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Contents

Federal Register

Vol. 62, No. 135

Tuesday, July 15, 1997

Agriculture Department
See Food and Consumer Service

Army Department
See Engineers Corps
NOTICES
Privacy Act:
Systems of records, 37891–37896

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37922
Meetings:
Safety and Occupational Health Study Section NIOSH meeting, 37922–37923
Task Group Session of the Safety and Occupational Health Study Section; NIOSH meeting, 37923

Coast Guard
NOTICES
Meetings:
Chemical Transportation Advisory Committee, 37950

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 37863–37864

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Bahrain, 37886
Peru, 37886–37887

Consumer Product Safety Commission
NOTICES
Settlement agreements:
CSA, Inc., 37887–37888
Dots, Inc., 37888–37890

Defense Department
See Army Department
See Engineers Corps
See Navy Department
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Affirmative action reform in Federal procurement, 37847
NOTICES
Grants and cooperative agreements; availability, etc.:
Lists of institutions of higher education ineligible for federal funds, 37890
Meetings:
Gender-Integrated Training and Related Issues Advisory Committee, 37890–37891

Defense Nuclear Facilities Safety Board
NOTICES
Meetings; Sunshine Act, 37896–37897

Energy Department
See Energy Efficiency and Renewable Energy Office
See Federal Energy Regulatory Commission

Energy Efficiency and Renewable Energy Office
NOTICES
Meetings:
Alternative Fuel Transportation Program; public workshop, 37897–37899

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Los Angeles and San Bernardino Counties, CA; San Antonio flood control study, 37896

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Polymer and resin production facilities (Group IV); correction, 37720–37722
Air quality implementation plans; approval and promulgation; various States:
Delaware, 37722–37724
Minnesota
Correction, 37724
Mississippi, 37724–37727
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Delaware, 37832
Mississippi, 37832–37833
Toxic substances:
Testing requirements—
Biphenyl, etc., 37833–37834
NOTICES
Committees; establishment, renewal, termination, etc.:
National Environmental Education Advisory Council, 37906–37907
Municipal solid waste landfill permit programs; adequacy determinations:
Wyoming, 37907–37909
Toxic and hazardous substances control:
Premanufacture notices receipts, 37992–38006

Federal Aviation Administration
RULES
Airworthiness directives:
Aerospatiale, 37707–37710
Bell Helicopter Textron, Inc., 37710–37711
PROPOSED RULES
Airworthiness directives:
Boeing, 37778–37818
Fees:
Certification-related services outside U.S., 38008–38013
NOTICES
Advisory circulars; availability, etc.:
Aircraft—
Certification-related services outside U.S., 38014

Federal Communications Commission
NOTICES
Meetings:
1997 World Radiocommunication Conference (WRC 1997 Advisory Committee), 37909–37910
Radio services, special:
Emergency medical radio service—
Southern California metropolitan area; waiver request, 37910–37911
Rulemaking proceedings; petitions filed, granted, denied, etc., 37911

Federal Deposit Insurance Corporation
PROPOSED RULES
International banking regulations; consolidation and simplification, 37748–37778

Federal Emergency Management Agency
RULES
Flood elevation determinations:
Alabama et al., 37727–37729
Indiana et al., 37729–37733
PROPOSED RULES
Flood elevation determinations:
Alabama et al., 37834–37847
NOTICES
Disaster and emergency areas:
Idaho, 37911
Minnesota, 37911–37912
North Dakota, 37912

Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Destin Pipeline Co., L.L.C. et al., 37902–37903
USG Pipeline Co., 37903–37904
Meetings; Sunshine Act, 37904–37906
Applications, hearings, determinations, etc.:
Cinergy Services, Inc., 37899
Consumers Power Co., 37899
Florida Gas Transmission Co., 37899–37900
Iroquois Gas Transmission System L.P., 37900
MIGC, Inc., 37900
National Fuel Gas Supply Corp., 37900–37901
Northwest Pipeline Corp., 37901–37902
Transcontinental Gas Pipe Line Corp., 37902
Viking Gas Transmission Co., 37902

Federal Highway Administration
NOTICES
Meetings:
Intelligent Transportation Society of America; correction, 37950

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 37939

Federal Reserve System
PROPOSED RULES
Miscellaneous interpretations:
Direct investment, loans and other transactions between member banks and their subsidiaries; funding restrictions, 37744–37747

Federal Trade Commission
NOTICES
Prohibited trade practices:
M.E.K. International, 37912–37913

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Flat-tailed horned lizard; withdrawn, 37852–37860
NOTICES
Endangered and threatened species permit applications, 37926

Food and Consumer Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37861–37862
Child nutrition programs:
Child and adult care food program—
Donated foods national average minimum value, July 1, 1997–June 30, 1998, 37862–37863

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
New drug applications—
Moxidectin tablets, 37712–37713
Pyrantel pamoate suspension, 37711–37712
Sulfaquinoxaline drinking water, 37712
Sponsor name and address changes—
Phoenix Scientific, Inc., 37713
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37923–37924
Animal drugs, feeds, and related products:
New drug applications—
Elanco Animal Health; approval withdrawn, 37924–37925
Guidance documents; availability, etc.:
Container closure systems used for packaging human drugs and biologics, 37925–37926
Meetings:
Advisory committees, panels, etc., 37926

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Tennessee, 37864

General Services Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Affirmative action reform in Federal procurement, 37847

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Human services transportation—
Research and analysis project, 37917–37921
Technical assistance project, 37913–37917
Scientific misconduct findings; administrative actions:
Hajra, Amitav, 37921–37922

Immigration and Naturalization Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37932–37933
Submission for OMB review; comment request, 37933–37934

Indian Affairs Bureau
NOTICES
Liquor and tobacco sale or distribution ordinance:
Coast Indian Community of Resighini Rancheria, CA, 37926–37930

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Minerals Management Service

Internal Revenue Service
PROPOSED RULES
Income taxes:
Inbound grantor trusts with foreign grantors
Correction, 37819
Permitted elimination of preretirement optional benefit forms
Hearing location change, 37818–37819

International Trade Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37864–37865
Antidumping:
Circular welded non-alloy steel pipe from—
Korea, 37865–37866
Cut-to-length carbon steel plate from—
Finland, 37866–37869
Elemental sulphur from—
Canada, 37958–37990
Silicomanganese from—
Brazil, 37869–37879
Uranium from—
Russian Federation, 37879–37880
Countervailing duties:
Carbon steel products from—
Belgium, 37880–37881

Justice Department
See Immigration and Naturalization Service
See Justice Programs Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37931, 37932

Justice Programs Office
RULES
Public safety officers' death and disability benefits:
Federal law enforcement dependents assistance program, 37713–37717

Labor Department
See Occupational Safety and Health Administration

Maritime Administration
RULES
Subsidized vessels and operators:
Maritime security program (10-year); establishment, 37733–37741

Minerals Management Service
PROPOSED RULES
Outer Continental Shelf; oil, gas, and sulphur operations:
Drilling and completion operations; blowout preventer testing requirements, 37819–37824
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37930–37931

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

National Aeronautics and Space Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Affirmative action reform in Federal procurement, 37847

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Combined Arts Advisory Panel, 37939

National Highway Traffic Safety Administration
PROPOSED RULES
National Traffic and Motor Vehicle Safety Act:
Nonconforming vehicle conformity certificates; review and processing; fee schedule, 37847–37852
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 37950–37952

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Northeastern United States fisheries—
Summer flounder, 37741–37743
PROPOSED RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Crab, 37860
Ocean and coastal resource management:
Monterey Bay National Marine Sanctuary, CA—
Jade collection, 37818
NOTICES
Marine mammals:
Incidental taking; authorization letters, etc.—
Beaufort Sea; oil and gas exploration drilling activities, 37881–37884
Meetings:
Western Pacific Fishery Management Council, 37884–37885
Permits:
Marine mammals, 37885

National Science Foundation
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 37939–37940

Navy Department
RULES
Navigation, COLREGS compliance exemptions:
USS Arleigh Burke, 37719–37720
NOTICES
Privacy Act:
Systems of records, 37896

Nuclear Regulatory Commission
NOTICES
Meetings:
Risk-Informed regulation for power reactors; public workshop, 37942–37943
Meetings; Sunshine Act, 37943–37944
Applications, hearings, determinations, etc.:
Duke Power Co., 37940–37942

Occupational Safety and Health Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37934–37939

Pension Benefit Guaranty Corporation
RULES
Single-employer plans:
Allocation of assets—
Interest assumptions for valuing benefits, 37717–37719
NOTICES
Multiemployer and single-employer plans:
Interest rates and assumptions, 37944–37945

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

Securities and Exchange Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37945–37946
Self-regulatory organizations; proposed rule changes:
Depository Trust Co., 37947–37948
Applications, hearings, determinations, etc.:
Chesapeake Biological Laboratories, Inc., 37946–37947

Social Security Administration
NOTICES
Meetings:
Plans for achieving self-support (PASS), administration; public forums, 37948–37949

Surface Transportation Board
NOTICES
Rail carriers:
Annual operating revenues of railroads; indexing, 37952
Railroad operation, acquisition, construction, etc.:
Bath & Hammondsport Railroad Co., 37952

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Maritime Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 37949
Privacy Act:
Systems of Records, 37949–37950

Treasury Department
See Internal Revenue Service

Veterans Affairs Department
PROPOSED RULES
Loan guaranty:
Automatic processing authority, loan reporting, and retention requirements, 37824–37832
NOTICES
Legal interpretations; General Counsel-precedent opinions:
Veterans' benefits under VA administered laws; summary, 37952–37955

Separate Parts In This Issue

Part II
Department of Commerce, International Trade Administration, 37958–37990

Part III
Environmental Protection Agency, 37992–38006

Part IV
Federal Aviation Administer, 38008–38014

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
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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.

12 CFR

Proposed Rules:

250 37744
303 37748
325 37748
326 37748
327 37748
346 37748
347 37748
351 37748
362 37748

14 CFR

39 (2 documents) 37707, 37710

Proposed Rules:

39 (4 documents) 37778, 37788, 37798, 37808
187 38008

15 CFR

Proposed Rules:

922 37818

21 CFR

520 (3 documents) 37711, 37712
522 37713

26 CFR

Proposed Rules:

1 (2 documents) 37818, 37819
301 37819

28 CFR

32 37713

29 CFR

4044 37717

30 CFR

Proposed Rules:

250 37819

32 CFR

706 37719

38 CFR

Proposed Rules:

36 37824

40 CFR

9 37720
52 (3 documents) 37722, 37724
63 37720

Proposed Rules:

52 (2 documents) 37832
799 37833

44 CFR

65 37727
67 37729

Proposed Rules:

67 37834

46 CFR

295 37733

48 CFR

Proposed Rules:

12 37874
14 37874
15 37874
19 37874
33 37874
52 37874
53 37874

49 CFR

Proposed Rules:

594 37847

50 CFR

648 37741

Proposed Rules:

17 37852
679 37860

Rules and Regulations

Federal Register
Vol. 62, No. 135
Tuesday, July 15, 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.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–84–AD; Amendment 39–10075, AD 97–15–02]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42 and ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Aerospatiale Model ATR42 and ATR72 series airplanes, that requires replacement of the attachment clips on the wing-to-fuselage fairings and on the upper cowlings of the engine nacelle with new improved attachment clips, and adding cup washers on the wing-to-fuselage fairing panels on certain airplanes. This amendment also requires a one-time inspection of certain fairings and the upper cowlings of the engine nacelle to detect discrepancies of the attachment hardware and the fairing panel; and replacement of the panel with a serviceable panel, if necessary. This amendment is prompted by a report of deformed attachment clips found on the wing-to-fuselage fairings and on the upper cowlings of the engine nacelle, and by a report of severe inflight vibration due to a loose wing/body fairing panel. The actions specified by this AD are intended to prevent deformation of the attachment clips due to insufficient strength of the attachment clip material. Such deformation of the attachment clips could result in the fairings and cowlings detaching from the airplane during flight and subsequently causing damage to the empennage or posing a hazard to persons or property on the ground.

DATES: Effective July 30, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 30, 1997.

Comments for inclusion in the rules docket must be received on or before September 15, 1997.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. 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: Gary Lium, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1112; fax (425) 227–1320.

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 all Aerospatiale Model ATR42 and ATR72 series airplanes was published in the **Federal Register** on January 11, 1996 (61 FR 1015). That action proposed to require replacement of the existing attachment clips on the wing-to-fuselage fairings and on the engine nacelle upper cowlings with new and improved attachment clips for certain airplanes. That action also proposed to require adding cup washers under the fastener countersunk holes, as well as replacement of the existing attachment clips on the wing-to-fuselage fairings and on the engine nacelle upper cowlings with new and improved attachment clips for certain other airplanes.

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

One commenter supports the proposed rule.

Request To Revise Work Hour Estimate

One commenter requests that the number of work hours required to accomplish the proposed replacement of the attachment clips and addition of cup washers be increased from 20 to 80. The commenter states that there is an economic loss associated with the longer down time required to accomplish the proposed actions; however, the commenter does not provide specifics nor offer a proposed solution.

The FAA agrees that 80 work hours represents a more accurate representation of the number of work hours necessary to accomplish the required actions. The FAA has revised the cost impact information, below, to reflect this revised work hour estimate.

Actions Since Issuance of the Proposal

Since the issuance of the proposal, the FAA has received a report indicating that severe inflight vibration occurred in the rudder and aileron controls on a Model ATR42 series airplane. This vibration was caused by a loose wing/body fairing panel. During this incident, the flightcrew experienced difficulty controlling the airplane. During descent, the flightcrew could not maintain altitude, and the airplane descended at 1,500 feet per minute until the flaps were lowered and control of the airplane was regained. The flightcrew diverted the airplane and landed it safely. Investigation revealed that three other recent instances of loose fairing panels had occurred previously on the same airplane. In each case, resultant vibration occurred during descent of the airplane; the vibration occurred at relatively high airspeed.

During subsequent replacement of the affected fairing panel, close inspection revealed cracking at the upper edge (towards the center) of the upper forward wing access panel 291BL. The crack extended from the upper leading edge rearward for approximately eight inches. The operator of the affected airplane stated that the crack was not visible with the fairing panel installed on the airplane because the panel is composite, and normal flexing of the panel with the airplane on the ground made the crack invisible. The operator suspected that the panel may have been damaged during a heavy maintenance check, or that the panel may have failed due to its age. The FAA believes that

flight operations with improper attachment screws and clips also may have contributed to the development of the crack.

Explanation of Additional Requirements of This AD

The FAA considers that the incident described above indicates the unsafe condition addressed in the proposal is more severe than understood previously. Consequently, due to the seriousness of the incident, the FAA finds it prudent to require actions beyond those specified in the proposal to ensure an acceptable level of safety during the time period prior to accomplishment of the actions required by the original proposed AD.

Therefore, this AD adds a requirement for a one-time detailed visual inspection of the wing-to-fuselage fairings and the upper cowlings of the engine nacelle to ensure that all attachment screws, clips, and other attachment hardware is secure, and that the fairing panel contains no visible cracks, tears, delamination, or other damage. If any screw, clip, or other attachment hardware is loose, bent or otherwise not secure, this AD requires that the panel be removed and a detailed visual inspection be performed to detect cracks, tears, delamination, or other visible signs of damage. If any discrepancy is found, this AD requires replacement of the panel with a serviceable panel.

In making this change to the original proposal, the FAA finds that, with respect to requiring this inspection, since a situation exists that requires immediate adoption of this requirement, notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

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.

Cost Impact

The FAA estimates that 175 airplanes of U.S. registry will be affected by this AD.

It will take approximately 2 work hours per airplane to accomplish the required detailed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required detailed inspection on U.S. operators is estimated to be $21,000, or $120 per airplane.

Should an operator be required to accomplish the required replacement of attachment clips and addition of cup washers, it will take approximately 80 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. The manufacturer will provide required parts at no cost to operators. Based on these figures, the cost impact of these required actions on U.S. operators (approximately 81 airplanes) is estimated to be $388,800, or $4,800 per airplane.

Should an operator be required to accomplish the required replacement of attachment clips, it will take approximately 20 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. The manufacturer will provide required parts at no cost to operators. Based on these figures, the cost impact of this required action on U.S. operators (approximately 94 airplanes) is estimated to be $112,800, or $1,200 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.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 95–NM–84–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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:

97–15–02 Aerospatiale: Amendment 39–10075. Docket 95–NM–84–AD.

Applicability: All Model ATR42 series airplanes and Model ATR72 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 deformation of the attachment clips on the wing-to-fuselage fairings and on the upper cowlings of the engine nacelle, which could result in the fairing and cowlings detaching from the airplane during flight and subsequently causing damage to the empennage or posing a hazard to persons or property on the ground, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a one-time detailed visual inspection of the wing-to-fuselage fairings and the upper cowlings of the engine nacelle to ensure that all attachment screws, clips, and other attachment hardware is secure, and that the fairing panel contains no visible cracks, tears, delamination, or other damage.

(b) If no discrepancy is found during the inspection required by paragraph (a) of this AD, within 9 months after the effective date of this AD, accomplish the requirements of paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this AD, as applicable.

(1) For Model ATR42 series airplanes on which Modification 2601 (Aerospatiale Service Bulletin ATR42–53–0063) has been installed: Replace the existing attachment clips at the wing-to-fuselage fairings and the engine nacelle upper cowlings with new attachment clips, in accordance with Aerospatiale Service Bulletin ATR42–53–0081, Revision 1, dated December 9, 1994.

(2) For Model ATR42 series airplanes on which Modification 2601 (Aerospatiale Service Bulletin ATR42–53–0063) has not been installed: Install cup washers (NAS1169C10) on the wing-to-fuselage fairing panels, and replace the existing attachment clips at the wing-to-fuselage fairings and the engine nacelle upper cowlings with new attachment clips, in accordance with Aerospatiale Service Bulletin ATR42–53–0082, dated June 6, 1994.

(3) For Model ATR72 series airplanes on which Modification 2601 (Aerospatiale Service Bulletin ATR72–53–1008) has been installed: Replace the existing attachment clips at the wing-to-fuselage fairings and the engine nacelle upper cowlings with new attachment clips, in accordance with Aerospatiale Service Bulletin ATR72–53–1043, Revision 1, dated December 9, 1994.

(4) For Model ATR72 series airplanes on which Modification 2601 (Aerospatiale Service Bulletin ATR72–53–1008) has not been installed: Install cup washers (NAS1169C10) on the wing-to-fuselage fairing panels, and replace the existing attachment clips at the wing-to-fuselage fairings and the engine nacelle upper cowlings with new attachment clips, in accordance with Aerospatiale Service Bulletin ATR72–53–1044, dated June 6, 1994.

(c) If any discrepancy is found during the inspection required by paragraph (a) of this AD, prior to further flight, remove the fairing panel, and perform a detailed visual inspection to detect cracks, tears, delamination, or other visible signs of damage of the fairing panel.

(1) If no discrepancy is found during the detailed visual inspection required by paragraph (c) of this AD, prior to further flight, reinstall the panel and accomplish the requirements of paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this AD, as applicable. No further action is required by this AD.

(2) If any discrepancy is found during the detailed visual inspection required by paragraph (c) of this AD, prior to further flight, replace the fairing panel with a serviceable panel, and install the panel on the airplane in accordance with the requirements of paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this AD, as applicable. No further action is required by this AD.

(d) As of the effective date of this AD, no person shall install an attachment clip, part number S5391010000000 or part number S5391009400000, on any airplane.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, 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.

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

(g) The actions shall be done in accordance with the following Aerospatiale service bulletins, which contains the specified effective pages:

Service bulletin referenced and date	Page number	Revision level shown on page	Date shown on page
ATR42–53–0081, Revision 1, December 9, 1994	1–3	1	December 9, 1994.
	4–15	Original	June 6, 1994.
ATR42–53–0082, June 6, 1994	1–31	Original	June 6, 1994.
ATR72–53–1043, Revision 1, December 9, 1994	1, 2	1	December 9, 1994.
	3–15	Original	June 6, 1994.
ATR72–53–1044, June 6, 1994	1–38	Original	June 6, 1994.

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 Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. 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.

(h) This amendment becomes effective on July 30, 1997.

Issued in Renton, Washington, on July 7, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–18202 Filed 7–14–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–SW–26–AD; Amendment 39–10077; AD 97–15–04]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 214B, 214B–1, and 214ST Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Bell Helicopter Textron, Inc. (BHTI) Model 214B, 214B–1, and 214ST helicopters, that currently establishes a mandatory retirement life of 60,000 high-power events for the main transmission upper planetary carrier (carrier). This amendment requires changing the method of calculating retirement life for the carrier from high-power events to a maximum accumulated Retirement Index Number (RIN) of 120,000. This amendment is prompted by fatigue analyses and tests that show certain carriers fail sooner than originally anticipated because of the unanticipated high number of lifts or takeoffs (torque events) performed with those carriers in addition to the time-in-service (TIS) accrued under other operating conditions. The actions specified by this AD are intended to prevent fatigue failure of the carrier, which could result in failure of the main transmission and subsequent loss of control of the helicopter.

EFFECTIVE DATE: August 19, 1997.

ADDRESSES: The service information referenced in Note 2 of this AD may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101.

FOR FURTHER INFORMATION CONTACT: Mr. Uday Garadi, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5157, fax (817) 222–5959.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 94–02–05, Amendment 39–8803 (59 FR 32325, June 23, 1994), which is applicable to BHTI Model 214B, 214B–1, and 214ST helicopters, was published in the **Federal Register** on January 14, 1997 (62 FR 1864). That action proposed to require creation of a component history card or equivalent record using the RIN system and a system for tracking increases to the accumulated RIN, and proposed to establish a retirement life of a maximum of 120,000 accumulated RIN for the carrier.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed, with one editorial change. The **ADDRESSES** paragraph in the preamble has been changed to clarify that the service bulletin is not incorporated into the AD, but is mentioned in Note 2 for information only. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 11 helicopters of U.S. registry will be affected by this AD, that it will take approximately (1) 48 work hours per helicopter to replace the affected part due to the new method of determining the retirement life required by this AD; (2) 2 work hours per helicopter to create the component history card or equivalent record (record); and (3) 10 work hours per helicopter to maintain the record each year, and that the average labor rate is $60 per work hour. Required parts will cost approximately $29,516 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $61,813 for the first year and $60,713 for each subsequent year. These costs assume replacement by the carrier of one-sixth of the fleet each year, creation and maintenance of the records for all the fleet the first year, and creation of one-sixth of the fleet's records and maintenance of the records for all the fleet each subsequent year.

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, 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 39–8803 (59 FR 32325, June 23, 1994), and by adding a new airworthiness directive (AD), Amendment 39–10077, to read as follows:

AD 97–15–04 Bell Helicopter Textron, Inc. (BHTI): Amendment 39–10077 Docket No. 94–SW–26–AD. Supersedes AD 94–02–05, Amendment 39–8803.

Applicability: Model 214B, 214B–1, and 214ST helicopters with main transmission upper planetary carrier (carrier), part number (P/N) 214–040–077–007 or –101, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been

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

Compliance: Required within 25 hours time-in-service (TIS) after the effective date of this AD, unless accomplished previously.

To prevent fatigue failure of the carrier, which could result in failure of the main transmission and subsequent loss of control of the helicopter, accomplish the following:

(a) Create a component history card or equivalent record for the carrier, P/N 214–040–077–007 or –101.

(b) Determine and record the accumulated Retirement Index Number (RIN) to date on the carrier as follows (if the multiplication results in a fraction, round the results up to the next whole number):

(1) For Model 214B or B–1 helicopters:

(i) Multiply the high-power event total to date by 2, or

(ii) If the actual operating hours are *known*, and:

(A) If the type of operation is internal load lift operations only, multiply each operating hour by 7;

(B) If the type of operation involves any external load lift operations and the number of external load lift operations is known, use the table below and multiply the appropriate factor for the average number of external load lift operations by the number of actual operating hours:

Average number of external load lift operations per hour	Factor [1]
0–2.00	7
2.01–5.00	7
5.01–16.00	14
16.01–27.00	21
above 27.00	28

[1] RIN = Factor × Actual Operating Hours.

(C) If the type of operation involves any external load lift operations and the number of external load lift operations is unknown, multiply each actual operating hour by 21; or

(D) If the type of operation is unknown, multiply each actual operating hour by 21.

(iii) If the actual operating hours are *unknown*, assume 900 operating hours per calendar year. Prorate the assumed operating hours for partial years.

(A) If the type of operation is internal only, multiply the assumed operating hours by 7.

(B) If the type of operation involves any external load lift operations and the number of external load lift operations is known, use the table in paragraph (b)(1)(ii)(B) and multiply the appropriate factor for the average number of external load lift operations by the number of assumed operating hours.

(C) If the type of operation involves any external load lift operations and the number of external load lift operations is unknown, multiply each assumed operating hour by 21.

(D) If the type of operation is unknown, multiply each assumed operating hour by 21.

(2) For Model 214ST helicopters:

(i) Multiply the high-power event total to-date by 2, or

(ii) Multiply the factored flight hour total to-date by 12.

Note 2: BHTI Alert Service Bulletin (ASB) 214–94–52, which is applicable to Model 214B helicopters, and ASB 214ST–94–66, which is applicable to Model 214ST helicopters, both of which are dated November 7, 1994, pertain to this subject.

(c) After compliance with paragraphs (a) and (b) of this AD, and during each operation thereafter, maintain a count of each lift or takeoff performed and at the end of each day's operations, increase the accumulated RIN on the component history card or equivalent record as follows:

(1) For Model 214B and 214B–1 helicopters,

(i) Increase the RIN by 1 for each takeoff.

(ii) Increase the RIN by 1 for each external load lift operation; or, increase the RIN by 2 for each external load lift operation in which the load is picked up at a higher elevation and released at a lower elevation, and the difference in the elevation between the pick up point and the release point is 200 feet or greater.

(2) For Model 214ST helicopters,

(i) Increase the RIN by 2 for each takeoff.

(ii) Increase the RIN by 2 for each external load lift operation; or, increase the RIN by 4 for each external load lift in which the load is picked up at a higher elevation and released at a lower elevation and the difference in elevation between the pick up point and the release point is 200 feet or greater.

(d) Remove the carrier, P/N's 214–040–077–007 or –101, from service on or before attaining an accumulated RIN of 120,000. The carrier is no longer retired based upon flight hours. This AD revises the Airworthiness Limitations section of the maintenance manual by establishing a new retirement life for the carrier of 120,000 RIN.

(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, Rotorcraft Certification Office, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft 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 helicopter to a location where the requirements of this AD can be accomplished.

(g) This amendment becomes effective on August 19, 1997.

Issued in Fort Worth, Texas, on July 8, 1997.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–18499 Filed 7–14–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Pyrantel Pamoate Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Lambert-Kay, Division of Carter-Wallace, Inc. The supplemental ANADA provides for oral use 4.54 milligrams per milliliter (mg/mL) pyrantel pamoate suspension in addition to the 2.27 mg/mL product for removal of large roundworms and hookworms in puppies and dogs and to prevent reinfections of *Toxocara canis* in puppies and adult dogs and in lactating bitches after whelping.

EFFECTIVE DATE: July 15, 1997.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1623.

SUPPLEMENTARY INFORMATION: Lambert-Kay, Division of Carter-Wallace, Inc., P.O. Box 1001, Half Acre Rd., Cranbury, NJ 08512–0181, filed a supplement to ANADA 200–028 that provides for oral use of 4.54 mg/mL of Evict®, Lassie®, and Vet's Own® (pyrantel pamoate) liquid wormer for removal of large roundworms (*T. canis* and *Toxascaris leonina*) and hookworms (*Ancylostoma caninum* and *Uncinaria stenocephala*) in puppies and dogs and to prevent reinfections of *T. canis* in puppies and adult dogs and in lactating bitches after whelping. The supplemental ANADA provides for use of 4.54 mg/mL pyrantel pamoate suspension in addition to 2.27 mg/mL suspension.

Approval of supplemental ANADA 200–028 for Lambert-Kay's pyrantel

pamoate suspension is as a generic copy of Pfizer's NADA 100–237 Nemex-2™ (pyrantel pamoate) suspension. The supplemental ANADA is approved as of June 4, 1997, and the regulations are amended in 21 CFR 520.2043(b)(2) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.2043 is amended by revising paragraph (b)(2) to read as follows:

§ 520.2043 Pyrantel pamoate suspension.

* * * * *

(b) * * *

(2) *Sponsors.* See Nos. 000069 and 011615 for use of 2.27 and 4.54 milligrams per milliliter product. See No. 023851 for use of 4.54 milligrams per milliliter product.

* * * * *

Dated: June 20, 1997.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 97–18459 Filed 7–14–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Sulfaquinoxaline Drinking Water

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Solvay Animal Health, Inc. The supplemental NADA provides for revised conditions of use of sulfaquinoxaline sodium in the drinking water of chickens and turkeys to reflect compliance with the results of the National Academy of Sciences/National Research Council (NAS/NRC), Drug Efficacy Study Implementation (DESI) evaluation of the product and FDA's conclusions based on that evaluation.

EFFECTIVE DATE: July 15, 1997.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center For Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1623.

SUPPLEMENTARY INFORMATION: Solvay Animal Health, Inc., 1201 Northland Dr., Mendota Heights, MN 55120–1149, filed supplemental NADA 6–707 that provides for use of 28.62-percent sulfaquinoxaline sodium solution to make 0.025- or 0.04-percent solution used in the drinking water of chickens and turkeys for control of coccidiosis, acute fowl cholera, and fowl typhoid.

The supplement is approved as of June 2, 1997, and the regulations are amended by adding new 21 CFR 520.2325a(a)(4) to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.2325a is amended by adding new paragraph (a)(4) to read as follows:

§ 520.2325a Sulfaquinoxaline drinking water.

(a) * * *

(4) No. 053501 for use of a 28.62-percent sulfaquinoxaline sodium solution as provided in paragraphs (c)(1), (c)(2), and (c)(3) of this section.

* * * * *

Dated: June 20, 1997.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 97–18458 Filed 7–14–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Moxidectin Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Fort Dodge Animal Health. The NADA provides for oral use of moxidectin tablets for dogs to prevent canine heartworm infections and subsequent development of canine heartworm disease.

EFFECTIVE DATE: July 15, 1997.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0614.

SUPPLEMENTARY INFORMATION: Fort Dodge Animal Health, Div. of American Home Products Corp., 800 Fifth St. NW., P.O. Box 518, Fort Dodge, IA 50501, filed original NADA 141–051 that provides for oral use of ProHeart™ (moxidectin) tablets in dogs to prevent infections by the canine heartworm *Dirofilaria immitis* and the subsequent development of canine heartworm disease. The drug is limited to use by or on the order of a licensed veterinarian.

The NADA is approved as of May 27, 1997, and the regulations are amended by adding new 21 CFR 520.1451 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning May 27, 1997, because no active ingredient of the drug, including any ester or salt of the active ingredient, has been previously approved in any other application filed under 512(b)(1) of the act.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. New § 520.1451 is added to read as follows:

§ 520.1451 Moxidectin.

(a) *Specifications.* Each tablet contains 30, 68, or 136 micrograms of moxidectin.

(b) *Sponsor.* See No. 000856 in § 510.600(c) of this chapter.

(c) [Reserved]

(d) *Conditions of use*—(1) *Amount.* 3 micrograms per kilogram (1.36 micrograms per pound) of body weight.

(2) *Indications for use.* To prevent infection by the canine heartworm *Dirofilaria immitis* and the subsequent development of canine heartworm disease.

(3) *Limitations.* Use once-a-month in dogs at 8 weeks of age or older. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: June 20, 1997.

Michael J. Blackwell,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 97–18457 Filed 7–14–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation of Injectable Dosage New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for an abbreviated new animal drug application (ANADA) from Phoenix Pharmaceutical, Inc., to Phoenix Scientific, Inc.

EFFECTIVE DATE: July 15, 1997.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: Phoenix Pharmaceutical, Inc., 4621 Easton Rd., P.O. Box 6457 Farleigh Station, St. Joseph, MO 64506–0457, has informed FDA that it has transferred ownership of, and all rights and interests in, approved ANADA 200–108 (dexamethasone injection) to Phoenix Scientific, Inc., 3915 South 48th St. Terrace, P.O. Box 6457, St. Joseph, MO 64506–0457. Accordingly, FDA is amending the regulations in 21 CFR 522.540 to reflect the change of sponsor.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 522.540 [Amended]

2. Section 522.540 *Dexamethasone injection* is amended in paragraph (a)(2) by removing ''057319'' and adding in its place ''059130''.

Dated: June 27, 1997.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 97–18461 Filed 7–14–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 32

[OJP(BJA)–1121]

RIN 1121–AA44

Federal Law Enforcement Dependents Assistance Program

AGENCY: Office of Justice Programs, Bureau of Justice Assistance, Public Safety Officers' Benefits Office, Justice.

ACTION: Final rule.

SUMMARY: Regulations are being issued to comply with the Federal Law Enforcement Dependents Assistance (FLEDA) Act of 1996. The FLEDA Program, to be administered by the Bureau of Justice Assistance through a delegation of authority from the Attorney General, will provide financial assistance in the form of awards to the children and spouses of Federal civilian law enforcement officers whose deaths or permanent and total disabilities in the line of duty resulted in the payment of benefits under the Public Safety Officers' Benefits (PSOB) Program. The financial assistance provided through

the FLEDA Program is designed to defray costs associated with higher education for these children and spouses.

EFFECTIVE DATE: This regulation is effective July 15, 1997.

