence of previous violations by any person or of any provision of the Statute or any requirement thereunder found by the Department or a court in any other proceeding or criminal or civil action may, if relevant and material, be admitted in any enforcement proceeding involving such person.

§ 302.414 Prehearing conference.

A prehearing conference may be held in an enforcement proceeding whenever the administrative law judge believes that the fair and expeditious disposition of the proceeding requires one. If a prehearing conference is held, it shall be conducted in accordance with § 302.22.

§ 302.415 Hearing.

After the issues have been formulated, whether by the pleadings or otherwise, the administrative law judge shall give the parties reasonable written notice of the time and place of the hearings. Except as may be modified by the provisions of this subpart, the procedures in §§ 302.17 through 302.38 governing the conduct of oral evidentiary hearings will apply.

§ 302.416 Appearances by persons not parties.

With consent of the administrative law judge, appearances may be entered without request for or grant of permission to intervene by interested persons who are not parties to the proceeding. Such persons may, with the consent of the administrative law judge, cross-examine a particular witness or suggest to any party or counsel therefor questions or interrogations to be asked witnesses called by any party, but may not otherwise examine witnesses and may not introduce evidence or otherwise participate in the proceeding. However, such persons may present to both the administrative law judge and the DOT decisionmaker an oral or written statement of their position on the issues involved in the proceeding.

§ 302.417 Settlement of proceedings.

(a) The Deputy General Counsel and the respondent may agree to settle all or some of the issues in an enforcement proceeding at any time before a final decision is issued by the DOT decisionmaker. The Deputy General Counsel shall serve a copy of any proposed settlement on each party and shall submit the proposed settlement to the administrative law judge for approval. The submission of a proposed settlement shall not automatically delay the proceeding.

(b) Any party to the proceeding may submit written comments supporting or opposing the proposed settlement within ten (10) days from the date of service.

(c) The administrative law judge shall approve the proposed settlement, as submitted, if it appears to be in the public interest, or otherwise shall disapprove it.

(d) Information relating to settlement offers and negotiations will be withheld from public disclosure if the Deputy General Counsel determines that disclosure would interfere with the likelihood of settlement of an enforcement proceeding.

§ 302.418 Motions for immediate suspension of operating authority pendente lite.

All motions for the suspension of the economic operating authority of an air carrier during the pendency of proceedings to revoke such authority shall be filed with, and decided by, the DOT decisionmaker. Proceedings on the motion shall be in accordance with § 302.11. In addition, the DOT decisionmaker shall afford the parties an opportunity for oral argument on such motion.

§ 302.419 Modification or dissolution of enforcement actions.

Whenever any party to a proceeding, in which an order of the Department has been issued pursuant to section 46101 of the Statute or an injunction or other form of enforcement action has been issued by a court of competent jurisdiction pursuant to section 46106 of the Statute, believes that changed conditions of fact or law or the public interest require that said order or judicial action be modified or set aside, in whole or in part, such party may file with the Department a motion requesting that the Department take such administrative action or join in applying to the appropriate court for such judicial action, as the case may be. The motion shall state the changes desired and the changed circumstances warranting such action, and shall include the materials and argument in support thereof. The motion shall be served on each party to the proceeding in which the enforcement action was taken. Within thirty (30) days after the service of such motion, any party so served may file an answer thereto. The Department shall dispose of the motion by such procedure as it deems appropriate.

§ 302.420 Saving clause.

Repeal, revision or amendment of any of the economic regulatory provisions of the Statute or of the Department's rules, regulations, orders, or other requirements shall not affect any pending enforcement proceeding or any enforcement proceeding initiated thereafter with respect to causes arising or acts committed prior to said repeal, revision or amendment, unless the act of repeal, revision or amendment specifically so provides.

Subpart E—Rules Applicable to Proceedings With Respect to Rates, Fares and Charges for Foreign Air Transportation

§ 302.501 Applicability.

This subpart sets forth the special rules applicable to proceedings with respect to rates, fares and charges in foreign air transportation under Chapter 415 of the Statute. Except as modified by this subpart, the provisions of subpart A apply.

§ 302.502 Institution of proceedings.

A proceeding to determine the lawfulness of rates, fares, or charges for the foreign air transportation of persons or property by aircraft, or the lawfulness of any classification, rule, regulation, or practice affecting such rates, fares or charges, may be instituted by the filing of a petition or complaint by any person, or by the issuance of an order by the Department.

§ 302.503 Contents and service of petition or complaint.

(a) If a petition or complaint is filed it shall state the reasons why the rates, fares, or charges, or the classification, rule, regulation, or practice complained of are unlawful and shall support such reasons with a full factual analysis.

(b) A petition or complaint shall be served by the petitioner or complainant upon the air carrier against whose tariff provision the petition or complaint is filed.

(c) Answers to complaints, other than those filed under § 302.506, shall be

filed within seven (7) working days after the complaint is filed.

§ 302.504 Dismissal of petition or complaint.

If the Department is of the opinion that a petition or complaint does not state facts that warrant an investigation or action on its part, it may dismiss such petition or complaint without hearing.

§ 302.505 Order of investigation.

The Department, on its own initiative, or if it is of the opinion that the facts stated in a petition or complaint warrant it, may issue an order instituting an investigation of the lawfulness of any present or proposed rates, fares, or charges for the foreign air transportation of persons or property by aircraft or the lawfulness of any classification, rule, regulation, or practice affecting such rates, fares, or charges, and may assign the proceeding for hearing before an administrative law judge. If a hearing is held, except as modified by this subpart, the provisions of § § 302.17 through 302.38 of this part shall apply.

§ 302.506 Complaints requesting suspension of tariffs; answers to such complaints.

(a) Formal complaints seeking suspension of tariffs pursuant to section 41509 of the Statute shall fully identify the tariff and include reference to the issued or posting date, to the effective date, to the name of the publishing carrier or agent, to the Department number, and to specific items or particular provisions protested or complained against. The complaint should indicate in what respect the tariff is considered to be unlawful, and state what complainant suggests by way of substitution.

(b) A complaint requesting suspension of a tariff ordinarily will not be considered unless made in conformity with this section and filed no more than ten (10) days after the issued date contained within such tariff.

(c) A complaint requesting suspension, pursuant to section 41509 of the Statute, of an existing tariff for foreign air transportation may be filed at any time. However, such a complaint must be accompanied by a statement setting forth compelling reasons for not having requested suspension within the time limitations provided in paragraph (b) of this section.

(d) In an emergency satisfactorily shown by the complainant, and within the time limits provided in this section, a complaint may be sent by facsimile, telegram, or electronic mail (when available) to the Department and to the carrier against whose tariff provision the complaint is made. Such complaint shall state the grounds relied upon, and must be confirmed in writing within three (3) business days and filed and served in accordance with this part.

(e) Answers to complaints shall be filed within six (6) working days after the complaint is filed.

§ 302.507 Computing time for filing complaints.

In computing the time for filing formal complaints pursuant to § 302.506, with respect to tariffs that do not contain a posting date, the first day preceding the effective date of the tariff shall be the first day counted, and the last day so counted shall be the last day for filing unless such day is a Saturday, Sunday, or legal holiday for the Department, in which event the period for filing shall be extended to the next successive day that is not a Saturday, Sunday, or holiday. The computation of the time for filing complaints as to tariffs containing a posting date shall be governed by § 302.8.

Subpart F—Rules Applicable to Proceedings Concerning Airport Fees

§ 302.601 Applicability.

(a) This subpart contains the specific rules that apply to a complaint filed by one or more air carriers or foreign air carriers, pursuant to 49 U.S.C. 47129(a), for a determination of the reasonableness of a fee increase or a newly established fee for aeronautical uses that is imposed upon the air carrier or foreign air carrier by the owner or operator of an airport. This subpart also applies to requests by the owner or operator of an airport for such a determination. An airport owner or operator has imposed a fee on an air carrier or foreign air carrier when it has taken all steps necessary under its procedures to establish the fee, whether or not the fee is being collected or carriers are currently required to pay it.

(b) This subpart does not apply to:

(1) A fee imposed pursuant to a written agreement with air carriers or foreign air carriers using the facilities of an airport;

(2) A fee imposed pursuant to a financing agreement or covenant entered into prior to August 23, 1994 or

(3) Any other existing fee not in dispute as of August 23, 1994.

§ 302.603 Complaint by an air carrier or foreign air carrier; request for determination by an airport owner or operator.

(a) Any air carrier or foreign air carrier may file a complaint with the Secretary for a determination as to the reasonableness of any fee imposed on the carrier by the owner or operator of an airport. Any airport owner or operator may also request such a determination with respect to a fee it has imposed on one or more air carriers. The complaint or request for determination shall conform to the requirements of this subpart and §§ 302.3 and § 302.4 concerning the form and filing of documents.

(b) If an air carrier or foreign air carrier has previously filed a complaint with respect to the same airport fee or fees, any complaint by another carrier and any airport request for determination shall be filed no later than seven (7) calendar days following the initial complaint. In addition, all complaints or requests for determination must be filed on or before the sixtieth (60th) day after the carrier receives written notice of the imposition of the new fee or the imposition of the increase in the fee.

(c) To ensure an orderly disposition of the matter, all complaints and any request for determination filed with respect to the same airport fee or fees will be considered in a consolidated proceeding, as provided in §§ 302.611 and 302.613.

§ 302.605 Contents of complaint or request for determination.

(a) The complaint or request for determination shall set forth the entire grounds for requesting a determination of the reasonableness of the airport fee. The complaint or request shall include a copy of the airport owner or operator's written notice to the carrier of the imposition of the fee, a statement of position with a brief, and all supporting testimony and exhibits available to the carrier on which the filing party intends to rely. In lieu of submitting duplicative exhibits or testimony, the filing party may incorporate by reference testimony and exhibits already filed in the same proceeding.

(b) All exhibits and briefs prepared on electronic spreadsheet or word processing programs should be accompanied by standard-format computer diskettes containing those submissions. Word processing and spreadsheets files must be readable by current versions of one or more of the following programs, or in such other format as may be specified by notice in the Federal Register: Microsoft Word, Word Perfect, Ami Pro, Microsoft Excel, Lotus, Quattro Pro, or ASCII tab-delineated files. Parties should submit one copy of each diskette to the docket section, one copy to the office of the Chief Administrative Law Judge (M–50), and one copy to the Chief, Economic and Financial Analysis Division (X–55),

of the Office of Aviation Analysis. Filers should ensure that files on the diskettes are unalterably locked.

(c) When a carrier files a complaint, it must also submit the following certifications:

(1) The carrier has served the complaint, brief, and all supporting testimony and exhibits on the airport owner or operator and all other air carriers and foreign air carriers serving the airport by hand, by electronic transmission, or by overnight express delivery. (Unless an air carrier or foreign air carrier has informed the complaining carrier that a different person should be served, service may be made on the person responsible for communicating with the airport on behalf of the carrier about airport fees.);

(2) The parties served have received the complaint, brief, and all supporting testimony and exhibits or will receive them no later than the date the complaint is filed;

(3) The carrier has previously attempted to resolve the dispute directly with the airport owner or operator;

(4) When there is information on which the carrier intends to rely that is not included with the brief, exhibits, or testimony, the information has been omitted because the airport owner or operator has not made that information available to the carrier. The certification shall specify the date and form of the carrier's request for information from the airport owner or operator; and

(5) Any submission on computer diskette is a true copy of the data file used to prepare the printed versions of the exhibits or briefs.

(d) When an airport owner or operator files a request for determination, it must also submit the following certifications:

(1) The airport owner or operator has served the request, brief, and all supporting testimony and exhibits on all air carriers and foreign air carriers serving the airport by hand, by electronic transmission, or by overnight express delivery. (Unless the air carrier or foreign air carrier has informed the airport owner or operator that a different person should be served, service may be made on the person responsible for communicating with the airport on behalf of the carrier about airport fees.);

(2) The carriers served have received the request, brief, and all supporting testimony and exhibits or will receive them no later than the date the request is filed;

(3) The airport owner or operator has previously attempted to resolve the dispute directly with the carriers; and

(4) Any submission on computer diskette is a true copy of the data file used to prepare the printed versions of the exhibits or briefs.

§ 302.607 Answers to a complaint or request for determination.