FOR FURTHER INFORMATION CONTACT: Jeff Allison, Chief, Public Safety Officers' Benefits Office, 633 Indiana Avenue, N.W. Washington, D.C. 20531. Telephone: (202) 307–0635.

SUPPLEMENTARY INFORMATION: The Federal Law Enforcement Dependents Assistance Act, P.L. 104–238, 110 Stat. 3114, Oct. 3, 1996, established a new subpart 2 in Part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3796 *et seq.*) to provide financial assistance to the children and spouses of Federal civilian law enforcement officers killed or permanently and totally disabled in the line of duty. The legislation redesignated the existing Public Safety Officers' Benefit (PSOB) Act as subpart 1 of Part L.

This Act further recognizes the sacrifices and invaluable contributions made to public safety in our Nation by Federal law enforcement officers and their families. The Federal Law Enforcement Dependents Assistance (FLEDA) program extends to the families of fallen or disabled Federal law enforcement officers the higher education assistance already available to state and local law enforcement officers in many states. As stated in the Act, the purposes of this program are—

(1) to enhance the appeal of service in civilian Federal law enforcement agencies;

(2) to extend the benefits of higher education to qualified and deserving persons who, by virtue of the death or total disability of an eligible officer, may not be able to afford it otherwise; and

(3) to allow the family members of eligible officers to attain the vocational and educational status which they would have attained had a parent or spouse not been killed or disabled in the line of duty.

As an amendment to the existing PSOB program, the FLEDA program offers educational benefits to the spouse or children of Federal law enforcement officers with respect to whom a claim has already been approved under the PSOB program. Thus, although the standards for the two programs differ, these regulations are drafted as far as possible to rely on existing determinations made by the Bureau of Justice Assistance under the PSOB program regarding the death or disability of a Federal law enforcement officer in the line of duty.

The FLEDA program authorizes the payment of benefits to eligible dependents for attendance at an approved program of education at institutions of higher learning. The program incorporates by reference established definitions relating to eligible institutions and other standard requirements for federal student aid programs under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1970 *et seq.*).

In general, eligible dependents may receive educational assistance for up to 45 months of full-time education or training, or a proportionately longer period of time for a part-time program. Absent a finding of extraordinary circumstances, a dependent child will not be eligible to receive educational benefits under the FLEDA program after the child's 27th birthday.

Educational benefits under FLEDA are calculated under the standards of 38 U.S.C. 3532, at the time the educational expenses are incurred. Presently, the educational assistance allowance for an eligible person pursuing a program of education consisting of institutional courses is $404 per month for full-time, $304 for three-quarter-time, and $202 for half-time pursuit, and proportional amounts for persons pursuing a program of education less than half-time. Separately determined amounts are available for a program of education that includes training in a business or industrial establishment; for a ''farm cooperative'' program; or for an independent study program.

All eligible dependents may seek assistance prospectively for attendance at an approved program of education. Dependents of a Federal law enforcement officer who was killed in the line of duty on or after May 1, 1992, also are eligible to receive retroactive benefits for a program of education they have already undertaken. The calculation of retroactive benefits shall be on the same basis as prospective assistance. Such dependents are eligible for prospective assistance as well, although the amount of retroactive benefits will be counted in applying the durational limits on assistance. Dependents entitled to retroactive benefits, if they so choose, may forgo such benefits and apply only for prospective assistance.

On April 24, 1997, the Bureau of Justice Assistance (Bureau) published proposed regulations in the **Federal Register** for implementation of the FLEDA Program. In addition to publication, the proposed regulations were sent to Federal law enforcement agencies, and the families of Federal law enforcement officers killed or permanently and totally disabled in the line of duty. Reviewers were invited to comment over a thirty-day period, which ended May 27, 1997.

Comments were received from one individual, the United States Postal Service, and the U.S. Department of Education. The Postal Service expressed the support of its Postal Inspection Service for the proposed regulations, and the FLEDA Program in general.

The U.S. Department of Education recommended that the Section 32.38(a)(4) provision in the proposed regulations for denial of FLEDA benefits to dependents who are in default on federally guaranteed student loans be expanded to apply to persons in default on any student loan made through Title IV of the Higher Education Act of 1965. The Bureau concurs with this recommendation and has modified Section 32.38(a)(4) accordingly. This modification does not limit FLEDA applicants' ability to use financial assistance being provided by the Bureau to repay defaulted loans consistent with an approved repayment plan.

The U.S. Department of Education also pointed out that, with the exception of Federal Pell Grants, assistance received through the FLEDA Program will be considered by the Secretary of Education in determining a student's need for financial assistance through the Title IV Student Financial Assistance Program. This finding does not necessitate a modification to Section 32.37(c) of the FLEDA regulations, but is nonetheless important for FLEDA applicants to be aware of. It is the opinion of the U.S. Department of Education and the Bureau that this finding will not adversely affect an individual's financial ability to obtain the benefits of higher education because reductions in Title IV assistance are anticipated to be offset by FLEDA assistance.

The individual respondent asked whether the age 27 limitation set forth in the FLEDA statute and at 32.22 (c) of the regulations pertains to the age of the child at the time of his or her parent's death or disability, or rather to the child's age at the time of application for FLEDA benefits. Section 32.22 (c) refers to the child's age at the time of application for FLEDA assistance. However, under the FLEDA statute and regulations as written, a child over the age of 27 could request retroactive assistance for educational costs incurred prior to his or her 27th birthday. In addition, the current wording of the regulations allows for exceptions, consistent with the statute, for extraordinary circumstances that precluded the child from pursuing a

program of higher education prior to age 27.

The individual's second question was whether FLEDA assistance could be applied to graduate school if the child was younger than 27 at the time of his or her parent's death, but over age 27 while attending graduate school. FLEDA assistance can be used to defray the costs of graduate school. However, as indicated above, educational costs incurred beyond the age of 27 are not compensable under the FLEDA Program, absent a finding of extraordinary circumstances which precluded the child from pursuing a program of higher education prior to age 27.

The third question asked by the respondent was whether FLEDA assistance could be received retroactively to reimburse a student for loans that were paid off after the death or disability of his or her parent. Consistent with Section 32.35 of the regulations, FLEDA assistance can be used to reimburse a student for higher education loans that were paid off following the death or disability of his or her parent. Consistent with Section 32.35 of the regulations, FLEDA assistance can be used to reimburse a student for higher education loans that were paid off following the death or disability of his or her parent if the loans were for educational expenses incurred following the death or disability of the Federal law enforcement officer.

Executive Order 12866

This regulation has been written and reviewed in accordance with Executive Order 12866, § 1(b), Principles of Regulation. The Office of Justice Programs has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, § 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12612

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

Regulatory Flexibility Act

The Office of Justice Programs, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: The FLEDA program will be administered by the Office of Justice Programs, and any funds distributed under it shall be distributed to individuals, not entities, and the economic impact is limited to the Office of Justice Program's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private section, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

The collection of information requirements contained in the proposed regulation will be submitted to the Office of Management and Budget for review under the Paperwork Reduction Act (44 U.S.C. 3504(h)).

List of Subjects in 28 CFR Part 32

Administrative practice and procedure, Claims, Disability benefits, Law enforcement officers.

For the reasons set out in the preamble, title 28, part 32 of the Code of Federal Regulations is amended as follows:

PART 32—PUBLIC SAFETY OFFICER'S DEATH AND DISABILITY BENEFITS

1. The authority citation for Part 32 continues to read as follows:

Authority: Part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (42 U.S.C. 3711 *et seq.*)

Subpart A—[Amended]

2. The heading ''Subpart A—Introduction'' is revised to read ''Subpart A—Death and Disability Benefits''.

§ 32.1 [Amended]

3. In § 32.1(a), in the first sentence, the phrase ''The purpose of this part'' is revised to read ''The purpose of this subpart'' and in the parenthetical, the phrase ''part L'' is revised to read ''subpart 1 of part L''.

§ 32.2 [Amended]

4. In § 32.2, the phrase ''For purposes of this subpart—'' is added as introductory text before paragraph (a).

Subpart B—[Amended]

5. The heading ''Subpart B—Officers Covered'' is removed and an undesignated center heading reading ''Officers Covered'' is inserted in its place.

Subpart C—[Amended]

6. The heading ''Subpart C—Beneficiaries'' is revised to read ''Beneficiaries'' as an undesignated center heading.

§ 32.10 [Amended]

7. In § 32.10(a) introductory text, the phrase ''subpart B of this part and § 32.11 of subpart C of this part'' is revised to read ''this subpart''.

Subpart D—[Amended]

8. The heading ''Subpart D—Interim and Reduced Death Payments'' is removed and an undesignated center heading reading ''Interim and Reduced Death Payments'' is added in its place.

§ 32.16 [Amended]

9. In § 32.16(a), the phrase ''subpart C'' is revised to read ''§§ 32.10 through 32.15''.

Subpart E—[Amended]

10. The heading ''Subpart E—Filing and Processing of Claims'' is removed and an undesignated center heading reading ''Filing and Processing of Claims'' is added in its place.

Subpart F—[Amended]

11. The heading ''Subpart F—Determination, Hearing, and Review'' is removed and an undesignated center heading reading ''Determination,

Hearing, and Review'' is added in its place.

Subpart G—[Amended]

12. The heading ''Subpart G—National Programs for Families of Public Safety Officers Who Have Died in the Line of Duty'' is removed and an undesignated center heading reading ''National Programs for Families of Public Safety Officers Who Have Died in the Line of Duty'' is added in its place.

13. Part 32 is amended by adding the following new subpart B following § 32.25:

Subpart B—Federal Law Enforcement Dependents Assistance

Sec.
32.31 Purpose.
32.32 Definitions.
32.33 Eligibility for assistance.
32.34 Application for assistance.
32.35 Retroactive benefits.
32.36 Action on applications for benefits.
32.37 Determination of benefits.
32.38 Denial of benefits.
32.39 Appeals.
32.40 Repayment.

Subpart B—Federal Law Enforcement Dependents Assistance

§ 32.31 Purpose.

This subpart implements the Federal Law Enforcement Dependents Assistance Act of 1996, which authorizes the payment of financial assistance for the purpose of higher education to the dependents of Federal law enforcement officers who are found, under the provisions of subpart A of this part, to have died as a direct and proximate result of a personal injury sustained in the line of duty, or to have been permanently and totally disabled as the direct result of a catastrophic injury sustained in the line of duty.

§ 32.32 Definitions.

For purposes of this subpart:

(a) The *Act* means the Federal Law Enforcement Dependents Assistance Act of 1996, Pub. L. 104–238, Oct. 3, 1996, codified as Subpart 2 of Part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3796d *et seq.*

(b)(1) *Bureau* means the Bureau of Justice Assistance of the Office of Justice Programs, which is authorized to implement the provisions of this subpart.

(2) *PSOB* means the Public Safety Officers' Benefits program administered by the Bureau under subpart A of this part.

(3) *FLEDA* means the Federal Law Enforcement Dependents Assistance program administered by the Bureau under this subpart.

(c) *Federal law enforcement officer* means any law enforcement officer, as defined in § 32.2(m), employed in a civilian capacity by an agency of the United States Government, with respect to whom PSOB benefits have been approved under subpart A of this part on account of the officer's death or disability in the line of duty.

(d) *Child* means any person who was the biological, adopted, or posthumous child, or the stepchild, of a Federal law enforcement officer at the time of the officer's death or disabling injury with respect to which PSOB benefits were approved under subpart A of this part. A step-child must meet the provisions set forth in § 32.15.

(e) *Spouse* means the husband or wife of a deceased or permanently and totally disabled officer at the time of the officer's death or disabling injury with respect to which PSOB benefits were approved under subpart A of this part, and includes a spouse living apart from the officer at that time for any reason.

(f) *Dependent* means the child or spouse of any eligible Federal law enforcement officer.

(g) *Program of education* means any curriculum or any combination of unit courses or subjects pursued at an eligible educational institution, which generally is accepted as necessary to fulfill requirements for the attainment of a predetermined and identified educational, professional, or vocational objective. It includes course work for the attainment of more than one objective if, in addition to the previous requirements, all of the objectives generally are recognized as reasonably related to a single career field.

(h) *Eligible educational institution* means a postsecondary institution which—

(1) Is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088), as in effect on October 3, 1996, including—

(i) An institution of higher education as defined in section 1201(a) of such Act (20 U.S.C. 1141(a)),

(ii) A proprietary institution of higher education,

(iii) A postsecondary vocational institution, or

(iv) A foreign medical school; and

(2) Is eligible to participate in student assistance programs under title IV of such Act (20 U.S.C. 1070 *et seq.*).

(i) *Satisfactory progress* means that the dependent is maintaining satisfactory progress in the program of education, as determined under section 484(c) of the Higher Education Act of 1965, as amended (20 U.S.C. 1091(c)).

(j) *Educational expenses* means tuition, room and board, books, supplies, fees, and transportation expenses that are consistent with the educational, professional or vocational objectives set forth by the applicant in the application for assistance.

§ 32.33 Eligibility for assistance.

(a) Subject to the availability of appropriations, and the provisions of the Act and this subpart, the Bureau shall provide financial assistance to a dependent who attends a program of education at an eligible educational institution and is—

(1) The child of any Federal law enforcement officer with respect to whom PSOB benefits have been approved under subpart A of this part; or

(2) The spouse of such an officer at the time of the officer's death or on the date of the officer's totally and permanently disabling injury.

(b) The educational assistance under this subpart is intended for the sole purpose of defraying the costs of educational expenses and may only be used to defray such costs. A certification of educational use will be required.

(c) No child shall be eligible for assistance under this subpart after the child's 27th birthday, absent a finding by the Bureau of extraordinary circumstances precluding the child from pursuing a program of education, including but not limited to the death of a relative, personal injury or illness of the student, military service, or financial hardship.

(d) No dependent shall receive assistance under this subpart for a period in excess of forty-five months of full-time education or training, or a proportionate period of time for a part-time program.

§ 32.34 Application for assistance.

(a) A person seeking assistance under this subpart shall submit an application to the Bureau in such form and containing such information as the Bureau may reasonably require. The provisions of § 32.21 relating to evidence shall apply to applications under this subpart.

(b) An applicant for assistance under this subpart must establish that the Bureau previously has received and approved a claim for PSOB benefits under subpart A of this part with respect to the death or disability of the parent or spouse of the applicant.

(1) A spouse or child recognized as the beneficiary of a PSOB claim under subpart A of the part with respect to a deceased officer will be recognized as a spouse or child for purposes of this subpart.

(2) In the case of a disabled Federal law enforcement officer approved for PSOB benefits under subpart A of this part, applicants for assistance under this subpart must submit birth or marriage certificates or other proof of relationship consistent with §§ 32.12 (spouse) and 32.13 (child), if such evidence had not been submitted with respect to the PSOB claim.

(c) The application shall describe the program of education at an eligible educational institution, and the educational expenses for which assistance is sought. A request for assistance may be for prospective assistance, for retroactive benefits pursuant to § 32.35 (if applicable), or both.

(d)(1) A request for prospective assistance must be accompanied by a certified copy of the official letter of acceptance from the eligible educational institution (on official letterhead) to the dependent, accepting the applicant into an educational program.

(2) The applicant also shall submit to the Bureau, when it is available, the schedule of classes in which the applicant is enrolled, and which must be consistent with the educational, professional, or vocational objectives stated in the application.

(e) An applicant may be represented in any proceeding before the Bureau by an attorney or other person authorized to act on behalf of the applicant pursuant to §§ 32.19 and 32.22.

§ 32.35 Retroactive benefits.

(a) Each dependent of a Federal law enforcement officer killed in the line of duty on or after May 1, 1992, shall be eligible for assistance, on the same basis and subject to the limitations of this subpart, for each month in which the dependent had pursued a program of education at an eligible educational institution.

(b) To be eligible for retroactive benefits, the applicant must submit a certified copy of transcripts from the educational institution covering the relevant time period. Absent compelling justification, no application will be accepted more than five years from the last date the applicant pursued such program of education.

(c) Subject to applicable limitations, retroactive benefits shall be in addition to prospective assistance provided under this subpart. A dependent eligible for retroactive benefits may choose to waive such assistance and apply only for prospective assistance under the provisions of this subpart.

§ 32.36 Action on applications for assistance.

(a) After examining the application for prospective or retroactive assistance under the provisions and limitations of this subpart, and any additional relevant information, the Bureau shall notify the dependent in writing of the approval or disapproval of the application.

(b) If the application is denied, in whole or part, the Bureau shall explain the reasons for the denial. A copy of the decision, together with information as to the right to an appeal, shall be mailed to the applicant's last known address.

§ 32.37 Determination of benefits.

(a)(1) Financial assistance under this subpart shall consist of direct payments to an eligible dependent and shall be computed on the basis set forth in 38 U.S.C. 3532.

(2) The dependent's status as a full-time, three-quarter-time, half-time, or less-than-half-time student will be determined in accordance with the requirements of, and must be certified by, the eligible educational institution.

(b) In applying the limitations under this subpart with respect to prospective assistance, the Bureau shall consider any retroactive benefits provided to the dependent pursuant to § 32.35.

(c) Benefits payable under this subpart shall be in addition to any other benefit that may be due from any other source, except that, if the FLEDA assistance in combination with other benefits would exceed the total approved costs for the applicant's program of education, the assistance under this subpart will be reduced by the amount of such excess.

§ 32.38 Denial of benefits.

(a) No benefit shall be paid under this subpart if the Bureau determines that the dependent is not eligible for, is no longer eligible for, or is not entitled to the assistance for which application is made. Without limitation, this will include circumstances in which—

(1) The benefits would exceed the applicable durational limits;

(2) A dependent child has exceeded the age limit for benefits;

(3) The dependent has failed to maintain satisfactory progress in the selected program of education as defined in § 32.32(i);

(4) The dependent is in default on any student loan obtained through Title IV of the Higher Education Act of 1965, unless the assistance under this subpart is used for repayment of the defaulted loans and the applicant provides evidence of this fact to the Bureau in the form of an approved repayment plan; or

(5) The dependent is subject to a denial of federal benefits under 21 U.S.C. 862.

(b) The Bureau shall deny benefits under this subpart if—

(1) The educational institution attended by the dependent fails to meet a requirement for eligibility described in § 32.32(h);

(2) The dependent's enrollment in or pursuit of the selected program of education would fail to meet the criteria established in § 32.32(g); or

(3) The dependent already is qualified by previous education or training for the educational, professional or vocational objective for which the program of education is offered.

§ 32.39 Appeals.

An applicant may, within 30 days after notification of denial, submit a written appeal request to the Bureau. Appeals will be handled consistent with § 32.24 and the appendix to this part, except that such appeals shall not be handled by oral hearing but will be conducted through a record review by an administrative hearing officer. Provisions in § 32.24 and the appendix to this part relating to oral hearings shall not be applicable to appeals under this subpart.

§ 32.40 Repayment.

In the event that the recipient of financial assistance under this subpart fails to maintain satisfactory progress, as defined in § 32.32(i), or otherwise become ineligible for assistance (other than as a result of age or the expiration of the time limit for assistance), the dependent is liable for repayment of funds awarded for prospective assistance. The Director of the Bureau may waive all or part of such repayment, based on a consideration of the circumstances and the hardship that would result from such repayment.

Dated: July 10, 1997.

Richard H. Ward,

Deputy Director, Bureau of Justice Assistance.

[FR Doc. 97–18584 Filed 7–14–97; 8:45 am]

BILLING CODE 4410–18–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's Regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the regulation to adopt interest assumptions for plans with valuation dates in August 1997.

EFFECTIVE DATE: August 1, 1997.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: The PBGC's Regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

Among the actuarial assumptions prescribed in part 4044 are interest assumptions. These interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Two sets of interest assumptions are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. This amendment adds to appendix B to part 4044 the annuity and lump sum interest assumptions for valuing benefits in plans with valuation dates during August 1997.

For annuity benefits, the interest assumptions will be 6.10 percent for the first 25 years following the valuation date and 5.00 percent thereafter. The annuity interest assumptions represent a decrease (from those in effect for July 1997) of 0.20 percent for the first 25 years following the valuation date and are otherwise unchanged. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 4.75 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. The lump sum interest assumptions represent a decrease (from those in effect for July 1997) of 0.50 percent for the period during which a benefit is in pay status and for the seven years directly preceding that period; they are otherwise unchanged.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans with valuation dates during August 1997, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. *See* 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, a new entry is added to Table I, and Rate Set 46 is added to Table II, as set forth below. The introductory text of each table is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 4044—Interest Rates Used to Value Annuities and Lump Sums

TABLE I.—ANNUITY VALUATIONS

[This table sets forth, for each indicated calendar month, the interest rates (denoted by i_1, i_2, . . . , and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t=	i_t	for t=	i_t	for t=
* * *	*		*		*	*
August 1997	.0610	1–25	.0500	>25	N/A	N/A

TABLE II.—LUMP SUM VALUATIONS

[In using this table: (1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply; (2) For benefits for which the deferral period is y years (where y is an integer and $0<y\leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years, and thereafter the immediate annuity rate shall apply; (3) For benefits for which the deferral period is y years (where y is an integer and $n_1<y\leq n_1+n_2$), interest rate i_2 shall apply from the valuation date for a period of $y-n_1$ years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply; (4) For benefits for which the deferral period is y years (where y is an integer and $y<n_1+n_2$), interest rate i_3 shall apply from the valuation date for a period of $y-n_1-n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply.]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	*
46	08–1–97	09–1–97	4.75	4.00	4.00	4.00	7	8

Issued in Washington, D.C., on this 10th day of July 1997.

John Seal,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97–18576 Filed 7–14–97; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972 Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS ARLEIGH BURKE (DDG 51) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: June 23, 1997.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS ARLEIGH BURKE (DDG 51) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the following specific provision of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Five of § 706.2 is amended by revising the entry for the USS ARLEIGH BURKE to read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
*	*	*	*	*	*
USS ARLEIGH BURKE	DDG 51	X	X	X	19.0
*	*	*	*	*	*

Dated: June 23, 1997.

Approved:

R.R. Pixa,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 97–18505 Filed 7–14–97; 8:45 am]

BILLING CODE 3810–FF–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[AD–FRL–5858–1]

RIN 2060–AD–56; and RIN 2060–AE–37

OMB Approval Number Under the Paperwork Reduction Act; National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins; National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendments.

SUMMARY: This action corrects errors and clarifies regulatory text in the ''National Emission Standards for Hazardous Air Pollutants: Group I Polymers and Resins,'' (40 CFR part 63, subpart U) which was issued as a final rule on September 5, 1996, and in the ''National Emission Standards for Hazardous Air Pollutants: Group IV Polymers and Resins,'' (40 CFR part 63, subpart JJJ) which was issued as a final rule on September 12, 1996.

In addition, in compliance with the Paperwork Reduction Act (PRA), this document announces that the Information Collection Requirements (ICR) contained in the ''National Emission Standards for Hazardous Air Pollutants: Group I Polymers and Resins,'' final rule (61 FR 46906), which were not previously approved under the Office of Management and Budget (OMB), have been approved by OMB under control number 2060–0356. The ICRs in the affected sections of the regulation are effective July 15, 1997. This action also amends the OMB approval table to list the OMB control number issued under the PRA for the affected sections.

DATES: The correcting amendments are effective July 15, 1997.

The information collection requirements contained in the final rule published on September 5, 1996 (61 FR 46906) are effective July 15, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosensteel, Organic Chemicals Group, Emission Standards Division (MD–13), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5608.

SUPPLEMENTARY INFORMATION: On September 5, 1996 (61 FR 46906), the Environmental Protection Agency (EPA) promulgated National Emission Standards for Hazardous Air Pollutants (NESHAP) for Group I Polymers and Resins. On September 12, 1996 (61 FR 48208), the EPA promulgated NESHAP for Group IV Polymers and Resins. These regulations were promulgated as subpart U and subpart JJJ of 40 CFR part 63. This document contains corrections and clarifications related to a cross-referencing error and oversight in the promulgated regulations.

In addition, this action amends the table of currently approved ICR control numbers issued by OMB. Today's amendment updates the table to list those information requirements promulgated under the National Emission Standards for Hazardous Air Pollutants: Group I Polymers and Resins, which appeared in the **Federal Register** on September 5, 1996 (61 FR 46906). The affected regulations are codified at 40 CFR part 63, subpart U. The EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations, and in each CFR volume containing EPA regulations. The table lists the section numbers with reporting and recordkeeping requirements, and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the requirements of the Paperwork Reduction Act and OMB's implementing regulations at 5 CFR part 1320.

This ICR was previously subject to public notice and comment prior to OMB approval, and today's amendment simply adds this ICR to the list of currently approved ICR control numbers. As a result, the EPA finds that there is ''good cause'' under section 553(b)(B) of the Administrative Procedure Act to amend this table without prior notice and comment.

I. Description of Clarifying Changes

Both the National Emission Standards for Hazardous Air Pollutants: Group I Polymers and Resins (40 CFR part 63, subpart U) and the National Emission Standards for Hazardous Air Pollutants: Group IV Polymers and Resins (40 CFR part 63, subpart JJJ) require that affected sources follow the equipment leak provisions found in the Hazardous Organics NESHAP, or HON (40 CFR part 63, subpart H). As promulgated on September 5, 1996 and September 12, 1996, respectively, neither subpart U (61 FR 46906) nor subpart JJJ (61 FR 48208) is clear about what the requirements are for equipment leaks at affected sources that are subject to the requirements of §§ 63.163 and 63.168 of subpart H (for pumps in light liquid service, valves in gas/vapor service and valves in light liquid service), as required under § 63.502 of subpart U and § 63.1331 of subpart JJJ.

Specifically, § 63.163 (a) and (b) of subpart H provide different ''phases'' (I, II, and III) of implementation of the requirements for pumps in light liquid service. Leak definitions become increasingly stringent over the course of the three phases. Similarly, § 63.168 (a) and (b) of subpart H have phased implementation of leak definitions for valves in gas/vapor or light liquid service. The EPA intended that the phased implementation of the leak definitions in 40 CFR part 63, subpart H apply to affected sources under both subparts U and JJJ. However, due to the structure of paragraphs § 63.163(a)(1) and § 63.168(a)(1), it is not clear that the three phases of implementation of these requirements also apply to subpart U and subpart JJJ affected sources. Because of this potential confusion, the EPA has found it necessary to amend § 63.502 and § 63.1331 to clarify that subparts U and JJJ are subject to § 63.163(a)(1)(i) and § 63.168(a)(1)(i). For this reason, an explanatory paragraph was added to both §§ 63.502 and 63.1331, describing how subpart U and JJJ affected sources should interpret § 63.163(a)(1)(i) and § 63.168(a)(1)(i), for the purposes of this subpart. A similar edit was necessary regarding § 63.174(c)(2)(iii), and this change is also included in the new explanatory paragraph.

Today's final rule also amends § 63.485(o) of subpart U, to clarify the EPA's intention at promulgation to exempt halogenated front-end process vents from the requirement to control hydrogen halides and halogens from the outlet of combustion devices at existing affected sources that produce butyl rubber, halobutyl rubber, or ethylene-propylene rubber. As promulgated, the rule exempts these halogenated vents from § 63.113(c) of subpart (G), which contains the requirement that the outlet of combustion devices that are controlling Group 1 halogenated vent streams be routed to a scrubber or other control device. However, § 63.113(a)(1)(ii) of subpart G prohibits the control of halogenated vent streams with a flare. Since § 63.485(o) did not address § 63.113(a)(1)(ii) of subpart G, there could be confusion as to whether

a flare could be used to control halogenated Group 1 vent streams at affected sources producing one of the three types of rubber listed above. Therefore, this amendment simply adds an additional reference within § 63.485(o), to clarify that front-end continuous process vents at affected sources producing butyl rubber, halobutyl rubber, or ethylene-propylene rubber are exempt from the requirements of § 63.113(a)(1)(ii) of subpart G.

The intent of §§ 63.502 and 63.1331 to incorporate all but a few specified portions of subpart H has not changed since promulgation; these edits are merely for the sake of clarification. The amendment to § 63.485(o) is also merely a clarification, and the intent of that paragraph has not changed since promulgation. As a result, the EPA finds that it is unnecessary to provide prior notice and opportunity to comment on these clarifying amendments.

II. Administrative Requirements

A. Paperwork Reduction Act

For the both the Group I and Group IV Polymers and Resins NESHAP, the information collection requirements were submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act. At promulgation, OMB had already approved the information collection requirements for the Group IV Polymers and Resins NESHAP and assigned those standards the OMB control number 2060–0351. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The EPA has amended 40 CFR part 9, Section 9.1, to indicate the information collection requirements contained in the Group IV Polymers and Resins NESHAP.

An Information Collection Request (ICR) document for the Group I Polymers and Resins I NESHAP was prepared by the EPA (ICR No. 1746.01) but, at promulgation, that ICR had not yet been approved by OMB. However, since promulgation the OBM has approved the ICR, and today's action amends the table of currently approved ICR control numbers issued by OMB and updates the table to accurately display those information requirements not previously approved. The information collection requirements that are made effective by this notice under OMB control number 2060–0356 were contained in Information Collection Request number 1746.01. A copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division (2137), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or by calling (202) 260–2740.

The amendments to the NESHAP contained in this final rule should have no impact on the information collection burden estimates made previously. Therefore, the ICRs have not been revised.

B. Executive Order 12866 Review

Under Executive Order (E.O.) 12866, the EPA must determine whether the regulatory action is ''significant'' and therefore, subject to OMB review and the requirements of the Executive Order. The Order defines ''significant'' regulatory action as one that is likely to lead to a rule that may:

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

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

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

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

These amendments to those NESHAP clarify the applicability of the equipment leak provisions in those rules. These amendments do not add any additional control requirements. Therefore, this final rule and correcting amendments were classified ''non-significant'' under Executive Order 12866 and were not required to be reviewed by OMB.

C. Regulatory Flexibility

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. The EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. See the September 5, 1996 **Federal Register** (61 FR 46906) and the September 12, 1996 **Federal Register** (61 FR 48208) for the basis for this determination.

D. Unfunded Mandates

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

The EPA has determined that this final rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector, nor does it significantly or uniquely impact small governments, because this action contains no requirements that apply to such governments or impose obligations upon them. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

E. Submission to Congress and the General Accounting Office

Under the Small Business Regulatory Enforcement Fairness Act of 1996, the 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 this final rule in the **Federal Register**. This is not a ''major rule'' as defined by the Small Business Regulatory Enforcement Fairness Act.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 63

Environmental protection, Reporting and recordkeeping requirements.

Dated: July 8, 1997.

Mary D. Nichols,

Assistant Administrator for Air and Radiation.

For the reasons set out in the preamble, parts 9 and 63 of title 40, chapter I of the Code of Federal Regulations are amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding in numerical order the new entries to the table under the indicated heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control no.
* * * * *	
National Emission Standards for Hazardous Air Pollutants for Source Categories [3]	
* * * * *	
63.480–63.506	2060–0356
* * * * *	

[3] The ICRs referenced in this section of the table encompass the applicable general provisions contained in 40 CFR part 63, subpart A, which are not independent information collection requirements.

* * * * *

PART 63—[AMENDED]

3. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart U—[Amended]

4. Section 63.485 is amended by revising paragraph (o) introductory text to read as follows:

§ 63.485 Continuous front-end process vent provisions.

* * * * *

(o) Group 1 halogenated continuous front-end process vents at affected existing sources producing butyl rubber, halobutyl rubber, or ethylene propylene rubber are exempt from the requirements to control hydrogen halides and halogens from the outlet of combustion devices contained in § 63.113(c) of subpart G and are exempt from the prohibition against flaring halogenated vent streams, which is contained in § 63.113(a)(1)(ii) of subpart G, if the conditions in paragraphs (o)(1) and (o)(2) of this section are met. Affected new sources are not exempt from these provisions.

* * * * *

5. Section 63.502 is amended by revising paragraph (a) and by adding paragraph (j) to read as follows:

§ 63.502 Equipment leak provisions.

(a) The owner or operator of each affected source shall comply with the requirements of subpart H of this part for all equipment in organic HAP service, with the exceptions noted in paragraphs (b) through (j) of this section.

* * * * *

(j) The owner or operator of each affected source shall substitute the phrase ''the provisions of subparts F, I, or U of this part'' for both the phrases ''the provisions of subparts F or I of this part'' and the phrase ''the provisions of subpart F or I of this part'' throughout §§ 63.163 and 63.168, for the purposes of this subpart. In addition, the owner or operator of each affected source shall substitute the phrase ''subparts F, I, and U'' for the phrase ''subparts F and I'' in § 63.174(c)(2)(iii), for the purposes of this subpart.

Subpart JJJ—[Amended]

6. Section 63.1331 is amended by revising paragraph (a) introductory text and adding paragraph (a)(10) to read as follows:

§ 63.1331 Equipment leak provisions.

(a) Except as provided in paragraphs (b) and (c) of this section, the owner or operator of each affected source shall comply with the requirements of subpart H of this part, with the differences noted in paragraphs (a)(1) through (a)(10) of this section.

* * * * *

(10) The owner or operator of each affected source shall substitute the phrase ''the provisions of subparts F, I, or JJJ of this part'' for both the phrases ''the provisions of subparts F or I of this part'' and the phrase ''the provisions of subpart F or I of this part'' throughout §§ 63.163 and 63.168, for the purposes of this subpart. In addition, the owner or operator of each affected source shall substitute the phrase ''subparts F, I, and JJJ'' for the phrase ''subparts F and I'' in § 63.174(c)(2)(iii), for the purposes of this subpart.

* * * * *

[FR Doc. 97–18566 Filed 7–14–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE030–1008a; FRL–5856–1]

Approval and Promulgation of Air Quality Implementation Plans; Delaware—General Conformity Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision consists of Delaware's regulation for General Conformity which sets forth policy, criteria, and procedures for demonstrating and assuring conformity of non-transportation related federal projects to all applicable implementation plans. The intended effect of this action is to approve Delaware's General Conformity regulation as a SIP revision.

DATES: This action is effective September 15, 1997 unless notice is received on or before Septmeber 14, 1997 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460; Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 566–2182, at the EPA Region III office or via e-mail at quinto.rose@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: On October 2, 1996, the Delaware Department of Natural Resources & Environmental Control (DNREC) submitted a formal revision to its State Implementation Plan (SIP) to EPA for

the purpose of meeting the requirements of 40 CFR 51.851, State Implementation Plans, found under 40 CFR part 51, subpart W, Determining Conformity of General Federal Actions to State and Federal Implementation Plans. Part 51, subpart W is commonly referred to as the federal General Conformity Rule. The DNREC SIP revision which is the subject of this approval action consists of Delaware Regulation 35—Conformity of General Federal Actions to the State Implementation Plans (General Conformity). This action to approve Delaware's General Conformity regulation as a SIP revision is being taken under section 110 of the Clean Air Act (CAA).

The revision to Regulation 26—Motor Vehicle Emission Inspection Program, that was also submitted by DNREC on October 2, 1996 is the subject of a separate rulemaking document.

Summary of the SIP Revision

Delaware Regulation 35, Conformity of General Federal Actions to the State Implementation Plans (General Conformity), establishes standards and procedures to follow when evaluating the conformity of non-transportation related federal projects to all applicable implementation plans developed pursuant to section 110 and Part D of the CAA.

At 40 CFR part 51, subpart W, EPA promulgated the federal rule for General Conformity to implement section 176(c) of the CAA. This federal rule sets forth policy, criteria, and procedures for demonstrating and assuring the conformity of federal actions to all applicable implementation plans developed pursuant to section 110 and part D of the CAA. The rule generally applies to federal actions except:

(1) Those required under the transportation conformity rule (40 CFR part 93, subpart A);

(2) Actions with associated emissions below specified de minimis levels; and

(3) Certain other actions which are exempt or presumed to conform to applicable air quality implementation plans.

At 40 CFR 51.851, State Implementation Plans, EPA promulgated the requirements that must be adopted by a state and submitted as a SIP revision to implement the General Conformity provisions. The provisions adopted by Delaware for General Conformity are those contained in and required by the federal rule. EPA has reviewed Delaware Regulation 35, for General Conformity, and has determined that it satisfies the requirements of 40 CFR 51.851. A Technical Support Document (TSD) has been prepared which details the EPA's evaluation of Delaware Regulation 35. Interested parties may obtain a copy of the TSD by contacting the EPA Regional Office listed in the **ADDRESSES** section of this document.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse and critical comments be filed. This action will be effective September 14, 1997, unless, by August 14, 1997, adverse or critical comments are received. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on September 15, 1997.

Final Action

EPA is approving Delaware Regulation 35, for General Conformity, submitted by the State of Delaware on October 2, 1996 as a revision to the Delaware SIP.

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

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this action from review under Executive Order 12866.

B. Regulatory Flexibility Act

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

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

C. Unfunded Mandates

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

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

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting

Office prior to the publication of the rule of today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action to approve a revision to the Delaware SIP for General Conformity must be filed in the United States Court of Appeals for the appropriate circuit by September 15, 1997. Filing a petition for reconsideration by the Administrator of this rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such a rule or action.

This action pertaining to the approval of Delaware Regulation 35 for General Conformity Rule may not be challenged later in the proceedings to enforce its requirements. (See section (b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations.

Dated: June 30, 1997.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart I—Delaware

2. Section 52.420 is amended by adding paragraphs (c)(58) to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

(58) Revisions to the Delaware State Implementation Plan on October 2, 1996 by the Delaware Department of Natural Resources & Environmental Control:

(i) Incorporation by reference.

(A) A letter of October 2, 1996 from the Delaware Department of Natural Resources & Environmental Control transmitting the General Conformity Rule.

(B) Delaware Regulation 35—Conformity of General Federal Actions to the State Implementation Plans (General Conformity), effective August 14, 1996.

(ii) Additional Material from the Delaware's October 2, 1996 submittal pertaining to Regulation 35.

[FR Doc. 97–18569 Filed 7–14–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN43–02–7268; FRL–5855–8]

Approval and Promulgation of Implementation Plan; Minnesota; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule correction.

SUMMARY: This document contains corrections to a final rule preamble which was published Wednesday, April 23, 1997 (62 FR 19674). The final rule approved the general conformity regulation which was incorporated by reference into the Minnesota State Implementation Plan (SIP).

EFFECTIVE DATE: This action is effective July 15, 1997.

FOR FURTHER INFORMATION CONTACT: Michael G. Leslie, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 353–6680.

SUPPLEMENTARY INFORMATION:

I. Background

On April 23, 1997 (62 FR 19674), the EPA approved a revision to the Minnesota SIP containing the general conformity regulation that contains criteria and procedures for assessing conformity of Federal actions to applicable SIPs. However, in the EPA final rulemaking, EPA inadvertently stated that Benton, Sherburne, and Stearns Counties are designated Carbon Monoxide (CO) maintenance areas, when in fact only a portion of each of these counties, namely the city of St. Cloud, are CO maintenance areas. The EPA apologizes for any inconvenience this action may have caused interested parties.

II. Miscellaneous

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is, therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contains any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or requires prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

B. Regulatory Flexibility Act

Because this action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

C. Submission to Congress and the General Accounting Office

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, General conformity, Hydrocarbons, Intergovernmental relations, Sulfur dioxide, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 23, 1997.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 97–18568 Filed 7–14–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MS21–1–9718a; MS22–1–9719a: FRL–5857–5]

Clean Air Act Approval and Promulgation of Revisions to the Mississippi State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Mississippi State implementation plan (SIP) submitted on September 30,

1996, by the State of Mississippi through the Department of Environmental Quality (MDEQ). These SIP revisions incorporate changes to Regulation APC–S–1, ''Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants,'' and Regulation APC–S–5, ''Regulations for the Prevention of Significant Deterioration of Air Quality.'' The proposed revisions to APC–S–1 incorporate amendments to state open burning restrictions and prohibitions to ensure consistency with federal solid waste disposal regulations as specified in 40 CFR Part 257. The proposed revisions to APC–S–5 incorporate revisions to the state prevention of significant deterioration of air quality regulations to update the adoption by reference in APC–S–5 of the amendments and revisions to the federal regulations promulgated in 40 CFR 52.21 and 51.166 of August 22, 1996.

DATES: This action will be effective September 15, 1997 unless adverse or critical comments are received by August 14, 1997. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Scott M. Martin, Regulatory Planning Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303–3104.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, Atlanta, Georgia 30303–3104.

Mississippi Department of Environmental Quality, Bureau of Pollution Control, Air Quality Division, P.O. Box 10385, Jackson, Mississippi 39289–0385.

FOR FURTHER INFORMATION CONTACT: Mr. Scott M. Martin, Regulatory Planning Section, Air Planning Branch, Air Pesticides and Toxics Management Division, Region 4, Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303. The telephone number is (404) 562–9036.

SUPPLEMENTARY INFORMATION: On September 30, 1996, MDEQ submitted revisions to the Mississippi SIP incorporating changes to Regulation APC–S–1, ''Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants,'' and to Regulation APC–S–5, ''Regulations for the Prevention of Significant Deterioration of Air Quality.'' Public hearings for these revisions were held on August 20, 1996, and became state effective September 21, 1996. The major revisions are described below:

APC–S–1 ''Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants''

1. Section 3, Specific Criteria for Sources of Particulate Matter, paragraph 7 is being amended to include provisions allowing permitted open burning at hazardous waste disposal facilities and reads as follows:

7. Open Burning. The open burning of residential, commercial, institutional, or industrial solid waste, is prohibited. This prohibition does not apply to infrequent burning of agricultural wastes in the field, silvicultural wastes for forest management purposes, land-clearing debris, debris from emergency clean-up operations, and ordinance; and permitted open burning at hazardous waste disposal facilities subject to regulation under Subtitle C of the Federal Resource Conservation Act (RCRA).

2. Paragraph 7(c) is being added and reads as follows:

(C) Permitted open burning at a hazardous waste disposal facility subject to regulation under Subtitle C of RCRA is considered a stationary source of air pollution subject to Mississippi air emission permitting regulations.

These revisions were incorporated to ensure consistency with Federal solid waste disposal regulations as specified in 40 CFR Part 257.

APC–S–5 ''Regulations for the Prevention of Significant Deterioration of Air Quality''

This plan revision incorporates revisions to the State PSD of air quality regulations to update the adoption by reference in APC–S–5 of the amendments and revisions to the Federal regulations promulgated in 40 CFR 52.21 and 51.166 as of August 22, 1996. This plan provides for incorporation of revisions to the Guideline on Air Quality Models (including Appendix C) as promulgated by EPA. This plan revision also provides for inclusion of amendments and revisions to definitions and any other section of the above referenced Federal regulations as promulgated by EPA as of August 22, 1996.

Final Action

The EPA proposes approval of the revisions to the Mississippi SIP because they are consistent with Clean Air Act and Agency requirements.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective September 15, 1997 unless, by August 14, 1997, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective September 15, 1997.

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

I. Administrative Requirements

A. Executive Order 12866

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

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare

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

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

C. Unfunded Mandates

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

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

D. Submission to Congress and the General Accounting Office

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

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 15, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 11, 1997.

A. Stanley Meiburg,

Acting Regional Administrator.

Chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42.U.S.C. 7401–7671q.

Subpart Z—Mississippi

2. In § 52.1270(c) the table is amended by revising ''Section 3'' under the entry APC–S–1 and entry APC–S–5 to read as follows:

§ 52.1270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED MISSISSIPPI REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Comments
APC–S–1—Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants				
*	*	*	*	*
Section 3	Specific Criteria for Sources of Particulate Matter.	09/21/96		July 15, 1997.
*	*	*	*	*
APC–S–5—Regulations for the Prevention of Significant Deterioration of Air Quality				
All	.....	09/21/96		July 15, 1997.

* * * * *

[FR Doc. 97–18571 Filed 7–14–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7225]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Executive Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Executive Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim 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.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 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.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Calhoun ...	City of Jacksonville	May 14, 1997, May 21, 1997, *Jacksonville News*.	The Honorable George Douthit, Mayor of the City of Jacksonville, 320 Church Avenue, S.E., Jacksonville, Alabama 36265.	May 8, 1997	010022B
Connecticut:					
Fairfield	Town of Darien	May 15, 1997, May 22, 1997, *Darien News Review*.	Mr. Henry Sanders, First Selectman, Darien Board of Selectmen, Darien Town Hall, 2 Renshaw Road, Darien, Connecticut 06820.	May 5, 1997	090005D

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
New Haven	City of New Haven	Apr. 8, 1997, Apr. 15, 1997, *New Haven Register*.	The Honorable John DeStefano, Jr., Mayor of the City of New Haven, 200 Orange Street, New Haven, Connecticut 06510.	June 30, 1997	090084C
Florida: Charlotte	Unincorporated areas.	May 5, 1997, May 12, 1997, *Sarasota Herald-Charlotte AM Edition*.	Mr. Matthew D. DeBoer, Chairman, Charlotte County Board of Commissioners, 18500 Murdock Circle, Room 536, Port Charlotte, Florida 33948–1094.	Apr. 21, 1997	120061E
Georgia: DeKalb	Unincorporated areas.	Mar. 20, 1997, Mar. 27, 1997, *Decatur-DeKalb News/Era*.	Ms. Liane Levetan, DeKalb County Chief Executive Officer, 1300 Commerce Drive, Decatur, Georgia 30030.	June 25, 1997	130065F
Illinois:					
Cook	City of Des Plaines	May 21, 1997, May 28, 1997 *Journal and Topics Newspaper*.	The Honorable Ted Sherwood, Mayor of the City of Des Plaines, 1420 Miner Street, Des Plaines, Illinois 60016.	May 14, 1997	170081C
Cook	Unincorporated areas.	Apr. 1, 1997, Apr. 8, 1997, *Chicago Sun-Times*.	Mr. John H. Stroger, President of the Cook County Board of Commissioners, 118 North Clark Street, Room 537, Chicago, Illinois 60602.	Mar. 20, 1997	170054B
Cook & DuPage	Village of Elk Grove Village.	May 15, 1997, May 22, 1997, *Daily Herald*.	Mr. Dennis Gallitano, Elk Grove Village President, 901 Wellington Avenue, Elk Grove, Illinois 60007.	Aug. 20, 1997	170088C
DuPage	Village of Winfield	May 7, 1997, May 14, 1997, *Winfield Estates*.	Mr. Bryon Vana, Village of Winfield Manager, 27 W. 465 Jewell Road, Winfield, Illinois 60190.	Apr. 29, 1997	170223B
Indiana:					
Allen	Unincorporated areas.	Apr. 11, 1997, Apr. 18, 1997, *Journal Gazette*.	Mr. Edwin Rousseau, President of the Allen County Board of Commissioners, 1 East Main Street, Room 200, Fort Wayne, Indiana 46802.	Apr. 4, 1997	180302D
Hendricks	Unincorporated areas.	May 12, 1997, May 19, 1997, *Hendricks County Flyer*.	Mr. John D. Clampitt, President of the Hendricks, County Board of Commissioners P.O. Box 188, Danville, Indiana 46122.	Aug. 17, 1997	180415B
New Hampshire: Hillsborough.	Town of Amherst	Mar. 20, 1997, Mar. 27, 1997, *The Telegraph*.	Mr. Robert Jackson, Chairman of the Selectmen of the Town of Amherst, P.O. Box 960, Amherst, New Hampshire 03031.	June 25, 1997	330081B
New York: Monroe	Town of Greece	May 8, 1997, May 15, 1997, *Greece Post*.	Mr. Roger W. Boily, Supervisor for the Town of Greece, 2505 West Ridge Road, Rochester, New York 14626.	Aug. 13, 1997	360417E
Ohio:					
Fairfield and Franklin.	City of Columbus	Mar. 28, 1997, Apr. 4, 1997, *The Columbus Dispatch*.	The Honorable Gregory S. Lashutka, Mayor of the City of Columbus, 90 West Broad Street, Columbus, Ohio 43215.	July 3, 1997	390170G
Fairfield and Franklin.	City of Columbus	May 23, 1997, May 30, 1997, *The Columbus Dispatch*.	The Honorable Gregory S. Lashutka, Mayor of the City of Columbus, 90 West Broad Street, Columbus, Ohio 43215.	Aug. 28, 1997	390170G
Pennsylvania: Montgomery.	Township of Cheltenham.	Apr. 16, 1997, Apr. 23, 1997, *Times Chronicle*.	Mr. David G. Kraynik, Township of Cheltenham Manager, 8230 Old York Road, Elkins Park, Pennsylvania 19027.	July 22, 1997	420696E
Tennessee:					
Shelby	Unincorporated areas.	Mar. 3, 1997, Mar. 10, 1997, *The Daily News*.	Mr. Jim Kelly, Shelby County Chief Administrative Officer, 160 North Main Street, Memphis, Tennessee 38103.	Feb. 26, 1997	470214E
Shelby	Unincorporated areas.	May 13, 1997, May 20, 1997, *Commerical Appeal*.	The Honorable James Rout, Mayor of Shelby County, 160 North Main Street, Suite 850, Memphis, Tennessee 38103.	May 7, 1997	470214E
Virginia:					
Culpeper	Unincorporated areas.	Mar. 11, 1997, Mar. 18, 1997, *Culpeper Star-Exponent*.	Mr. Steven Miner, Culpeper County Administrator, 135 West Cameron Street, Culpeper, Virginia 22701.	Sept. 3, 1997	510041B

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Orange	Unincorporated areas.	Mar. 13, 1997, Mar. 20, 1997, *Orange County Review.*	Ms. Brenda Bailey, Orange County Administrator, P.O. Box 111, Orange, Virginia 22960.	Sept. 3, 1997	510203B
Wisconsin: Richland	City of Richland Center.	Apr. 3, 1997, Apr. 10, 1997, *The Richland Observer.*	The Honorable Thomas McCarthy, Mayor of the City of Richland Center, P.O. Box 230, Richland Center, Wisconsin 53581.	Mar. 25, 1997	555576B

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

Dated: June 19, 1997.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

[FR Doc. 97–18538 Filed 7–14–97; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Executive Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

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.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 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.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
INDIANA	
Wabash County (Unincorporated Areas) (FEMA Docket No. 7199)	
Wabash River:	
Approximately 1.0 mile downstream of Prairie Road (At county boundary)	*651
Approximately 0.5 mile upstream of 100 North Road ...	*687

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
Treaty Creek:	
Approximately 3,000 feet upstream of Bailey Road	*731
Approximately 100 feet downstream of County Road 700 South.	*793
Maps available for inspection at the Planning Commission Office, Wabash County Courthouse, 1 West Hill Street, Wabash, Indiana.	
FLORIDA	
Leon County (Unincorporated Areas) (FEMA Docket No. 7199)	
Alford Arm Tributary:	
Approximately 0.91 mile downstream of State Route 158 (Buck Lake Road)	*51
Downstream face of Centerville Road	*82
Bradford Brook:	
Confluence with Cascade Lake	*39
Just downstream of Aenon Church Road	*49
Fords Arm Tributary:	
Upstream face of Meridian Road	*110
Approximately 1,250 feet upstream of Trillium Court	*156
Gum Creek:	
Just downstream of Blounstown Highway	*60
At confluence of West Branch Gum Creek and North Branch Gum Creek	*60
Lake Overstreet Drain:	
Upstream face of Meridian Road	*98
Approximately 1,900 feet upstream of Bobbin Brook West	*125
Munson Slough:	
Approximately 1,600 feet downstream of State Route 260 (Oakridge Road)	*22
At Lake Bradford Road	*40
North Branch Gum Creek:	
At confluence with Gum Creek	*60
Just upstream of Gum Road	*60
West Branch Gum Creek:	
At confluence with Gum Creek	*60
Just upstream of CSX Transportation	*60
West Drainage Ditch:	
Approximately 0.3 mile upstream of Yulee Street	*58
Approximately 50 feet upstream of Pensacola Street	*59
Lake Cascade:	
Entire shoreline within the community	*39
Lake Bradford:	
Entire shoreline within the community	*39
Lake Lafayette-Alford Arm:	
Downstream of CSX Transportation crossing (Lake Lafayette, Piney Z Lake)	*51
Ochlockonee River:	
At Jackson Bluff Dam	*72
Approximately 600 feet downstream of Interstate 10	*81
East Drainage Ditch:	
At confluence with Munson Slough	*40
Approximately 650 feet upstream of the confluence with Munson Slough	*40
Meginnis Arm Tributary:	
Approximately 350 feet upstream of Lakeshore Drive	*104
Approximately 1,600 feet upstream of Lakeshore Drive	*105
Maps available for inspection at the Leon County Public Works Department, Leon County Courthouse, Room 201, Tallahassee, Florida.	
Tallahassee (City), Leon County (FEMA Docket No. 7199)	
East Drainage Ditch:	
At confluence with Munson Slough	*40
Approximately 100 feet upstream of Apakin Nene	*144
Gum Creek:	
At confluence with West Drainage Ditch	*60
Approximately 0.4 mile upstream of Blounstown Highway	*60
McCord Park Pond Drainage Ditch:	
Approximately 700 feet downstream of State Route 151 (Centerville Road)	*71
At downstream face of Betton Road	*111
Middle Drainage Ditch:	
At confluence with Munson Slough	*40
Approximately 1,100 feet upstream of Pensacola Street	*71
Munson Slough:	
At confluence of East Drainage Ditch	*40
Approximately 200 feet upstream of Lake Bradford Road	*40
Northeast Drainage Ditch:	
At the upstream face of Weems Road	*52
Approximately 1.3 miles upstream of Lonnbladh Road	*131
Park Avenue Ditch:	
At confluence with Northeast Drainage Ditch	*56
Approximately 0.8 mile upstream of Victory Garden Drive	*107
Richview Road Ditch:	
At confluence with Northeast Drainage Ditch	*68
Approximately 40 feet upstream of Park Avenue	*90
Royal Oaks Creek:	
Confluence with Lake Kinsale (Alford Arm Tributary)	*84
Approximately 650 feet upstream of Foxcroft Drive	*87
St. Augustines Branch:	
Approximately 200 feet upstream of confluence with Middle Drainage Ditch	*62
At downstream side of U.S. Route 90 (Tennessee Street)	*114
Alford Arm Tributary:	
Upstream face of Centerville Road	*83
Just downstream of Thomasville Road (U.S. Route 319 and State Route 61)	*93
West Drainage Ditch:	
At confluence with Munson Slough	*40
Approximately 100 feet upstream of Interstate Route 10	*147
West Drainage Ditch Tributary:	
At the confluence with West Drainage Ditch	*53
Approximately 1,140 feet upstream of Jackson Bluff Road	*56
Windrush Apartments Ditch:	
At confluence with Northeast Drainage Ditch Tributary	*77
Approximately 140 feet upstream of Apartment Road	*103
Grassy Lake:	
Entire shoreline within community	*40
Lake Bradford:	
Entire shoreline within community	*39
Lake Cascade:	
Entire shoreline within community	*39
Lake Hiawatha:	
Entire shoreline within community	*39
San Luis Branch:	
At confluence with West Drainage Ditch	*67
Approximately 1,300 feet upstream of Ocala Road	*102
Maps available for inspection at the City of Tallahassee Department of Public Works, 300 South Adams Street, Tallahassee, Florida.	
CONNECTICUT	
East Haven (Town), New Haven County (FEMA Docket No. 7199)	
Tuttle Brook:	

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
Approximately 1,720 feet upstream of Dodge Avenue	*11
Approximately 110 feet upstream of I–95	*18
Maps available for inspection at the Town of East Haven Public Works Building, Engineering Department, 461 North High Street, East Haven, Connecticut.	
MAINE	
Bowdoinham (Town), Sagadahoc County (FEMA Docket No. 7199)	
Kennebec River:	
Approximately 850 feet downstream of Abagadasset Point	*10
At upstream corporate limits ...	*12
Denham Stream:	
At confluence with West Branch	*9
At upstream corporate limits ...	*143
Abagadasset River:	
At downstream corporate limits	*115
At upstream corporate limits ...	*125
Maps available for inspection at the Bowdoinham Town Office, 13 School Street, Bowdoinham, Maine.	
MINNESOTA	
Prior Lake (City), Scott County (FEMA Docket No. 7199)	
Arctic Lake:	
Entire shoreline within community	*909
Maps available for inspection at the City Hall, 16200 Eagle Creek Avenue, S.E., Prior Lake, Minnesota.	
VERMONT	
Duxbury (Town), Washington County (FEMA Docket No. 7199)	
Winooski River:	
At Bolton Falls Dam	*409
At downstream corporate limits	*427
Maps available for inspection at the Duxbury Town Clerk's Office, R.D. 2, Waterbury, Vermont.	
MICHIGAN	
Albee (Township), Saginaw County (FEMA Docket No. 7124)	
Flint River:	
Approximately 0.4 mile west of intersection of Tom Cresswell Road and corporate limits	*594
At Sheridan Road	*600
Shiawassee Flats:	
At intersection of Bishop Road and Fergus Road	*594
Misteguay Creek:	
Approximately 600 feet upstream of confluence with Flint River	*594
At West Gary Road	*604
Maps available for inspection at the Township Community Center, 10645 East Road, Burt, Michigan.	
Brant (Township), Saginaw County (FEMA Docket No. 7124)	
Bad River:	
At downstream corporate limits	*595
Approximately 2,200 feet upstream of downstream corporate limits	*595
Maps available for inspection with Mr. James Lester, Brant Township Clerk, 10510 South Hemlock Road, Brant, Michigan.	
Buena Vista (Charter Township), Saginaw County (FEMA Docket No. 7187)	
Saginaw River Flood Storage Area:	
Area east of Interstate 75 and north of East Washington Road	*587
Saginaw River:	
At downstream corporate limits	*589
Approximately 0.75 mile downstream of upstream corporate limits	*589
Maps available for inspection at the Township Clerk's Office, 1160 South Outer Drive, Saginaw, Michigan.	
Bridgeport (Charter Township), Saginaw County (FEMA Docket No. 7124)	
Cass River:	
At Sheridan Road	*594
Approximately 1.1 miles upstream of Grand Trunk Western Railroad	*595
Flint River:	
Approximately 0.3 mile south of the intersection of Sheridan Road and Curtis Road	*599
At the intersection of Townline Road and Railroad Street	*601
Maps available for inspection at the Bridgeport Charter Township Offices, 6206 Dixie Highway, Bridgeport, Michigan.	
Carrollton (Township), Saginaw County (FEMA Docket No. 7187)	
Saginaw River:	
Immediate area south of Tittabawassee Street and west of Venoy Road	*589
Area west of CONRAIL and south of Schust Road	*589
Maps available for inspection at the Carrollton Township Building, Department of Public Works, 1645 Mapleridge, Saginaw, Michigan.	
Frankenmuth (City), Saginaw County (FEMA Docket No. 7219)	
Cass River:	
.	
Approximately 0.6 mile downstream of South Main Street	*612
Approximately 1.1 miles upstream of South Main Street	*614
Maps available for inspection at the Frankenmuth City Hall, 240 West Genesee Street, Frankenmuth, Michigan.	
Frankenmuth (Township), Saginaw County (FEMA Docket No. 7199)	
Cass River:	
Approximately 0.6 mile downstream of South Main Street	*612
Approximately 1.1 miles upstream of South Main Street	*614
Maps available for inspection at the Frankenmuth Township Building, 218 West Genesee Street, Frankenmuth, Michigan.	
Fremont (Township), Saginaw County (FEMA Docket No. 7199)	
Shiawassee Flats:	
North of Beaver Road	*594
Maps available for inspection at the Fremont Township Hall, 5980 Hemlock Road, Hemlock, Michigan.	
Hazelton (Township), Shiawassee County (FEMA Docket No. 7199)	
Misteguay Creek:	
Approximately 0.58 mile downstream of Byron Road	*666

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
Approximately 350 feet upstream of Juddville Road	*717
Maps available for inspection at the Hazelton Township Hall, 7505 Orchard Street, New Lothrop, Michigan.	
James (Township), Saginaw County (FEMA Docket No. 7187)	
Tittabawassee River:	
Area north of CONRAIL and east of Van Wormer Road ..	*594
Maps available for inspection at the James Township Hall, 6060 Swan Creek Road, Saginaw, Michigan.	
Kochville (Township), Saginaw County (FEMA Docket No. 7187)	
Saginaw Bay:	
West of Venoy Road and north of Tittabawassee Street	*586
Kochville Drain:	
Approximately 0.75 mile downstream of CONRAIL	*588
At confluence with North Branch Kochville Drain	*588
South Branch Kochville Drain:	
At confluence with North Branch Kochville Drain	*588
Approximately 100 feet downstream of Michigan Road	*588
North Branch Kochville Drain:	
At confluence with Kochville Drain	*588
At Kochville Road	*588
Maps available for inspection at the Kochville Township Hall, 5851 Mackinaw Road, Saginaw, Michigan.	
Maple Grove (Township), Saginaw County (FEMA Docket No. 7124)	
Misteguay Creek:	
At upstream side of West Gary Road	*605
Approximately 0.76 mile upstream of upstream county boundary	*669
Maps available for inspection at the Maple Grove Township Office, 17010 Lincoln Road, New Lothrop, Michigan.	
New Lothrop (Village), Shiawassee County (FEMA Docket No. 7199)	
Misteguay Creek:	
Approximately 0.63 mile downstream of Easton Road	*673
Approximately 1,600 feet upstream of confluence of Onion Creek	*680
Maps available for inspection at the New Lothrop Village Hall, 7507 Orchard Street, New Lothrop, Michigan.	
Saginaw (City), Saginaw County (FEMA Docket No. 7124)	
Saginaw River:	
Approximately 1,000 feet northeast of intersection of State Routes 81 and 13	*589
Maps available for inspection at the Saginaw City Hall, 1315 South Washington Avenue, Saginaw, Michigan.	
Spaulding (Township), Saginaw County (FEMA Docket No. 7124)	
Flint River:	
At Tom Cresswell Road	*595
At Sheridan Road	*600
Maps available for inspection at the Spaulding Township Offices, 5025 East Road, Saginaw County, Michigan.	
St. Charles (Township), Saginaw County (FEMA Docket No. 7124)	
Bad River:	
At the downstream corporate limits	*594
At the upstream corporate limits	595
South Branch Bad River:	
At the downstream corporate limits	*594
Approximately 1,000 feet upstream of downstream corporate limits	*594
Shiawassee Flats:	
Flooding affecting community	*594
Maps available for inspection at the St. Charles Township Offices, 1003 North Saginaw Street, St. Charles, Michigan.	
Swan Creek (Township), Saginaw County (FEMA Docket No. 7187)	
Shiawasee Flats:	
Barer and Benkert Roads intersection	*594
Maps available for inspection at the Swan Creek Township Offices, 11415 Lakefield Road, St. Charles, Michigan.	
Taymouth (Township), Saginaw County (FEMA Docket No. 7124)	
Flint River:	
At the intersection of Townline Road and Sheridan Road	*600
Approximately 0.4 mile north of the intersection of Pettit Road and Busch Road	*601
Maps available for inspection at the Taymouth Township Offices, 4343 East Birch Run Road, Birch Run, Michigan.	
Thomas (Township), Saginaw County (FEMA Docket No. 7187)	
Shiawassee Flats (Tittabawassee River):	
At Ederer Road and North River Road intersection	*596
Swan Creek:	
At Ederer Road	*594
Approximately 1,700 feet downstream of Geddes Road	*594
Maps available for inspection at the Thomas Township Offices, 249 North Miller Road, Saginaw, Michigan.	
Zilwaukee (City), Saginaw County (FEMA Docket No. 7187)	
Saginaw Bay:	
Area west of Grand Trunk Western Railroad and north of Tittabawassee Street	*586
Saginaw River:	
Area west of Conrail and south of Tittabawassee Street	*589
At downstream and upstream sides of Interstate Route 75	*589
Maps available for inspection at the Zilwaukee City Hall, 319 Tittabawassee Road, Saginaw, Michigan.	
Zilwaukee (Township), Saginaw County (FEMA Docket No. 7187)	
Kochville Drain:	
Approximately 0.4 mile upstream of Interstate Route 75	*586
Approximately 400 feet downstream of Kochville Road	*586
Saginaw River Flood Storage Area:	
Area east of State Route 13 (Veterans Memorial Parkway)	*587
Saginaw River:	

Source of flooding and location	# Depth in feet above ground. * Elevation in feet (NGVD)
At downstream county boundary	*587
Approximately 800 feet upstream of Interstate Route 75	*589
Saginaw Bay:	
Areas west of Grand Trunk Western and north of Kochville Road	*586
Maps available for inspection at the Township Supervisor's Home Office, 7600 Melbourne Road, Saginaw, Michigan.	
NEW JERSEY	
Roselle Park (Borough), Union County (FEMA Docket No. 7199)	
Morses Creek:	
Approximately 220 feet downstream of West Westfield Avenue	*68
At upstream corporate limits (Sumner Street)	*87
Maps available for inspection at the Borough of Roselle Park Engineer's Office, 110 East Westfield Avenue, Roselle Park, New Jersey.	
NEW YORK	
Fort Ann (Town), Washington County (FEMA Docket No. 7211)	
Copeland Pond:	
Entire shoreline within community	*453
Hadlock Pond:	
Entire shoreline within community	*458
Lakes Pond:	
Entire shoreline within community	*864
Lake Nebo:	
Entire shoreline within community	*843
Lake George:	
Entire shoreline within community	*321
Maps available for inspection at the Fort Ann Town Clerk's office, Route 4 in the Village of Fort Ann, Fort Ann, New York.	
VIRGINIA	
Smyth County (Unincorporated Areas) (FEMA Docket No. 7149)	
Middle Fork Holston River:	
North of Interstate 81 and southwest of the Town of Chilhowie corporate limits	*1,944
Maps available for inspection at the Smyth County Courthouse, Building Inspector's Department, 109 West Main, Marion, Virginia.	

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

Dated: June 19, 1997.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 295

[Docket No. R–163]

RIN 2133-AB24

Maritime Security Program

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD) is issuing this final rule to provide procedures to implement the provisions of the Maritime Security Act of 1996 (MSA). The MSA establishes a new Maritime Security Program (MSP), which authorizes payments through FY 2005. The MSP supports the operations of U.S.-flag vessels in the foreign commerce of the United States through assistance payments. Participating vessel operators are required to make their ships and other commercial transportation resources available to the Government during times of war or national emergency.

DATES: This final rule is effective July 17, 1997.

FOR FURTHER INFORMATION CONTACT: Raymond R. Barberesi, Director, Office of Sealift Support, Telephone 202–366–2323.

SUPPLEMENTARY INFORMATION:

Background

Section 2 of the MSA amended Title VI of the Merchant Marine Act, 1936, as amended, 46 App. U.S.C. 1171 *et seq.* (Act), by adding a new Subtitle B, which authorizes MSP to provide assistance for operators of U.S.-flag vessels that meet certain qualifications. It requires the Secretary of Transportation (Secretary) to establish a fleet of active, militarily useful, privately owned vessels to meet national defense and other security requirements, while also maintaining an American presence in international commercial shipping. Section 655 of the MSA authorized $100 million annually through fiscal year 2005 to support the operation of up to 47 U.S.-flag vessels in the foreign commerce of the United States. Payments to participating operators are $2.1 million per ship, per year. Participating operators are required to make their ships available upon request by the Secretary of Defense during times of war or national emergency. Unlike the operating-differential subsidy (ODS) program, the MSP has few restrictions on vessels operating in the U.S.-foreign commerce and eligible vessels may be built in foreign shipyards.