(a)(1) When an air carrier or foreign air carrier files a complaint under this subpart, the owner or operator of an airport and any other air carrier or foreign air carrier serving the airport may file an answer to the complaint as provided in paragraphs (b) and (c) of this section.

(2) When the owner or operator of an airport files a request for determination of the reasonableness of a fee it has imposed, any air carrier or foreign air carrier serving the airport may file an answer to the request.

(b) The answer to a complaint or request for determination shall set forth the answering party's entire response. When one or more additional complaints or a request for determination has been filed pursuant to § 302.603(b) with respect to the same airport's fee or fees, the answer shall set forth the answering party's entire response to all complaints and any such request for determination. The answer shall include a statement of position with a brief and any supporting testimony and exhibits on which the answering party intends to rely. In lieu of submitting duplicative exhibits or testimony, the answering party may incorporate by reference testimony and exhibits already filed in the same proceeding.

(c) Answers to a complaint shall be filed no later than fourteen (14) calendar days after the filing date of the first complaint with respect to the fee or fees in dispute at a particular airport. Answers to a request for determination shall be filed no later than fourteen (14) calendar days after the filing date of the request.

(d) All exhibits and briefs prepared on electronic spreadsheet or word processing programs should be accompanied by standard-format computer diskettes containing those submissions. Word processing and spreadsheets files must be readable by current versions of one or more of the following programs, or in such other format as may be specified by notice in the Federal Register: Microsoft Word, Word Perfect, Ami Pro, Microsoft Excel, Lotus, Quattro Pro, or ASCII tab-delineated files. Parties should submit one copy of each diskette to the docket section, one copy to the office of the Chief Administrative Law Judge (M–50), and one copy to the Chief, Economic and Financial Analysis Division (X–55), of the Office of Aviation Analysis. Filers should ensure that files on the diskettes are unalterably locked.

(e) The answering party must also submit the following certifications:

(1) The answering party has served the answer, brief, and all supporting testimony and exhibits by hand, by electronic transmission, or by overnight express delivery on the carrier filing the complaint or the airport owner or operator requesting the determination;

(2) The parties served have received the answer and exhibits or will receive them no later than the filing date of the answer; and

(3) Any submission on computer diskette is a true copy of the data file used to prepare the printed versions of the exhibits or briefs.

§ 302.609 Replies.

(a) The carrier submitting a complaint may file a reply to any or all of the answers to the complaint. The airport owner or operator submitting a request for determination may file a reply to any or all of the answers to the request for determination.

(b) The reply shall be limited to new matters raised in the answers. It shall constitute the replying party's entire response to the answers. It shall be in the form of a reply brief and may include supporting testimony and exhibits responsive to new matters raised in the answers. In lieu of submitting duplicative exhibits or testimony, the replying party may incorporate by reference testimony and exhibits already filed in the same proceeding.

(c) The reply shall be filed no later than two (2) calendar days after answers are filed.

(d) All exhibits and briefs prepared on electronic spreadsheet or word processing programs should be accompanied by standard-format computer diskettes containing those submissions. Word processing and spreadsheets files must be readable by current versions of one or more of the following programs, or in such other format as may be specified by notice in the Federal Register: Microsoft Word, Word Perfect, Ami Pro, Microsoft Excel, Lotus, Quattro Pro, or ASCII tab-delineated files. Parties should submit one copy of each diskette to the docket section, one copy to the office of the Chief Administrative Law Judge (M–50), and one copy to the Chief, Economic and Financial Analysis Division, (X–55) of the Office of Aviation Analysis. Filers should ensure that files on the diskettes are unalterably locked.

(e) The carrier or airport owner or operator submitting the reply must certify that it has served the reply and

all supporting testimony and exhibits on the party or parties submitting the answer to which the reply is directed and that any submission on computer diskette is a true copy of the data file used to prepare the printed versions of the exhibits or briefs.

§ 302.611 Review of complaints.

(a) Within 30 days after a complaint is filed under this subpart, the Secretary will determine whether the complaint meets the procedural requirements of this subpart and whether a significant dispute exists, and take appropriate action pursuant to paragraph (b), (c), or (d) of this section.

(b) If the Secretary determines that a significant dispute exists, he or she will issue an instituting order assigning the complaint for hearing before an administrative law judge. The instituting order will—

(1) Establish the scope of the issues to be considered and the procedures to be employed;

(2) Indicate the parties to participate in the hearing;

(3) Consolidate into a single proceeding all complaints and any request for determination with respect to the fee or fees in dispute; and

(4) Include any special provisions for exchange or disclosure of information by the parties.

(c) The Secretary will dismiss any complaint if he or she finds that no significant dispute exists. The order dismissing the complaint will contain a concise explanation of the reasons for the determination that the dispute is not significant.

(d) If the Secretary determines that the complaint does not meet the procedural requirements of this subpart, the complaint will be dismissed without prejudice to filing a new complaint. The order of the Secretary will set forth the terms and conditions under which a revised complaint may be filed.

§ 302.613 Review of requests for determination.

(a) Except as provided in paragraph (e) of this section, within 30 days after an airport owner or operator files a request for determination of the reasonableness of a fee under this subpart, the Secretary will determine whether the request meets the procedural requirements of this subpart and whether a significant dispute exists.

(b) If the Secretary determines that a significant dispute exists, he or she will issue an instituting order assigning the request for hearing before an administrative law judge. The instituting order will establish the scope of the issues to be considered and the procedures to be employed and will indicate the parties to participate in the hearing. The instituting order will consolidate into a single proceeding all complaints and any request for determination with respect to the fee or fees in dispute.

(c) If the Secretary finds that the request for determination presents no significant dispute, the Secretary will either issue a final order as provided in § 302.621 or set forth the schedule for any additional procedures required to complete the proceeding.

(d) If the Secretary determines that the request does not meet the procedural requirements of this subpart, the request for determination will be dismissed without prejudice to filing a new request. The order of the Secretary will set forth the terms and conditions under which a revised request may be filed.

(e) When both a complaint and a request for determination have been filed with respect to the same airport fee or fees, the Secretary will issue a determination as to whether the complaint, the request, or both meet the procedural requirements of this subpart and whether a significant dispute exists within 30 days after the complaint is filed.

§ 302.615 Decision by administrative law judge.

The administrative law judge shall issue a decision recommending a disposition of a complaint or request for determination within 60 days after the date of the instituting order, unless a shorter period is specified by the Secretary.

§ 302.617 Petitions for discretionary review.

(a) Within five (5) calendar days after service of a decision by an administrative law judge, any party may file with the Secretary a petition for discretionary review of the administrative law judge's decision.

(b) Petitions for discretionary review shall comply with § 302.32(a). The petitioner must also submit the following certifications:

(1) The petitioner has served the petition by hand, by electronic transmission, or by overnight express delivery on all parties to the proceeding; and

(2) The parties served have received the petition or will receive it no later than the date the petition is filed.

(c) Any party may file an answer in support of or in opposition to any petition for discretionary review. The answer shall be filed within four (4) calendar days after service of the petition for discretionary review. The answer shall comply with the page limits specified in § 302.32(b).

§ 302.619 Completion of proceedings.

(a) When a complaint with respect to an airport fee or fees has been filed under this subpart and has not been dismissed, the Secretary will issue a determination as to whether the fee is reasonable within 120 days after the complaint is filed.

(b) When a request for determination has been filed under this subpart and has not been dismissed, the Secretary will issue a determination as to whether the fee is reasonable within 120 days after the date the request for determination is filed.

(c) When both a complaint and a request for determination have been filed with respect to the same airport fee or fees and have not been dismissed, the Secretary will issue a determination as to whether the fee is reasonable within 120 days after the complaint is filed.

§ 302.621 Final order.

(a) When a complaint or request for determination stands submitted to the Secretary for final decision on the merits, he or she may dispose of the issues presented by entering an appropriate order, which will include a statement of the reasons for his or her findings and conclusions. Such an order shall be deemed a final order of the Secretary.

(b) The final order of the Secretary shall include, where necessary, directions regarding an appropriate refund or credit of the fee increase or newly established fee which is the subject of the complaint or request for determination.

(c) If the Secretary has not issued a final order within 120 days after the filing of a complaint by an air carrier or foreign air carrier, the decision of the administrative law judge shall be deemed to be the final order of the Secretary.

Subpart G—Rules Applicable to Mail Rate Procedings and Contracts

§ 302.701 Applicability.

This subpart sets forth the special rules applicable to proceedings for the establishment of mail rates by the Department for foreign air transportation and air transportation between points in Alaska, and certain contractual arrangements between the U.S. Postal Service and certificated air carriers for the carriage of mail in foreign air transportation entered into pursuant to 39 U.S.C. 5402(a), 84 Stat. 772. Such contracts must be for the transportation of at least 750 pounds of

mail per flight, and no more than five (5) percent, based on weight, of the international mail transported under any such contract may consist of letter mail.

Final Mail Rate Proceedings

§ 302.702 Institution of proceedings.

(a) Proceedings for the determination of rates of compensation for the transportation of mail may be commenced by the filing of a petition by an air carrier whose rate is to be fixed, or the U.S. Postal Service, or upon the issuance of an order by the DOT decisionmaker.

(b) The petition shall set forth the rate or rates sought to be established, a statement that they are believed to be fair and reasonable, the reasons supporting the request for a change in rates, and a detailed economic justification sufficient to establish the reasonableness of the rate or rates proposed.

(c) In any case where an air carrier is operating under a final mail rate uniformly applicable to an entire rate-making unit as established by the DOT decisionmaker, a petition must clearly and unequivocally challenge the rate for such entire rate-making unit and not only a part of such unit.

(d) All petitions, amended petitions, and documents relating thereto shall be served upon the U.S. Postal Service by sending a copy to the Assistant General Counsel, Transportation Division, Washington, DC 20260–1124, by registered or certified mail, postpaid, prior to the filing thereof with the Department. Proof of service on the U.S. Postal Service shall consist of a statement in the document that the person filing it has served a copy as required by this section.

(e) Answers to petitions shall be filed within twenty (20) days after service of the petition.

§ 302.703 Order to show cause or instituting a hearing.

Whether the proceeding is commenced by the filing of a petition or upon the Department's own initiative, the DOT decisionmaker may issue an order directing the respondent to show cause why it should not adopt such findings and conclusions and such final rates as may be specified in the order to show cause, or may issue an order setting the matter for hearing before an administrative law judge.

§ 302.704 Objections and answers to order to show cause.

(a) Where an order to show cause is issued, any person having objections to the rates specified in such order shall file with the DOT decisionmaker a notice of objection within ten (10) days after the date of service of such order or within such other period as the order may specify.

(b) If such notice is properly filed, written answers and any supporting documents shall be filed within thirty (30) days after the service of the order to show cause, or within such other period as the order may specify. An answer to an order to show cause shall contain specific objections, and shall set forth the findings and conclusions, the rates, and the supporting exhibits that would be substituted for the corresponding items in the findings and conclusions of the show cause order, if such objections were found valid.

(c) A notice or answer filed by a person who is neither a party nor a person ultimately permitted to intervene in an oral evidentiary hearing if such proceeding is established shall be treated as a memorandum filed under § 302.706.

§ 302.705 Further procedures.

(a) If no notice, or, if after notice, no answer is filed within the designated time, or if a timely filed answer raises no material issue of fact, the DOT decisionmaker may, upon the basis of all of the documents filed in the proceeding, enter a final order fixing the rate or rates.

(b) If an answer raising a material issue of fact is filed within the time designated in the Department's order, the DOT decisionmaker may then issue an order authorizing additional pleadings and/or establishing further procedural steps, including setting the matter for oral evidentiary hearing before an administrative law judge.

§ 302.706 Hearing.

(a) *Issues.* If a hearing is ordered under § 302.705, the issues at such hearing shall be formulated in accordance with the instituting order, except that at a prehearing conference, the administrative law judge may permit the parties to raise such additional issues as he or she deems necessary to make a full determination of a fair and reasonable rate.

(b) *Parties and persons other than parties.* (1) The parties to the proceeding shall be the air carrier or carriers for whom rates are to be fixed, the U.S. Postal Service, the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings and any other person whom the DOT decisionmaker or administrative law judge permits to intervene in accordance with § 302.20.