Interim Final Rule

As authorized by section 8 of the MSA, MARAD issued an interim final rule on October 16, 1996, (61 FR 53861), which added a new 46 CFR Part 295. That rule provides procedures to implement the MSA with respect to the application for, and award of, MSP operating agreements that provide financial assistance to operators of vessels enrolled in the program. The program will be administered on the basis of one-year renewable contracts, provided funding is available in subsequent years. The rule provides that participating operators will be required to operate eligible vessels in the foreign commerce of the United States, and certain specified mixed foreign and domestic areas, with a minimum of operating restrictions, for at least 320 days in any fiscal year. It provides that payments will be made on a prorated basis for vessels operated less than 320 days in any year, exclusive of days a MSP vessel is being drydocked, surveyed or repaired. In addition, no payments will be made for each day any vessel carries civilian bulk preference cargoes of 7,500 tons or more.

The interim final rule issued on October 16, 1996, allowed an initial comment period ending November 15, 1996. This comment period was later extended to December 2, 1996 by notice published in the **Federal Register** (61 FR 58663; November 18, 1996). MARAD received 13 comments from persons or entities with an interest in the MSP, including vessel operators, labor unions, representatives of U.S. shipyards, and U.S. insurers providing U.S. marine hull insurance. In addition, on October 11, 1996, MARAD invited applications for participation in the MSP by

advertisement in the **Federal Register** (61 FR 53483) using the application approved under OMB Approval No. 2133–0525. Based on these applications MARAD awarded 47 contracts for annual payment of $98.7 million. Accordingly, the application process has been closed until such time as additional funding may become available.

Editorial and Clarifying Comments Adopted

The commentors submitted many helpful, editorial and clarifying comments which MARAD is incorporating in the final rule. In general, the final rule drops all references to FY 1996. The term Eligible Contractor is being deleted as it is confusing and now holds no relevance. The reference in § 295.10(b)(3) will read ''applicant,'' not ''contractor'' and reference will be made to the Maritime Security Fleet Program instead of Maritime Security Program in § 295.1 ''Purpose.'' With respect to the hull insurance comments affecting the marine insurance industry, MARAD will encourage use of the American market for marine hull insurance to the maximum extent possible when rates, terms and conditions offered by American underwriters are competitive with those offered by foreign underwriters. In order to satisfy the Congressional intent of providing a less restrictive program, this requirement will not be mandatory.

Summary of Substantive Comments by Section

Definition of Militarily Useful

§ 295.2(q)

Comment: MARAD received three comments, two that requested clarification of the term ''militarily useful'' and one that requested that the term be deleted entirely. According to that commentor, the Department of Defense (DOD) is the expert in the area of military utility and, as written, the definition exceeds the authority of the MSA.

Response: MARAD disagrees with the comment that a definition of ''militarily useful'' exceeds the MSA. Under the MSA, responsibility for the determination of military utility belongs to MARAD in conjunction with DOD, pursuant to authority contained in section 651(b)(1)(c) of the Act. MARAD agrees that DOD criteria should be considered and therefore will use the Joint Strategic Capabilities Plan (JSCAP) definition of ''militarily useful'' in the final rule to define the type of vessel utility that would qualify a vessel as being eligible for the MSP. MARAD agrees with the comments that requested clarification and will include the applicable JSCAP definition describing vessel types deemed acceptable for MSP use. The regulation at § 295.2(q) will be amended accordingly.

Definition of ''Related Party''

§ 295.2(x)(New)

Comment: MARAD received five comments from carriers on the issue of clarifying the term ''related party'' used in numerous provisions of the Interim Final Rule. Three commentors requested clarification of the definition of the term and two commentors requested that the reference be deleted from § 295.12(a)(1).

Response: The term ''related party'' is defined in the MSA in section 656(h), which specifies that the definition is for the purposes of section 656 only. At the time the Interim Final Rule was published, many questions concerning the interpretation of section 656 had not been resolved and references to the non-contiguous domestic trades were not finalized. As a result, no definition of this term was contemplated. However, in view of the comments received and the use of the term in section 652(i) of the Act and its reflective language in § 295.12 of the regulations, MARAD agrees that a general definition is required. Accordingly, MARAD believes consistency requires that the definition used in section 656(h) of the Act be used in general in the regulations. That definition will be added to the definitions section of the regulations with a new § 295.2(x) ''Related Party.''

With regard to the reference to related parties in § 295.12(a)(1), that section was intended to mirror the language of section 652(i)(1)(A)(i) of the Act relating to the ordering of priorities in the granting of MSP awards. However, while the pertinent language of that section of the Act reserves the highest first priority eligibility to citizens of the United States, the language of § 295.12(a)(1) of the interim final rule extended that priority to include related parties. Commentors requested that the term ''related party'' be deleted from § 295.12(a)(1), ''U.S. Citizen Ownership.'' MARAD agrees and this reference will be deleted.

Applications

§ 295.11(a)(2) (Revised)

Since MSP is authorized only through fiscal year 2005 and since it has been fully implemented with annual renewable contracts, applications will only be accepted in response to public invitation by MARAD. Section 295.11(a)(2) has been clarified to establish the limits within which applications will be accepted by MARAD.

Reflagging U.S. Vessels on the Basis of MSP Denial

§ 295.11(a)(4)

Comment: One commentor suggested that MARAD make clear that the rejection for enrollment in the MSP of any U.S.-flag vessel which requires, but did not receive either an affirmative defense or military purposes determination or an age waiver, does not entitle the vessel to be transferred to foreign registry without approval by DOT under section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808) (1916 Act).

Response: Generally, section 9(c)(2) of the 1916 Act provides that a U.S.-documented vessel may not be transferred to a foreign registry or operated under the authority of a foreign country without the approval of the Secretary. Section 6 of the MSA adds a new subsection (e) to section 9 of the 1916 Act. Pursuant to paragraph (2) of the new subsection (e) an eligible vessel which has applied for an operating agreement under the MSP, and which has not received an award within 90 days of application, may transfer to a foreign registry without approval by the Secretary. After careful analysis, MARAD has determined that the new section 9(e)(2) would not remove the requirement for approval by MARAD for transfer to foreign registry of a U.S.-flag vessel that applied for MSP but was not qualified for award other than by reason of age. The statute applies only to vessels eligible under section 651(b)(1), which encompasses all vessel eligibility requirements, with the exception of age. Therefore, if MARAD has determined that the applicant is qualified and the vessel is eligible under the provisions of section 651(b)(1), but does not award a MSP operating agreement due to lack of funds or an inadequate program level, the applicant may remove the subject vessel from U.S. registry and reflag the vessel under a foreign registry without section 9 approval by MARAD. This reflag would only apply to vessels eligible for awards within a priority in which awards have been authorized. Vessels under ODS contract or on MSC charter for which MSP applications have been denied would be eligible to reflag only after those obligations have expired.

Proration

§ 295.12(d)(1)

Comment: Rounding problems may produce more eligible vessels than available slots.

Response: One comment was received regarding rounding of fractional eligibility in the proration process. The point was that inclusion of all fractional eligibility could result in a number of eligible vessels that exceeds the funding available for a particular priority. MARAD agrees. However, the problem of fractional vessels versus slots was anticipated by the language of section 652(o)(2) of the Act. Specifically, that section states that, if the number of vessels eligible in a priority exceeds the available funding for the priority, the number of awards to each person shall be made in *approximately* the same ratio as the number of vessels that the individual applied for bears to the total number of vessels applied for in the priority. The term grants latitude within the process to round awards up or down, as needed, to correct rounding problems and adjust awards. Accordingly, § 295.12(d)(1) provides a mechanism for dealing with rounding problems and no changes are required.

Replacement Vessels

§ 295.20(c)

Comment: One comment was received concerning the statutory authority and practical application of § 295.20(c), which permits the replacement of vessels enrolled in the MSP.

Response: In section 8(a), the MSA authorizes the Secretary to prescribe rules as necessary to carry out the MSA. Providing for the orderly replacement of vessels enrolled in the program, should such replacement become necessary, falls within the purview of the Secretary's mandate under section 8(a). Practical application of such replacement would result from the loss of an enrolled vessel, or from an enrolled vessel otherwise becoming ineligible for participation in the program, for example, by becoming overage. The intent of § 295.20(c) is to provide the mechanism for such replacement. Criteria are already established. Section 295.20(c) refers back to § 295.10, which establishes the eligibility criteria and reflects section 651 of the Act. No change will be made in § 295.20(c).

Notice to Shipbuilders

§ 295.20(d)

Comment: MARAD received four comments on § 295.20(d). Two of the commentors stated that the section exceeded the statutory authority of the MSA by providing that MARAD issue notice in the **Federal Register** of a contractor's intent to build a vessel in a foreign shipyard, and a third commentor stated that this notice may be harmful to MSP contractors. The commentors suggested that MARAD simply develop a list of shipyards capable of building various types of vessels and make the list available to the MSP contractors. A contractor then could satisfy the requirements of section 652(b) of the MSA by directly providing notice to the shipbuilders. One commentor suggested that the prohibition against entering a contract with a foreign shipbuilder be extended from 5 to 10 working days after MARAD's publication of notice of the applicant's intent, and also that any interested U.S. shipbuilder should be allowed not less than 30 days, and not more than 120 days, to submit a design and price to the Maritime Administration. Further, the commentor suggested that MARAD require MSP contractors to make both foreign and domestic bid prices known to MARAD. MARAD would determine whether the U.S. bid is competitive and then notify the contractor that, if they select the foreign offer, the vessel would not be eligible for MSP payments.

Response: MARAD's role in issuing notices in instances where an MSP contractor proposes construction of a vessel or vessels by a foreign shipbuilder was intended to expedite the notification process while ensuring that every shipbuilder in the United States would have proper and timely notice. The agency considered the idea of providing a list of shipbuilders to each MSP contractor. However, after review, MARAD decided that such a list would be an inadequate notification tool when considering the ever changing maritime environment. It is appropriate for MARAD to exercise its discretion to provide adequate notice to U.S. shipbuilders, and it would satisfy Congressional intent that they be given an opportunity to compete for contracts. MARAD believes that publishing in the **Federal Register** is in the best interest of U.S. shipbuilders, since these notices are public documents and potential U.S. shipbuilders have access to the information. MARAD agrees with the comment concerning the length of the notice period because it will allow a more reasonable time period for U.S. shipbuilders to learn of the notice and respond to it. Section 295.20(d) will be amended to provide that MARAD publish notice of a contractor's intent within 10 days of notification by the contractor, and that the contractor will be required to wait an additional 10 days from the date of publication before entering into any contract with a foreign shipyard.

With regard to a mandatory delay of 30 to 120 days for U.S. shipyards to respond to a foreign contracting notice published by MARAD, MARAD does not believe that it has authority under the MSA to require such extended delay. The apparent intent of the legislation was only that notification be given, not that an extended delay should be imposed. Since the notification from the contractor is required ''not later than 30 days'' after a solicitation of a bid from a foreign yard, the bidding process should not be sufficiently advanced that U.S. shipyards could not provide bids in an expeditious manner. Accordingly, MARAD will not attempt to impose any further restriction on the contractors by requiring a longer waiting period.

With respect to the comment that MARAD evaluate bids and withhold MSA payments if the MSP operator selects a foreign shipyard, the MSA contains no authority for MARAD to deny an award or withhold MSP payments based on its evaluation of the U.S. bid being competitive.

Early Termination

§ 295.20(e)

Comment: One commentor suggested that § 295.20(e) should be rewritten substantially in the form of section 652(m) of the Act, or that the phrase ''* * * to the extent and for the period * * *,'' be inserted before, ''* * * contained in section 652(m) of the Act.''

Response: Section 295.20(e) concerns the obligations of a contractor to keep an Agreement Vessel documented under U.S. registry if the contractor voluntarily elects to terminate the MSP Agreement before its termination date. The inclusion of the language ''* * * to the extent and for the period * * *'' would add some clarity to this provision by directly linking § 295.20(e) to the period of time specified for retention under U.S. registry in section 652(m) of the Act. Section 295.20(e) will be amended accordingly.

Termination for Lack of Funds

§ 295.20(f)

Comment: One commentor has proposed that the title of this part be changed to ''Nonrenewal for Lack of Funds.'' In addition, the commentor suggested that vessels transferred to another registry under this regulation should be transferred to ''Effective United States Control'' registries deemed acceptable by MARAD.

Response: The first proposed amendment, i.e., the use of ''Nonrenewal'' vs. ''Termination,'' would conform the regulation to the language of section 652(n) of the Act. Section 295.20(f) will be amended accordingly. With regard to the language on ''Effective United States Control,'' it should be noted that the language contained in that section of the Act specifies that ''* * * the vessel owner or operator may transfer and register such vessel under a foreign registry deemed acceptable by the Secretary of Transportation, notwithstanding any other provision of law.'' The language adopted in § 295.20(f) states ''* * * the contractor may transfer and register the applicable vessel under a foreign registry deemed acceptable to the Maritime Administration.'' Since the Administrator has been delegated authority by the Secretary to authorize such transfers, MARAD believes that the language contained in § 295.20(f) adequately covers this situation and that no additional change is required.

Transfer of Operating Agreements

§ 295.20(i)

In light of the issues raised by many commentors regarding possible transfers of MSP operating agreements, additional safeguards have been included in § 295.20(i) to ensure that, in the event an Agreement is transferred by a Contractor to another person or entity, the person or entity to whom an Agreement is transferred, and the vessel to be covered by the Agreement after transfer, meet the original eligibility requirements.

Limitations

§ 295.21(e)

Comment: One commentor noted that section 804 of the Act was substantially changed by section 5 of the MSA, and recommended that ''* * * as amended,'' be added to the first sentence of § 295.21(e) after ''* * * section 804.''

Response: MARAD agrees, and will make the change.

Determination of Section 656 Service Level Criteria

§ 295.21(f)

Comment: MARAD received four extensive comments regarding how it should interpret the statute with regard to service levels and provide objective criteria to determine the allowable levels of service provided by MSP contractors in noncontiguous domestic trades. Most of the commentors requested that the service levels be determined at their historical levels, not anticipated carrying capacity. One commentor, in addition to advocating the use of historical capacity figures for this purpose, suggested that the applicant or contractor submit this information under oath, subject to validation by an objective source, and that the number of TEU's carried in the noncontiguous trades be reported annually by MSP contractors under oath, and subject to audit.

Response: Upon receipt of the applications for the MSP, MARAD published notification of those applications wherein the applicants requested approval to continue existing noncontiguous domestic operations. These notices were separate from the Interim Final Rule, and the comments were received separately from those of this rulemaking. Notices were published for Sea-Land Service, Inc., for services to Hawaii, Puerto Rico and Alaska; Crowley Maritime Corp., for Alaska; and OSG Car Carriers, Inc., for Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands.

Comments were received from seven commentors on the published levels of existing service claimed by the applicants, particularly where service to Alaska and Hawaii is involved. However, the volume and complexity of those comments mandated a thorough and separate examination of the implementation of section 656 of the Act.

MARAD is reserving a section in the Final Rule for determination of limitations on operations in the non-contiguous domestic trades, and will publish a Notice of Proposed Rulemaking regarding those provisions after the issue has been resolved. Section 295.21(f) has been reserved for that purpose.

Need for Financial Data

§ 295.23

Comment: MARAD received numerous comments which stated that the requirement for filing form MA–172 and an audited financial statement was beyond the statutory authority contained in the MSP and should be removed.

MARAD does not agree. In collecting such information, MARAD is exercising its discretion to require information necessary to perform its responsibilities and to monitor the efficiency and effectiveness of the maritime industry. However, in an effort to minimize the administrative burden on the contractor, the rule has been changed. MARAD is not requiring the submission of Form MA–172. The Final Rule will provide that, in the alternative, an applicant may submit an audited financial statement and vessel operating cost data submitted as part of its Emergency Preparedness Program Agreement. Final approval of the MSP data collection requirement was made by OMB on February 24, 1997, under approval number 2133–0525.

Reduction in Amount Payable

§ 295.30 (b)

Comment: MARAD received three comments which requested that the 30-day limitation on the number of days a vessel may be drydocked, surveyed, inspected or repaired be made more flexible.

Response. MARAD agrees in part with the commentors regarding the 30-day limitation. Some legitimate shipyard periods may require a greater length of time. However, in its capacity as funds administrator, the agency must assess some reasonable time frame for work or maintenance to be performed in order to ensure that the program is for operating vessels. Therefore, the final rule at § 295.30(b)(1) will be revised to permit greater than 30-day periods upon approval from MARAD.

Calculation for Partial Months

§ 295.31(a)(3) (New)

After experience gained in the start-up of the MSP in December 1996 and January 1997, MARAD realized that clarification was required regarding billing and payment for partial months. To remedy the problems experienced, a new § 295.31(a)(3) was developed. The new paragraph provides for potential prorating. The original § 295.31(a)(3) has been redesignated § 295.31(a)(4), and subsequent material has been redesignated accordingly.

Withholding 10 Percent of Funds Payable Until Final Review of the Billing Period

§ 295.31(a)(4)

Comment: MARAD received two comments stating that withholding 10 percent of funds payable until final review of the billing period exceeds the authority of the MSA.

Response: MARAD disagrees with the commentors that withholding of funds exceeds the authority granted by the MSA. Pursuant to 46 App. U.S.C. 1114(b), the Secretary, acting through the Administrator by delegation, has the authority to adopt all necessary rules and regulations to carry out the Act.

The intent of § 295.31(a)(4) is to provide a readily available source for the recapture of funds in the event that

a Contractor fails to meet the requirements of § 295.21(d). Section 295.21(d) reflects the language of section 652(b) of the Act, which requires that a vessel must be operated in U.S.-foreign, or specified mixed foreign and domestic trade, and must remain documented under 46 U.S.C., Chapter 121. However, MARAD agrees with the commentors that the establishment of an across-the-board level of 10 percent would not be necessary in all cases under the MSP. Therefore, MARAD will exercise its discretion to withhold funds based on a carrier's normal operating experience. Section 295.31(a)(4) is being amended accordingly.

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review), and Department of Transportation (DOT) Regulatory Policies

This rulemaking is not considered to be an economically significant regulatory action under section 3(f) of E.O. 12866. This Final Rule also is not considered a major rule for purposes of Congressional review under P.L. 104–121. Since the program is designed to support 47 vessels in FY 1997, each receiving up to $2.1 million annually, the Maritime Administrator finds that the program will not have an annual effect on the economy of $100 million or more. However, it is considered to be a significant rule under Executive Order 12866 and DOT's Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Accordingly, it has been reviewed by the Office of Management and Budget.

The program is subject to annual appropriations to provide payments to the participants of $2.1 million for each Agreement Vessel for each fiscal year in which the agreement is in effect. These payments are approximately 50 percent less, per vessel, than the average payments made under the existing ODS program. A full regulatory evaluation is not necessary since this rule only establishes the procedures to implement the Act, which imposes conditions for enrollment of vessels in the MSP.

Federalism

MARAD has analyzed this rulemaking in accordance with principles and criteria contained in E.O. 12612 and has determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility

Although the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq*, does not apply to final rules for which a proposed rulemaking was not required, MARAD has evaluated this rule under that Act and certifies that this rule will not have a significant economic impact on a substantial number of small entities. The participants in this program are not small entities.

Environmental Assessment

MARAD has concluded that this final rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (NEPA) because they would not individually or cumulatively have a significant impact on the human environment, as determined by section 4.05 and Appendices 1 and 2 of Maritime Administrative Order MAO–600–1, which contains MARAD Procedures for Considering Environmental Impacts (50 FR 11606, March 22, 1985) implementing NEPA. The final rule does not change the environmental effect of the current ODS program, which the MSP supersedes (and which is currently under a categorical exclusion pursuant to MAO–600–1), because the vessels eligible for the MSP (1) Will continue to operate under the U.S. flag, and will continue to be governed by U.S.-flag state control while operating in the global commons; and (2) are and will continue to be designed, constructed, equipped and operated in accordance with stringent United States Coast Guard and International Maritime Organization standards for maritime safety and marine environmental protection. Therefore, this rule does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 *et seq.*), this rulemaking contains new information collection or recordkeeping requirements, which were approved by OMB (approval number 2133–0525) under emergency approval authority until February 28, 1997. This approval was subsequently extended by OMB for the customary three years on February 24, 1997.

This rule does not impose any unfunded mandates.

List of Subjects in 46 CFR Part 295

Assistance payments, Maritime carriers, Reporting and recordkeeping requirements.

Accordingly, Part 295 of 46 CFR Chapter II, Subchapter C, is revised to read as follows:

PART 295—MARITIME SECURITY PROGRAM (MSP)

Subpart A—Introduction

Sec.
295.1 Purpose.
295.2 Definitions.
295.3 Waivers.

Subpart B—Establishment of MSP Fleet and Eligibility

295.10 Eligibility requirements.
295.11 Applications.
295.12 Priority for awarding agreements.

Subpart C—Maritime Security Program Operating Agreements

295.20 General conditions.
295.21 MSP assistance conditions.
295.22 Commencement and termination of operations.
295.23 Reporting requirements.

Subpart D—Payment and Billing Procedures

295.30 Payment.
295.31 Criteria for payment.

Subpart E—Appeals Procedures

295.40 Administrative determinations.

Authority: 46 App. U.S.C. 1171 *et seq.*, 46 App. U.S.C. 1114 (b), 49 CFR 1.66.

Subpart A—Introduction

§ 295.1 Purpose.

This part prescribes regulations implementing the provisions of Subtitle B (Maritime Security Fleet Program) of Title VI of the Merchant Marine Act, 1936, as amended, governing Maritime Security Program payments for vessels operating in the foreign trade or mixed foreign and domestic commerce of the United States allowed under a registry endorsement issued under 46 U.S.C. 12105.

§ 295.2 Definitions.

For the purposes of this part:

(a) *Act*, means the Merchant Marine Act, 1936, as amended by the Maritime Security Act of 1996 (MSA)(46 App. U.S.C. 1101 *et seq.*).

(b) *Administrator*, means the Maritime Administrator, U.S. Maritime Administration (MARAD), U.S. Department of Transportation, who is authorized to administer the MSA.

(c) *Agreement Vessel*, means a vessel covered by a MSP Operating Agreement.

(d) *Applicant*, means an applicant for a MSP Operating Agreement.

(e) *Bulk Cargo*, means cargo that is loaded and carried in bulk without mark or count.

(f) *Chapter 121*, means the vessel documentation provisions of chapter 121 of Title 46, United States Code.

(g) *Citizen of the United States*, means an individual or a corporation, partnership or association as

determined under section 2 of the Shipping Act, 1916, as amended (46 App. U.S.C. 802).

(h) *Contracting Officer*, means the Associate Administrator for National Security, MARAD.

(i) *Contractor*, means the owner or operator of a vessel that enters into a MSP Operating Agreement for the vessel with MARAD pursuant to § 295.20 of this part.

(j) *DOD*, means the U.S. Department of Defense.

(k) *Domestic Trade*, means trade between two or more ports and/or points in the United States.

(l) *Eligible Vessel*, means a vessel that meets the requirements of § 295.10(b) of this part.

(m) *Emergency Preparedness Program Agreement*, means the agreement, required by section 653 of the Act, between a Contractor and the Secretary of Transportation (acting through MARAD) to make certain commercial transportation resources available during time of war or national emergency.

(n) *Enrollment*, means the entry into a MSP Operating Agreement with the MARAD to operate a vessel(s) in the MSP Fleet in accordance with § 295.20 of this part.

(o) *Fiscal Year*, means any annual period beginning on October 1 and ending on September 30.

(p) *LASH Vessel*, means a lighter aboard ship vessel.

(q) *Militarily Useful*, is defined according to DOD Joint Strategic Planning Capabilities Plan (JSCAP) guidance as follows:

(1) *U.S. Sources*—All active and inactive ocean-going ships (and certain other specially selected vessels) within the following types and criteria from United States sources with a minimum speed of 12 knots.

(2) *Dry Cargo*—All dry cargo ships, including integrated tug/barges (ITBs) with a minimum capacity of 6,000 tons (DWT) capable of carrying, without significant modification, any of the following cargoes: unit equipment, ammunition, or sustaining supplies.

(r) *MSP Fleet*, means the fleet of vessels operating under MSP Operating Agreements.

(s) *MSP Operating Agreement*, means the MSP Operating Agreement, providing for MSP payments entered into by a Contractor and MARAD.

(t) *MSP Payments*, means the payments made for the operation of U.S.-flag vessels in the foreign trade or mixed foreign and domestic trade of the United States allowed under a registry endorsement issued under 46 U.S.C. 12105, to maintain intermodal shipping capability and to meet national defense and security requirements in accordance with the terms and conditions of the MSP Operating Agreement.

(u) *Ocean Common Carrier*, means a carrier that meets the requirements of the MSA, section 654(3).

(v) *ODS*, means Operating-Differential Subsidy provided by Subtitle A, Title VI, of the Act.

(w) *Operating Day*, means any day during which a vessel is operated in accordance with the terms and conditions of the MSP Operating Agreement.

(x) *Related party*, means:

(1) a holding company, subsidiary, affiliate, or associate of a contractor who is a party to an operating agreement under Subtitle B, Title VI, of the Act; and

(2) an officer, director, agent, or other executive of a contractor or of a person referred to in paragraph (x)(1) of this section.

(y) *Roll-on/Roll-off Vessel*, means a vessel that has ramps allowing cargo to be loaded and discharged by means of wheeled vehicles so that cranes are not required.

(z) *Secretary*, means the Secretary of Transportation.

(aa) *United States Documented Vessel*, means a vessel documented under Chapter 121 of Title 46, United States Code.

§ 295.3 Waivers.

In special circumstances, and for good cause shown, the procedures prescribed in this part may be waived in writing by the Maritime Administration, by mutual agreement of the Maritime Administration and the Contractor, so long as the procedures adopted are consistent with the Act and with the objectives of these regulations.

Subpart B—Establishment of MSP Fleet and Eligibility

§ 295.10 Eligibility requirements.

(a) *Applicant*. Any person may apply to MARAD for Enrollment of Eligible Vessels in MSP Operating Agreements for inclusion in the MSP Fleet pursuant to the provisions of Subtitle B, Title VI, of the Act. Applications shall be addressed to the Secretary, Maritime Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

(b) *Eligible Vessel*. A vessel eligible for enrollment in a MSP Operating Agreement shall be self-propelled and meet the following requirements:

(1) *Vessel Type*. (i) *Liner Vessel*. The vessel shall be operated by a person as an Ocean Common Carrier.

(ii) *Specialty vessel*. Whether in commercial service, on charter to the DOD, or in other employment, the vessel shall be either:

(A) a Roll-on/Roll-off vessel with a carrying capacity of at least 80,000 square feet or 500 twenty-foot equivalent units; or

(B) a LASH vessel with a barge capacity of at least 75 barges; or

(iii) *Other vessel*. Any other type of vessel that is determined by the MARAD to be suitable for use by the United States for national defense or military purposes in time of war or national emergency; and

(2) *Vessel Requirements*. (i) *U.S. Documentation*. Except as provided in paragraph (b)(2)(iv) of this section, the vessel is a U.S.-documented vessel; and

(ii) *Age*. Except as provided in paragraph (b)(2)(iii), on the date a MSP Operating Agreement covering the vessel is first entered into is:

(A) a LASH Vessel that is 25 years of age or less; or

(B) any other type of vessel that is 15 years of age or less.

(iii) *Waiver Authority*. In accordance with section 651(b)(2) of the Act, MARAD is authorized to waive the application of paragraph (b)(2)(ii) of this section if MARAD, in consultation with the Secretary of Defense, determines that the waiver is in the national interest.

(iv) *Intent to document U.S*. Although the vessel may not be a U.S.-documented vessel, it shall be considered an Eligible Vessel if the vessel meets the criteria for documentation under 46 U.S.C. Chapter 121, the vessel owner has demonstrated an intent to have the vessel documented under 46 U.S.C. Chapter 121, and the vessel will be less than 10 years of age on the date of that documentation; and

(3) *MARAD's determination*. MARAD determines that the vessel is necessary to maintain a United States presence in international commercial shipping and the applicant possesses the ability, experience, resources and other qualifications necessary to execute the obligations of the MSP Operating Agreement, or MARAD, after consultation with the Secretary of Defense, determines that the vessel is militarily useful for meeting the sealift needs of the United States.

§ 295.11 Applications.

(a) *Action by MARAD*. (1) *Time Deadlines*. Not later than 30 days after the enactment of the Maritime Security Act of 1996, Pub. L. 104–239, MARAD shall accept applications for Enrollment of vessels in the MSP Fleet. Within 90 days after receipt of a completed application, MARAD shall enter into a MSP Operating Agreement with the

applicant or provide in writing the reason for denial of that application.

(2) *Closure of Applications.* Applications for MSP Operating Agreements shall be made only at such time as, and in response to, publication of invitations to apply by MARAD in the **Federal Register**. After the Administrator has fully allocated authorized contracting authority through the award of the maximum number of vessels allowed under § 295.30(a), MARAD will not accept any applications for award of new Operating Agreements until additional contracting authority becomes available, or existing contracting authority reverts back to MARAD.

(3) *Reflagging for Eligible vessels.* Except as provided in paragraph (a)(4) of this section, an applicant may remove a vessel from U.S. registry without MARAD approval if an application for a MSP Operating Agreement has been filed for that vessel, the applicant is qualified, and it has been determined by MARAD to be eligible under MSA section 651(b)(1) under a priority for which sufficient funds are available and the Administrator has not awarded an Operating Agreement for the vessel within 90 days of that application.

(4) *Reflagging ODS and MSC chartered vessels.* Vessels eligible under MSA section 651(b)(1) which are also subject to ODS contracts or on charter to MSC, and for which applications have been denied pursuant to § 295.11(a)(1) of this part, may be removed from U.S. registry only after those agreements have expired and only after the age requirement in section 9(e)(3) of the Shipping Act, 1916 (46 App. U.S.C. 808) has been met.

(b) *Action by the Applicant.* Applicants for MSP Payments shall submit information on the following:

(1) *Intermodal network.* A statement describing its operating and transportation assets, including vessels, container stocks, trucks, railcars, terminal facilities, and systems used to link such assets together;

(2) *Diversity of trading patterns.* A list of countries and trade routes serviced along with the types and volumes of cargo carried;

(3) *Vessel construction date;*

(4) *Vessel type and size;* and

(5) *Military Utility.* An assessment of the value of the vessel to DOD sealift requirements.

(Approved by the Office of Management and Budget under Control Number 2133–0525)

§ 295.12 Priority for awarding agreements.

Subject to the availability of appropriations, MARAD shall enter into individual MSP Operating Agreements for Eligible Vessels according to the following priorities:

(a) *First priority requirements.* First priority shall be accorded to any Eligible Vessel meeting the following requirements:

(1) *U.S. citizen ownership.* Vessels owned and operated by persons who are Citizens of the United States as defined in § 295.2; or

(2) *Other corporations.* Vessels less than 10 years of age and owned and operated by a corporation that is:

(i) eligible to document a vessel under 46 U.S.C. Chapter 121; and

(ii) affiliated with a corporation operating or managing for the Secretary of Defense other vessels documented under 46 U.S.C. Chapter 121, or chartering other vessels to the Secretary of Defense.

(3) *Limitation on number of vessels.* Limitation on the total number of Eligible Vessels awarded under paragraph (a) of this section shall be:

(i) For any U.S. citizen under paragraph (a)(1), the number of vessels may not exceed the sum of:

(A) the number of U.S.-flag documented vessels that the Contractor or a related party operated in the foreign commerce of the United States on May 17, 1995, except mixed coastwise and foreign commerce; and

(B) the number of U.S.-flag documented vessels the person chartered to the Secretary of Defense on that date; and

(ii) For any corporation under paragraph (a)(2) of this section, not more than five Eligible Vessels.

(4) *Related party.* For the purpose of this section a related party with respect to a person shall be treated as the person.

(b) *Second priority requirements.* To the extent that appropriated funds are available after applying the first priority in paragraph (a) of this section, the MARAD shall enter into individual MSP Operating Agreements for Eligible Vessels owned and operated by a person who is:

(1) *U.S. citizen.* A Citizen of the United States, as defined in § 295.2(g), that has not been awarded a MSP Operating Agreement under the priority in paragraph (a) of this section, or

(2) *Other.* A person (individual or entity) eligible to document a vessel under 46 U.S.C. Chapter 121, and affiliated with a person or corporation operating or managing other U.S.-documented vessels for the Secretary of Defense or chartering other vessels to the Secretary of Defense.

(c) *Third priority.* To the extent that appropriated funds are available after applying the first and second priority, any other Eligible Vessel.

(d) *Number of MSP Operating Agreements Awarded.* If appropriated funds are not sufficient to award agreements to all vessels within a priority set forth herein, MARAD shall award to each eligible applicant in that priority a number of Operating Agreements that bears approximately the same ratio to the total number of Operating Agreements requested under that priority, and for which timely applications have been made, as the amount of appropriations available for MSP Operating Agreements for Eligible Vessels in the priority bears to the amount of appropriations necessary for MSP Operating Agreements for all Eligible Vessels in the priority.

Subpart C—Maritime Security Program Operating Agreements

§ 295.20 General conditions.