(2) In addition to participation in hearings in accordance with § 302.19, persons other than parties may, within the time fixed for filing notice of objection to an order to show cause as provided in § 302.704, submit a memorandum of opposition to, or in support of, the position taken in the petition or order. Such memorandum shall not be received as evidence in the proceeding.

(c) *Evidence.* All direct evidence shall be in writing and shall be filed in exhibit form within the times specified by the DOT decisionmaker or by the administrative law judge.

(d) Except as modified by this subpart, the provisions of §§ 302.17 through 302.38 of this part shall apply.

Provision for Temporary Rate

§ 302.707 Procedure for fixing temporary mail rates.

At any time during the pendency of a proceeding for the determination of final mail rates, the DOT decisionmaker, upon his or her own initiative, or on petition by the air carrier whose rates are in issue or by the U.S. Postal Service, may fix temporary rates of compensation for the transportation of mail subject to downward or upward adjustment upon the determination of final mail rates.

Informal Mail Rate Conference Procedure

§ 302.708 Invocation of procedure.

(a) Conferences between DOT employees, representatives of air carriers, the U.S. Postal Service and other interested persons may be called by DOT employees for the purpose of considering and clarifying issues and factual material in pending proceedings for the establishment of rates for the transportation of mail.

(b) At the commencement of an informal mail rate conference pursuant to this section, the authorized DOT employees conducting such conference shall issue to each person present at such conference a written statement to the effect that such conference is being conducted pursuant to this section and stating the time of commencement of such conference; and at the termination of such conference the DOT employees conducting such conference shall note in writing on such statement the time of termination of such conference.

§ 302.709 Scope of conferences.

The mail rate conferences shall be limited to the discussion of, and possible agreement on, particular issues and related factual material in accordance with sound rate-making

principles. The duties and powers of DOT employees in rate conferences essentially will not be different, therefore, from the duties and powers they have in the processing of rate cases not involving a rate conference. The employees' function in both instances is to present clearly to the DOT decisionmaker the issues and the related material facts, together with recommendations. The DOT decisionmaker will make an independent determination of the soundness of the employees' analyses and recommendations.

§ 302.710 Participants in conferences.

The persons entitled to be present in mail rate conferences will be the representatives of the carrier whose rates are in issue, the staff of the U.S. Postal Service, and the authorized DOT employees. No other person will attend unless the DOT employees deem his or her presence necessary in the interest of one or more purposes to be accomplished, and in such case his or her participation will be limited to such specific purposes. No person, however, shall have the duty to attend merely by reason of invitation by the authorized DOT employees.

§ 302.711 Conditions upon participation.

(a) *Nondisclosure of information.* As a condition to participation, every participant, during the period of the conference and for ninety (90) days after its termination, or until the Department takes public action with respect to the facts and issues covered in the conference, whichever is earlier:

(1) Shall, except for necessary disclosures in the course of employment in connection with conference business, hold the information obtained in conference regarding the future course of action or position of the Department or its employees with respect to the facts or issues discussed at the conference in absolute confidence and trust;

(2) Shall not deal, directly or indirectly, for the account of himself or herself, his or her immediate family, members of his or her firm or company, or as a trustee, in securities of the air carrier involved in the rate conference except that under exceptional circumstances special permission may be obtained in advance from the DOT decisionmaker; and

(3) Shall adopt effective controls for the confidential handling of such information and shall instruct personnel under his or her supervision, who by reason of their employment come into possession of information obtained at the conference, that such information is confidential and must not be disclosed to anyone except to the extent absolutely necessary in the course of employment, and must not be misused.

(b) *Signed statement required.* Every representative of an air carrier actually present at any conference shall sign a statement that he or she has read this entire section and promises to abide by it and advise any other participant to whom he or she discloses any confidential information of the restrictions imposed in paragraph (a) of this section. Every representative of the U.S. Postal Service actually present at any conference shall, on his or her own behalf, sign a statement to the same effect.

(c) *Presumption of having conference information.* A director of any air carrier that has had a representative at the conference, who deals either directly or indirectly for himself or herself, his or her immediate family, members of his or her firm or company, or as a trustee, in securities of the air carrier involved in the conference, during the restricted period set forth in paragraph (a) of this section, shall be presumed to have come into possession of information obtained at the conference knowing that such information was subject to the restrictions imposed in paragraph (a) of this section; but such presumption can be rebutted.

(d) *Compliance report required.* Within ten (10) days after the expiration of the time specified for keeping conference matters confidential, every participant, as defined in paragraph (e) of this section, shall file a verified compliance report with Department of Transportation Dockets stating that he or she has complied in every respect with the conditions of this section, or if he or she has not so complied, stating in detail in what respects he or she has failed to comply.

(e)(1) *Persons subject to the provisions of this section.* For the purposes of this section, participants shall include

(i) Any representative of any air carrier and any representative of the U.S. Postal Service actually present at the conference;

(ii) The directors and the officers of any air carrier that had a representative at the conference;

(iii) The members of any firm of attorneys or consultants that had a representative at the conference; and

(iv) The members of the U.S. Postal Service staff who come into possession of information obtained at the conference, knowing that such information is subject to the restrictions imposed in this section.

(2) Restrictions on disclosure of confidential information and dealing in air carrier securities are imposed upon the DOT employees pursuant to applicable law.

§ 302.712 Information to be requested from an air carrier.

When an air carrier is requested to submit detailed estimates as to traffic, revenues and expenses by appropriate periods and the investment that will be required to perform the operations for a future period, full and adequate support shall be presented for all estimates, particularly where such estimates deviate materially from the air carrier's experience. With respect to the rate for a past period, essentially the same procedure shall be followed. Other information or data likewise may be requested by the DOT employees. All data submitted by the air carrier shall be certified by a responsible officer.

§ 302.713 DOT analysis of data for submission of answers thereto.

After a careful analysis of these data, the DOT employees will, in most cases, send the air carrier a statement of exceptions showing areas of differences. Where practicable, the air carrier may submit an answer to these exceptions. Conferences will then be scheduled to resolve the issues and facts in accordance with sound ratemaking principles.

§ 302.714 Availability of data to the U.S. Postal Service.

The representatives of the U.S. Postal Service shall have access to all conference data and, insofar as practicable, shall be furnished copies of all pertinent data prepared by the DOT employees and the air carrier, and a reasonable time shall be allowed to review the facts and issues and to make any presentation deemed necessary; *Provided,* That in cases other than those involving an issue as to the service mail rates payable by the U.S. Postal Service pursuant to section 41901 of the Statute, representatives of the U.S. Postal Service shall be furnished with copies of data under this provision only upon their written request.

§ 302.715 Post-conference procedure.

No briefs, argument, or any formal steps will be entertained by the DOT decisionmaker after the rate conferences. The form, content and time of the staff's presentation to the DOT decisionmaker are entirely matters of internal procedure. Any party to the mail rate proceeding may, through an authorized DOT employee, request the opportunity to submit a written or oral statement to the DOT decisionmaker on any unresolved issue. The DOT decisionmaker will grant such requests

whenever he or she deems such action desirable in the interest of further clarification and understanding of the issues. The granting of an opportunity for such further presentation shall not, however, impair the rights that any party might otherwise have under the Statute and this part.

§ 302.716 Effect of conference agreements.

No agreements or understandings reached in rate conferences as to facts or issues shall in any respect be binding on the Department or any participant. Any party to mail rate proceedings will have the same rights to file an answer and take other procedural steps as though no rate conference had been held. The fact, however, that a rate conference was held and certain agreements or understandings may have been reached on certain facts and issues renders it proper to provide that, upon the filing of an answer by any party to the rate proceeding, all issues going to the establishment of a rate shall be open, except insofar as limited in prehearing conference in accordance with § 302.22.

§ 302.717 Waiver of participant conditions.

After the termination of a mail rate conference conducted under the provisions of this subpart, the air carrier whose rates were in issue may petition the DOT decisionmaker for a release from the obligations imposed upon it and all other persons by § 302.711. The DOT decisionmaker will grant such petition only after a detailed and convincing showing is made in the petition and supporting exhibits and documents that there is no reasonable possibility that any of the abuses sought to be prevented will occur or that the Department's processes will in any way be prejudiced. There will be no hearing or oral argument on the petition and the DOT decisionmaker will grant or deny the request without being required to assign reasons therefor.

Processing Contracts for the Carriage of Mail in Foreign Air Transportation

§ 302.718 Filing.

Any air carrier that is a party to a contract to which this subpart is applicable shall file three (3) copies of the contract in the Office of Aviation Analysis, X–50, Department of Transportation, Washington, DC 20590, not later than ninety (90) days before the effective date of the contract. A copy of such contract shall be served upon the persons specified in § 302.720 and the certificate of service shall specify the persons upon whom service has been made. One copy of each contract filed shall bear the certification of the secretary or other duly authorized officer of the filing air carrier to the effect that such copy is a true and complete copy of the original written instrument executed by the parties.

§ 302.719 Explanation and data supporting the contract.

Each contract filed pursuant to this subpart shall be accompanied by economic data and such other information in support of the contract upon which the filing air carrier intends that the Department rely, including, in cases where pertinent, estimates of the annual volume of contract mail (weight and ton-miles) under the proposed contract, the nature of such mail (letter mail, parcel post, third class, etc.), together with a statement as to the extent to which this traffic is new or diverted from existing classes of air and surface mail services and the priority assigned to this class of mail.

§ 302.720 Service.

A copy of each contract filed pursuant to § 302.718, and a copy of all material and data filed pursuant to § 302.719, shall be served upon each of the following persons:

(a) Each certificated and commuter (as defined in § 298.2 of this chapter) air carrier, other than the contracting carrier, that is actually providing scheduled mail services between any pair of points between which mail is to be transported pursuant to the contract; and

(b) The Assistant General Counsel, Transportation Division, U.S. Postal Service, Washington, DC 20260–1124.

§ 302.721 Complaints.

Within fifteen (15) days of the filing of a contract, any interested person may file with the Office of Aviation Analysis, X–50, Department of Transportation, Washington, DC 20590, a complaint with respect to the contract setting forth the basis for such complaint and all pertinent information in support of same. A copy of the complaint shall be served upon the air carrier filing the contract and upon each of the persons served with such contract pursuant to § 302.720.

§ 302.722 Answers to complaints.

Answers to the complaint may be filed within ten (10) days of the filing of the complaint, with service being made as provided in § 302.720.

§ 302.723 Further procedures.

(a) In any case where a complaint is filed, the DOT decisionmaker shall issue an order dismissing the complaint, disapproving the contract, or taking such other action as may be appropriate. Any such order shall be issued not later than ten (10) days prior to the effective date of the contract.

(b) In cases where no complaint is filed, the DOT decisionmaker may issue a letter of notification to all persons upon whom the contract was served indicating that the Department does not intend to disapprove the contract.

(c) Unless the DOT decisionmaker disapproves the contract not later than ten (10) days prior to its effective date, the contract automatically becomes effective.

§ 302.724 Petitions for reconsideration.

Except in the case of a Department determination to disapprove a contract, no petitions for reconsideration of any Department determination pursuant to this subpart shall be entertained.

APPENDIX A TO PART 302.—INDEX TO RULES OF PRACTICE

Subject	Current rule	Proposed rule
ADMINISTRATIVE LAW JUDGES:		
Actions after hearings	§ 302.27(b)	§ 302.31(a)
Actions during prehearing conference	§ 302.23(a)	§ 302.22(b)
Arguments before	§ 302.25	§ 302.29
Briefs	§ 302.26	§ 302.30
Licensing cases	§ 302.1752	§ 302.215
Certification for decision	§ 302.22(d)	§ 302.31(b)
Definition	§ 302.22(a)	§ 302.2
Delegation of authority	§ 302.27(a)	§ 307.17(a)(3)
Exceptions	§ 302.27(a)	§ 307.17(a)(3)
Interlocutory matters	§ 302.27(a)	§ 307.17(a)(3)

APPENDIX A TO PART 302.—INDEX TO RULES OF PRACTICE—Continued

Subject	Current rule	Proposed rule
Disqualification	§ 302.22(b)	§ 302.17(b)
Exceptions	§ 302.24(e)	§ 302.24(i)
Licensing cases	§ 302.1754	§ 302.217
Hearings before	§ 302.24	§ 302.23
Initial decision (see Initial Decision)		
Powers	§ 302.22(c)	§ 302.17(a)
Prehearing conference report	§ 302.23(b)	§ 302.22(c)
Recommended decision (see Recommended Decision)		
Termination of authority	§ 302.22(c)	§ 307.17(a)(4)
ADMISSIONS:		
Enforcement proceeding	§ 302.212	§ 302.412
Limitation on use	§ 302.212	§ 302.412(c)
AIRPORT FEES:		
Administrative law judge decision	§ 302.615	§ 302.615
Complaints by U.S. or foreign air carriers	§ 302.603(a)	§ 302.603(a)
Answers	§ 302.607	§ 302.607
Additional complaints	§ 302.603(b)	§ 302.603(b)
Contents	§ 302.605	§ 302.605
Format of exhibits and briefs	§ 302.605(b)	§ 302.605(b)
Service	§ 302.605(c)(1)	§ 302.605(c)(1)
Replies	§ 302.609	§ 302.609
Consolidation of proceedings	§ 302.603(c)	§ 302.603(c)
Dismissal	§ 302.611 (c), (d)	§ 302.611 (c), (d)
Final order	§ 302.621	§ 302.621
Timing	§ 302.619	§ 302.619
Instituting order	§ 302.611(b)	§ 302.611(b)
Petitions for discretionary review	§ 302.617	§ 302.617
Answers	§ 302.617(c)	§ 302.617(c)
Request for determination by airport owner/operator	§ 302.603(a)	§ 302.603(a)
Answers	§ 302.607	§ 302.607
Contents	§ 302.605	§ 302.605
Format of exhibits and briefs	§ 302.605(b)	§ 302.605(b)
Service	§ 302.605(d)(1)	§ 302.605(d)(1)
Replies	§ 302.609	§ 302.609
Review procedures	§ 302.611	§ 302.611
Significant dispute determination	§ 302.611(b)	§ 302.611(b)
AMENDMENTS OF DOCUMENTS (see Documents)		
ANSWERS (see also Replies):		
Airport fees	§ 302.607	§ 302.607
Certificate applications:		
Initial fitness	§ 302.1730(c)	§ 302.204
International route awards:		
Conforming applications	§ 302.1720(d)	§ 302.212(d)
Motions to modify scope	§ 302.1720(e)	§ 302.212(d)
New authority	§ 302.1720(d)	§ 302.212(b)
Complaints:		
Air mail contracts	§ 302.1506	§ 302.722
Airport fees	§ 302.607	§ 302.607
Enforcement matters	§ 302.204(b)	§ 302.405
Suspension of tariffs	§ 302.505	§ 302.506
Consolidation of proceedings	§ 302.12(c)	§ 302.13(c)
Enforcement proceeding, notice instituting	§ 302.207	§ 302.408
Exemption applications	§ 302.406	§ 302.307
Foreign air carrier permit applications	§ 302.1740(c)	§ 302.204
Generally	§ 302.6	§ 302.6
Mail rate proceedings show cause orders	§ 302.305	§ 302.704
Motions, generally	§ 302.18(c)	§ 302.11(c)
Motions to consolidate	§ 302.12(c)	§ 302.13(c)
Motions to dismiss and for summary judgment	§ 302.212	§ 302.411
Motions for modification/dissolution of enforcement proceedings	§ 302.218	§ 302.419
Petitions for discretionary review	§ 302.28(b)	§ 302.32(b)
Petitions for final mail rates	§ 302.303	§ 302.702(e)
Petitions for intervention	§ 302.15(c)(3)	§ 302.20(c)(3)
Petitions for reconsideration	§ 302.37a	§ 302.14
Requests for determination of airport fees	§ 302.607	§ 302.607
APPEALS:		
Administrative Law Judge's ruling	§ 302.18(f)	§ 302.11(h)
Enforcement complaints	§ 302.206(b)	§ 302.406(c)
APPEARANCES:		
Generally	§ 302.11	§ 302.21
Application for admission to practice unnecessary	§ 302.11(a)	§ 302.21(b)
Copy of transcript	§ 302.11(c)	§ 302.27(b)

APPENDIX A TO PART 302.—INDEX TO RULES OF PRACTICE—Continued

Subject	Current rule	Proposed rule
Retention of counsel	§ 302.11(b)	§ 302.27(a)
Enforcement proceedings	§ 302.214	§ 302.416
APPLICATIONS:		
Admission to practice unnecessary	§ 302.11(a)	§ 302.21(b)
Suspension from practicing before DOT	§ 302.11(a)	§ 302.21(c)
Amendment	§ 302.5	§ 302.5
Certificates for international route awards	§§ 302.1701–1713, 1720	§§ 302.201–206
Conforming applications	§ 302.1720(c)	§ 302.212(c)
Certificates involving initial fitness	§§ 302.1701–1713, 1730	§§ 302.201–206
Consolidation	§ 302.12	§ 302.13
Exemptions	§§ 302.401–405	§§ 302.302–304
Exemptions, emergency	§ 302.410 (b), (c)	§ 302.311
Foreign Air Carrier Permits	§§ 302.1701–1713,1740	§§ 302.201–206
Licensing cases	§§ 302.1701–1790	§§ 302.201–206
ARGUMENT:		
Before Administrative Law Judge	§ 302.25	§ 302.29
Oral (see Oral Arguments)		
ATTENDANCE FEES AND MILEAGE BRIEFS	§ 302.21	§ 302.27(c)
Accompanying motions or answers	§ 302.18(d)	§ 302.11(d)
Failure to restate objections	§ 302.31(b)	§ 302.35(b)
Filing time	§ 302.31(a)	§ 302.35(a)
Formal specifications	§ 302.31(c)	§ 302.35(c)
Incorporation by reference	§ 302.31(b)	§ 302.35(c)(2)
Licensing cases	§§ 302.1752, 1755	§§ 302.215, 218
To Administrative Law Judge	§ 302.26	§ 302.30
Licensing cases	§ 302.1752	§ 302.215
To DOT decisionmaker	§ 302.31	§ 302.35
Licensing cases	§ 302.1755	§ 302.218
CERTIFICATE CASES FOR U.S. AIR CARRIERS:		
Application:		
Answers to	§§ 302.1720(d), 1730(d)	§ 302.204(a)
Contents of	§ 302.1704	§ 302.202
Incomplete	§ 302.1713	§ 302.209
Replies to answers	§ 302.204(b)	
Service of	§ 302.1705	§ 302.203
Supporting evidence	§ 302.1710	§§ 302.202(a),205
Verification	§ 302.1707	§ 302.206
Continuing Fitness	§ 302.1730	§ 302.211
Non-hearing procedures	§ 302.1712(a)	§ 302.207
Generally	§§ 302.1701–1790	§§ 302.201–220
Initial Fitness	§ 302.1730	§ 302.211
International Route Awards	§ 302.1720	§ 302.212
Oral evidentiary hearing proceedings	§ 302.1751–1757	§§ 302.214–220
Petition for	§ 302.1712(b)	§ 302.208
CERTIFICATION:		
Documents	§ 302.4(b)	§ 302.3(d)
Record	§§ 302.22(d), 27, 29	§ 302.31(b)
CHARGES (see Rates, Fares, and Charges; Airport Fees)		
CITATION OF RULES	§ 302.2	§ 302.1(c)
CIVIL PENALTIES	§ 302.206(a)	§ 302.407 (d), (e)
COMPLAINANTS, JOINDER	§ 302.13	§ 302.404(d)
COMPLAINTS:		
Airport fees	§§ 302.603–605	§§ 302.603–605
Contracts for transportation of mail	§§ 302.1505–1507	§ 302.721
Enforcement proceedings	§§ 302.200–204	§§ 302.403–404
Joinder	§ 302.13	§ 302.404(d)
Rates, fares, and charges	§§ 302.501–508	§§ 302.501–507
Suspension of tariffs	§§ 302.505–508	§ 302.506
COMPUTATION OF TIME (see also Time)	§ 302.16	§ 302.8
CONSOLIDATION OF PROCEEDINGS	§ 302.12	§ 302.13
Airport fees	§ 302.603(c)	§ 302.603(c)
Answer to motion for	§ 302.12(c)	§ 302.13(c)
Enforcement proceedings	§ 302.210(a)	§ 302.410
Filing time	§ 302.12(b)	§ 302.13(b)
Initiation of	§ 302.12(a)	§ 302.13(a)
CONTINUING FITNESS CERTIFICATE CASES	§§ 302.1701–1713	§ 302.212
CONTRACTS (see Mail Contracts)		
DECISIONS:		
Final	§ 302.36	§§ 302.38, 220
Initial (see Administrative Law Judges)		
Recommended (see Administrative Law Judges)		
Tentative	§ 302.29	§ 302.33

APPENDIX A TO PART 302.—INDEX TO RULES OF PRACTICE—Continued

Subject	Current rule	Proposed rule
Exceptions to	§ 302.30	§ 302.34
DEFINITIONS	NA	§§ 302.2, 402
DELEGATION OF AUTHORITY	§ 302.27	§§ 302.17(a), 18(a)
DEPOSITIONS:		
Application by party for	§ 302.20(b)	§ 302.26(b)
Criteria for order to issue	§ 302.20(a)	§ 302.26(a)
Evidential status	§ 302.20(h)	§ 302.26(h)
Objections to questions or evidence	§ 302.2(d)	§ 302.26(d)
Specifications	§ 302.20(g)	§ 302.26(g)
Subscription by witness	§ 302.20(e)	§ 302.26(e)
Written interrogatories	§ 302.20(f)	§ 302.26(f)
DISCRETIONARY REVIEW:		
Initial and recommended decisions	§ 302.28	§ 302.32
Answers in opposition or support	§ 302.28(b)	§ 302.32(b)
Formal requirements	§ 302.28(a)(3)	§ 302.32(a) (3), (4)
Grounds for	§ 302.28(a)(2)	§ 302.32(a)(2)
Orders declining review	§ 302.28(c)	§ 302.32(c)
Oral arguments	§ 302.28(a)(5)	§ 302.32(a)(5)
Petitions for	§ 302.28(a)(1)	§ 302.32(a)(1)
Review proceedings	§ 302.28(d)	§ 302.32(d)
DISSOLUTION OF ENFORCEMENT ACTION	§ 302.218	§ 302.419
DOCUMENTS:		
Amendments	§ 302.5	§ 302.5
Leave of Department	§ 302.5	§ 302.5(a)
Timing of	§ 302.5	§ 302.5(b)
Answers (see Answers)		
Briefs (see Briefs)		
Dismissal	§ 302.5	§ 302.3(d)
Electronic filing	NA	§ 302.3(c)
Exhibits	§ 302.24(g)	§ 302.24(g)
		§ 302.24(c)
Filing	§ 302.3	§ 302.3
Address	§ 302.3(a)	§ 302.3(a)
Date	§ 302.3(a)	§ 302.3(a)
Improper filing	§ 302.4e	§ 302.3(d)
Formal specifications	§ 302.3(b)	§ 302.3(b)
General requirements	§ 302.4	§ 302.4
Contents	§ 302.4(a)	§ 302.4(a)(2)
Designation of person to receive service	§ 302.4(c)	§ 302.4(a)
Subscription	§ 302.4(b)	§ 302.4(b)
Memoranda of opposition or support	§ 302.6(c)	§ 302.706(b)(2)
Number of copies	§ 302.3(c)	§ 302.3(c)
Objections to public disclosure	§ 302.39(b)	§ 302.12
Official Notice of facts	§ 302.24(n)	§ 302.24(g)
Partial relevance of	§ 302.24(l)	§ 302.24(e)
Presented at oral argument	§ 302.32(b)	§ 302.36(b)
Receipt after hearing	§ 302.24(k)	§ 302.24(h)
Responsive	§ 302.6	§ 302.6
Retention	§ 302.7	§ 302.3(g)
Service (see Service)		
Table of contents/Index	§ 302.3(d)	§ 302.4(a)(3)
Unauthorized	§ 302.4(f)	§ 302.3(e)
DOT DECISIONMAKER:		
Briefs to	§ 302.31	§ 302.35
Licensing cases	§ 302.1755	§ 302.218
Certification of record to	§ 302.22(d)	§ 302.31(b)
Definition	§ 302.22a	§ 302.2, 18
Final decision	§ 302.36	§ 302.38
Licensing cases	§ 302.1757	§ 302.220
Oral argument	§ 302.32	§ 302.36
Licensing cases	§ 302.1756	§ 302.219
Petitions for reconsideration	§ 302.37	§ 302.14
Review of Administrative Law Judge decision	§ 302.28	§ 302.32
Tentative decision	§ 302.29	§ 302.33
Exceptions	§ 302.30	§ 302.34
ENFORCEMENT PROCEEDINGS:		
Admissions as to facts and documents	§ 302.212	§ 302.412
Complaints:		
Formal	§ 302.201	§ 302.404
Informal	§ 302.200	§ 302.403
Insufficiency of	§ 302.203	§ 302.404(c)
Consolidation of proceedings	§ 302.210a	§ 302.410