(a) *Approval.* MARAD may approve applications to enter into a MSP Operating Agreement and make MSP Payments with respect to vessels that are determined to be necessary to maintain a United States presence in international commercial shipping or those that are deemed, after consultation with the Secretary of Defense, to be militarily useful for meeting the sealift needs of the United States in national emergencies.

(b) *Effective date.* (1) *General Rule.* Unless otherwise provided in the contract, the effective date of a MSP Operating Agreement is the date when executed by the Contractor and MARAD.

(2) *Exceptions.* In the case of an Eligible Vessel to be included in a MSP Operating Agreement that is subject to an ODS contract under Subtitle A, Title VI, of the Act or on charter to the U.S. Government, other than a charter under the provisions of an Emergency Preparedness Program Agreement provided by Section 653 of the Act, unless an earlier date is requested by the applicant, the effective date for a MSP Operating Agreement shall be:

(i) The expiration or termination date of the ODS contract or Government charter covering the vessel, respectively, or

(ii) Any earlier date on which the vessel is withdrawn from that contract or charter.

(c) *Replacement Vessels.* MARAD may approve the replacement of an Eligible Vessel in a MSP Operating Agreement provided the replacement vessel is eligible under § 295.10.

(d) *Notice to shipbuilders.* The Contractor agrees that no later than 30

days after soliciting any offer or bid for the construction of any vessel in a foreign shipyard, and before entering into any contract for construction of a vessel in a foreign shipyard, the Contractor shall provide notice of its intent to enter into such a contract (for vessels being considered for U.S.-flag registry) to MARAD. Within 10 business days after the receipt of such notification, MARAD shall issue a notice in the **Federal Register** of the Contractor's intent. The Contractor is prohibited from entering into any such contract until 10 business days after the date of publication of such notice.

(e) *Early termination.* A MSP Operating Agreement shall terminate on a date specified by the Contractor if the Contractor notifies MARAD not later than 60 days before the effective date of the proposed termination, that the Contractor intends to terminate the Agreement. The Contractor shall be bound by the provisions relating to vessel documentation and national security commitments to the extent and for the period contained in section 652(m) of the Act.

(f) *Non-renewal for lack of funds.* If, by the first day of a fiscal year, insufficient funds have been appropriated under Section 655 of the Act for that fiscal year, MARAD shall notify the Congress that MSP Operating Agreements for which insufficient funds are available will be terminated on the 60th day of that fiscal year if sufficient funds are not appropriated or otherwise made available by that date. If only partial funding is appropriated by the 60th day of such fiscal year, then MSP Operating Agreements for which funds are not available shall be terminated using the pro rata distribution method used to award MSP Operating Agreements set forth in § 295.12(d). With respect to each terminated agreement the Contractor shall be released from any further obligation under the agreement, and the Contractor may transfer and register the applicable vessel under a foreign registry deemed acceptable by MARAD. In the event that no funds are appropriated, then all MSP Operating Agreements shall be terminated and each Contractor shall be released from its obligations under the agreement. Final payments under the terminated agreements shall be made in accordance with § 295.30. To the extent that funds are appropriated in a subsequent fiscal year, existing operating agreements may be renewed if mutually acceptable to the Administrator and the Contractor and the MSP vessel remains eligible.

(g) *Operation under a Continuing Resolution.* In the event a Continuing Resolution (CR) is in place that does not provide sufficient appropriations to fully meet obligations under MSP Operating Agreements, a Contractor may request termination of the agreement in accordance with paragraph (f), herein, and § 295.30.

(h) *Requisition authority.* To the extent section 902 of the Act is applicable to any vessel transferred foreign under this section, the vessel shall remain available to be requisitioned by the Maritime Administration under that provision of law.

(i) *Transfer of Operating Agreements.* A Contractor subject to an Agreement may transfer that Agreement (including all rights and obligations thereunder) to any person eligible to enter into an Agreement under the same priority established in section 652(i)(1)(A) of the Act as the Contractor, provided that:

(1) The Contractor gives notice of any such transfer to the Maritime Administrator by filing a completed application;

(2) The transfer is not disapproved in writing by the Maritime Administrator within 90 days of the notification; and

(3) the vessel to be covered by the Agreement after transfer is the same vessel originally covered by the Agreement or is an eligible vessel under section 651(b) of the Act and is the same type, and comparable to, the vessel originally covered by the Agreement.

§ 295.21 MSP Assistance Conditions.

(a) *Term of MSP Operating Agreement.* MSP Operating Agreements shall be effective for a period of not more than one fiscal year, and unless otherwise specified in the Agreement, shall be renewable, subject to the availability of appropriations or amounts otherwise made available, for each subsequent fiscal year through the end of FY 2005. In the event appropriations are enacted after October 1 with respect to any subsequent fiscal year, October 1 shall be considered the effective date of the renewed agreement, provided sufficient funds are made available and subject to the Contractor's rights for early termination pursuant to section 652(m) of the Act.

(b) *Terms under a Continuing Resolution (CR).* In the event funds are available under a CR, the terms and conditions of the MSP Operating Agreements shall be in force provided sufficient funds are available to fully meet obligations under MSP Operating Agreements, and only for the period stipulated in the applicable CR. If funds are not appropriated at sufficient levels for any portion of a fiscal year, the terms and conditions of any applicable MSP Operating Agreement may be voided and the Contractor may request termination of the MSP Operating Agreement in accordance with § 295.20(f).

(c) *National security requirements.* Each MSP Operating Agreement shall require the owner or operator of an Eligible Vessel included in that agreement to enter into an Emergency Preparedness Program Agreement pursuant to Section 653 of the Act.

(d) *Vessel operating requirements.* The MSP Operating Agreement shall require that during the period an Eligible Vessel is included in that Agreement, the Eligible Vessel shall:

(1) *Documentation.* Be documented as a U.S.-flag vessel under 46 U.S.C. Chapter 121; and

(2) *Operation.* Be operated exclusively in the U.S.-foreign trade or in mixed foreign and domestic trade allowed under a registry endorsement issued under 46 U.S.C. 12105, and shall not otherwise be operated in the coastwise trade of the United States.

(e) *Limitations.* Limitations on Contractors with respect to the operation of foreign-flag vessels shall be in accordance with section 804 of the Act, as amended. The operation of vessels, other than Agreement Vessels, in the noncontiguous trades shall be limited in accordance with service levels and conditions permitted in section 656 of the Act.

(f) *Non-Contiguous Domestic Trade. [Reserved]*

(g) *Obligation of the U.S. Government.* The amounts payable as MSP Payments under a MSP Operating Agreement shall constitute a contractual obligation of the United States Government to the extent of available appropriations.

§ 295.22 Commencement and termination of operations.

(a) *Time frames.* A Contractor that has been awarded a MSP Operating Agreement shall commence operations of the Eligible Vessel, under the applicable agreement or a subsequently renewed agreement, within the time frame specified as follows:

(1) *Existing vessel.* Within one year after the initial effective date of the MSP Operating Agreement in the case of a vessel in existence on that date and after notification to MARAD within 30 days of the Contractor's intent; or

(2) *New building.* Within 30 months after the initial effective date of the MSP Operating Agreement in the case of a vessel to be constructed after that date.

(b) *Unused authority.* In the event of a termination of unused authority pursuant to paragraph (a) of this section, such authority shall revert to MARAD.

§ 295.23 Reporting requirements.

The Contractor shall submit to the Director, Office of Financial Approvals, Maritime Administration, 400 Seventh St., SW., Washington, DC 20590, one of the following reports, including management footnotes where necessary to make a fair financial presentation:

(a) *Form MA–172.* Not later than 120 days after the close of the Contractor's semiannual accounting period, a Form MA–172 on a semiannual basis, in accordance with 46 CFR 232.6; or

(b) *Financial Statement.* Not later than 120 days after the close of the Contractor's annual accounting period, an audited annual financial statement in accordance with 46 CFR 232.6 and the most recent vessel operating cost data submitted as part of its Emergency Preparedness Agreement.

(Approved by the Office of Management and Budget under Control Number 2133–0525.)

Subpart D—Payment and Billing Procedures

§ 295.30 Payment.

(a) *Amount payable.* A MSP Operating Agreement shall provide, subject to the availability of appropriations and to the extent the agreement is in effect, for each Agreement Vessel, an annual payment of $2,100,000 for each fiscal year. This amount shall be paid in equal monthly installments at the end of each month. The annual amount payable shall not be reduced except as provided in paragraph (b) of this section and § 295.31(a)(3).

(b) *Reductions in amount payable.* (1) The annual amount otherwise payable under a MSP Operating Agreement shall be reduced on a pro rata basis for each day less than 320 in a fiscal year that an Agreement Vessel is not operated exclusively in the U.S.-foreign trade or in mixed foreign and domestic trade allowed under a registry endorsement issued under 46 U.S.C. 12105. Days during which the vessel is drydocked or undergoing survey, inspection, or repair shall be considered to be days during which the vessel is operated, provided the total of such days within a fiscal year does not exceed 30 days, unless prior to the expiration of a vessel's 30 day period, approval is obtained from MARAD for an extension of the 30 day provision.

(2) There shall be no payment for any day that a MSP Agreement Vessel is engaged in transporting more than 7,500 tons (using the U.S. English standard of short tons, which converts to 6,696.75 long tons, or 6,803.85 metric tons) of civilian bulk preference cargoes pursuant to section 901(a), 901(b), or 901b of the Act, provided that it is bulk cargo.

§ 295.31 Criteria for payment

(a) *Submission of voucher.* For contractors operating under more than one MSP Operating Agreement, the contractor may submit a single monthly voucher applicable to all its agreements. Each voucher submission shall include a certification that the vessel(s) for which payment is requested were operated in accordance with § 295.21(d) and applicable MSP Operating Agreements with MARAD, and consideration shall be given to reductions in amounts payable as set forth in § 295.30. All submissions shall be forwarded to the Director, Office of Accounting, MAR–330 Room 7325, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590. Payments shall be paid and processed under the terms and conditions of the Prompt Payment Act, 31 U.S.C. 3901.

(1) Payments shall be made per vessel, in equal monthly installments, of $175,000.

(2) To the extent that reductions under § 295.30(b) are known, such reductions shall be applied at the time of the current billing. The daily reduction amounts shall be based on the annual amounts in 295.30(a) of this part divided by 365 days (366 days in leap years) and rounded to the nearest cent. Daily reduction amounts shall be applied as follows:

FY 1997—$5,753.42
FY 1998—$5,753.42
FY 1999—$5,753.42
FY 2000—$5,737.70
FY 2001—$5,753.42
FY 2002—$5,753.42
FY 2003—$5,753.42
FY 2004—$5,737.70
FY 2005—$5,753.42

(3) In the event a monthly payment is for a period less than a complete month, that month's payment shall be calculated by multiplying the appropriate daily rate in § 295.31(a)(2) by the actual number of days the Eligible Vessel operated in accordance with § 295.21.

(4) MARAD may require, for good cause, that a portion of the funds payable under this section be withheld if the provisions of § 295.21(d) have not been met.

(5) Amounts owed to MARAD for reductions applicable to a prior billing period shall be electronically transferred using MARAD's prescribed format, or a check may be forwarded to the Maritime Administration, P.O. Box 845133, Dallas, Texas 75284–5133, or the amount owed can be credited to MARAD by offsetting amounts payable in future billing periods.

(b) [Reserved]

Subpart E—Appeals Procedures

§ 295.40 Administrative determinations.

(a) *Policy.* A Contractor who disagrees with the findings, interpretations or decisions of the Contracting Officer with respect to the administration of this part may submit an appeal to the Maritime Administrator. Such appeals shall be made in writing to the Maritime Administrator, within 60 days following the date of the document notifying the Contractor of the administrative determination of the Contracting Officer. Such an appeal should be addressed to the Maritime Administrator, Att.: MSP Contract Appeals, Maritime Administration, 400 Seventh St., S.W. Washington, D.C. 20590.

(b) *Process.* The Maritime Administrator may require the person making the request to furnish additional information, or proof of factual allegations, and may order any proceeding appropriate in the circumstances. The decision of the Maritime Administrator shall be final.

By order of the Maritime Administrator.

Dated: July 10, 1997.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 97–18559 Filed 7–14–97; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 961210346–7035–02; I.D. 070397G]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Adjustments to the 1997 State Quotas; Commercial Quota Harvested for North Carolina

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

ACTION: Commercial quota adjustment, notice of commercial quota harvest.

SUMMARY: NMFS issues this notification announcing adjustments to the commercial state quotas for the 1997 summer flounder fishery. This action complies with regulations implementing the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea

Bass Fisheries (FMP), which require that landings in excess of a state's annual summer flounder commercial quota be deducted from that state's quota the following year. The public is advised that quota adjustments have been made, and is informed of the revised quotas for the affected states. As a consequence of this action, NMFS further announces that no commercial quota is available for landing summer flounder in North Carolina for the remainder of the 1997 calendar year.

DATES: Effective July 9, 1997, through December 31, 1997.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, 508–281–9221.

SUPPLEMENTARY INFORMATION: Regulations implementing summer flounder management measures are found at 50 CFR part 648, subparts A and G. The regulations require annual specification of a commercial quota that is apportioned among the Atlantic coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100. The final specifications for the 1997 summer flounder fishery, adopted to ensure achievement of a fishing mortality rate of 0.3 for 1997, set a coastwide commercial quota equal to 11,111,298 lb (5.0 million kg) (March 7, 1997, 62 FR 10473).

Section 648.100(d)(2) provides that all landings for sale in a state shall be applied against that state's annual commercial quota. Any landings in excess of the state's quota must be deducted from that state's annual quota for the following year. NMFS published all available 1996 landings data as part of the final specifications for 1997, and made associated adjustments to several states' 1997 quotas as a result of 1996 overages. Quota adjustments were made to the 1997 commercial quotas for the States of Maine, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Virginia, and North Carolina. At the time of publication of the final specifications, the remaining states of New Hampshire and Maryland did not appear to have exceeded their quotas.

When these data were presented to the principal state official with marine fishery management responsibility in each constituent state, data were noted as final, with the exception of Virginia inshore landings of summer flounder, which were preliminary. However, it was noted that if additional data were received that would alter the figures, an adjustment would be necessary. Since the final specifications were published, additional landings from 1996 have been reported by several states. These late reports came from either federally permitted dealers or state statistical agencies.

Weekly dealer reports must be received or postmarked, if mailed, within 3 days after the end of each reporting week. If a dealer is delinquent in submitting its reports, a permit will not be issued in the following year until all delinquent reports are received. Since dealers must renew permits annually, some dealers have recently submitted delinquent 1996 reports in order to comply with the regulations and receive a 1997 permit. NMFS recognizes the problems that chronic late dealer reporting poses to accurate quota monitoring. As such, present compliance monitoring includes monthly checks of weekly dealer reports (for quota managed species) versus monthly dealer weighouts (for all species), to eliminate concerns of a dealer's continued chronic late or misreporting on weekly reports. If chronic problems are noted, dealers are referred to law enforcement for further action.

Additionally, some states have inshore fisheries that are not covered by the Federal reporting system. These landings data are collected by the respective state agencies and submitted to NMFS as they become available. As a result of these late and/or additional reports, in this case from the States of Maryland, Virginia, and North Carolina, additional 1996 landings data have recently become available. In the case of North Carolina, the state-collected data were not provided to NMFS until May 28, 1997. While other state data were received prior to that date, all of the adjustments are made in this notice.

Based on dealer reports and other available information, NMFS has determined that the States of Maine, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina exceeded their 1996 quotas. The remaining State of New Hampshire did not exceed its 1996 quota. The revised 1996 landings and resulting overages for all states are given in Table 1. The adjusted 1997 commercial quota for each state is given in Table 2.

TABLE 1.—REVISED 1996 STATE COMMERCIAL LANDINGS

State	Original 1996 landings [1]		Revised 1996 landings		Difference	
	lb	(kg) [2]	lb	(kg)	lb	(kg)
ME	8,226	3,731	8,226	3,731	0	0
NH	0	0	0	0	0	0
MA	780,297	353,940	800,704	363,193	20,407	9,256
RI	1,663,520	754,560	1,766,482	801,263	102,962	46,703
CT	278,776	126,451	278,776	126,451	0	0
NY	927,763	420,826	940,313	426,519	12,550	5,693
NJ	2,345,460	1,063,883	2,369,134	1,074,621	23,674	10,738
DE	7,153	3,245	7,917	3,591	764	347
MD	225,051	102,081	264,886	120,150	39,835	18,069
VA	2,280,457	1,034,398	2,274,457	1,031,676	(6,000)[3]	(2,722)
NC	3,688,217	1,672,947	4,227,052	1,917,359	538,835	244,411
Total	12,204,920	5,536,059	12,937,947	5,868,554	733,027	332,495

[1] Original 1996 landings data, as published March 7, 1997.
[2] Kilograms are as converted from pounds, and may not necessarily add due to rounding.
[3] Parentheses indicate a negative number.

TABLE 2.—1997 READJUSTED STATE COMMERCIAL QUOTAS, AS ADJUSTED FOR REVISED 1996 OVERAGES

State	Adjusted 1997 quota [1]		Readjusted 1997 quota	
	lb	(Kg) [2]	lb	(Kg)
ME	2,342	1,062	2,342	1,062
NH	51	23	51	23
MA	729,636	330,957	709,229	321,701
RI	1,699,405	770,837	1,596,443	724,134
CT	222,806	101,063	222,806	101,063
NY	766,893	347,857	754,343	342,164
NJ	1,371,266	621,996	1,347,592	611,257
DE	[3] (4,898)	(2,222)	[3] (5,662)	(2,568)
MD	226,570	102,770	186,735	84,702
VA	2,288,793	1,038,179	2,294,793	1,040,901
NC	1,812,440	882,109	1,273,605	577,698
Total	9,115,304	4,134,632	8,382,277	3,802,137

[1] Adjusted 1997 quotas, as published March 7, 1997.
[2] Kilograms are as converted from pounds, and may not necessarily add due to rounding.
[3] Number in parentheses are negative.

Section 648.101(b) requires the Administrator, Northeast Region, NMFS, (Regional Administrator) to monitor state commercial quotas and to determine when a state commercial quota is harvested. NMFS is required to publish a notice in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state.

Since this adjustment reduces the adjusted 1997 North Carolina commercial quota allocation from 1,812,440 lb (882,109 kg), to 1,273,605 pounds (577,698 kg), and landings for 1997 to date in that State are in excess of the adjusted quota, this notice also serves to announce that the summer flounder quota available to North Carolina has been harvested. As a result, no commercial quota is available for landing summer flounder in that State for the remainder of the 1997 calendar year.

The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of the permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours July 9, 1997, until 2400 hours, December 31, 1997, landings of summer flounder in North Carolina by vessels holding commercial Federal fisheries permits are prohibited unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in North Carolina for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: July 9, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–18462 Filed 7–9–97; 4:44 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 62, No. 135
Tuesday, July 15, 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.

FEDERAL RESERVE SYSTEM

12 CFR Part 250

[Miscellaneous Interpretations; Docket R–0977]

Applicability of Sections 23A and 23B of the Federal Reserve Act to Transactions Between a Member Bank and Its Subsidiaries

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: Sections 23A and 23B of the Federal Reserve Act restrict the ability of a member bank to fund an affiliate through direct investment, loans, or other transactions. The Board is proposing to apply sections 23A and 23B to transactions between a member bank and any subsidiary that engages in activities that are impermissible for the bank itself and that Congress has not previously exempted from coverage by section 23A. The proposed treatment is largely consistent with the existing treatment of these subsidiaries by the other banking agencies, which have applied sections 23A and 23B in some form to transactions between a bank and such subsidiaries.

DATES: Comments must be submitted on or before September 3, 1997.

ADDRESSES: Comments, which should refer to Docket No. R–0977, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments addressed to Mr. Wiles also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in Room MP–500 between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Gregory Baer, Managing Senior Counsel (202/452–3236), Pamela G. Nardolilli, Senior Attorney (202/452–3289), or Deborah M. Awai, Senior Attorney (202/452–3594), Legal Division or Roger T. Cole, Deputy Associate Director (202/452–2618), Banking Supervision and Regulation or Molly S. Wassom, Assistant Director, Banking Supervision and Regulation (202/452–2305), Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device of the Deaf (TDD), Diane Jenkins (202/452–3254).

SUPPLEMENTARY INFORMATION:

Background

Restrictions of Sections 23A and 23B

Sections 23A and 23B of the Federal Reserve Act are designed to protect a member bank from loss in transactions with its affiliates.[1] Although sections 23A and 23B originally applied only to member banks, Congress has since applied these sections to insured nonmember banks and savings associations in the same manner as they apply to member banks.[2] Section 23A protects these institutions in three major ways. First, the statute limits ''covered transactions'' with any single affiliate to no more than 10 percent of the bank's capital and surplus, and aggregate transactions with all affiliates to no more than 20 percent of capital and surplus.[3] Covered transactions include extensions of credit, investments, and other transactions exposing the member bank to risk. Second, all transactions between a member bank and its affiliate must be on terms and conditions consistent with safe and sound banking practices, and, in particular, a bank may not purchase low-quality assets from the bank's affiliate. Finally, the statute requires that all credit exposures to an affiliate be secured by a statutorily defined amount of collateral.

Section 23B of the Federal Reserve Act requires a member bank to engage in transactions with its affiliates only on terms and under circumstances that are substantially the same or at least as favorable as those prevailing at the time for comparable transactions with unaffiliated companies.[4] Section 23B applies this restriction to any covered transaction as defined by section 23A, as well as other transactions, such as a sale of securities or other assets to an affiliate and the payment of money or the furnishing of services to an affiliate.

Coverage of Subsidiaries of Banks

Section 23A defines an ''affiliate'' of a member bank to include any company that controls the member bank and any company that is under common control with the member bank.[5] (The definition is applied to insured nonmember banks and savings associations in the same way as member banks.) Section 23A excludes from the definition of ''affiliate'' any subsidiary of the bank, unless the Board determines by regulation or order that the subsidiary should be considered an affiliate. The statute also excludes from the definition of ''affiliate'' companies engaged solely in certain specified activities: holding the premises of the member bank, conducting a safe deposit business, or holding obligations issued or guaranteed by the United States or its agencies.[6]

When section 23A was originally enacted as part of the Banking Act of 1933, a majority-owned subsidiary of a member bank was included as an affiliate of the member bank.[7] In its 1982 redrafting of section 23A, Congress, at the Board's urging, amended the definition of ''affiliate'' in section 23A to exclude nonbank subsidiaries.[8] This statutory amendment was consistent with the law as it had developed since 1933. The 1933 version of section 23A already exempted from the definition of ''affiliate'' Edge Act subsidiaries, Agreement corporations, companies holding bank premises, companies

[1] 12 U.S.C. 371c, 371c–1.

[2] 12 U.S.C. 1828(j); 12 U.S.C. 1468.

[3] ''Capital and surplus'' has been defined by the Board as tier 1 and tier 2 capital plus the balance of an institution's allowance for loan and lease losses not included in tier 2 capital. 12 CFR 250.242.

[4] 12 U.S.C. 371c–1(a)(1). Section 23B also contains other provisions that apply in limited cases.

[5] 12 U.S.C. 371c(b)(1). The definition also includes other entities as an affiliate, including a bank subsidiary of a member bank.

[6] 12 U.S.C. 371c(b)(2). The statute temporarily excludes companies where control of the company results from the exercise of rights arising out of a bona fide debt previously contracted. The exception generally lasts for two years.

[7] Banking Act of 1933, Pub. L. 73–66, section 13, 48 Stat. 162, 183 (1933).

[8] Banking Affiliates Act of 1982, Pub. L. 97–320, section 410, 96 Stat. 1469, 1515 (1982) (codified at 12 U.S.C. 371c(b)(2)(A)).

conducting a safe deposit business, and certain other member bank subsidiaries that Congress had authorized. In 1970, the Board issued an interpretation that also excluded from section 23A any transaction between a member bank and its ''operations subsidiary,'' defined as ''a separately incorporated department of the bank, performing, at locations at which the bank is authorized to engage in business, functions that the bank is empowered to perform directly.'' [9] Thus, in recommending that Congress exempt subsidiaries in 1982, the Board stated, ''It should be noted that this liberalization is much more limited than it might first appear * * *. [M]ember banks are generally prohibited from purchasing stock, and of the few types of companies whose stock is exempt from this prohibition, several are already exempt from the restriction of Section 23A.'' [10]

Although Congress generally exempted transactions with a subsidiary from section 23A, it expressly granted the Board authority to reimpose sections 23A and 23B on any subsidiary that has ''a relationship with the member bank or any subsidiary or affiliate of the member bank, such that covered transactions by the member bank or its subsidiary with that company may be affected by the relationship to the detriment of the member bank or its subsidiary.'' [11] The Board has had few occasions to exercise this authority, as subsidiaries of banks generally have continued to be limited in their activities to those on which the 1982 amendments were premised.[12]

Expansion of Subsidiary Activities

Increasingly, however, operating subsidiaries are being authorized to engage in activities impermissible for the bank. The Board recently expressed its belief that Congress did not intend, in the National Bank Act or elsewhere, to allow national banks to engage through subsidiaries in activities prohibited to the national bank itself.[13] Indeed, as noted above, the 1982 amendments to section 23A were based on the assumption that such activities were impermissible. However, Congress has allowed state banks and federal savings associations to engage through a subsidiary in some activities impermissible to the state bank or thrift itself. Thus, the issue of how a subsidiary engaged in activities impermissible for its parent institution should be treated for purposes of sections 23A and 23B arises regardless of the permissibility of those activities for national banks.

For example, as amended in 1991, section 24 of the Federal Deposit Insurance Act (FDI Act), although generally prohibiting insured state banks from engaging as principal through a subsidiary in an activity that is not permissible for a subsidiary of a national bank, allows a state bank to engage in such an activity provided certain conditions are met: The activity must be authorized by the bank's state chartering authority, the bank must meet relevant capital requirements, and the Federal Deposit Insurance Corporation (FDIC) must determine that the activity will not pose a significant risk to the deposit insurance fund.[14] Acting under that authority, the FDIC recently allowed by order some state chartered banks to invest in real estate through majority-owned subsidiaries as authorized by state law, and has issued a proposed rulemaking that would allow such activity by regulation when authorized by state law, subject to certain restrictions.[15]

As drafted, the FDIC's proposed rule would require the bank to comply with sections 23A and 23B in its transactions with a real estate subsidiary to the same extent as if the subsidiary were an affiliate, except that a bank's loan to finance the sale of real estate by the subsidiary to a third party would not be subject to the limits of section 23A provided that it complied with section 23B.[16]

The FDIC also has promulgated a rule establishing parameters pursuant to which state nonmember banks may, if authorized by their state chartering authority, underwrite and deal in securities. The FDIC generally applies the restrictions of section 23A of the Federal Reserve Act to extensions of credit to such a subsidiary, but does not include investments in the subsidiary toward the 23A limit and does not apply the attribution rule of section 23A. However, very few, if any, state nonmember banks have established a securities subsidiary pursuant to this rule.[17]

With respect to thrifts, section 5(c)(4)(B) of the Home Owners' Loan Act (HOLA) allows a savings association to invest up to three percent of its assets in the capital stock, obligations, and other securities of a ''service corporation.'' [18] Under Office of Thrift Supervision (OTS) rules, a service corporation may conduct any activity ''reasonably related'' to the activities of financial institutions, even if that activity is not permitted to the parent savings association.[19] Pursuant to OTS rules, extensions of credit by a savings association to a majority-owned service corporation generally are not subject to funding restrictions akin to sections 23A and 23B, although other restrictions are applied by statute and regulation.

Finally, as noted above, the Office of the Comptroller of the Currency (OCC) recently amended its rules to allow a national bank to engage through an operating subsidiary in activities prohibited to the national bank. The OCC rule would subject transactions between national banks and such subsidiaries to sections 23A and 23B.[20]

[9] 12 CFR 250.240 (1997).

[10] *A Discussion of Amendments to Section 23A of the Federal Reserve Act Proposed by the Board of Governors of the Federal Reserve System* 15 (September 1981) (hereafter, *Board's 23A Proposal*) (attached as appendix to correspondence from Chairman Paul Volcker to the Chairman and Ranking Members of the House and Senate Committees on Banking, Housing and Urban Affairs, October 2, 1981).

[11] 12 U.S.C. 371c(b)(1)(E).

[12] In one case, the Board concluded that transactions between a bank and a subsidiary that engaged in underwriting life insurance abroad should be limited by section 23A. *Citibank Overseas Investment Corporation*, 70 Fed. Res. Bull. 68 (1984). In another case, the Board determined that certain investment advisory subsidiaries of a national bank should be treated as affiliates of the bank. *Wells Fargo & Company*, 76 Fed. Res. Bull. 465,466 (1990).

In addition, in 1987, the Board solicited comment on a proposal regarding the real estate investment and development activities of subsidiaries of banks owned by bank holding companies. 52 FR 42301 (1987). As part of its rulemaking, the Board sought comment on whether to apply sections 23A and 23B to the subsidiaries of banks engaged in real estate activities. The Board never issued a final rule, as market conditions caused banks to curtail their real estate activities and thereby made such action unnecessary.

[13] *See, e.g.*, Comment Letter from Board to Comptroller of the Currency on Docket Numbers 97–06 and 97–07, May 5, 1997 (commenting on a national bank's proposal to engage in real estate development and leasing through a subsidiary).

[14] 12 U.S.C. 1831a.

[15] 61 FR 43486 (1996).

[16] *Id.* at 43499. If such credit were extended to a third party to purchase property from an *affiliate*, the credit would be subject to the ''attribution rule'' of sections 23A and 23B, whereby any transaction where the proceeds are used for the benefit of, or transferred to, an affiliate is considered a transaction with the affiliate. 12 U.S.C. 371c(a)(2), 371c-1(a)(3).

[17] *See General Accounting Office, Banks' Securities Activities: Oversight Differs Depending on Activity and Regulator* 65 (1995) (sampling found no state nonmember banks engaged in underwriting and dealing in bank-ineligible securities). FDIC staff is currently aware of only one such subsidiary.

[18] 12 U.S.C. 1464(c)(4)(B).

[19] 12 CFR 559.4. The OTS distinguishes service corporations from ''operating subsidiaries,'' which by definition may engage only in activities the savings association may conduct directly.

[20] 61 FR 60342 (1996) (codified at 5 CFR 5.34 (f)(3)(ii)).

Proposal

Coverage of Transactions Between Member Banks and Their Subsidiaries

The Board is proposing to designate a subsidiary of a member bank as an affiliate of the member bank if the subsidiary engages in functions that the member bank is not empowered to perform directly and that Congress has not previously exempted from sections 23A and 23B. Covered activities could include real estate development and underwriting and dealing in bank-ineligible securities. The Board believes, and proposes to find under the standard set forth in section 23A(b)(1)(E), that the relationship of such a subsidiary to its parent institution could result in funding of the subsidiary to the detriment of the bank.

Absent application of sections 23A and 23B, a bank would have a strong incentive to use its resources to prevent the failure of a subsidiary or affiliate. Such efforts could include lending below market rates, lending more than is prudent, or purchasing low quality assets from the subsidiary or affiliate. Indeed, the risks to an insured depository institution from a subsidiary (as well as the rewards) appear to be greater than those present when nonbanking activities are conducted in a holding company affiliate of the institution. Under generally accepted accounting principles and regulatory capital rules, losses of the subsidiary would generally be consolidated with the parent bank, thereby adversely affecting the capital position of the bank from both a market and regulatory perspective. Furthermore, because the bank owns and controls the management and operation of the subsidiary, its reputational stake is greater. Thus, in the Board's view, the incentive of bank management to prevent or defer losses through easy credit and other transactions is that much stronger.

The Board is also concerned that imposition of sections 23A and 23B on an *ad hoc* basis by different agencies could result in inconsistencies that would create confusion or competitive advantage by charter or structure. The Board believes that it was this result that Congress sought to avoid by authorizing the Board to write the regulations in this area.

Finally, the Board believes that imposition of sections 23A and 23B could help to ensure corporate separateness. The requirement of section 23B that transactions be on market terms, in particular, could help to prevent piercing of the bank's corporate veil. Nonetheless, the Board recognizes that in this area, and with respect to other safety and soundness concerns, imposition of sections 23A and 23B is not itself sufficient. Ensuring that banks observe appropriate principles of corporate separateness in dealing with their subsidiaries, and that the relationship of a subsidiary to its parent bank does not otherwise endanger the bank, will remain the responsibility of the bank's appropriate Federal banking agency, as would primary responsibility for monitoring compliance with sections 23A and 23B to the extent that they were applied.

The Board is not proposing to alter the statutory exemption from sections 23A and 23B for two types of subsidiaries. First, the Board's proposal would not affect the statutory exemption for subsidiaries that are engaged solely in activities in which the member bank could engage directly. Although concerns about imprudent funding by a bank exist with respect to these subsidiaries as well, they have traditionally been exempt from sections 23A and 23B, and it is these subsidiaries that Congress understood it was exempting in the 1982 amendments. More practically speaking, covering these subsidiaries could result in the activities simply being transferred back to the bank, thereby imposing costs with no corresponding benefit. Thus, the Board is not proposing to apply sections 23A and 23B to such subsidiaries.

The proposal also would not cover subsidiaries that Congress previously had exempted from sections 23A and 23B when those statutes generally applied to subsidiaries. In effect, Congress has determined that the benefits of allowing banks to assume financial exposure to these types of subsidiaries exceed the potential costs.