APPENDIX A TO PART 302.—INDEX TO RULES OF PRACTICE—Continued

Subject	Current rule	Proposed rule
Evidence of previous violations	§ 302.216	§ 302.413
Generally	§§ 302.200–217	§§ 302.401–420
Hearings	§ 302.213	§ 302.415
Modification or dissolution of enforcement action	§ 302.218	§ 302.419
Motions to dismiss	§ 302.212	§ 302.411
Motions for summary judgment	§ 302.212	§ 302.402
Settlement proceedings	§ 302.215	§ 302.417
EVIDENCE:		
Exhibits	§ 302.24 (g),(h)	§ 302.24 (c),(d)
Generally	§ 302.24(c+)	§ 302.24(a)
Objections to	§ 302.24(d)	§ 302.24(b)
Offers of proof	§ 302.24(f)	§ 302.24(j)
Official notice of facts in certain documents	§ 302.24(n)	§ 302.24(g)
Partial relevance of	§ 302.24(l)	§ 302.24(e)
Previous violations	§ 302.216	§ 302.413
Records in other proceedings	§ 302.24(j)	§ 302.24(f)
EXAMINERS (see Administrative Law Judges)		
EXCEPTIONS:		
Administrative Law Judge's rulings	§ 302.24(e)	§ 302.24(i)
Initial decisions	§ 302.30	§ 302.31(c)
Licensing cases	§ 302.1754	§ 302.217
Recommended decisions	§ 302.30	§ 302.31(c)
Request for oral argument	§ 302.32	§ 302.36
Tentative decisions	§ 302.30	§ 302.34
Waiver	§ 302.33	§ 302.37
EXEMPTION PROCEEDINGS:		
Application:		
Answers to	§ 302.406	§ 302.307
Contents of	§ 302.402	§ 302.303
Filing of	§ 302.401	§ 302.302
Incomplete	§ 302.405	§ 302.306
Posting of	§ 302.404	§ 302.305
Service of	§ 302.403	§ 302.304
Reply to answer	§ 302.407	§ 302.308
Supporting evidence	§ 302.402(c)	§ 302.302(c)
DOT's initiative	§ 302.409	§ 302.310
Emergencies	§ 302.410	§ 302.311
Cabotage	§ 302.402(d)	§ 302.303(d)
Hearing request	§ 302.408	§ 302.309
EXHIBITS (see also Evidence):		
Generally	§ 302.24(g)	§ 302.24 (c),(d)
FARES (see Rates, Fares, and Charges)		
FEES (see Airport Fees)		
FINAL MAIL RATE PROCEEDINGS (see Mail Rate Proceedings)		
FINAL ORDERS (see Orders)		
FITNESS CASES (see Certificate Cases)		
FOREIGN AIR CARRIER PERMIT CASES:		
Application:		
Answers to	§ 302.1740(c)	§ 302.204(a)
Contents of	§ 302.1704	§ 302.202
Incomplete	§ 302.1713	§ 302.209
Replies to answers		§ 302.204(b)
Service of	§ 302.1705	§ 302.203
Supporting evidence	§ 302.1710	§ 302.202(a) 205,
Verification	§ 302.1707	§ 302.206
Non-hearing procedures	§ 302.1712(a)	§ 302.207
Generally	§§ 302.1701–1713, 1740–1790	§§ 302.201–220
Oral evidentiary hearing proceedings	§§ 302.1751–1757	§§ 302.214–220
Petition for	§ 302.1712(b)	§ 302.208
HEARINGS:		
Airport fee dispute proceedings	§ 302.611(b)	§ 302.611(b)
Argument before Administrative Law Judge	§ 302.25	§ 302.29
Change in rates, fares, or charges	§ 302.506	§ 302.706
Consolidated (see Consolidation of Proceedings)		
Documents of partial relevance	§ 302.24(i)	§ 302.24(e)
Enforcement proceedings	§ 302.213	§ 302.415
Evidence (see Evidence)		
Expedition of	§ 302.14(a)	§ 302.11(e)
Generally	§ 302.24	§ 302.23
Intervention	§ 302.15	§ 302.20
Licensing cases	§ 302.1751	§ 302.214

APPENDIX A TO PART 302.—INDEX TO RULES OF PRACTICE—Continued

Subject	Current rule	Proposed rule
Notice	§ 302.24(b)	§ 302.23
Offers of proof	§ 302.24(f)	§ 302.24(j)
Official notice of facts in certain documents	§ 302.24(n)	§ 302.24(g)
Participation by non parties	§ 302.14(b)	§ 302.19
Receipt of documents after hearing	§ 302.24(k)	§ 302.24(h)
Records in other proceedings	§ 302.24(j)	§ 302.24(f)
Request for, on application for exemption	§ 302.408	§ 302.309
Shortened procedure	§ 302.35	§ 302.15
Transcripts	§ 302.24 (l), (m)	§ 302.28
INITIAL DECISION:		
Answer in support or opposition	§ 302.28(b)	§ 302.32(b)
Contents	§ 302.27(b)	§ 302.31(c)
Effect of	§ 302.27(c)	§ 302.31(d)
Licensing cases	§ 302.1753	§ 302.216
Exceptions to	§ 302.1754	§ 302.217
Oral arguments	§ 302.28(a)(5)	§ 302.32(a)(5)
Orders declining review	§ 302.28(c)	§ 302.32(c)
Petitions for discretionary review	§ 302.28	§ 302.32
Service	§ 302.27(b)	§ 302.31(c)
Scope	§ 302.27(a)	§ 302.31(a)(1)
INITIAL FITNESS CERTIFICATE CASES (see Certificate Cases)		
INSTITUTING ORDERS (see Orders)		
INTERROGATORIES (see Depositions)		
INTERVENTION:		
Generally	§ 302.15	§ 302.20
JOINDER OF COMPLAINTS OR COMPLAINANTS	§ 302.13	§ 302.404(d)
JOINT PLEADINGS:		
Enforcement cases	§ 302.13	§ 302.404(d)
Licensing cases	§ 302.1708	§ 302.204(c)
LAW JUDGE (see Administrative Law Judges)		
LICENSING CASES (see Certificate Cases; Foreign Air Carrier Permit Cases)		
MAIL CONTRACTS:		
Complaint against contract	§ 302.1505–1507	§ 302.721–723
Data supporting contract	§ 302.1503	§ 302.719
Explanation of contract	§ 302.1503	§ 302.719
Filing of contract	§ 302.1502	§ 302.718
Petition for reconsideration	§ 302.1508	§ 302.724
Service of contract	§ 302.1504	§ 302.720
MAIL RATE CONFERENCES:		
Availability of data to Postal Service	§ 302.317	§ 302.714
Conditions upon participation	§ 302.314	§ 302.711
Compliance report	§ 302.314(d)	§ 302.711(d)
Non-disclosure of information	§ 302.314(a)	§ 302.711(a)
Signed statement required	§ 302.314(b)	§ 302.711(b)
DOT analysis of data for submission of answers	§ 302.316	§ 302.713
Effect of conference agreements	§ 302.319	§ 302.716
Information to be requested from carrier	§ 302.315	§ 302.712
Participants in conferences	§ 302.313	§ 302.710
Post conference procedure	§ 302.318	§ 302.715
Scope of conferences	§ 302.312	§ 302.709
Time of commencing and terminating conference	§ 302.321	§ 302.708(b)
Waiver of participant conditions	§ 302.320	§ 302.717
MAIL RATE PROCEEDINGS:		
Evidence	§ 302.308	§ 302.706(c)
Further procedures	§ 302.306, 307	§ 302.705
Hearing	§ 302.309	§ 302.706
Institution of proceedings	§ 302.302	§ 302.702
Objections and answers to show cause order	§ 302.305	§ 302.704
Order to show cause	§ 302.303	§ 302.703
Parties and persons other than parties	§ 302.301, 302	§ 302.706(b)
MILEAGE FEES	§ 302.21	§ 302.27(c)
MODIFICATION OF ENFORCEMENT ACTION	§ 302.218	§ 302.419
MOTIONS (see also Petitions):		
Answers to	§ 302.18(c)	§ 302.11(c)
Appeals from rulings of Administrative Law Judges	§ 302.18(f)	§ 302.11(h)
Briefs	§ 302.18(d)	§ 302.11(d)
Consolidation of proceedings	§ 302.12	§ 302.13
Enforcement cases	§ 302.210a	§ 302.410
Continuances and extension of time	§ 302.17	§ 302.9
Disposition of	§ 302.18(e)	§ 302.11(g)
Effect of pendency	§ 302.18(g)	§ 302.11(f)
Expedition of case	§ 302.14(a)	§ 302.11(e)

APPENDIX A TO PART 302.—INDEX TO RULES OF PRACTICE—Continued

Subject	Current rule	Proposed rule
For suspension of operating authority pendente lite	§ 302.217	§ 302.418
For modification or dissolution of orders	§ 302.218	§ 302.419
Form and contents	§ 302.18(b)	§ 302.11(b)
Generally	§ 302.18	§ 302.11(a)
Oral arguments	§ 302.18(d)	§ 302.11(d)
Substitution of parties	§ 302.10	§ 302.10(b)
To correct transcripts	§ 302.24(m)	§ 302.28(f)
To dismiss and for summary judgment	§ 302.212	§ 302.411
To dismiss formal complaint	§ 302.204	§ 302.405(c)
To file unauthorized documents	§ 302.4(f)	§ 302.3(e)
To modify scope in Licensing cases	§ 302.1720(c)	§ 302.212(b)
To quash or modify subpoena	§ 302.19(f)	§ 302.25(f)
To whom motions addressed	§ 302.18(a)	§ 302.11(a)
To withhold information from public disclosure	§ 302.39(b), (e), (f)	§ 302.12(d), (e)
NON-HEARING PROCEDURES	§ 302.35	§ 302.15
Licensing cases	§ 302.1712(a)	§ 302.207
OBJECTIONS (see also Answers):		
To Public Disclosure of Information	§ 302.39	§ 302.12
OFFERS OF PROOF	§ 302.24(f)	§ 302.24(j)
OFFICIAL NOTICE	§ 302.24(n)	§ 302.24(g)
ORAL ARGUMENTS:		
Before DOT decisionmakers	§ 302.32	§ 302.36
Request for leave	§ 302.32(a)	§ 302.36(a)
Rules on documentary evidence	§ 302.32(b)	§ 302.36(b)
Before Administrative Law Judges	§ 302.25	§ 302.29
Discretionary review	§ 302.28(a)(5)	§ 302.32(a)(5)
Licensing cases	§ 302.1756	§ 302.219
Waivers	§ 302.33	§ 302.37
ORAL EVIDENTIARY HEARINGS (see Hearings)		
ORDERS:		
Declining review of initial decisions	§ 302.28(c)	§ 302.32(c)
Dismissal		
Airport fee dispute proceedings	§ 302.611 (c), (d)	§ 302.611 (c), (d)
Enforcement complaints	§ 302.205	§ 302.406
Licensing cases	§ 302.1750(a)(2)	§ 302.210(a)(3)
Establishing further procedures (Licensing cases)	§ 302.1750	§ 302.210
Final	§ 302.36	§ 302.38
Airport fee dispute proceedings	§ 302.621	§ 302.621
Licensing cases	§ 302.1750	§ 302.210
Mail contracts	§ 302.1507(a)	§ 302.723(a)
Mail rate proceedings	§ 302.306	§ 302.705
Instituting oral evidentiary hearing:		
Airport fee dispute proceedings	§ 302.611(b)	§ 302.611(b)
Licensing cases	§ 302.1750(a)(1)	§ 302.210(a)(4)
Mail rate proceedings	§§ 302.307, 309	§§ 302.703, 705(b)
Instituting investigation of rates, fares, and charges	§ 302.504	§ 302.505
Show cause:		
Licensing cases	§ 302.1730(d)	§ 302.210(a)(1)
Mail rate proceedings	§ 302.304	§ 302.703
PARTIES:		
Appearances of	§ 302.11	§ 302.21(a)
Defined	§ 302.9	§ 302.2, 10(a)
Enforcement proceedings	§ 302.210	§ 302.402
Licensing cases	§ 302.1709	§ 302.210(a)(4)
Mail rate proceedings	§ 302.301	§ 302.706(b)
Participation by Air Carrier Associations	§ 302.10(a)	§ 302.10(c)
Persons other than parties	§ 302.14	§ 302.19
Substitution of	§ 302.10	§ 302.10(b)
PETITIONS:		
Determination of rates, fares, or charges	§ 302.502(a)	§§ 302.502–503
Discretionary review (see Discretionary Review)		
Filing Time	§ 302.37(a)	§ 302.14(a)
Institution of mail rate proceedings	§ 302.303	§ 302.302
Intervention	§ 302.15(c)	§ 302.20
Orders subject to reconsideration	§ 302.37(a)	§ 302.14(a)
Repetitive	§ 302.37(c)	§ 302.14(c)
Reconsideration	§ 302.37	§ 302.14
Rulemaking	§ 302.38	§ 302.16
PREHEARING CONFERENCE	§ 302.23	§ 302.22
Actions during	§ 302.23(a)	§ 302.22(b)
Enforcement proceeding	§ 302.211	§ 302.414
Purpose	§ 302.23(a)	§ 302.22(a)