The proposed rule addresses such subsidiaries in two ways. As noted, the 1933 version of section 23A exempted subsidiaries engaged in certain specified activities from coverage by sections 23A and 23B. One group of activities could be performed by either an affiliate or a subsidiary; although these activities no longer required an exemption if performed in a subsidiary after 1982, section 23A continued to exempt them if performed in an affiliate.[21] These activities include conducting a safe deposit business or holding bank premises. Although the proposed rule would now treat a subsidiary conducting such activities as an affiliate under sections 23A and 23B, the subsidiary would also qualify for the exception that applies when such activities are conducted in an affiliate.[22] Thus, no language in the proposed rule is necessary to exclude this group of companies from coverage as subsidiaries by sections 23A and 23B.

The second group of subsidiaries exempt under the 1933 Act were Edge Act subsidiaries and Agreement corporations. Because those companies were almost always subsidiaries of a bank, Congress did not retain a specific exception for them after the 1982 amendments (because they, like all other subsidiaries, were already exempt). Similarly, when member banks were first authorized to invest directly in the stock of foreign banks in 1966, Congress specifically authorized the Board to exempt transactions with such foreign bank subsidiaries from section 23A.[23] The Board did so between 1967 and 1982, but discontinued the exemption as unnecessary after 1982. Thus, the proposed rule needs to contain specific language exempting these subsidiaries.

Application of Sections 23A and 23B to Insured Nonmember Banks and Savings Associations

As noted above, if the Board were to apply sections 23A and 23B to transactions between a member bank and its subsidiaries, then by operation of law such application would also extend to transactions between an insured nonmember bank and a subsidiary engaged in activities impermissible for its parent, and to transactions between a savings association and a subsidiary engaged in activities impermissible for its parent. However, especially in the savings association context, application of sections 23A and 23B raises certain policy issues. For example, in section 5 of the HOLA, Congress has expressly permitted a savings association to invest up to 3 percent of its assets in a service corporation—an amount greater than section 23A would allow.[24] The Board believes that if section 23A were applied to service corporations, any investment in a subsidiary expressly permitted by section 5 of the HOLA therefore should be exempt. Furthermore, section 11(a)(1) of the

[21] There were two other types of companies that could operate as either a subsidiary or an affiliate and that were exempt from the pre-1982 section 23A: agricultural credit corporations and livestock loan companies. However, on the Board's recommendation, Congress discontinued the affiliate exemption for these companies. *Board's 23A Proposal* at 26.

[22] 12 U.S.C. 371c(b)(2)(B–D).

[23] 12 U.S.C. 601 (Third).

[24] At least one-half of the investment in excess of one percent of a savings association's assets must be primarily used for community, inner-city and community development purposes. 12 U.S.C. 1464(c)(4)(B).

HOLA prohibits a savings association from making a loan or extension of credit to an affiliate if the affiliate is engaged in impermissible bank holding company activities. If the Board were to designate a subsidiary as an ''affiliate'' for purposes of sections 23A and 23B, then this lending prohibition arguably would be applied to savings associations subsidiaries. Subsidiaries of member banks are not subject to such a prohibition. Accordingly, the Board seeks comment on whether sections 23A and 23B should be applied to transactions between savings associations and their subsidiaries and, if so, in what manner.

Similarly, section 302(b) of the Small Business Investment Act of 1958 [25] allows member banks and non-member insured banks to invest up to 5 percent of their capital and surplus in small business investment companies. The Board does not propose to include any investment by a member or nonmember insured bank in a subsidiary that qualifies as a small business investment company towards the limitations of section 23A, and seeks comment on whether any additional transactions should be covered.

Transactions Between a Subsidiary and an Affiliate

Pursuant to sections 23A and 23B, transactions between a subsidiary of a bank and an affiliate of the bank are treated as if they are transactions between the parent bank and the affiliate. For example, a loan by a subsidiary of a bank to an affiliate of the bank is subject to the collateral and other qualitative restrictions of sections 23A and 23B, and the amount of the loan is counted toward the bank's quantitative limits. This treatment is consistent with such subsidiaries being considered departments of the bank.

However, when such subsidiaries engage in activities not permitted to the bank, and the bank would be limited by the proposed rule in its ability to fund such subsidiaries, this restriction may no longer be appropriate. If a subsidiary is no longer treated as a part of the bank when it borrows, it could be argued that the subsidiary should not be treated as part of the bank when lending to other affiliates. Accordingly, the Board seeks comment on whether transactions between a bank subsidiary and an affiliate of the bank should be exempt from section 23A or 23B when the subsidiary is limited by sections 23A and 23B in the funding it can receive from its parent bank.

Remaining Issues

The Board recognizes that application of sections 23A and 23B to bank subsidiaries may raise interpretive issues that the current application to affiliates has not. For example, under Generally Accepted Accounting Principles, retained earnings of a subsidiary are considered an investment in the subsidiary by its parent bank and would therefore be considered a covered transaction for purposes of sections 23A and 23B.[26] The Board seeks comment on whether additional interpretive issues should be addressed in the final rule.

Regulatory Flexibility Act Analysis

This proposal is not expected to have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because a substantial number of small insured depository institutions do not operate subsidiaries that are subject to the regulation. The Board recognizes that some small state banks have established subsidiaries engaged in real estate activities pursuant to section 24 of the FDI Act, and the proposal would apply sections 23A and 23B to transactions between the state banks and these subsidiaries. However, in its orders approving such subsidiaries, the FDIC generally has required compliance with sections 23A and 23B. The Board seeks comment on whether the proposal would impose any additional burden on these entities, and what relief would be appropriate.

Paperwork Reduction Act

No collection of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is contained in this notice.

List of Subjects in 12 CFR Part 250

Banks, banking, Federal Reserve System.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 250 as follows:

PART 250—MISCELLANEOUS INTERPRETATIONS

1. The authority citation for part 250 continues to read as follows:

Authority: 12 U.S.C. 78, 248(i) and 371c(e).

2. Section 250.243 is added to read as follows:

§ 250.243 Applicability of sections 23A and 23B of the Federal Reserve Act to transactions between a member bank and its subsidiaries.

(a) *Covered transactions between an insured depository institution and its subsidiary*—(1) *In general.* For purposes of sections 23A(b)(1) and 23B(d)(1) of the Federal Reserve Act (12 U.S.C. 371c(b)(1) and 371c–1(d)(1)), ''affiliate'' with respect to a member bank includes any subsidiary of the member bank that engages, directly or through a subsidiary, in any activity in which its parent bank may not engage directly.

(2) *Exception for certain subsidiaries.* The following subsidiaries shall not be considered an affiliate for purposes of paragraph (a)(1) of this section:

(i) A corporation organized and operating under section 25A of the Federal Reserve Act (12 U.S.C. 611–631), and any subsidiary thereof;

(ii) A corporation operating under section 25 of the Federal Reserve Act (12 U.S.C. 601), and any subsidiary thereof; and

(iii) A foreign bank held under authority of section 25 of the Federal Reserve Act (12 U.S.C. 601), and any subsidiary thereof.

(3) *Exception for certain investments.* An investment in a small business investment company pursuant to section 302(b) of the Small Business Investment Act of 1958 (15 U.S.C. 682(b)) shall not be subject to the lending limit of section 23A(a)(1)(A) and shall not count towards the aggregate lending limit of section 23A(a)(1)(B) (12 U.S.C. 371c (a)(1)(A) and (a)(1)(B)).

(b) *Covered transactions between a subsidiary of an insured depository institution and an affiliate of the institution.* For purposes of sections 23A(a)(1), 23A(c), and 23B(a)–(c) of the Federal Reserve Act (12 U.S.C. 371c(a)(1), 371c(c), and 371c–1(a)–(c)), a subsidiary of a member bank shall not include any subsidiary that is considered an affiliate for purposes of paragraph (a)(1) of this section.

By order of the Board of Governors of the Federal Reserve System, July 3, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–18526 Filed 7–14–97; 8:45 am]

BILLING CODE 6210–01–P

[25] 15 U.S.C. 682(b).

[26] 12 U.S.C. 371c(b)(7)(B).

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303, 325, 326, 327, 346, 347, 351 and 362

RIN 3064–AC05

International Banking Regulations; Consolidation and Simplification

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

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 seeking public comment on its proposal to revise and consolidate its three different groups of rules and regulations governing international banking. The first group governs insured branches of foreign banks and specifies what deposit-taking activities are permissible for uninsured state-licensed branches of foreign banks. The FDIC's proposal makes conforming changes throughout this group of regulations to reflect the statutory requirement that domestic retail deposit activities must be conducted through an insured bank subsidiary, not through an insured branch. Also with respect to this group of regulations, the FDIC is proposing to rescind the provisions concerning optional insurance for U.S. branches of foreign banks; the pledge of assets formula has been revised; and the FDIC Division of Supervision's (DOS) new supervision program—the Case Manager approach—has been integrated throughout the applicable regulations. The second group of regulations governs the foreign branches of insured state nonmember banks, and also governs such banks' investment in foreign banks or other financial entities. The FDIC's proposal modernizes this group of regulations and clarifies provisions outlining the activities in which insured state nonmember banks may engage abroad, and reduces the instances in which banks must file an application before opening a foreign branch or making a foreign investment. The third group of regulations governs the international lending of insured state nonmember banks and specifies when reserves are required for particular international assets. The FDIC is proposing to revise this group of regulations to simplify the accounting for fees on international loans to make it consistent with generally accepted accounting principles. Consistent with the goals of CDRI, the proposed rule will improve efficiency, reduce costs, and eliminate outmoded requirements.

DATES: Comments must be received on or before September 15, 1997.

ADDRESSES: Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, D.C. 20429. Comments may be hand delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. (Fax number (202) 898–3838; Internet address: comments@fdic.gov). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW, Washington, D.C. 20429, between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Christie A. Sciacca, Assistant Director, (202/898–3671), Karen M. Walter, Chief, (202/898–3540), Suzanne L. Williams, Senior Financial Analyst, (202/898–6788), Division of Supervision; Jamey Basham, Counsel, (202/898–7265), Wendy Sneff, Counsel (202/898–6865), Karen L. Main, Senior Attorney (202/898–8838), Legal Division, FDIC, 550 17th Street, NW, Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION: The FDIC is conducting a systematic review of its regulations and written policies. Section 303(a) of the CDRI (12 U.S.C. 4803(a)) requires the FDIC to streamline and modify its regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. Section 303(a) also requires the FDIC to remove inconsistencies and outmoded and duplicative requirements from its regulations and written policies.

As part of this review, the FDIC has determined that certain portions of part 346 are out-of-date, and other provisions of this part require clarification. Although the FDIC previously made certain regulatory amendments which took effect as recently as 1996, other regulatory language contained in part 346 does not accurately reflect the underlying statutory authority. The FDIC has also determined that part 347 is outmoded. Part 347 has not been revised in any significant regard since 1979, when it was originally promulgated.

The FDIC has decided to consolidate its international banking rules into a single part, part 347, for ease of reference. This proposal places material on foreign branching and foreign bank investment by nonmember banks, currently located in part 347, into subpart A of part 347. Material currently located in part 346, governing insured branches of foreign banks and deposit-taking by uninsured state-licensed branches of foreign banks, is placed in subpart B of part 347. Part 351 of the FDIC's current rules and regulations, which contains rules governing the international lending operations of insured state nonmember banks, is placed in subpart C of new part 347. Part 351 was originally adopted in 1984 as an interagency rulemaking in coordination with the Board of Governors of the Federal Reserve System (FRB) and the Office of the Comptroller of the Currency (OCC). The proposed revisions to part 351 have been discussed with representatives from the OCC and FRB and they are in general agreement with the changes. However, as the other two federal banking agencies are not ready to act on a revised regulation at this time, the FDIC has decided to unilaterally issue its proposed revision to part 351 in connection with its consolidation of the international banking regulations.

In addition, the FDIC is currently processing a complete revision of part 303 of the FDIC's rules and regulations, which contains the FDIC's applications procedures and delegations of authority. For ease of reference, the FDIC will consolidate its applications procedures for international banking matters into a single subpart of part 303, subpart J. At this time, the FDIC cannot determine whether this part 347 rulemaking will be finalized before or after the FDIC's part 303 rulemaking. To deal with this uncertainty, the FDIC's part 303 proposal will contain an ''interim'' version of subpart J, which will set out application processes compatible with the FDIC's current versions of parts 346 and 347. In addition, this part 347 proposal includes, as a separate subpart D of part 347, revised ''permanent'' application procedures compatible with the substantive provisions of this part 347 proposal. These ''permanent'' application procedures will be located in subpart J without substantive change, displacing the interim procedures, once both part 303 and part 347 are issued as final rules.

The FDIC requests public comments about all aspects of the proposal. In addition, the FDIC is raising specific questions for public comment, as set out in connection with the analysis of the proposal below.

Proposed Revisions to Part 347, Foreign Branches and Investments in Foreign Banks and Other Entities

Background

Section 18(d)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d)(2)) requires a nonmember bank to obtain the FDIC's consent to establish or operate a foreign branch. Section 18(d)(2) also authorizes the FDIC to impose conditions and issue regulations governing the affairs of foreign branches.

Section 18(l) of the FDI Act (12 U.S.C. 1828(l)) requires a nonmember bank to obtain the FDIC's consent to acquire and hold, directly or indirectly, stock or other evidences of ownership in any foreign bank or other entity. Section 18(l) also states that these entities may not engage in any activities in the United States except as the Board of Directors of the FDIC (Board), in its judgment, has determined are incidental to the international or foreign business of these entities. In addition, section 18(l) authorizes the FDIC to impose conditions and issue regulations governing these investments. Finally, although nonmember banks subject to the interaffiliate transaction restrictions of sections 23A and 23B of the Federal Reserve Act, 12 U.S.C. 371c and 371c–1, as expressly incorporated by section 18(j) of the FDI Act, 12 U.S.C. 1821(j), section 18(l) provides that nonmember banks may engage in transactions with these foreign banks and other entities in which the nonmember bank has invested in the manner and within the limits prescribed by the FDIC.

A nonmember bank's authority to establish a foreign branch or invest in foreign banks or other entities, and the permissible activities for foreign branches or foreign investment entities, must be established in the first instance under the law of its state chartering authority. Congress created sections 18(d)(2) and 18(l) out of a concern that there was no federal-level review of nonmember banks' foreign branching and investments. S. Rep. No. 95–323, 95th Cong., 1st Sess. (1977) at 15. Although the FRB had long held authority over foreign branching and investment by state member banks and national banks (member banks) under the Federal Reserve Act, as well as foreign investment by bank holding companies under the Bank Holding Company Act, the FDIC did not hold corresponding statutory authority over nonmember banks until Congress created sections 18(d)(2) and 18(l) as part of the Financial Institutions Regulatory and Interest Rate Control Act of 1978, Public Law 95–630 (FIRIRCA).

When the FDIC originally adopted part 347 in 1979, to implement the Corporation's new authority under sections 18(d)(2) and 18(l), the FDIC adopted a rule which was virtually the same as the corresponding provisions of the FRB's rules and regulations at the time. Based on the above legislative history, the FDIC determined that Congress intended to bring the international activities of nonmember banks under federal controls that were similar, but not necessarily identical, to those contained in the FRB's rules governing the international activities of member banks and bank holding companies. 44 FR 25194, 25195 (April 30, 1979).

In developing its proposal to revise part 347, the FDIC has therefore maintained a parity with the substance of the FRB's corresponding rules on foreign branching and investments by member banks, contained in subpart A of Regulation K (12 CFR 211.1–211.8). The permissible activities for foreign branches of nonmember banks and for foreign entities in which nonmember banks invest are virtually identical to those authorized for member banks under Regulation K. The amount limits and extent to which nonmember banks may engage in such activities without obtaining the FDIC's specific approval are also very similar, taking into account certain variances attributable to structural differences between the types of institutions governed. Where there are substantive differences between the FDIC's proposal and the FRB's rules under subpart A of Regulation K, the differences are noted below.

In certain of the few limited instances in which the FDIC is proposing a different treatment than the FRB's under Regulation K, the difference raises issues under section 24 of the FDI Act (12 U.S.C. 1831a) and part 362 of the FDIC's rules and regulations (12 CFR part 362). Section 24 and part 362 prohibit a state bank from engaging as principal in any activity which is not permissible for a national bank, unless the FDIC first determines that it would not pose a significant risk of loss to the appropriate deposit insurance fund and the bank meets its minimum capital requirements. Section 24 and part 362 similarly prohibit a subsidiary of a state bank from engaging as principal in any activity which is not permissible for a subsidiary of national bank, unless the FDIC first determines that it would not pose a significant risk of loss to the appropriate deposit insurance fund and the bank meets its minimum capital requirements. Section 24 and part 362 also prohibit a state bank from making an equity investment which is not permissible for a national bank, unless the investment is made through a majority-owned subsidiary, the FDIC determines that it would not pose a significant risk of loss to the appropriate deposit insurance fund for the subsidiary to hold the equity investment, and the bank meets its minimum capital requirements. Where these section 24 issues arise, they are discussed below.

Subpart A—Foreign Branches

The most significant revision made by the proposal is the FDIC's grant of authority to a nonmember bank meeting certain eligibility criteria to establish foreign branches under general consent or prior notice procedures. The existing list of foreign branch powers under current § 347.3(c) has also been redrafted to bring it more in line with modern banking practice. The proposal also introduces expanded powers for foreign branches to underwrite, distribute, deal, invest in, and trade foreign government obligations.

The general consent and prior notice procedures are discussed in detail in the analysis of subpart D, below, but to summarize them briefly, proposed § 347.103(b) gives the FDIC's general consent for an eligible nonmember bank—one which is well-capitalized, well-rated under certain supervisory assessment benchmarks, has no supervision problems and has been in operation at least three years—to establish additional branches within a foreign country or relocate a branch within a foreign country. An eligible nonmember bank which has established its international expertise by successfully operating foreign branches or affiliates in two or more foreign countries may also establish branches in additional foreign countries upon 45 days prior notice to the FDIC. There are certain necessary limitations on these general consent and prior notice procedures, however, as discussed in the analysis of subpart D.

In an effort to modernize the list of foreign branch powers currently contained in § 347.3(c), the proposal eliminates § 347.3(c)(2), containing specific authorization for a foreign branch to accept drafts or bills of exchange, and § 347.3(c)(5), containing specific authorization for a foreign branch to make loans secured by real estate. In addition, the FDIC has not included a counterpart to the FRB's specific authorization for a foreign branch to engage in repurchase agreements involving securities that are the functional equivalent of extensions of credit. In the FDIC's view, these activities are within the general banking

powers of a foreign branch, and thus do not require specific mention on the list of activities which the FDIC is authorizing in addition to such general banking powers.

The proposal also eliminates § 347.3(c)(6), containing specific authorization for a foreign branch to pay its foreign branch officers and employees a greater rate of interest on branch deposits than the rate paid to other depositors on similar branch deposits. Regulation K presently contains a similar provision. While section 22(e) of the Federal Reserve Act (12 U.S.C. 376) generally limits a member bank's authority to pay employees a greater rate of interest than the rate paid to other depositors on similar deposits, the FDIC is not aware of any current regulatory restrictions directly prohibiting a nonmember bank from doing so, assuming there were no implications of insider abuse or of evading certain limited regulatory requirements concerning executive compensation. Thus, in the FDIC's view, this activity is within the general banking powers of a foreign branch of a nonmember bank.

In addition, the FDIC has not included a counterpart to the FRB's specific authorization for a foreign branch to extend credit to an officer of the branch residing in the foreign country in which the branch is located to finance the officer's living quarters. In the FDIC's view, this activity is within the general banking powers of a foreign branch, provided that the bank observes prudent banking practices and Regulation O limits on loans to the bank's executive officers. Given that Regulation O currently makes provisions for a bank to finance an executive officer's purchase, construction, maintenance, or improvement of a personal residence, the FDIC need not specifically authorize it here.

To update the current authorization under § 347.3(c)(3) to hold the equity securities of the central bank, clearing houses, governmental entities, and development banks of the country in which the branch is located, proposed § 347.103(a)(2) adds debt securities eligible to meet local reserve or similar requirements, as well as shares of automated electronic payment networks, professional societies, schools, and similar entities necessary to the business of the branch. The proposal continues to set the limit for such investments at 1 percent of the total deposits in all the bank's branches in that country as reported in the preceding year-end call report, subject to the same exclusions as currently apply for investments required by local law or permissible for a national bank under 12 U.S.C. 24 (Seventh). The FDIC specifically requests public comment on whether this limit is too high or too low, or should be calculated on a different basis.

The current authorization under § 347.3(c)(4) to underwrite, distribute and deal, invest and trade in obligations of the national government of the country in which the branch is located has been similarly updated. Proposed § 347.103(a)(3) clarifies that obligations of the national government's political subdivisions, and its agencies and instrumentalities if supported by the national government's taxing authority or full faith and credit, are also eligible. The proposal also revises the investment limit to make it 10 percent of the nonmember bank's tier 1 capital, instead of the outdated reference to 10 percent of its capital and surplus.

Finally, the FDIC is considering whether it would be appropriate and desirable to permit a foreign branch to underwrite, distribute and deal, invest in and trade obligations of any foreign government, rather than just the obligations of the country in which it is located. Proposed § 347.103(a)(3)(ii) would permit this activity, so long as the issuing country permits foreign enterprises to do so. Since Regulation K does not currently authorize member (and thus national) banks to conduct this activity, the proposal presents an issue under section 24 of the FDI Act and part 362 of the FDIC's rules and regulations. If adopted as part of the final rule, § 347.103(a)(3)(ii) would represent the FDIC's determination that the activity would not create a significant risk to the deposit insurance fund.[1]

Proposed § 347.103(a)(3)(ii) would allow nonmember banks to consolidate these activities, which must currently be carried out in different branch offices in each country, into a single branch office, for more convenient administration and oversight. The proposal would include these activities as part of the 10 percent limit applicable to local obligation underwriting, distribution, investment and trading, and would also require the non-local obligations to be investment grade. The FDIC would expect nonmember banks to make appropriate periodic independent credit reviews to determine and monitor the investment-grade quality of issues which are unrated or rated under comparatively less-rigorous standards than the ones used by U.S. ratings agencies. The FDIC specifically requests comments on the merits of the proposal, including comments on appropriate amount limits if the activity is authorized and any appropriate safeguards which should be imposed.

Subpart A—Foreign Investments

Overview

The FDIC is completely revising its approach to approvals of a nonmember bank's investment in the stock or other evidences of ownership of a foreign bank or other entity. Section 347.4 has not been revised in any significant regard since the FDIC originally adopted it, shortly after Congress gave the FDIC statutory responsibility for reviewing foreign investments. It currently provides little information about the types of activities in which the FDIC would consider it to be appropriate for a foreign investment entity to engage. The rule requires specific FDIC approval of virtually every foreign investment, and limits total investment in all cases to 25 percent of a nonmember bank's capital. Nonmember banks affected by the rule have advised the FDIC that they view the current approach as an impediment to their ability to compete effectively abroad. While the FDIC must remain mindful of its supervisory obligations arising from the FDI Act and international supervisory agreements, and has a responsibility to address certain issues to ensure that international operations do not threaten the safety and soundness or financial condition of nonmember banks, the FDIC agrees that the rule can be significantly revised in light of the experience the Corporation has gained since § 347.4 was originally adopted.

The FDIC's proposal adopts an approach like that of the FRB under Regulation K. The proposed rule lists the various types of financial activities in which a nonmember bank's foreign subsidiaries and joint ventures may engage. The proposal also authorizes limited indirect investment in and trading of the stock of nonfinancial entities. Securities underwriting and dealing abroad up to specified limits is permitted, with the FDIC's prior approval. Moreover, the proposed rule grants eligible nonmember banks the FDIC's general consent to make investments in conformity with the rule up to specified annual limits, and

[1] Because section 24 only permits the FDIC to authorize equity investments which are not permissible for a national bank through a majority-owned subsidiary, proposed § 347.103(a)(3)(B) would require any foreign government obligations which constitute equity interests to be held through a subsidiary of the foreign branch. However, practically speaking, the vast majority of foreign government obligations would be debt obligations instead of equity interests, and could be held at the branch level.

permits additional investments upon 45 days prior notice.

Investment in Foreign Banks and Other Entities Engaged in Financial Activities

Proposed § 347.104(b) contains a list of approved activities which are financial in nature. A foreign subsidiary of a nonmember bank is limited to conducting these authorized financial activities, unless the nonmember bank acquires the subsidiary as a going concern, in which case up to 5 percent of the subsidiary's assets or revenues may be attributable to activities which are not on the list. Under the proposed definition of ''subsidiary'' at § 347.102(p), a foreign organization is a subsidiary of a nonmember bank if the nonmember bank and its affiliates hold more than 50 percent of the foreign organization's voting equity securities. It is important to note that this proposed definition of a subsidiary differs from the commonly-used subsidiary definitional structure based on section 2(d) of the Bank Holding Company Act (12 U.S.C. 1841(d)). Under the section 2(d) type of structure, subsidiary status typically arises upon ownership of 25 percent or more of the subsidiary's voting securities.

Subsidiary status under the section 2(d) type of structure also arises when the parent controls election of the majority of the subsidiary's directors in any manner or if the parent has the power to directly or indirectly exercise a controlling influence over the management and policies of an organization. In contrast, the FDIC's proposal separates these elements out into their own definition of ''control'' at § 347.102(b). Section 347.102(b) also provides that control is deemed to exist whenever a nonmember bank or its affiliate is a general partner of a foreign organization. As is the case with subsidiaries, any foreign organization which is controlled by a state nonmember bank or its affiliates, regardless of the percent of voting stock owned by the state nonmember bank, is limited to conducting approved financial activities contained on the § 347.104(b) list, subject to the same 5 percent exception for going concerns.

The FDIC has proposed the less-inclusive subsidiary definition which is triggered at 50 percent rather than the more commonly-used 25 percent in order to maintain consistency with the corresponding provisions of Regulation K. This less-inclusive approach is also carried through to the definition of an affiliate under proposed § 347.102(a), also to maintain consistency with Regulation K. The FDIC has attempted to establish activity and amount limits in this part 347 proposal which take into account any conduct of similar activities by the nonmember bank's holding company or the holding company's other affiliates as authorized by Regulation K. The use of consistent definitional thresholds is of great assistance to this end.

If a nonmember bank and its affiliates hold less than 50 percent of the voting equity securities of a foreign organization and do not control the organization, up to 10 percent of the organization's assets or revenues may be attributable to activities which are not on the list. If the nonmember bank and its affiliates' holdings are less than 20 percent of a foreign organization's voting equity interests, the nonmember bank is also prohibited from making any loans or extensions of credit to the organization which are not on substantially the same terms as those prevailing at the time for comparable transactions with nonaffiliated organizations. The FDIC is contemplating whether this 20 percent limit should be somewhat higher, and specifically requests public comment on this point.

The list of authorized financial activities in proposed § 347.104(b) is modeled on the FRB's corresponding provision in Regulation K, 12 CFR 211.5(d). The proposal reorders the activities in an effort to group similar activities together, and where there are conditions and limitations on the conduct of a particular activity, this additional information is separately set out in proposed §§ 347.105 and 347.106. Additional activities require the FDIC's approval.

The proposal does not include six activities which currently appear in Regulation K. The FDIC has not included these activities, because they are each authorized under Regulation Y (12 CFR 225.28(b)) as being closely related to banking under section 4(c)(8) of the Bank Holding Company Act (Regulation Y list), and the proposal authorizes foreign investment organizations to engage in any activity on the Regulation Y list. The omitted activities are: financing; acting as fiduciary; providing investment, financial, or economic advisory services; leasing real or personal property or acting as agent, broker or advisor in connection with such transactions if the lease serves as the functional equivalent of an extension of credit to the lessee; acting as a futures commission merchant; and acting as principal or agent in swap transactions.

In addition, proposed § 347.104(b) contains certain activities—for example, data processing—which are also authorized by the Regulation Y list, but are subject to certain additional limitations and conditions under Regulation Y. In such cases, the activities are included in § 347.104(b) because a foreign investment entity is permitted to conduct them under the less restrictive terms of § 347.104(b). But in cases in which the nonmember bank relies solely on § 347.104(b)'s cross-reference to the Regulation Y list as authority to conduct an activity, the foreign investment entity must comply with the attendant restrictions in 12 CFR 227.28(b).

Also, in the case of one activity authorized by § 347.104(b)'s cross-reference to the Regulation Y list, acting as a futures commission merchant (FCM), the FDIC is contemplating imposing one restriction in addition to the restrictions imposed by Regulation Y at 12 CFR 225.28(b). Under proposed § 347.106(a), a foreign investment entity could not have potential liability to a mutual exchange or clearing association of which the foreign investment entity was a member exceeding an amount equal to 2 percent of the nonmember bank's tier 1 capital, unless the FDIC has granted its prior approval.

This overall approach, in which part 347 specifies an approved list of activities applicable to varying degrees depending on the nonmember bank's proportional ownership of a foreign organization, is a major change from the approach under current part 347, in which activities are evaluated on a case-by-case basis in connection with the FDIC's approval of the investment. The FDIC specifically requests public comment on this new approach, including whether the limits are appropriate.

Unlike Regulation K, the FDIC's proposal authorizes nonmember banks to directly invest in foreign organizations which are not foreign banks. Under 12 CFR 211.5(b)(2), the only foreign organizations in which member banks are permitted to invest directly are foreign banks; foreign organizations formed for the sole purpose of either holding shares of a foreign bank or for performing nominee, fiduciary, or other banking services incidental to the activities of the member bank's foreign branches or affiliates; or subsidiaries of foreign branches authorized under 12 CFR 211.3(b)(9). Any investment by a member bank in a foreign organization which is not one of these types of entities must be made indirectly, through an Edge corporation subsidiary or foreign bank subsidiary of the member bank. This limitation arises out of the language of section 25 of the

Federal Reserve Act, which generally limits the direct investments of member banks to foreign banks. In contrast, section 18(l) of the FDI Act permits state nonmember banks, to the extent authorized by state law, to invest in foreign ''banks or other entities.'' As discussed above, the legislative history of section 18(l) shows that Congress was, at the time it created section 18(l), mindful of the FRB's parallel authority over member banks under section 25. Therefore, the FDIC interprets the difference between the two statutes to be significant, and the type of foreign organizations in which a state nonmember bank may invest directly are not restricted by section 18(l).

A national bank's inability to invest directly in the shares of a nonbank foreign organization raises issues under section 24 of the FDI Act and part 362 of the FDIC's rules and regulations. If a nonmember bank acquires a sufficient stake in a nonbank foreign organization such that the nonbank foreign organization is a ''majority-owned subsidiary'' [2] of the state nonmember bank for purposes of section 24, no section 24 analysis is required. This is because the FDIC's proposed rule only authorizes foreign organizations to engage in the same activities which the FRB has authorized for the foreign subsidiaries of member (and thus national) banks. Therefore, the nonmember bank's foreign subsidiary could only engage as principal in the same activities permitted for a foreign subsidiary of a national bank, and section 24's application requirement is never triggered.

If the nonmember bank holds a lesser amount of the nonbank foreign organization's shares, such that it does not arise to a ''majority-owned subsidiary'' within the meaning of section 24 and part 362, the FDIC is required by section 24 and part 362 to determine that the nonmember bank's equity investment in a nonbank foreign organization does not pose a significant risk to the appropriate deposit insurance fund. Moreover, section 24 and part 362 provide that the FDIC may only permit equity investments to be held by the bank through a majority-owned subsidiary. Under the proposal, the FDIC would permit such investments, and require them to be held through some form of U.S. or foreign majority-owned subsidiary. If adopted as part of the final rule, this would represent the FDIC's determination that dispensing with the intermediate foreign bank subsidiary or Edge subsidiary, the vehicle through which a national bank would be permitted to make this type of investment, would not create a significant risk to the deposit insurance fund.

The FDIC is also omitting one activity authorized by Regulation K concerning a foreign investment entity's ability to underwrite life, annuity, pension fund-related, and other types of insurance, where the associated risks have been determined by the FRB to be actuarially predictable. Under Regulation K, the FRB has not given general authorization for this activity to be conducted directly or indirectly by a subsidiary of a U.S. insured bank. Since the activity is thus not generally permissible for a subsidiary of a national bank, a section 24 issue arises. However, under section 24(b) and 24(d)(2), the FDIC may not give section 24 approval for a state bank or its subsidiary to engage in insurance underwriting to the extent it is not permissible for a national bank, or is not expressly excepted by other subsections of section 24 covering limited types of insurance underwriting. Therefore, the FDIC is presently foreclosed from granting general regulatory authorization for nonmember banks to underwrite life, pension-fund related, or other types of insurance in this fashion. The question of permitting nonmember banks to underwrite annuities through a foreign organization is beyond the scope of this rulemaking.

The FDIC specifically requests public comment on the list of activities under proposed § 347.104(b), including the scope of such activities and whether any different conditions or limits would be appropriate.

Portfolio Investments in Nonfinancial Foreign Organizations

Proposed § 347.104(g) authorizes nonmember banks to make portfolio investments in a foreign organization without regard to whether the activities of the organization are authorized financial activities listed in § 347.104(b). Aggregate holdings of a particular foreign organization's equity interests by the nonmember bank and its affiliates must be less than 20 percent of the foreign organization's voting equity interests and 40 percent of its total voting and nonvoting equity interests. The FDIC is proposing the latter restriction to prevent a nonmember bank from, by obtaining a large equity position albeit a nonvoting one, obtaining a level of influence over the foreign organization which is inconsistent with the notion of a portfolio holding. The nonmember bank and its affiliates are not permitted to control the foreign organization, and any loan or extensions of credit to the foreign organization are to be on substantially the same terms as those prevailing at the time for comparable transactions with nonaffiliated organizations.

The FDIC is considering limiting these investments in nonfinancial foreign organizations to an amount equal to 15 percent of the nonmember bank's tier 1 capital. The FDIC seeks to establish a level which will permit a nonmember bank's foreign subsidiaries to compete effectively with other financial institutions in their foreign markets. The FDIC specifically requests public comment on whether this limit is too high, or too low, and whether any additional safeguards are appropriate. The FDIC is also considering whether nonmember banks should be permitted to hold somewhat more than 20 percent of the organization's voting equity interests, and specifically requests public comment on this issue.

In contrast to its approach with foreign organizations engaged primarily in financial activities authorized under § 347.104(b), proposed § 347.104(g) does not displace current limitations prohibiting member (and thus national) banks from making nonfinancial portfolio investments at the bank level or through a domestic subsidiary of the bank. Section 347.104(g) requires these investments to be held through a foreign subsidiary, or an Edge corporation subsidiary (subject to the FRB's authorization). The FDIC believes a nonmember bank's foreign bank and other financial subsidiaries must be permitted to make such investments in order to compete effectively in their foreign markets, and since such investments are permissible for a national bank, no section 24 analysis is required.

U.S. Activities of Foreign Organizations

As discussed above, section 18(l) of the FDI Act states that the foreign organizations in which nonmember banks invest may not engage in any activities in the U.S. except as the Board, in its judgment, have determined are incidental to the international or foreign business of the foreign

[2] Section 24 and part 362 do not set out a separate definition of ''majority owned subsidiary.'' Part 362 defines a ''subsidiary'' to mean any company directly or indirectly controlled by an insured state nonmember bank. Part 362 further defines ''control'' to mean the power to vote, directly or indirectly, 25 percent or more of any class of the voting stock of a company, the ability to control in any manner the election of a majority of a company's directors or trustees, or the ability to exercise a controlling influence over the management and polices of a company. A state nonmember bank thus holds a company as a ''majority-owned subsidiary'' when the bank holds more than 50 percent of the company's stock. This is equivalent to the definition of ''subsidiary'' in proposed § 347.102(p).

organization. Proposed § 347.107 addresses what activities may be engaged in within the United States. The proposal prohibits a nonmember bank from investing in any foreign organization which engages in the general business of buying or selling goods, wares, merchandise, or commodities in the U.S., and prohibits investments totaling over 5 percent of the equity interests of any foreign organization if the organization engages in any business or activities in the U.S. which are not incidental to its international or foreign business. A foreign organization will not be considered to be engaged in business or activities in the U.S. unless it maintains an office in the U.S. other than a representative office.

This structure follows the one established by the FRB under Regulation K. The FDIC is including the 5 percent threshold and the U.S. office threshold in acknowledgment that the U.S. is a leading international market and a substantial number of foreign organizations transact some portion of their business here. If nonmember banks are prohibited from investing in every foreign organization which does even a limited amount of its business in the U.S., nonmember banks will be at a disadvantage vis a vis their international financial institution competitors.

Beyond these thresholds, the FDIC is proposing to permit a foreign organization to conduct activities that are permissible in the U.S. for an Edge corporation, or such other business or activities as are approved by the FDIC. In approving additional activities, the FDIC will consider whether the activities are international in character. For activities proposed by a foreign subsidiary or joint venture of a nonmember bank, the FDIC will also consider whether the activity would be conducted through a foreign organization to circumvent some legal requirement which would apply if the nonmember bank conducted the activity through a domestic organization.

The FDIC specifically requests comments on this aspect of the proposal, including whether the thresholds and approved U.S. activities are appropriate.

Underwriting, Distributing, and Dealing Equity Securities Outside the United States

Under the proposal, a foreign investment entity of a nonmember bank would be permitted to underwrite, distribute, and deal equity securities outside the United States. Briefly summarized, the FDIC is considering imposition of three main limits as part of proposed § 347.105:

Underwriting commitments for a single issuer could not exceed an amount equal to the lesser of $60 million or 25 percent of the nonmember bank's tier 1 capital.

Distribution and dealing shares of a single entity could not exceed an amount equal to the lesser of $30 million or 5 percent of the nonmember bank's tier 1 capital.[3]

The sum of underwriting commitments, distribution and dealing shares, and any portfolio investments in nonfinancial foreign organizations under § 347.104(g) could not exceed an amount equal to 25 percent of the nonmember bank's tier 1 capital.

Each of these three limits is discussed further below. In determining compliance with these limits, the nonmember bank would count all commitments of and shares held by each foreign organization in which the nonmember bank has invested pursuant to subpart A of part 347. The nonmember bank would also count all commitments of and shares held by foreign organizations in which the nonmember bank's affiliates have invested pursuant to subpart A of Regulation K.

The $60 million/25 percent underwriting commitment limit could be exceeded to the extent the commitment is covered by binding commitments from subunderwriters or purchasers. The limit could also be exceeded to the extent the commitment is deducted from the nonmember bank's capital and the bank remains well-capitalized after the deduction. At least half of this deduction would be from tier 1 capital, and the deduction would be applicable for all regulatory purposes.

The $30 million/5 percent limit on the equity securities of a single entity which may be held for distribution or dealing would be subject to two exceptions. First, in order to facilitate underwritings, any equity securities acquired pursuant to an underwriting commitment extending up to 90 days after the payment date of the underwriting would not be included in the limit. Second, up to 75 percent of the position in an equity security could be reduced by netting long and short positions in the identical equity security, or by offsetting cash positions against derivative instruments referenced to the same security. The provision permitting netting of derivative positions is intended to recognize the beneficial impact of prudent hedging strategies, and encourage such strategies where the nonmember bank and the foreign organization determines they are appropriate. The FDIC would expect a nonmember bank asserting netting involving derivatives to be able to establish the validity of the hedging strategy to the nonmember bank's examiners.

If the nonmember bank's foreign organizations hold the same equity securities for distribution and dealing as well as for investment or trading pursuant to § 347.104 or the corresponding provision of Regulation K, two additional considerations would apply:

The investment or trading securities would be included in calculating the 5 percent/$30 million per-entity distribution and dealing limit, in order to prevent securities which are potentially distribution or dealing inventory from being characterized as investment or trading shares. Conversely, if the nonmember bank relies on the general consent provisions under proposed § 347.108 to acquire the securities for investment or trading purposes, distribution and dealing securities would be counted towards the general consent investment limits.

In addition, equity interests in a particular foreign organization held for distribution and dealing would be required to conform with the limits of proposed § 347.104. Equity interests held for distribution or dealing by an affiliate permitted to do so under § 337.4 of the FDIC's rules and regulations (12 CFR 337.4) or section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) would be counted for this limit. If the nonmember bank's foreign organizations hold equity interests in the same entity for investment and trading purposes, such interests would be included in determining compliance with these limits. However, in order to permit 100 percent underwriting, the proposal contains an exception for equity securities acquired pursuant to an underwriting commitment for up to 90 days after the payment date for the underwriting.

The combined limit, under which nonfinancial portfolio shares, underwriting commitments, and distribution and dealing shares would be limited to 25% of the nonmember bank's capital, would only include underwriting commitments net of amounts subject to commitments from subunderwriters or purchasers or already deducted from the nonmember bank's capital. Equity securities held for distribution or dealing would only be counted net of any position reduction through netting, as permitted in connection with the 5% dealing limit.

The FDIC specifically requests public comments on the underwriting, distribution, and dealing aspects of the proposal, including comments on whether the limits and limit adjustments are too low or too high, the basis upon which limits should be calculated, and any appropriate

[3] Regulation K currently authorizes the lesser of $30 million or 10 percent.

safeguards. The FDIC also requests comments on the proposed netting provisions and on the type of hedging strategies a nonmember bank might use pursuant to the proposed netting provisions concerning derivatives.

Approval of Investments

The FDIC is proposing to permit a nonmember bank meeting certain eligibility criteria to make foreign investments under the rule pursuant to general consent and prior notice procedures. These procedures are discussed in detail in the analysis of proposed subpart D below, but to summarize them briefly, proposed § 347.108 grants the FDIC's general consent for nonmember banks meeting the same eligibility criteria as apply in the foreign branching context to invest up to 5 percent of their tier 1 capital in any twelve month period, plus up to an additional 5 percent in equity interests for trading purposes. A sublimit of 2 percent of tier 1 capital per foreign organization applies. The nonmember bank must already have at least one foreign organization subsidiary, and at least one nonmember bank must have a foreign organization subsidiary in the relevant foreign country, in order for general consent to be applicable. An investment that does not qualify for general consent, but is otherwise in compliance with the rule, may be made by an eligible bank upon 45 days prior notice. There are certain necessary limitations on these general consent and prior notice procedures, however, as discussed in the analysis of proposed subpart D.

Extensions of Credit

Proposed § 347.109(a) does not alter the FDIC's current treatment under § 347.5 of extensions of credit to foreign investment entities. The limitations of section 18(j) of the FDI Act, incorporating by reference the interaffiliate transaction restrictions of sections 23A and 23B of the Federal Reserve Act, do not apply. The FDIC specifically requests public comment whether it is appropriate to continue this aspect of the rule without change, in light of the activities and investments which would be permitted under the proposal.

Debts Previously Contracted

With one exception, proposed § 347.109(b) does not alter the FDIC's current treatment under § 347.4(b), whereby equity interests acquired to prevent loss on a debt previously contracted in good faith are not subject to the limits and approvals of the regulation. The FDIC is proposing to extend the time period an institution is granted to dispose of such equity interests without the FDIC's specific approval under part 347 from one to two years. The extension is not intended to relieve an institution from its general obligation to dispose of the investment promptly under the circumstances and make diligent efforts to such end. However, extending the point at which an application is required will reduce administrative burden, and the FDIC can monitor the progress of divestiture efforts as part of the normal examination cycle. As with the current requirements of § 347.4(b), the proposed rule is not intended to displace any of the nonmember bank's concurrent obligations under state law, or extend a state law divestiture or approval period of less than two years. The FDIC specifically requests public comment on the merits of extending this time period, and the appropriate duration of the extension.

Supervision and Recordkeeping for Foreign Branches and Investments

With one exception, proposed § 347.110 does not alter the FDIC's current requirements for reporting and recordkeeping under current § 347.6. These requirements are intended to facilitate both the nonmember bank's oversight of its foreign operations and the FDIC's supervision of them. The proposal adds one new element. If a nonmember bank seeks to establish a foreign branch, or acquire a foreign joint venture or subsidiary, in a country in which applicable law or practice would limit the FDIC's access to information about the branch or subsidiary for supervisory purposes, the nonmember bank may not rely on the FDIC's general consent or prior notice procedures to do so. In such cases, the FDIC must have an opportunity to evaluate the impact of the limits on the FDIC's access, and determine whether the FDIC can still serve its domestic and international supervisory obligations through measures such as duplicate record-keeping in the U.S., reliance on host country supervisors, operating policies of the foreign organization, or reliance on recognized external auditors.

Proposed Revisions to Part 346, Deposit Insurance Requirements for State Branches and Foreign Banks Having Insured Branches

Background

The FDIC adopted part 346 as a final regulation on July 9, 1979. This part was originally promulgated to implement various provisions of the International Banking Act of 1978 (IBA) (Pub. L. 95–369). 12 U.S.C. 3101 *et seq.* Under the IBA, foreign banks operating in the United States through branches, agencies or commercial lending companies are subject to federal supervision and regulation similar to that imposed on like activities of domestic banks. For example, section 6 of the IBA requires certain branches of foreign banks to obtain federal deposit insurance. In particular, deposit insurance is required for a federal branch that accepts deposits of less than $100,000 and for a state branch that accepts deposits of less than $100,000 if it is located in a state which requires deposit insurance for state-chartered banks. Exemptions from the insurance requirement may be granted either by regulation or by order of the OCC, in the case of a federal branch, or the FDIC, in the case of a state branch, if the branch is not engaged in a domestic retail deposit activity requiring insurance protection. Section 6 also made numerous amendments to the FDI Act. The amendments to the FDI Act dealt with in part 346 include: (1) A requirement that the foreign bank give a commitment for examination; (2) a requirement that the foreign bank pledge assets to the FDIC; (3) rules for the maintenance of assets in the branch; and (4) rules for the assessment of deposits by the FDIC.

In 1991, the IBA was amended with the passage of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (Pub. L. 102–242); specifically, sections 201–215 of FDICIA were enacted as the Foreign Bank Supervision Enhancement Act of 1991 (FBSEA). This legislation made numerous changes to the IBA. Section 6 of the IBA was amended to require that any foreign bank that intends to conduct domestic retail deposit activities in the United States must do so by organizing one or more insured bank subsidiaries in the United States. Until this legislative change, foreign banks were allowed to accept initial deposits of less than $100,000 in insured branches. In addition, section 7 of the IBA was amended by adding a new subsection (h) which provides that a state-licensed insured branch of a foreign bank may not engage in any activity which is not permissible for a federal branch of a foreign bank unless the FRB has determined that the activity is consistent with sound banking practice, and the FDIC has determined that the activity would pose no significant risk to the Bank Insurance Fund (BIF). The statutory amendments to section 7 of the IBA were implemented in part 346 in final form and became effective on

January 1, 1995. At that time, a new subpart D was added to address the application procedures and approval process necessary for an insured state branch to request permission from the FDIC (and the FRB) to engage in or continue an activity that is otherwise not permissible for a federal branch of a foreign bank. The statutory requirement that a foreign bank only accept domestic retail deposits in the United States through an insured bank subsidiary was not incorporated into part 346 at that time.

Finally, in 1994, with the enactment of section 107 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Riegle-Neal Act) (Pub. L. 103–328), the federal banking agencies were charged with the obligation of revising their respective regulations adopted pursuant to section 6 of the IBA to ensure that the regulations are consistent with the legislative goal of ''affording equal competitive opportunities to foreign and United States banking organizations in their United States operations [and to] ensure that foreign banking organizations do not receive an unfair competitive advantage over United States banking organizations.'' 12 U.S.C. 3104(a). To this end, the FDIC reviewed and revised its regulation governing the deposit insurance exemptions available to state branches under part 346. Section 346.6. The current list of excepted deposit-taking activities enumerated in § 346.6(a) became effective on April 1, 1996.

Current Part 346

Subpart A of part 346 contains the definitions of terms which are relevant to the regulatory provisions set forth in this part. Subpart B establishes rules for determining which state branches must obtain deposit insurance. Basically, branches engaged in ''retail'' deposit activity must be insured while branches engaged in ''wholesale'' deposit activity do not have to be insured. Subpart B also includes a requirement that where one branch of a foreign bank becomes insured, every branch of that bank in the same state must become insured (except for branches which accept only initial deposits in an amount of $100,000 or greater). This restriction on the operation of insured branches applies to both federal and state branches. Section 346.6 of this subpart lists the types of excepted deposit-taking activities which will not be deemed to be ''domestic retail deposit activity'' and describes the procedures for a state branch to apply for an exemption from the deposit insurance requirement; § 346.7 provides depositor notification requirements for those noninsured branches.

Subpart C of part 346 establishes rules that apply to foreign banks which operate insured state or federal branches. These rules require a foreign bank having an insured branch to: (1) Provide the FDIC with information regarding the bank's activities outside of the United States and allow the FDIC to examine the foreign bank's activities in the United States; (2) maintain records in an appropriate manner; (3) pledge assets under terms acceptable to the FDIC; and (4) maintain assets at the branch equal in value to the branch's liabilities. Rules for assessing the deposits of an insured branch are also set out. As mentioned above, a new subpart D was added in 1995 which provides that a foreign bank operating an insured state branch which desires to engage in or continue an activity that is not permissible for a federal branch, pursuant to statute, regulation, official bulletin or circular, or any other order or interpretation issued in writing by the OCC, shall file with the FDIC (and the FRB) a prior written application for permission to conduct or continue such activity. Subpart D describes the application contents, the filing procedures and the circumstances under which a plan of divestiture or cessation must be submitted to the FDIC.

Subpart B Proposal

Former part 346 will become subpart B of the new, consolidated part 347. Unlike former part 347, former part 346 has been revised several times since its original adoption to implement various provisions of the IBA which were amended by FBSEA and the Riegle-Neal Act in 1991 and 1994, respectively. However, one significant change to section 6 of the IBA which was effected by FBSEA in 1991 has not been implemented by a revision of the FDIC's regulations. FBSEA amended section 6 of the IBA to require that foreign banks which intend to conduct domestic retail deposit activities in the United States must organize insured bank subsidiaries to conduct those deposit activities after December 19, 1991. (Section 6(c) of the IBA; however, in 1994, the section was re-designated as section 6(d).) However, any insured branches which were accepting or maintaining domestic retail deposit accounts on December 19, 1991, are allowed to continue to operate as insured branches conducting retail deposit activities (grandfathered insured branches). IBA section 6(d) also provides an exception to the definition of ''foreign bank'' which excludes ''any bank organized under the laws of any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands the deposits of which are insured by the [FDIC] pursuant to the [FDI Act]''. IBA section 6(d)(3). This definitional ''carve out'' has the effect of allowing banks organized under the laws of the territories included therein to continue to conduct domestic retail deposit activities in the United States through insured branches rather than be required to charter an insured bank subsidiary. This statutory framework to authorize and regulate the domestic retail deposit activities of foreign banks in the United States has been implemented in proposed § 347.204. Moreover, corresponding revisions to other relevant sections in subpart B are also being made to recognize this statutory change to the deposit insurance requirements for foreign banks.

Proposed § 347.206 addresses exemptions from the deposit insurance requirement. Paragraph (a)(7) has been revised in an effort to simplify and clarify the calculation of the regulatory de minimis exception. The transition rule applicable to time deposits has been revised by the deletion of the reference to 90 days after the effective date of the regulation which has been rendered moot with the passage of time. Finally, the FDIC is proposing to rescind former § 346.8 of its rules and regulations. Former § 346.8 provides foreign banks with the opportunity to apply for deposit insurance for their U.S. branches which would not otherwise be required to be insured pursuant to proposed § 347.204.

In the portion of former part 346 that addressed the examination and supervisory requirements for foreign banks having insured branches, several proposed changes have been made. First, in proposed § 347.210 which sets out the requirements for foreign banks to pledge assets for the benefit of the FDIC, the formula for calculating the amount of assets to be pledged has been simplified and clarified. Proposed § 347.210(b). Other revisions have been made throughout proposed § 347.210 to incorporate the FDIC DOS's new supervision program—the Case Manager approach.

Finally, in connection with the FDIC's CDRI review of part 303 of its rules and regulations, the application procedures for the exemption from domestic retail deposit activities for a noninsured branch which were formerly found in § 346.6(b) of part 346 will be temporarily transferred to § 347.404, and the application and divestiture plan procedures set forth in the current section governing FDIC approval for state insured branches to conduct

activities not permissible for federal branches will be temporarily relocated to § 347.405 of this part. Because former part 346 will become subpart B of the proposed part 347, the two separate scope sections of the former part have been combined to create a more cohesive and integrated subpart B. Some technical and non-substantive changes have been made to several of the definitions in proposed § 347.202, and the terms have been alphabetized for the reader's ease of reference.

Insurance of Deposits Sections

As presented above in the general discussion of the proposed subpart B, one legislative change which must be incorporated throughout the applicable sections addressing deposit insurance requirements for state branches is the mandate that domestic deposit retail activity be conducted through an insured bank subsidiary. The first section in subpart B which is affected by this statutory change is proposed § 347.201 which discusses the scope of the new subpart. Proposed § 347.204, ''Insurance requirement'', is being completely reorganized to incorporate the statutory requirement that a foreign bank must organize an insured bank subsidiary to initiate or conduct domestic retail deposit activity in the United States. This requirement is set forth in proposed § 347.204(a). Paragraph (b) of that section sets out the exclusion to the definition of ''foreign bank'' discussed above, which will allow banks organized under the laws of the U.S. territories included therein to conduct domestic retail deposit activities through insured branches rather than being required to charter an insured bank subsidiary. This exception reflects the fact that banks organized in these jurisdictions are already subject to more comprehensive examination and supervision by the U.S. banking regulatory agencies, and therefore, these banks can engage in retail deposit-taking in the U.S. through their branch networks. Paragraph (c) recognizes that there are grandfathered insured branches that are authorized to continue domestic retail deposit activities because they were operating prior to the effective date of the FBSEA legislation. And finally, paragraph (d) authorizes foreign banks to establish or operate noninsured branches if such branch (i) is only conducting a ''wholesale'' deposit operation, (ii) is only accepting deposits that are permissible for an Edge Act corporation (pursuant to § section 347.205); or (iii) meets the requirements for an exemption from the definition of ''domestic retail deposit activity'' pursuant to proposed § 347.206.

The FDIC is proposing to make minor revisions to § 346.6 (proposed § 347.206)—the section which enumerates the exemptions to the definition of ''domestic retail deposit activities'' for state branches of foreign banks. Proposed § 347.206(a) will be amended to provide that if the state branch conducts deposit-taking activities which do not fall within the enumerated exceptions in proposed § 347.206(a), then the parent foreign bank will be required to organize an insured bank subsidiary to engage in such retail deposit activities in the U.S. (The foreign bank will still have the option, however, to operate a noninsured branch which accepts initial deposits of less than $100,000 that do not otherwise fall within the exceptions enumerated in paragraphs (a)(1)–(a)(7) of this section by applying for the FDIC's consent pursuant to proposed § 347.206(b)). Paragraph (a)(7) of the proposed section, the regulatory de minimis exception, is being revised to clarify the calculation methodology and to delete the ''average daily basis'' reference. As stated in the preamble to the final rule when the current exceptions were adopted on April 1, 1996:

> [t]he FDIC wishes to make it clear that the numerator is comprised of the total amount of deposits accepted under the de minimis exception, not just the amount of the initial deposits of less than $100,000 which were accepted to open the accounts.

61 FR 5671, 5674 (February 14, 1996). The de minimis calculation methodology remains unchanged from the current rule. See FDIC Legal Division Staff Advisory Opinion (unpublished) dated December 16, 1985 from Katharine H. Haygood, Esq. Paragraph (b) of proposed § 347.206 will be revised by transferring the application for an exemption procedure set forth therein to § 347.404 of proposed subpart D until the FDIC's proposed part 303 is finalized. Lastly, the transition rule for time deposits set forth in proposed paragraph (c) is being revised by deleting the reference to 90 days after April 1, 1996—which was the effective date of these particular regulatory changes. This transition period was originally included to afford branches the requisite time to reclassify or divest time deposits that would mature very soon after the regulation's effective date. This transition period has expired, and therefore, this reference will be deleted. The FDIC invites public comment on the clarification of the calculation methodology.

The FDIC proposes to rescind former § 346.8 which permits a foreign bank to apply to the FDIC for deposit insurance for a noninsured federal or state branch when it is not otherwise required to be insured. When the IBA was initially enacted in 1978, certain provisions thereof amended the FDI Act to provide that ''[s]ubject to the provisions of [the FDI Act] and to such terms and conditions as the Board of Directors may impose, any branch of a foreign bank * * * may become an insured branch.'' 12 U.S.C. 1815(b). Although the statutory mandate of FBSEA now requires a foreign bank that proposes to engage in domestic retail deposit activity to organize an insured bank subsidiary, noninsured branches are still authorized to operate in the U.S. because they are not engaged in domestic retail deposit activity. (Noninsured branches are permitted to conduct wholesale deposit activities, and are authorized to operate under §§ 347.205 and 347.206 of the proposed subpart B.) Section 5(b) of the FDI Act is still, in theory, applicable to these U.S. branches of foreign banks. 12 U.S.C. 1815(b). Because of this statutory underpinning, rescinding the regulation does not really affect a foreign bank's discretion to apply to the FDIC for insurance. Former § 346.8 added nothing substantive to the statutory authorization and, therefore, is redundant and unnecessary.

Since the enactment of FBSEA in 1991, there can be no de novo insured branches to conduct domestic retail deposit-taking activities. It was Congress' intent that foreign banks wishing to conduct domestic retail deposit activities in the U.S. must do so through an insured bank subsidiary. The FDIC recognizes that there are regulatory exemptions which allow noninsured branches to accept initial deposits of less than $100,000 without being deemed to be engaged in domestic retail deposit activities. See, proposed § 347.206. Although a technical reading of section 5(b) of the FDI Act suggests that a foreign bank may still apply to the FDIC for deposit insurance for a noninsured branch, as a practical matter the FDIC does not foresee many circumstances in which it could be appropriate for the FDIC Board of Directors (Board) to approve such an application. The Board would review the facts and circumstances in each case, in addition to the pertinent legal and policy considerations, and would have to determine whether to actually approve an application for deposit insurance for a noninsured branch. The FDIC is requesting public comment on its proposed rescission of former § 346.8 as well as any possible effects on U.S.

branches of foreign banks of such an action.

Proposed Sections Addressing Foreign Banks Having Insured Branches

Proposed § 347.210(a) sets forth the FDIC's requirement that an insured branch pledge assets for the benefit of the FDIC or its designee. Paragraph (b) of the proposed section will contain a revised formula for calculating the amount of assets that the insured branch will be required to pledge to satisfy the requirement in paragraph (a) of proposed § 347.210. Currently, in order to satisfy the pledge of assets requirement, an insured branch must pledge assets equal to five percent of the average of the insured branch's liabilities for the last 30 days of the second and fourth calendar quarters, respectively. Paragraph (b) then provides detailed instructions for making this calculation. Proposed § 347.210(b) will provide that the amount of assets that must be pledged to the FDIC will be equal to ''five percent of the average of the insured branch's liabilities for the last 30 days of the most recent calendar quarter.'' This formula will be more straightforward to apply and the calculation thereof will be easier for the insured branches. However, the foreign bank will be required to provide the appropriate FDIC regional director with a written report regarding the pledged assets on a quarterly basis rather than semi-annually, in accordance with proposed § 347.210(e)(6)(ii). This new reporting requirement will be consistent with other FDIC reporting requirements, such as the filing of Reports of Income and Condition, and with the FDIC's policy of analyzing financial data on a quarterly basis. It is the FDIC's belief that the quarterly reporting requirement will not impose a significant additional burden on affected foreign banks because the information is already being collected and maintained by the bank. Submitting it to the FDIC will not require much additional preparation by the affected banks. However, the FDIC is soliciting public comment regarding this proposal to require these reports on pledged assets to be submitted on a quarterly basis rather than semi-annually.

In proposed § 347.210(c), the restriction that a depository may not be an affiliate of the foreign bank whose insured branch is seeking to use the depository has been moved from the definition of ''depository'', proposed § 347.202(d), to this substantive provision. A requirement that the foreign bank shall concurrently provide copies of all the documents and instruments delivered to the depository to the appropriate FDIC regional director has been added in paragraph (e)(4) of the proposed section. Many of the provisions in proposed § 347.210(e) will be revised to incorporate references to the appropriate FDIC regional office or official to fully integrate DOS's new Case Manager approach to bank supervision. Finally, the delegation of authority to the Director of DOS (and to the Deputy Director (DOS)) to enter into or revoke the approval of a pledge agreement or to require the dismissal of a depository pursuant to § 303.8(f) of the FDIC's rules and regulations has been transferred to proposed § 347.210, and will become new paragraph (f) of that section.

Proposed § 347.213 will retain the substantive requirements and standards regarding the necessity for an insured state branch to apply to the FDIC (and the FRB) for their approval to conduct or continue an activity which is otherwise not permissible for a federal branch. However, the application and plan of divestiture procedures which were formerly found in § 346.101 will be temporarily transferred to new § 347.405 of subpart D until the FDIC's proposed part 303 is finalized.

Definitions

Some technical and non-substantive changes have been made to various definitions in proposed § 347.202. As mentioned above, the definition of ''depository'' has been amended by deleting the restriction that a depository cannot be an affiliate of the foreign bank whose insured branch is seeking to use the depository. This limitation has been moved to proposed § 347.210(c), the substantive provision which addresses the requirements for a depository which must be contained in the pledge agreement. In addition, the definition of ''foreign bank'' has been revised by deleting the exclusionary language which ''carves out'' any banks that are organized under the laws of U.S. territories from the requirement that a foreign bank organize an insured bank subsidiary to conduct domestic retail deposit activities in the U.S. This exclusionary language has been re-located and designated as proposed § 347.204(b). In this way, the exclusion, which is found in section 6(d)(3) of the IBA, will be read in conjunction with the other regulatory language which implements sections 6(c) and (d) of the IBA in proposed § 347.204. Finally, the terms in the definitional section have been alphabetized for the reader's ease of reference.

Subpart C—International Lending

The International Lending Supervision Act of 1983 (ILSA), 12 U.S.C. 3901, *et. seq.*, strengthens supervision of international lending by requiring each federal banking agency to evaluate the foreign country exposure and transfer risk of banks within its jurisdiction for use in examination and supervision of such banks. To implement this provision, the federal banking agencies, through the Interagency Country Exposure Review Committee (ICERC), assess and categorize countries on the basis of conditions that may lead to increased transfer risk. In addition, section 905(a) of ILSA directs each federal banking agency to require banks within its jurisdiction to establish and maintain a special reserve whenever the agency determines that the quality of a bank's assets has been impaired by a protracted inability of public or private borrowers in a foreign country to make payments on their external indebtedness, or no definite prospects exist for the orderly restoration of debt service. 12 U.S.C. 3904(a). In keeping with the requirements of ILSA, on February 13, 1984, the FDIC, the Office of the Comptroller of the Currency and the Board of Governors of the Federal Reserve System (collectively, the federal banking agencies) issued a joint notice of final rulemaking requiring banks to establish special reserves, the allocated transfer risk reserve (ATRR), against the risks presented in certain international assets.

The current regulation sets forth specific instructions on the accounting treatment for the ATRR. The instructions for the preparation of Consolidated Reports of Condition and Income (Call Reports) provide that a bank which is required by ILSA and the regulations of the federal banking agencies to establish an ATRR must report the reserve separately in its Call Report. Currently, persons preparing Call Reports have to look to the regulations for guidance on the accounting treatment of ATRRs. In an effort to simplify the task of preparing Call Reports by gathering all accounting information in one place, some of the federal banking agencies have been considering whether to amend the Call Report instructions to include a full description of the accounting treatment of ATRRs. The agencies are further considering whether to replace the existing provision in the regulation with a reference to the amended Call Report instructions or to maintain a full description of the accounting treatment in both the regulation and the amended

Call Report instructions. At present, as ILSA specifically directs the federal banking agencies to require banks to account for ATRRs in a particular manner and the instructions for the Call Report do not currently include such detailed instructions for treatment of ATRRs, the FDIC has decided to retain the description of the accounting treatment of the ATRR in its revised regulation. The FDIC is requesting comment as to whether the instructions for the Call Report should be amended to include a description of the accounting treatment for ATRRs. The FDIC is requesting further comment as to whether, if the Call Report instructions are amended, to retain the detailed description of the accounting treatment of ATRRs in the revised part 351 or to replace the existing regulation language with a requirement to follow the accounting treatment outlined in amended Call Report instructions.

ILSA also requires the federal banking agencies to promulgate regulations for accounting for fees charged by banks in connection with international loans. Section 906(a) of ILSA (12 U.S.C. 3905(a)) deals specifically with the restructuring of international loans to avoid excessive debt service burden on debtor countries. This section requires banks, in connection with the restructuring of an international loan, to amortize any fee exceeding the administrative cost of the restructuring over the effective life of the loan. Section 906(b) of ILSA (12 U.S.C. 3905(b)) deals with all international loans and requires the federal banking agencies to promulgate regulations for accounting for agency, commitment, management and other fees in connection with such loans to assure that the appropriate portion of such fees is accrued in income over the effective life of each such loan. The current regulation provides a separate accounting treatment for each type of fee charged by banks in connection with their international lending. When ILSA was enacted in 1983 and the current regulation on accounting for international loan fees was promulgated on March 29, 1984, Congress and the federal banking agencies considered that the application of the broad fee accounting principles for banks contained in GAAP were insufficient to accomplish adequate uniformity in accounting principles in this area. Since that time, the Financial Accounting Standards Board has revised the GAAP rules for fee accounting for international loans in a manner that accommodates the specific requirements of section 906 of ILSA. As a result, in order to reduce the regulatory burden on insured state nonmember banks, and simplify its regulations, the FDIC has decided, in consultation with accounting staff from the other federal banking agencies, to eliminate from the revised version of part 351 the requirements as to the particular accounting method to be followed in accounting for fees on international loans and to require instead that state nonmember banks follow GAAP in accounting for such fees. In the event that the FASB changes the GAAP rules on fee accounting for international loans, the FDIC will reexamine its regulation in light of ILSA to assess the need for a revision to the regulation.

Subpart D—Application Procedures and Delegations of Authority

Overview

This proposed rule includes a separate subpart D containing application procedures and delegations of authority for the substantive matters covered by the proposal.[4] As discussed above, the FDIC is currently preparing a complete revision of part 303 of the FDIC's rules and regulations, which contains the FDIC's applications procedures and delegations of authority. As part of these revisions to part 303, subpart J of part 303 will address application requirements relating to the foreign activities of insured state nonmember banks and the U.S. activities of insured branches of foreign banks. It is the FDIC's intent that at such time as part 347 and part 303 are both final, the application procedures proposed in subpart D of this proposal will be relocated to subpart J of part 303, in order to centralize all international banking application procedures in one convenient place.

Establishing, Moving, or Closing a Foreign Branch of a State Nonmember Bank

Applications for a nonmember bank to establish a foreign branch are currently treated under the same process applicable for domestic branches under 12 CFR 303.2. The FDIC proposes to treat foreign branches separately, since foreign branch applications are not legally required to be subjected to analysis under the Community Reinvestment Act or under the factors listed in section 6 of the FDI Act, as is the case for domestic branches.