APPENDIX A TO PART 302.—INDEX TO RULES OF PRACTICE—Continued

Subject	Current rule	Proposed rule
Report of	§ 302.23(b)	§ 302.22(c)
Scope	§ 302.23(a)	§ 302.22(a)
PROCEEDINGS:		
Airport fee dispute proceedings	§§ 302.601–621	§§ 302.601–621
Consolidation of (see Consolidation)		
Contemporaneous consideration (see Consolidation)		
Enforcement	§§ 302.200–217	§§ 302.401–420
Exemption	§§ 302.400–410	§§ 302.301–311
Licensing cases	§§ 302.1701–1790	§§ 302.201–220
Mail rate	§§ 302.300–321	§§ 302.701–717
Rates, fares, and charges	§§ 302.500–508	§§ 302.501–507
PUBLIC DISCLOSURE OF INFORMATION:		
Documents	§ 302.39(b)	§ 302.12(b)
Generally	§ 302.39(a)	§ 302.12(a)
Objection to by government	§ 302.39(d)	§ 302.12(f)
Oral testimony	§ 302.39(c)	§ 302.12(c)
RATES, FARES, AND CHARGES—PROCEEDINGS (see also Mail Rate Proceedings; Airport Fees):		
Institution of	§ 302.501	§ 302.502
Order of investigation	§ 302.504	§ 302.505
Petition	§ 302.501	§ 302.503
Contents	§ 302.502(a)	§ 302.503(a)
Dismissed	§ 302.503	§ 302.504
Service	§ 302.502(b)	§ 302.503(b)
Suspension of tariffs	§ 302.505	§ 302.506
Answers	§ 302.505	§ 302.506(e)
Complaints	§ 302.505	§ 302.506
Time for filing complaint	§ 302.508	§ 302.507
RECOMMENDED DECISIONS (see Decisions):		
Answer in support or opposition	§ 302.28(b)	§ 302.32(b)
Contents	§ 302.27(b)	§ 302.31(c)
Effect of	§ 302.27(c)	§ 302.31(d)
Licensing cases	§ 302.1753	§ 302.216
Exceptions to	§ 302.1754	§ 302.217
Oral arguments	§ 302.28(a)(5)	§ 302.32(a)(5)
Orders declining review	§ 302.28(c)	§ 302.32(c)
Petitions for discretionary review	§ 302.28	§ 302.32
Service	§ 302.27(b)	§ 302.31(c)
Scope	§ 302.27(a)	§ 302.31(a)(2)
RECONSIDERATION, REHEARING, REARGUMENT (see Petitions for Reconsideration):		
RECORD, CERTIFICATION	§§ 302.22(d), 27(a), 29(a)	§ 302.31(b)
REPLIES:		
Airport fee dispute proceedings	§ 302.609	§ 302.609
Exemption cases	§ 302.407	§ 302.308
Generally	§ 302.6(b)	§ 302.6(b)
Licensing cases		§ 302.204(b)
Motions	§ 302.18(c)	§ 302.11(c)
Enforcement proceedings	§ 302.209	§ 302.408
RESPONSIVE DOCUMENTS (see Answers; Replies)		
REVIEW (see Discretionary Review)		
ROUTE PROCEEDINGS (see also Certificate Cases):		
International route awards	§§ 302.1701–1790	§§ 302.201–220
RULEMAKING PETITIONS	§ 302.38	§ 302.16
SERVICE:		
Airport fee dispute proceedings	§ 302.605 (c)(1), (d)(1)	§ 302.605 (c)(1), (d)(1)
By the Department	§ 302.8(a)(1)	§ 302.7(a)(1)
Date of	§ 302.8(f)	§ 302.7(f)
Enforcement complaints	§ 302.204(a)	§ 302.404(e)
Exemption cases	§ 302.403	§ 302.304
Generally	§ 302.8	§ 302.7
Licensing cases	§ 302.1705	§ 302.203
Mail rate peitions	§ 302.303(c)	§ 302.702(d)
Persons eligible for service	§ 302.8(c)	§ 302.7 (c), (g), (h)
Procedures	§ 302.8(b)	§ 302.7(b)
Proof of	§ 302.8(e)	§ 302.7(e)
Rates, fares, and charges complaints	§ 302.502(b)	§ 302.503(b)
Where to be made	§ 302.8(d)	§ 302.7(d)
SETTLEMENT OFFERS:		
Enforcement proceedings	§ 302.215	§ 302.417
Public disclosure	§ 302.215(d)	§ 302.417(d)
SHORTENED PROCEDURE	§ 302.35	§ 302.15

APPENDIX A TO PART 302.—INDEX TO RULES OF PRACTICE—Continued

Subject	Current rule	Proposed rule
SHOW CAUSE ORDERS (see Orders):		
SUBPOENAS	§ 302.19	§ 302.25
SUSPENSION OF PRACTICE BEFORE DOT	§ 302.11(a)	§ 302.25(f)
TARIFFS:		
Complaints requesting suspension	§ 302.505	§ 302.506
TEMPORARY RATE PROCEEDINGS	§ 302.310	§ 302.707
TENTATIVE DECISIONS (see Decisions)		
TESTIMONY (see Witnesses)		
TIME:		
Computation of	§ 302.16	§ 302.8
Continuances of	§ 302.17	§ 302.9
Extensions of	§ 302.17	§ 302.9
Licensing cases	§§ 302.1706, 1711	§ 302.209
TRANSCRIPTS OF HEARINGS	§ 302.24(l)	§ 302.28
U.S. AIR CARRIER CERTIFICATION (see Certificate Cases)		
VERIFICATION:		
Licensing cases	§ 302.1707	§ 302.206
WAIVERS OF PROCEDURAL STEPS	§ 302.33	§ 302.37
WITNESSES:		
Attendance fees and mileage	§ 302.21	§ 302.27(c)
Cross-examination by nonparties	§ 302.14(b)	§ 302.19
Depositions	§ 302.20	§ 302.26
Objections to public disclosure of testimony	§ 302.39(c)	§ 302.12(c)
Represented by counsel	§ 302.11(a)	§ 302.27(a)
Subpoenas	§ 302.19	§ 302.25
VIOLATIONS—EVIDENTIAL STATUS IN ENFORCEMENT PROCEEDINGS	§ 302.216	§ 302.413

Issued in Washington, DC, on January 3, 1997.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 97–2070 Filed 1–31–97; 8:45 am]

BILLING CODE 4910–62–P

federal register

Monday
February 3, 1997

Part IV

The President

Executive Order 13034—Extension of Presidential Advisory Committee on Gulf War Veterans' Illnesses

Federal Register
Vol. 62, No. 22
Monday, February 3, 1997

Presidential Documents

Title 3—

The President

Executive Order 13034 of January 30, 1997

Extension of Presidential Advisory Committee on Gulf War Veterans' Illnesses

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Extension.* The Presidential Advisory Committee on Gulf War Veterans' Illnesses (the ''Committee''), established pursuant to Executive Order 12961 of May 26, 1995, is hereby extended for the purposes set forth herein. All provisions of that order relating to membership and administration shall remain in effect. All Committee appointments, as well as the President's designation of a Chairperson, shall remain in effect. The limitations set forth in section 2(c)–(e) and section 4(a) of Executive Order 12961 shall also remain in effect. The Committee shall remain subject to the Federal Advisory Committee Act, as amended, 5 U.S.C. App. 2.

Sec. 2. *Functions.* (a) The Committee shall report to the President through the Secretary of Defense, the Secretary of Veterans Affairs, and the Secretary of Health and Human Services.

(b) The Committee shall have two principal roles:

(1) Oversight of the ongoing investigation being conducted by the Department of Defense with the assistance, as appropriate, of other executive departments and agencies into possible chemical or biological warfare agent exposures during the Gulf War; and

(2) Evaluation of the Federal Government's plan for and progress towards the implementation of the Committee's recommendations contained in its Final Report submitted on December 31, 1996.

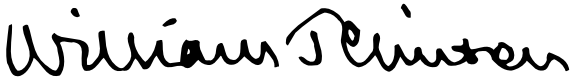
(c) The Committee shall provide advice and recommendations related to its oversight and evaluation responsibilities.

(d) The Committee may also provide additional advice and recommendations prompted by any new developments related to its original functions as set forth in section 2(b) of Executive Order 12961.

(e) The Committee shall submit by letter a status report by April 30, 1997, and a final supplemental report by October 31, 1997, unless otherwise directed by the President.

Sec. 3. *General Provisions.* (a) The Committee shall terminate 30 days after submitting its final supplemental report.

(b) This order is intended only to improve the internal management of the executive branch and it is not intended to create any right, benefit or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person.



THE WHITE HOUSE,
January 30, 1997.

[FR Doc. 97–2818
Filed 1–31–97; 10:55 am]
Billing code 3195–01–P

Reader Aids

Federal Register

Vol. 62, No. 22

Monday, February 3, 1997

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids	**202–523–5227**

Laws

For additional information	**523–5227**

Presidential Documents

Executive orders and proclamations	**523–5227**
The United States Government Manual	**523–5227**

Other Services

Electronic and on-line services (voice)	**523–4534**
Privacy Act Compilation	**523–3187**
TDD for the hearing impaired	**523–5229**

ELECTRONIC BULLETIN BOARD

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

FAX-ON-DEMAND

You may access our Fax-On-Demand service. You only need a fax machine and there is no charge for the service except for long distance telephone charges the user may incur. The list of documents on public inspection and the daily Federal Register's table of contents are available using this service. The document numbers are 7050-Public Inspection list and 7051-Table of Contents list. The public inspection list will be updated immediately for documents filed on an emergency basis.

NOTE: YOU WILL ONLY GET A LISTING OF DOCUMENTS ON FILE AND NOT THE ACTUAL DOCUMENT. Documents on public inspection may be viewed and copied in our office located at 800 North Capitol Street, N.W., Suite 700. The Fax-On-Demand telephone number is: **301–713–6905**

FEDERAL REGISTER PAGES AND DATES, FEBRUARY

4895–5138..... 3

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

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.

RULES GOING INTO EFFECT TODAY

COMMERCE DEPARTMENT

Export Administration Bureau

Export licensing:

Entities ineligible to receive specified items without license; list establishment; published 2-3-97

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Financial aid to fisheries:

Capital Construction Fund--

Fishing vessel capital construction fund procedures; published 1-3-97

CONSUMER PRODUCT SAFETY COMMISSION

Hazardous substances:

Fireworks devices; fuse burn time; effective date; published 2-3-97

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

California; published 12-4-96

Air quality planning purposes; designation of areas:

Nebraska; published 12-4-96

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Carboxin; published 2-3-97

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:

Alabama; published 12-24-96

Florida; published 12-24-96

Kentucky et al.; published 1-6-97

Missouri; published 12-24-96

New Mexico; published 12-24-96

FEDERAL DEPOSIT INSURANCE CORPORATION

Practice and procedure:

Forms, instructions, and reports; published 2-3-97

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

San Diego fairy shrimp; published 2-3-97

JUSTICE DEPARTMENT

Civil and criminal forfeitures, remission or mitigation petitions; procedures; published 1-3-97

LABOR DEPARTMENT

Occupational Safety and Health Administration

Safety and health standards, etc.:

1,3-Butadiene; occupational exposure; published 11-4-96

State plans; standards approval, etc.:

Alaska et al.; published 1-17-97

LABOR DEPARTMENT

Pension and Welfare Benefits Administration

Employee Retirement Income Security Act:

Plan assets; participant contributions; published 8-7-96

SOCIAL SECURITY ADMINISTRATION

Supplemental security income:

Aged, blind, and disabled--

Supplementary payments on behalf of States; administration fees and interest; published 1-3-97

TRANSPORTATION DEPARTMENT

Coast Guard

Uninspected vessels:

Commercial fishing industry regulations; published 11-5-96

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

de Havilland; published 12-30-96

Boeing; published 12-30-96

Cessna; published 1-22-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Spearmint oil produced in Far West; comments due by 2-10-97; published 1-9-97

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Crop insurance regulations:

Forage seeding; comments due by 2-14-97; published 1-15-97

AGRICULTURE DEPARTMENT

Forest Service

National Forest System timber; disposal and sale:

Timber sale contracts; cancellation; comments due by 2-13-97; published 12-30-96

AGRICULTURE DEPARTMENT

Farm Service Agency

Farm marketing quotas, acreage allotments, and production adjustments:

Tobacco; comments due by 2-12-97; published 1-27-97

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Nutrition labeling and reference daily intakes for vitamin K, selenium, manganese, chromium, molybdenum and chloride; comments due by 2-11-97; published 12-13-96

AGRICULTURE DEPARTMENT

Meat and meat products; export reporting; comments due by 2-12-97; published 12-27-96

COMMERCE DEPARTMENT

Export Administration Bureau

Export licensing:

Commerce control list--

Encryption items transferred from U.S. Munitions List to the Commerce Control List; comments due by 2-13-97; published 12-30-96

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone--

Scallop fishery vessel entry; temporary moratorium; comments due by 2-10-97; published 12-26-96

Magnuson Act provisions; comments due by 2-12-97; published 1-9-97

CONSUMER PRODUCT SAFETY COMMISSION

Hazardous substances:

Baby cribs; requirements for full-size and non-full-size; comments due by 2-14-97; published 12-16-96

DEFENSE DEPARTMENT

Acquisition regulations:

Individual compensation; comments due by 2-11-97; published 12-13-96

Federal Acquisition Regulation (FAR):

Contract administration and audit cognizance; comments due by 2-10-97; published 12-11-96

ENERGY DEPARTMENT

Nuclear waste repositories; general guidelines for site recommendation; comments due by 2-14-97; published 12-16-96

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Consumer products; energy conservation program:

Room air conditioner energy conservation standards; comments due by 2-13-97; published 1-29-97

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Polymer and resin production facilities (Groups I and IV); comments due by 2-13-97; published 1-14-97

Air programs; State authority delegations:

Oregon; comments due by 2-14-97; published 1-15-97

Water pollution control:

National pollutant discharge elimination system--

Permitting procedures; comments due by 2-10-97; published 12-11-96

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Cellular and general wireless communications services; geographic partitioning and spectrum disaggregation; market entry barriers elimination; comments due by 2-10-97; published 1-6-97

Radio and television broadcasting:

Personal attack and political editorial rules; comments due by 2-10-97; published 12-27-96

Radio services, special:

Experimental radio service rules; revision; comments due by 2-10-97; published 12-30-96

Radio stations; table of assignments:
Georgia; comments due by 2-10-97; published 12-24-96
Wyoming; comments due by 2-10-97; published 12-24-96

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):
Contract administration and audit cognizance; comments due by 2-10-97; published 12-11-96

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food additives:
Adjuvants, production aids, and sanitizers--
2,2'-ethylidenebis(4,6-di-tert-butylphenyl) fluorophosphonite; comments due by 2-14-97; published 1-15-97

Medical devices:
Neurological devices--
Cranial electrotherapy stimulators; premarket approval requirement; comments due by 2-12-97; published 1-28-97

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal regulatory reform:
Home investment partnership program; streamlining; comments due by 2-10-97; published 12-11-96

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
Jaguar (panthera onca); comments due by 2-14-97; published 1-31-97

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
Arkansas; comments due by 2-14-97; published 1-30-97

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):
Contract administration and audit cognizance; comments due by 2-10-97; published 12-11-96

NUCLEAR REGULATORY COMMISSION

Byproduct material; domestic licensing:
Regulatory, health, and radiation safety licensing practices; clarification; comments due by 2-12-97; published 11-14-96

Rulemaking petitions:
Nuclear Energy Institute; comments due by 2-10-97; published 11-26-96

PERSONNEL MANAGEMENT OFFICE

Employment:
Excepted service--
Summer employment; comments due by 2-12-97; published 1-13-97

POSTAL SERVICE

International Mail Manual:
Global package link (GPL) service to Canada; comments due by 2-12-97; published 1-13-97

SECURITIES AND EXCHANGE COMMISSION

Investment Advisers Act of 1940:
Investment advisers between Commission and states; reallocation of responsibilities; comments due by 2-10-97; published 12-27-96

Investment Companies:
National Securities Markets Improvement Act of 1996; private investment companies; comments due by 2-10-97; published 12-26-96

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
Air Tractor, Inc.; comments due by 2-14-97; published 11-26-96
Bell Helicopter Textron, Inc.; comments due by 2-10-97; published 12-12-96
Burkhart Grob, Luft-und Raumfahrt; comments due by 2-12-97; published 12-10-96
Glasflugel; comments due by 2-12-97; published 12-10-96
Class E airspace; comments due by 2-10-97; published 1-2-97

Rulemaking petitions; summary and disposition; comments due by 2-10-97; published 12-11-96

TRANSPORTATION DEPARTMENT

Maritime Administration

Cargo preference-U.S. flag vvessels:
Exclusive carriage of export cargo--
Available U.S. flag commercial vessels; comments due by 2-10-97; published 12-24-96

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Drug and alcohol testing:
Reporting drug and alcohol testing results by computer disk; comments due by 2-10-97; published 12-12-96

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:
Accuracy-related penalties; reasonable basis definition; comments due by 2-10-97; published 11-12-96
Computer programs transactions; classification; comments due by 2-11-97; published 11-13-96

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A "●" precedes each entry that is now available on-line through the Government Printing Office's *GPO Access* **service at http://www.access.gpo.gov/nara/cfr. For information about** *GPO Access* **call 1-888-293-6498 (toll free).**

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $951.00 domestic, $237.75 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, or Master Card). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at **(202) 512–1800** from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to **(202) 512-2250**.

Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–028–00001–1)	$4.25	Feb. 1, 1996
3 (1995 Compilation and Parts 100 and 101)	(869–028–00002–9)	22.00	[1] Jan. 1, 1996
4	(869–028–00003–7)	5.50	Jan. 1, 1996
5 Parts:			
1–699	(869–028–00004–5)	26.00	Jan. 1, 1996
700–1199	(869–028–00005–3)	20.00	Jan. 1, 1996
1200–End, 6 (6 Reserved)	(869–028–00006–1)	25.00	Jan. 1, 1996
7 Parts:			
0–26	(869–028–00007–0)	22.00	Jan. 1, 1996
27–45	(869–028–00008–8)	11.00	Jan. 1, 1996
46–51	(869–028–00009–6)	13.00	Jan. 1, 1996
52	(869–028–00010–0)	5.00	Jan. 1, 1996
53–209	(869–028–00011–8)	17.00	Jan. 1, 1996
210–299	(869–028–00012–6)	35.00	Jan. 1, 1996
300–399	(869–028–00013–4)	17.00	Jan. 1, 1996
400–699	(869–028–00014–2)	22.00	Jan. 1, 1996
700–899	(869–028–00015–1)	25.00	Jan. 1, 1996
900–999	(869–028–00016–9)	30.00	Jan. 1, 1996
1000–1199	(869–028–00017–7)	35.00	Jan. 1, 1996
1200–1499	(869–028–00018–5)	29.00	Jan. 1, 1996
1500–1899	(869–028–00019–3)	41.00	Jan. 1, 1996
1900–1939	(869–028–00020–7)	16.00	Jan. 1, 1996
1940–1949	(869–028–00021–5)	31.00	Jan. 1, 1996
1950–1999	(869–028–00022–3)	39.00	Jan. 1, 1996
2000–End	(869–028–00023–1)	15.00	Jan. 1, 1996
8	(869–028–00024–0)	23.00	Jan. 1, 1996
9 Parts:			
1–199	(869–028–00025–8)	30.00	Jan. 1, 1996
200–End	(869–028–00026–6)	25.00	Jan. 1, 1996
10 Parts:			
0–50	(869–028–00027–4)	30.00	Jan. 1, 1996
51–199	(869–028–00028–2)	24.00	Jan. 1, 1996
200–399	(869–028–00029–1)	5.00	Jan. 1, 1996
400–499	(869–028–00030–4)	21.00	Jan. 1, 1996
500–End	(869–028–00031–2)	34.00	Jan. 1, 1996
11	(869–028–00032–1)	15.00	Jan. 1, 1996
12 Parts:			
1–199	(869–028–00033–9)	12.00	Jan. 1, 1996
200–219	(869–028–00034–7)	17.00	Jan. 1, 1996
220–299	(869–028–00035–5)	29.00	Jan. 1, 1996
300–499	(869–028–00036–3)	21.00	Jan. 1, 1996
500–599	(869–028–00037–1)	20.00	Jan. 1, 1996
600–End	(869–028–00038–0)	31.00	Jan. 1, 1996
13	(869–028–00039–8)	18.00	Mar. 1, 1996
14 Parts:			
1–59	(869–028–00040–1)	34.00	Jan. 1, 1996
60–139	(869–028–00041–0)	30.00	Jan. 1, 1996
140–199	(869–028–00042–8)	13.00	Jan. 1, 1996
200–1199	(869–028–00043–6)	23.00	Jan. 1, 1996
1200–End	(869–028–00044–4)	16.00	Jan. 1, 1996
15 Parts:			
0–299	(869–028–00045–2)	16.00	Jan. 1, 1996
300–799	(869–028–00046–1)	26.00	Jan. 1, 1996
800–End	(869–028–00047–9)	18.00	Jan. 1, 1996
16 Parts:			
0–149	(869–028–00048–7)	6.50	Jan. 1, 1996
150–999	(869–028–00049–5)	19.00	Jan. 1, 1996
1000–End	(869–028–00050–9)	26.00	Jan. 1, 1996
17 Parts:			
1–199	(869–028–00052–5)	21.00	Apr. 1, 1996
200–239	(869–028–00053–3)	25.00	Apr. 1, 1996
240–End	(869–028–00054–1)	31.00	Apr. 1, 1996
18 Parts:			
1–149	(869–028–00055–0)	17.00	Apr. 1, 1996
150–279	(869–028–00056–8)	12.00	Apr. 1, 1996
280–399	(869–028–00057–6)	13.00	Apr. 1, 1996
400–End	(869–028–00058–4)	11.00	Apr. 1, 1996
19 Parts:			
1–140	(869–028–00059–2)	26.00	Apr. 1, 1996
141–199	(869–028–00060–6)	23.00	Apr. 1, 1996
200–End	(869–028–00061–4)	12.00	Apr. 1, 1996
20 Parts:			
1–399	(869–028–00062–2)	20.00	Apr. 1, 1996
●400–499	(869–028–00063–1)	35.00	Apr. 1, 1996
500–End	(869–028–00064–9)	32.00	Apr. 1, 1996
21 Parts:			
●1–99	(869–028–00065–7)	16.00	Apr. 1, 1996
●100–169	(869–028–00066–5)	22.00	Apr. 1, 1996
●170–199	(869–028–00067–3)	29.00	Apr. 1, 1996
●200–299	(869–028–00068–1)	7.00	Apr. 1, 1996
●300–499	(869–028–00069–0)	50.00	Apr. 1, 1996
●500–599	(869–028–00070–3)	28.00	Apr. 1, 1996
●600–799	(869–028–00071–1)	8.50	Apr. 1, 1996
●800–1299	(869–028–00072–0)	30.00	Apr. 1, 1996
●1300–End	(869–028–00073–8)	14.00	Apr. 1, 1996
22 Parts:			
1–299	(869–028–00074–6)	36.00	Apr. 1, 1996
300–End	(869–028–00075–4)	24.00	Apr. 1, 1996
23	(869–028–00076–2)	21.00	Apr. 1, 1996
24 Parts:			
0–199	(869–028–00077–1)	30.00	May 1, 1996
200–219	(869–028–00078–9)	14.00	May 1, 1996
220–499	(869–028–00079–7)	13.00	May 1, 1996
500–699	(869–028–00080–1)	14.00	May 1, 1996
700–899	(869–028–00081–9)	13.00	May 1, 1996
900–1699	(869–028–00082–7)	21.00	May 1, 1996
1700–End	(869–028–00083–5)	14.00	May 1, 1996
25	(869–028–00084–3)	32.00	May 1, 1996
26 Parts:			
§§ 1.0-1–1.60	(869–028–00085–1)	21.00	Apr. 1, 1996
§§ 1.61–1.169	(869–028–00086–0)	34.00	Apr. 1, 1996
§§ 1.170–1.300	(869–028–00087–8)	24.00	Apr. 1, 1996
§§ 1.301–1.400	(869–028–00088–6)	17.00	Apr. 1, 1996
§§ 1.401–1.440	(869–028–00089–4)	31.00	Apr. 1, 1996
§§ 1.441-1.500	(869-028-00090-8)	22.00	Apr. 1, 1996
§§ 1.501–1.640	(869–028–00091–6)	21.00	Apr. 1, 1996
§§ 1.641–1.850	(869–028–00092–4)	25.00	Apr. 1, 1996
§§ 1.851–1.907	(869–028–00093–2)	26.00	Apr. 1, 1996
§§ 1.908–1.1000	(869–028–00094–1)	26.00	Apr. 1, 1996
§§ 1.1001–1.1400	(869–028–00095–9)	26.00	Apr. 1, 1996
§§ 1.1401–End	(869–028–00096–7)	35.00	Apr. 1, 1996

Title	Stock Number	Price	Revision Date
2–29	(869–028–00097–5)	28.00	Apr. 1, 1996
30–39	(869–028–00098–3)	20.00	Apr. 1, 1996
40–49	(869–028–00099–1)	13.00	Apr. 1, 1996
50–299	(869–028–00100–9)	14.00	Apr. 1, 1996
300–499	(869–028–00101–7)	25.00	Apr. 1, 1996
500–599	(869–028–00102–5)	6.00	[4] Apr. 1, 1990
600–End	(869–028–00103–3)	8.00	Apr. 1, 1996
27 Parts:			
1–199	(869–028–00104–1)	44.00	Apr. 1, 1996
200–End	(869–028–00105–0)	13.00	Apr. 1, 1996
28 Parts:			
1-42	(869–028–00106–8)	35.00	July 1, 1996
43-end	(869-028-00107-6)	30.00	July 1, 1996
29 Parts:			
0–99	(869–028–00108–4)	26.00	July 1, 1996
100–499	(869–028–00109–2)	12.00	July 1, 1996
500–899	(869–028–00110–6)	48.00	July 1, 1996
900–1899	(869–028–00111–4)	20.00	July 1, 1996
1900–1910 (§§ 1900 to 1910.999)	(869–028–00112–2)	43.00	July 1, 1996
1910 (§§ 1910.1000 to end)	(869–028–00113–1)	27.00	July 1, 1996
1911–1925	(869–028–00114–9)	19.00	July 1, 1996
1926	(869–028–00115–7)	30.00	July 1, 1996
1927–End	(869–028–00116–5)	38.00	July 1, 1996
30 Parts:			
1–199	(869–028–00117–3)	33.00	July 1, 1996
200–699	(869–028–00118–1)	26.00	July 1, 1996
700–End	(869–028–00119–0)	38.00	July 1, 1996
31 Parts:			
0–199	(869–028–00120–3)	20.00	July 1, 1996
200–End	(869–028–00121–1)	33.00	July 1, 1996
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–028–00122–0)	42.00	July 1, 1996
191–399	(869–028–00123–8)	50.00	July 1, 1996
400–629	(869–028–00124–6)	34.00	July 1, 1996
630–699	(869–028–00125–4)	14.00	[5] July 1, 1991
700–799	(869–028–00126–2)	28.00	July 1, 1996
800–End	(869–028–00127–1)	28.00	July 1, 1996
33 Parts:			
1–124	(869–028–00128–9)	26.00	July 1, 1996
125–199	(869–028–00129–7)	35.00	July 1, 1996
200–End	(869–028–00130–1)	32.00	July 1, 1996
34 Parts:			
1–299	(869–028–00131–9)	27.00	July 1, 1996
300–399	(869–028–00132–7)	27.00	July 1, 1996
400–End	(869–028–00133–5)	46.00	July 1, 1996
35	(869–028–00134–3)	15.00	July 1, 1996
36 Parts			
1–199	(869–028–00135–1)	20.00	July 1, 1996
200–End	(869–028–00136–0)	48.00	July 1, 1996
37	(869–028–00137–8)	24.00	July 1, 1996
38 Parts:			
0–17	(869–028–00138–6)	34.00	July 1, 1996
18–End	(869–028–00139–4)	38.00	July 1, 1996
39	(869–028–00140–8)	23.00	July 1, 1996
40 Parts:			
●1–51	(869–028–00141–6)	50.00	July 1, 1996
●52	(869–028–00142–4)	51.00	July 1, 1996
●53–59	(869–028–00143–2)	14.00	July 1, 1996
60	(869-028-00144-1)	47.00	July 1, 1996
●61–71	(869–028–00145–9)	47.00	July 1, 1996
●72–80	(869–028–00146–7)	34.00	July 1, 1996
●81–85	(869–028–00147–5)	31.00	July 1, 1996
86	(869–028–00148–3)	46.00	July 1, 1996
●87-135	(869–028–00149–1)	35.00	July 1, 1996
●136–149	(869–028–00150–5)	35.00	July 1, 1996
●150–189	(869–028–00151–3)	33.00	July 1, 1996
●190–259	(869–028–00152–1)	22.00	July 1, 1996
●260–299	(869–028–00153–0)	53.00	July 1, 1996
●300–399	(869–028–00154–8)	28.00	July 1, 1996
●400–424	(869–028–00155–6)	33.00	July 1, 1996
●425–699	(869–028–00156–4)	38.00	July 1, 1996
●700–789	(869–028–00157–2)	33.00	July 1, 1996
●790–End	(869–028–00158–7)	19.00	July 1, 1996
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–028–00159–9)	12.00	July 1, 1996
101	(869–028–00160–2)	36.00	July 1, 1996
102–200	(869–028–00161–1)	17.00	July 1, 1996
201–End	(869–028–00162–9)	17.00	July 1, 1996
42 Parts:			
●1–399	(869–028–00163–7)	32.00	Oct. 1, 1996
●400–429	(869–028–00164–5)	34.00	Oct. 1, 1996
●430–End	(869–026–00165–1)	39.00	Oct. 1, 1995
43 Parts:			
●1–999	(869–028–00166–1)	30.00	Oct. 1, 1996
*●1000–End	(869–028–00167–0)	45.00	Oct. 1, 1996
●44	(869–028–00168–8)	31.00	Oct. 1, 1996
45 Parts:			
●1–199	(869–028–00169–6)	28.00	Oct. 1, 1996
200–499	(869–028–00170–0)	14.00	[6] Oct. 1, 1995
●500–1199	(869–028–00171–8)	30.00	Oct. 1, 1996
●1200–End	(869–026–00173–1)	26.00	Oct. 1, 1995
46 Parts:			
●1–40	(869–028–00173–4)	26.00	Oct. 1, 1996
●41–69	(869–028–00174–2)	21.00	Oct. 1, 1996
●70–89	(869–028–00175–1)	11.00	Oct. 1, 1996
●90–139	(869–028–00176–9)	26.00	Oct. 1, 1996
●140–155	(869–028–00177–7)	15.00	Oct. 1, 1996
156–165	(869–026–00179–1)	17.00	Oct. 1, 1995
*●166–199	(869–028–00179–3)	22.00	Oct. 1, 1996
●200–499	(869–028–00180–7)	21.00	Oct. 1, 1996
●500–End	(869–026–00182–1)	13.00	Oct. 1, 1995
47 Parts:			
●0–19	(869–026–00183–9)	25.00	Oct. 1, 1995
●20–39	(869–026–00184–7)	21.00	Oct. 1, 1995
●40–69	(869–026–00185–5)	14.00	Oct. 1, 1995
●70–79	(869–028–00185–8)	33.00	Oct. 1, 1996
●80–End	(869–026–00187–1)	30.00	Oct. 1, 1995
48 Chapters:			
●1 (Parts 1–51)	(869–026–00188–0)	39.00	Oct. 1, 1995
●1 (Parts 52–99)	(869–026–00189–8)	24.00	Oct. 1, 1995
●2 (Parts 201–251)	(869–028–00189–1)	22.00	Oct. 1, 1996
●2 (Parts 252–299)	(869–028–00190–4)	16.00	Oct. 1, 1996
●3–6	(869–026–00192–8)	23.00	Oct. 1, 1995
*●7–14	(869–028–00192–1)	29.00	Oct. 1, 1996
15–28	(869–028–00193–9)	38.00	Oct. 1, 1996
●29–End	(869–028–00194–7)	25.00	Oct. 1, 1996
49 Parts:			
●1–99	(869–028–00195–5)	32.00	Oct. 1, 1996
100–177	(869–026–00197–9)	34.00	Oct. 1, 1995
●186–199	(869–028–00197–1	14.00	Oct. 1, 1996
200–399	(869–026–00199–5)	30.00	Oct. 1, 1995
400–999	(869–026–00200–2)	40.00	Oct. 1, 1995
*●1000–1199	(869–028–00200–5)	23.00	Oct. 1, 1996
●1200–End	(869–028–00201–3)	15.00	Oct. 1, 1996

Title	Stock Number	Price	Revision Date
50 Parts:			
1–199	(869–026–00203–7)	26.00	Oct. 1, 1995
●200–599	(869–026–00204–5)	22.00	Oct. 1, 1995
●600–End	(869–026–00205–3)	27.00	Oct. 1, 1995
CFR Index and Findings Aids	(869–028–00051–7)	35.00	Jan. 1, 1996
Complete 1997 CFR set		951.00	1997
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1997
Individual copies		1.00	1997
Complete set (one-time mailing)		264.00	1996
Complete set (one-time mailing)		244.00	1995

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1996. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1996. The CFR volume issued July 1, 1991, should be retained.

[6] No amendments were promulgated during the period October 1, 1995 to September 30, 1996. The CFR volume issued October 1, 1995 should be retained.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—FEBRUARY 1997

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
February 3	February 18	March 5	March 20	April 4	May 5
February 4	February 19	March 6	March 21	April 7	May 5
February 5	February 20	March 7	March 24	April 7	May 6
February 6	February 21	March 10	March 24	April 7	May 7
February 7	February 24	March 10	March 24	April 8	May 8
February 10	February 25	March 12	March 27	April 11	May 12
February 11	February 26	March 13	March 28	April 14	May 12
February 12	February 27	March 14	March 31	April 14	May 13
February 13	February 28	March 17	March 31	April 14	May 14
February 14	March 3	March 17	March 31	April 15	May 15
February 18	March 5	March 20	April 4	April 21	May 19
February 19	March 6	March 21	April 7	April 21	May 20
February 20	March 7	March 24	April 7	April 21	May 21
February 21	March 10	March 24	April 7	April 22	May 22
February 24	March 11	March 26	April 10	April 25	May 27
February 25	March 12	March 27	April 11	April 28	May 27
February 26	March 13	March 28	April 14	April 28	May 27
February 27	March 14	March 31	April 14	April 28	May 28
February 28	March 17	March 31	April 14	April 29	May 29