Under §§ 347.103(b) and 347.402 as proposed, the FDIC would give its general consent for an eligible nonmember bank to establish additional foreign branches in any country in which the bank already operates a branch, or to relocate a branch within the country. The proposal only requires an eligible nonmember bank to notify the FDIC of its actions within thirty days. In addition, an eligible nonmember bank that operates branches or affiliates in two or more foreign jurisdictions may establish additional branches conducting approved activities in additional foreign jurisdictions upon 45 days prior notice to the FDIC.

To be eligible, the nonmember bank must be well capitalized, not be subject to a cease and desist order, consent order, prompt corrective action directive, formal written agreement, memorandum of understanding, or other administrative agreement with any U.S. bank regulatory agency, and must have been chartered and operating for at least three years. The nonmember bank must also have received an FDIC-assigned composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (UFIRS); have received a rating of 1 or 2 under the ''management'' component of the UFIRS at its most recent examination; have a compliance rating of 1 or 2; and have a satisfactory or better Community Reinvestment Act rating. An application to establish a foreign branch is not an ''application for a deposit facility'' covered by the Community Reinvestment Act, and the FDIC will therefore only take the nonmember bank's CRA rating into account for purposes of determining whether the application receives expedited treatment under the general consent and prior notice procedures.

The FDIC is proposing these general consent and prior notice provisions because a nonmember bank meeting the proposed requirements should ordinarily have sufficient familiarity with the implications of foreign branching, be well-managed, and be of sufficiently sound overall condition, that extensive FDIC review is not required. The FDIC retains the option to suspend these procedures as to any institutions for which this is not the case. If the FDIC suspends its general consent or prior notice with respect to a particular nonmember bank, it means that the nonmember bank must make full application to establish additional branches. Suspension of general consent or prior notice does not, in and of itself, require closure of existing foreign branches, and cases necessitating actual closure of branches would be handled

[4] Under the FDIC's current rules, these application requirements are located in various sections of three different regulations: 12 CFR part 303, 12 CFR part 346, and 12 CFR part 347.

under section 8 of the FDI Act (12 U.S.C. 1818) or other relevant authority. For nonmember banks seeking to establish a branch in an additional jurisdiction under the prior notice procedure, the FDIC may remove an applicant from the prior notice process if the FDIC's review of the notice indicates significant concerns related to supervision, law or policy, and the nonmember bank will be required to complete the full application process.

General consent and prior notice are also inapplicable in any case presenting either of two special circumstances. Since the FDIC must have access to information about a foreign branch's activities in order to effectively supervise the institution, general consent or prior notice do not apply if the law or practice of the foreign jurisdiction would limit the FDIC's access to information for supervisory purposes. In such cases, the FDIC must have an opportunity to fully analyze the extent of the confidentiality conferred under foreign law and whether it would, in light of all the circumstances, impair the FDIC's ability to carry out the FDIC's responsibilities as a bank supervisor. In addition, if the proposed foreign branch would be have a direct adverse impact on a site which is on the World Heritage List[5] or the foreign jurisdiction's equivalent of the National Register of Historic Places, the FDIC may need an opportunity to evaluate the proposal in light of section 402 of the National Historic Preservation Act Amendments of 1989 (16 U.S.C. 470a-2).

The proposal also requires a nonmember bank which closes a foreign branch to notify the appropriate regional director that it has done so. This notice is strictly for informational purposes, since the FDIC has previously determined that Congress did not intend section 42 of the FDI Act (12 U.S.C. 42) on branch closings to apply to foreign branches.

Finally, proposed § 347.402 sets out the procedures for applications which are not eligible for the general consent or prior notice provisions.

This proposal is a major change from the FDIC's current procedures under which an application is required for each foreign branch. The FDIC specifically requests public comment on the merits of proposed procedure, and whether its parameters are appropriately designed.

Acquisition of Stock of Foreign Banks or Other Financial Entities by an Insured State Nonmember Bank

Section 347.4 of the FDIC's current rules contains an investment ceiling, under which a nonmember bank's investments in foreign organizations (as well as an Edge corporation) may not exceed 25% of the bank's capital and surplus. The FDIC is proposing to eliminate this general limit, and instead monitor the overall investments of each nonmember bank on an individual basis. In addition, § 347.4 presently requires an application before a nonmember bank may make any investment in a foreign organization. Under §§ 347.108(a) and 347.403 of the proposal, the FDIC would give its general consent for an eligible nonmember bank to make investments in foreign organizations complying with the activity and other limits of subpart A. Eligibility of the nonmember bank is determined by the same criteria as for foreign branch approvals.[6] The proposal permits investments in a single foreign organization of up to 2 percent of the nonmember bank's tier 1 capital during any twelve-month period. Aggregate investments for investment purposes may total as much as 5 percent of the nonmember bank's tier 1 capital during any twelve-month period, and an additional 5 percent for investments acquired for trading purposes. Investments acquired at net asset value from an affiliate or representing reinvestments of cash dividends from the foreign organization are not subject to these limits. The proposal only requires the nonmember bank to notify the FDIC of its investment within thirty days, and no notice is required for trading investments.

However, in order to make investments under general consent, the nonmember bank or an affiliate must already have at least one foreign organization subsidiary. In addition, if the investment will constitute a joint venture or a subsidiary, the proposal requires that at least one other nonmember bank already have a foreign organization subsidiary in the country in question. This will prevent nonmember banks from establishing a presence in a jurisdiction in which the FDIC has not had an opportunity to contact host country supervisory authorities and establish a working arrangement for cross-border supervision.

The proposal also permits an eligible nonmember bank to make any investment which complies with the activity and other limits of subpart A upon 45 days prior notice to the FDIC. The FDIC may remove an applicant from the prior notice process if the FDIC's review of the notice indicates significant concerns related to supervision, law or policy, and a complete application would be required.

As is the case in connection with the foreign branch proposal, the FDIC is proposing these general consent and prior notice procedures because a nonmember bank meeting the requirements of the provisions is of sufficient expertise, is well-managed, and is in sufficiently sound overall condition, that extensive FDIC review is not required. The FDIC retains the option to suspend these procedures as to any institutions for which this is not the case. As with foreign branch applications, the consequence of suspension is that a full application is required in the future, and divestiture is not implicated. General consent and prior notice are also not available in any foreign jurisdiction if its law or practice would limit the FDIC's access to information for supervisory purposes, for the same reasons stated above in connection with foreign branch approvals.

Finally, proposed § 347.403 sets out the procedures for applications which are not eligible for the general consent or prior notice provisions.

This proposal is a major change from the FDIC's current procedures under which an application is required for each foreign investment and total investment is subject to a 25% limit. The FDIC specifically requests public comment on the merits of proposed procedure, and whether its parameters are appropriately designed.

Exemptions From the Insurance Requirement for a State Branch of a Foreign Bank

From its initial adoption in 1979, § 346.6 of the FDIC's rules has provided a list of deposit activities in which a state branch could engage that would not constitute ''domestic retail deposit activity''. 44 FR 23869 (April 23, 1979), 44 FR 40056 (July 9, 1979). ''Domestic retail deposit activity'' refers to the acceptance by a state branch of any initial deposit of less than $100,000. In

[5] The World Heritage List was established under the terms of The Convention Concerning the Protection of World Culture and Natural Heritage adopted in November, 1972 at a General Conference of the United Nations Education, Scientific and Cultural Organization. Current versions of the list are on the Internet at http://www.unesco.org/whc/heritage.htm, or may be obtained from the FDIC Public Information Center, Room 100, 801 17th Street, NW, Washington, DC.

[6] As is the case under the proposed foreign branch application procedure, the FDIC will take the nonmember bank's Community Reinvestment Act rating into account only for purposes of determining whether the application is eligible for general consent or prior notice procedures, since an application to make a foreign investment is not an ''application for a deposit facility'' covered by the CRA.

1979, the significance of the distinction between ''retail'' deposit-taking and non-retail deposit activities resulted in the organization of insured and noninsured state branches, respectively. A state branch which conducted retail deposit activities was required to be insured by the FDIC. However, a state branch which limited its deposit-taking activities to those entities and/or circumstances enumerated in § 346.6 was not deemed to be engaged in domestic retail deposit activities and, therefore, was not required to be an insured branch.

With the passage of FBSEA, the significance of the distinction between retail and non-retail deposit activities became more pronounced. FBSEA amended section 6 of the IBA to require that foreign banks that intend to conduct domestic retail deposit activities in the United States shall organize an insured bank subsidiary for such purpose. Domestic retail deposit activities can no longer be conducted through an insured state branch (except for a grandfathered branch).

As originally developed, § 346.6 provided two alternative means for a state branch to operate as a noninsured branch. This bifurcated approach to authorizing a state branch to operate as a noninsured branch was not affected by the enactment of FBSEA which mandated the chartering of an insured bank subsidiary to engage in retail deposit taking. If the state branch only conducts deposit-taking activities which are enumerated in § 346.6(a) (1)–(7), and are carried forward to proposed § 347.206(a) (1)–(7), then the state branch is deemed to not be engaged in domestic retail deposit activity, and the deposit insurance requirement is not triggered. Second, a state branch can operate as an noninsured branch when it is engaged in deposit-taking activities which are not otherwise excepted under paragraph (a) of § 346.6, (proposed § 347.206), if the FDIC Board approves its application for consent to operate the branch as a noninsured branch pursuant to § 346.6(b), which has been carried forward as proposed § 347.206(b). The Board may exempt the state branch from the insurance requirement if the Board finds that the branch is not engaged in domestic retail deposit activities requiring insurance protection. (After FBSEA, if the state branch is engaged in domestic retail deposit activities, then the foreign bank parent must charter an insured bank subsidiary to conduct its domestic deposit-taking activities—not an insured branch.)

The proposal transfers the application procedures currently contained in § 346.6(b) to proposed § 347.404. These procedures need no substantive revision at this time, because the procedures were recently reviewed and amended by the FDIC as a result of amendments to the IBA which were made by section 107 of the Riegle-Neal Act.

Application by Insured State Branches for FDIC Approval To Conduct Activities Not Permissible for Federal Branches

Section 202 of FDICIA amended section 7 of the IBA by adding a new subsection (h) which provides that after December 19, 1992, a state-licensed insured branch of a foreign bank may not engage in any activity which is not permissible for a federal branch of a foreign bank unless the FRB has determined that the activity is consistent with sound banking practice, and the FDIC has determined that the activity would pose no significant risk to the Bank Insurance Fund (BIF). The legislative amendments also addressed application procedures and plans of divestiture or cessation. The FDIC and the FRB both promulgated regulations to implement the applicable provisions of the IBA. The FDIC adopted a new subpart D to part 346, Applications Seeking Approval for Insured State Branches to Conduct Activities Not Permissible for Federal Branches, which became effective on January 1, 1995.

Foreign banks are required to seek both the FDIC's and the FRB's approval for an insured state branch to engage in or continue to engage in an activity which is not permissible for a federal branch of a foreign bank. In the event such an application is denied or the foreign bank elects not to continue the activity, a plan of divestiture or cessation must be submitted and such divestiture or cessation must be completed within one year or sooner if the FDIC so directs. As discussed in the preamble to the final regulation, the FDIC deliberately chose to model many substantive provisions of current § 346.101 upon its (then) recently adopted part 362, ''Activities and Investments of Insured State Banks'' (58 FR 64462, December 8, 1993). 59 FR 60703 (November 28, 1994). For example, the preamble states that, ''[t]he FDIC is of the opinion that [section] 346.101(a) of the final regulation should parallel [section] 362.2(b) concerning the activities of state banks with regard to the determination of permissible activities.'' Moreover, the FDIC took the position in the final regulation that activities approved as exceptions for state-chartered domestic banks on the basis that they pose no significant risk to the BIF should also be permissible for state-licensed insured branches of foreign banks without the necessity of filing an application or notice pursuant to § 346.101 (provided the activity in question is also permissible for a state licensed branch of a foreign bank under state law and any other applicable federal law or regulation). And finally, the definition of ''significant risk to the deposit insurance fund'' parallels the part 362 definition.

As part of the FDIC's ongoing CDRI review of all of its regulations and written policies, the FDIC is also conducting a thorough review of part 362, and is preparing a proposed notice of rulemaking on this regulation for publication in the **Federal Register** in the near term. In view of the many and substantive similarities between § 346.101 and the FDIC's part 362, the proposed § 347.213 makes no substantive changes from the requirements of § 346.101 at this time. The application procedures proposed in § 347.405 also contain no substantive changes. After the closing of the comment period and the completion of the final part 362, § 347.213 and/or § 347.405 may be amended, if necessary, to reflect any changes made to the underlying regulatory scheme governing the permissible activities of insured state banks.

Technical and Conforming Changes

The FDIC's rules and regulations currently contain numerous cross-references to part 346. These would be conformed to the proposed sections of revised part 347 under the proposal. The proposal would also eliminate application procedures and delegations under current part 303 of the FDIC's rules and regulations, to the extent those procedures and delegations are displaced under the proposal.

Paperwork Reduction Act

The collections of information contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated

collection techniques or other forms of information technology.

Comments should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer Alexander Hunt, New Executive Office Building, Room 3208, Washington, DC 20503, with copies of such comments to Steven F. Hanft, Assistant Executive Secretary (Regulatory Analysis), Federal Deposit Insurance Corporation, Room F–400, 550 17th Street NW, Washington, DC 20429. All comments should refer to ''Part 347—International Banking.'' OMB is required to make a decision concerning the collections of information contained in the proposed regulations between 30 and 60 days after the publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of this publication. This does not affect the deadline for the public to comment to the FDIC on the proposed regulation.

The collections of information in this proposed rule are contained in various proposed sections appearing in subpart A and subpart B of proposed part 347. The FDIC has asked the OMB to divide the collections of information into two groups, each with a separate OMB control number, with one group containing the collections from subpart A (Foreign Branching and Investment by Insured State Nonmember Banks) and the other containing the collections from subpart B (Foreign Banks). For the subpart A group, the FDIC has requested a new OMB control number. For the subpart B group the FDIC has requested the revision of one collection already approved by OMB (OMB No. 3064–0114) and the elimination of a second OMB approved collection (OMB No. 3064–0010). Each of the collections required by the proposed part 347 is discussed below.

Subpart A—Foreign Branching and Investment by Insured State Nonmember Banks

Sections 347.103(b) and 347.402 contain collections of information in the form of requirements that insured state nonmember banks (nonmember banks) (1) notify the FDIC if the bank establishes a foreign branch under certain eligibility criteria in the rule; (2) give the FDIC 45 days prior notice before establishing a branch under certain eligibility criteria in the rule; (3) file an application with the FDIC requesting authorization to establish a foreign branch or to engage in certain activities through a foreign branch; or (4) notify the FDIC if the bank closes a foreign branch. The information will be used by the FDIC to authorize foreign branching as set out in section 18(d)(2) of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1828(d)(2)). The estimated annual reporting burden for the collection of information is summarized as follows:

Collections (1) and (4)(notice of foreign branch establishment (347.402(a)) or foreign branch closure (347.402(c)):
Total annual responses: 4
Average hours per response: 2
Collection (2) (prior notice of foreign branch establishment (347.402(b))
Total annual responses: 3
Average hours per response: 6
Collection (3) (application to establish a foreign branch (347.402(d))
Total annual responses: 3
Average hours per response: 40
Total annual burden hours: 146

Sections 347.108 and 347.403 contain collections of information in the form of requirements that nonmember banks (1) notify the FDIC if the bank acquires stock or other evidences of ownership of foreign organizations under certain eligibility criteria in the rule; (2) give the FDIC 45 days prior notice before acquiring stock or other evidences of ownership of foreign organizations under certain eligibility criteria in the rule; or (3) file an application with the FDIC requesting authorization to acquire stock or other evidences of ownership of foreign organizations or to engage in certain activities through foreign organizations. The information will be used by the FDIC to authorize foreign investment as set out in section 18(l) of the FDI Act (12 U.S.C. 1828(l)). The estimated annual reporting burden for the collection of information is summarized as follows:

Collection (1) (notice of foreign investment (347.403(a)).
Total annual responses: 5
Average hours per response: 2
Collection (2) (prior notice of foreign investment (347.403(b)).
Total annual responses: 4
Average hours per response: 6
Collection (3) (application to make a foreign investment (347.403(c)).
Total annual responses: 3
Average hours per response: 60
Total annual burden hours: 214

Section 347.110 contains collections of information in the form of a requirement that nonmember banks with foreign branches, or that hold 20 percent or more of a foreign organization's voting equity interests, or control a foreign organization, maintain certain records, controls, and reports on the foreign operation's business activities. Sections 18(d)(2) and 18(l) of the FDI Act authorize the FDIC to govern a nonmember bank's conduct of foreign branching and investment, and the information will be used by the nonmember bank to monitor the foreign operations and control its risk. The estimated annual reporting burden for the collection of information is summarized as follows:

Total annual responses: 63
Average hours per response: 400
Total annual burden hours: 25,200

Summary of Subpart A Collections

Total annual responses: 85
Total annual burden hours: 25,560

Subpart B—Foreign Banks

Sections 347.206(b) and 347.404 contain a collection of information in the form of a requirement that noninsured state-licensed branches of foreign banks make an application to obtain the FDIC's permission to receive deposits of less than $100,000 if the deposits are not otherwise authorized by § 347.206(a). The information will be used by the FDIC to determine whether to authorize the deposit taking as set out in section 6(b) of the International Banking Act (12 U.S.C. 3104(b)). The estimated annual reporting burden for the collection of information is summarized as follows:

Total annual responses: 1
Average hours per response: 6
Total annual burden hours: 6

Sections 347.216 and 347.405 contain collections of information in the form of requirements that insured state-licensed branches of foreign banks (1) file an application with the FDIC requesting permission to conduct activities which are not permissible for a federal branch of a foreign bank; or (2) submit a pro forma plan of divestiture or cessation for activities which are not permissible for a federal branch of a foreign bank. The information in the application will be used by the FDIC to determine whether the activity poses a significant risk to the deposit insurance fund, as required by section 7 of the International Banking Act (12 U.S.C. 3105(h)), and the information in the plan of divestiture or cessation will be used by the FDIC to make judgments concerning the reasonableness of the branch's actions to discontinue activities deemed to pose a significant risk to the deposit insurance fund. This collection of information has previously been approved by the OMB under control no. 3064–0114. The estimated annual reporting burden for the collection of information is summarized as follows:

Total annual responses: 1

Average hours per response: 8
Total annual burden hours: 8

Sections 347.209 contains a collection of information in the form of a requirement that insured branches of foreign banks maintain a set of accounts and records in English and maintain its records as a separate entity with assets and liabilities separate from the foreign bank's head office, other branches, etc. The information will be used by the insured branch in the same way any banking entity uses such records, and the FDIC will review such records in connection with examining and supervising the insured branch (which is an ''insured depository institution'' for which the FDIC is the ''appropriate Federal banking agency'' within the meaning of section 3 of the FDI Act, (12 U.S.C. 1813)). The estimated annual reporting burden for the collection of information is summarized as follows:

Total annual responses: 32
Average hours per response: 120
Total annual burden hours: 3,840

Sections 347.210(e)(4) and 347.210(e)(6) contain collections of information in the form of a requirement that insured branches of foreign banks and their depositories (1) make quarterly reports to the FDIC identifying the specific securities the foreign bank has pledged to the FDIC and their value, as well as the average liabilities of the insured branch; and (2) provide the FDIC copies of documents and instruments conveyed by the insured branch to the depository to effectuate the pledge. The information will be used by the FDIC to verify compliance with the pledge of asset requirements authorized by section 5(c) of the FDI Act (12 U.S.C. 1815(c)). The collection of information under item (1) on a semiannual basis has previously been approved by the OMB, whereas the FDIC is now proposing to collect it quarterly. The OMB's previous approval was under control no. 3064–0010, but the FDIC is requesting that it be regrouped under the subpart B control number for ease of reference. The estimated annual reporting burden for the collection of information is summarized as follows:

Collection (1) (reports (347.210(e)(6))
Total annual responses: 256
Average hours per response: 2
Collection (2) (copies of documents effectuating pledges (347.210(e)(4))
Total annual responses: 128
Average hours per response: 0.25
Total annual burden hours: 544

Summary of Subpart B Collections

Total annual responses: 418
Total annual burden hours: 4,398

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), it is certified that the proposed rule will not have a significant impact on a substantial number of small entities. With respect to subparts A and C of the proposed rule, the FDIC's review of call report data indicates the proposal will impact only an insubstantial number of small entities. With respect to subpart B of proposed part 347, the proposed revisions basically incorporate the legislative requirement first imposed by FBSEA that a foreign bank which intends to engage in domestic retail deposit activity in the U.S. must do so through an insured bank subsidiary. This has been the statutory standard for over 15 years; however, this requirement was not heretofore addressed in the FDIC's applicable regulation, part 346. Explicitly including this requirement in subpart B can not be characterized as having a ''significant impact'' on the affected entities as they have been required to comply with this provision of FBSEA for many years. The other revisions which have been made to proposed subpart B involve adding references to the FDIC's new supervisory approach—the Case Manager system—where applicable and simplifying the calculation of the amount of pledged assets required to comply with proposed § 347.210(a). The formula will be based upon a quarterly calculation rather than a semi-annual calculation. In the future, the foreign bank will be required to report the calculation to the appropriate regional director every quarter. However, the additional two reports per year will not represent a significant burden on the affected banks because the foreign banks are already maintaining the information, and the time required to forward the quarterly calculation to the FDIC will be nominal. Therefore, the proposed revisions to subpart B will not have a significant impact on a substantial number of small entities.

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 325

Administrative practice and procedure, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State non-member banks.

12 CFR Part 326

Banks, banking, Currency, Insured nonmember banks, Reporting and recordkeeping requirements, Security measures.

12 CFR Part 327

Assessments, Bank deposit insurance, Banks, banking, Financing Corporation, Savings associations.

12 CFR Part 346

Bank deposit insurance, Foreign banking, Reporting and recordkeeping requirements.

12 CFR Part 347

Bank deposit insurance, Banks, banking, Credit, Foreign banking, Foreign investments, Insured branches, Investments, Reporting and recordkeeping requirements, United States investments abroad.

12 CFR Part 351

Foreign banking, Reporting and recordkeeping requirements.

12 CFR Part 362

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Insured depository institutions, Investments, Reporting and recordkeeping requirements.

For the reasons set forth above and under the authority of 12 U.S.C. 1819(a)(Tenth), the FDIC Board of Directors hereby proposes to amend 12 CFR chapter III as follows:

PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES REQUIRED TO BE FILED BY STATUTE OR REGULATION

1. The authority citation for part 303 continues to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817(j), 1818, 1819 (Seventh and Tenth), 1828, 1831e, 1831o, 1831p–1; 15 U.S.C. 1607.

§ 303.2 [Amended]

2. In § 303.2, paragraph (a) introductory text is amended by removing and reserving footnote 2.

§ 303.5 [Amended]

3. In § 303.5, paragraph (d) is removed and reserved.

4. In § 303.6, paragraphs (f)(1)(ii)(A) and (f)(1)(ii)(C) are revised to read as follows:

§ 303.6 Application procedures.

* * * * *

(f) * * *

(1) * * *

(ii) * * *

(A) *Applications to establish a branch, including a remote service facility.* In the communities in which the home office and the domestic branch to be established are located.

* * * * *

(C) *Applications for deposit insurance.* In the community in which the home bank office is or will be located.

* * * * *

5. In § 303.7, the heading for paragraph (a) and paragraphs (a)(1)(i), (a)(1)(ii)(A), (a)(1)(iii)(D), and (b)(4)(ii) are revised, the words ''; and'' are removed at the end of paragraph (f)(2)(i) and a period is added in their place, and paragraph (f)(2)(ii) is removed and reserved to read as follows:

§ 303.7 Delegation of authority to the Director (DOS) and to the associate directors, regional directors and deputy regional directors to act on certain applications, requests, and notices of acquisition of control.

* * * * *

(a) Applications for branches (including remote service facilities, courier services), relocations, and for trust and other banking powers—(1) * * * (i) Authority is delegated to the Director (DOS), and where confirmed in writing by the director, to an associate director, or to the appropriate regional director or deputy regional director, to approve applications for consent to establish branch facilities (including remote service facilities and courier services) or relocations where the applicant satisfies the requisites listed in paragraph (a)(1)(iii) of this section and agrees in writing to comply with any condition imposed by the delegate other than those standard conditions listed in § 303.0(b)(31).

(ii) * * *

(A) to deny applications for consent to establish branch facilities (including remote service facilities and courier services) or relocations; and

* * * * *

(iii) * * *

* * * * *

(D) The requirements of the National Historic Preservation Act (16 U.S.C. 470), the National Environmental Policy Act (42 U.S.C. 4321), and the Community Reinvestment Act of 1977 (12 U.S.C. 2901–2905) and its applicable implementing regulation (part 345 of this chapter) have been considered and favorably resolved: *Provided however,* That the authority to approve an application may not be subdelegated to a regional director or deputy regional director where a protest (as that term is defined in § 303.0(b)(30)) under the Community Reinvestment Act is filed.

* * * * *

(b) * * *

(4) * * *

(ii) Where the resulting institution, upon consummation of the merger transaction, does not meet the capital requirements set forth in part 325 of this chapter and the FDIC's ''Statement of Policy on Capital''. (If the applicant is a foreign bank, the delegated authority to approve does not extend to instances where, upon consummation of the merger transaction, the foreign bank's insured branch is not in compliance with subpart B of part 347 of this chapter.)

* * * * *

§ 303.8 [Amended]

6. In § 303.8, paragraph (f) is removed and reserved.

PART 325—CAPITAL MAINTENANCE

7. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, 2355, 2386 (12 U.S.C. 1828 note).

8. In § 325.103, paragraph (c) is revised to read as follows:

§ 325.103 Capital measures and capital category definitions.

* * * * *

(c) *Capital categories for insured branches of foreign banks.* For purposes of the provisions of section 38 and this subpart, an insured branch of a foreign bank shall be deemed to be:

(1) *Well capitalized* if the insured branch:

(i) Maintains the pledge of assets required under § 347.210 of this chapter; and

(ii) Maintains the eligible assets prescribed under § 347.211 of this chapter at 108 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities; and

(iii) Has not received written notification from:

(A) The OCC to increase its capital equivalency deposit pursuant to 12 CFR 28.15(b), or to comply with asset maintenance requirements pursuant to 12 CFR 28.20; or

(B) The FDIC to pledge additional assets pursuant to § 347.210 of this chapter or to maintain a higher ratio of eligible assets pursuant to § 347.211 of this chapter.

(2) *Adequately capitalized* if the insured branch:

(i) Maintains the pledge of assets required under § 347.210 of this chapter; and

(ii) Maintains the eligible assets prescribed under § 347.211 of this chapter at 106 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities; and

(iii) Does not meet the definition of a well capitalized insured branch.

(3) *Undercapitalized* if the insured branch:

(i) Fails to maintain the pledge of assets required under § 347.210 of this chapter; or

(ii) Fails to maintain the eligible assets prescribed under § 347.211 of this chapter at 106 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities.

(4) *Significantly undercapitalized* if it fails to maintain the eligible assets prescribed under § 347.211 of this chapter at 104 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities.

(5) *Critically undercapitalized* if it fails to maintain the eligible assets prescribed under § 347.211 of this chapter at 102 percent or more of the preceding quarter's average book value of the insured branch's third-party liabilities.

* * * * *

PART 326—MINIMUM SECURITY DEVICES AND PROCEDURES AND BANK SECRECY ACT [1] COMPLIANCE

9. The authority citation for part 326 continues to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1818, 1819 (Tenth), 1881–1833; 31 U.S.C. 5311–5324.

10. In § 326.1, paragraph (c) is amended by revising the last sentence to read as follows:

§ 326.1 Definitions.

* * * * *

(c) * * * In the case of a foreign bank, as defined in § 347.202 of this chapter, the term *branch* has the same meaning given in § 347.202 of this chapter.

11. In § 326.8, paragraph (a) and footnote 3 are revised to read as follows:

[1] In its original form, subchapter II of chapter 53 of title 31 U.S.C., was part of Pub. L. 91–508 which requires recordkeeping for and reporting of currency transactions by banks and others and is commonly known as the *Bank Secrecy Act.*

§ 326.8 Bank Secrecy Act compliance.

(a) *Purpose.* This subpart is issued to assure that all insured nonmember banks as defined in § 326.1[3] establish and maintain procedures reasonably designed to assure and monitor their compliance with the requirements of subchapter II of chapter 53 of title 31, United States Code, and the implementing regulations promulgated thereunder by the Department of Treasury at 31 CFR part 103.

* * * * *

PART 327—ASSESSMENTS

12. The authority citation for part 327 is revised to read as follows:

Authority: 12 U.S.C. 1441, 1441b, 1813, 1815, 1817–1819; Pub. L. 104–208, 110 Stat. 3009–479 (12 U.S.C. 1821).

13. In § 327.1, paragraph (b)(2) is revised to read as follows:

§ 327.1 Purpose and scope.

* * * * *

(b) * * *

(2) Deductions from the assessment base of an insured branch of a foreign bank are stated in subpart B of part 347 of this chapter.

14. In § 327.4, paragraphs (a)(1)(i)(B)(*1*), (a)(1)(i)(B)(*2*), (a)(1)(ii)(B)(*1*), and (a)(1)(ii)(B)(*2*) are revised to read as follows:

§ 327.4 Annual assessment rate.

(a) * * *

(1) * * *

(i) * * *

(B) * * *

(*1*) Maintains the pledge of assets required under § 347.210 of this chapter; and

(*2*) Maintains the eligible assets prescribed under § 347.211 of this chapter at 108 percent or more of the average book value of the insured branch's third-party liabilities for the quarter ending on the report date specified in this paragraph (a)(1).

(ii) * * *

(B) * * *

(*1*) Maintains the pledge of assets required under § 347.210 of this chapter; and

(*2*) Maintains the eligible assets prescribed under § 347.211 of this chapter at 106 percent or more of the average book value of the insured branch's third-party liabilities for the quarter ending on the report date specified in this paragraph (a)(1); and

* * * * *

[3] In regard to foreign banks, the programs and procedures required by § 326.8 need be instituted only at an *insured branch* as defined in § 347.202 of this chapter which is a *State branch* as defined in § 347.202 of this chapter.

PART 346—[REMOVED]

15. Part 346 is removed.

16. Part 347 is revised to read as follows:

PART 347—INTERNATIONAL BANKING

Subpart A—Foreign Branching and Investment by Insured State Nonmember Banks

Sec.
347.101 Purpose, authority, and scope.
347.102 Definitions.
347.103 Foreign branches of insured state nonmember banks.
347.104 Investment by insured state nonmember banks in foreign organizations.
347.105 Underwriting and dealing limits applicable to foreign organizations held by insured state nonmember banks.
347.106 Restrictions on certain activities applicable to foreign organizations held by insured state nonmember banks.
347.107 U.S. activities of foreign organizations held by insured state nonmember banks.
347.108 Obtaining FDIC approval to invest in foreign organizations.
347.109 Extensions of credit to foreign organizations held by insured state nonmember banks; shares of foreign organizations held in connection with debts previously contracted.
347.110 Supervision and recordkeeping of the foreign activities of insured state nonmember banks.

Subpart B—Foreign Banks

347.201 Scope.
347.202 Definitions.
347.203 Restriction on operation of insured and noninsured branches.
347.204 Insurance requirement.
347.205 Branches established under section 5 of the International Banking Act.
347.206 Exemptions from the insurance requirement.
347.207 Notification to depositors.
347.208 Agreement to provide information and to be examined.
347.209 Records.
347.210 Pledge of assets.
347.211 Asset maintenance.
347.212 Deductions from the assessment base.
347.213 FDIC approval to conduct activities not permissible for federal branches.

Subpart C—International Lending

347.301 Allocated transfer risk reserve.
347.302 Accounting for fees on international loans.
347.303 Reporting and disclosure of international assets.

Subpart D—Applications and Delegations of Authority

347.401 Definitions.
347.402 Establishing, moving or closing a foreign branch of a state nonmember bank; § 347.103.
347.403 Investment by insured state nonmember banks in foreign organizations; § 347.108.
347.404 Exemptions from insurance requirement for a state branch of a foreign bank; § 347.206(b).
347.405 Approval for an insured state branch of a foreign bank to conduct activities not permissible for federal branches; § 347.213.

Authority: 12 U.S.C. 1813, 1815, 1817, 1819, 1820, 1828, 3103, 3104, 3105, 3108; Title IX, Pub. L. 98–181, 97 Stat. 1153.

Subpart A—Foreign Branching and Investment by Insured State Nonmember Banks

§ 347.101 Purpose, authority, and scope.

Under sections 18(d) and 18(l) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d), 1828(l)), the Federal Deposit Insurance Corporation prescribes the regulations in this subpart relating to foreign branches of insured state nonmember banks, the acquisition and holding of stock of foreign organizations, and loans or extensions of credit to or for the account of such foreign organizations.

§ 347.102 Definitions.

For the purposes of this subpart:

(a) An *affiliate* of an insured state nonmember bank means:

(1) Any entity of which the insured state nonmember bank is a direct or indirect subsidiary or which otherwise controls the insured state nonmember bank;

(2) Any organization which is a direct or indirect subsidiary of such entity or which is otherwise controlled by such entity; or

(3) Any other organization which is a direct or indirect subsidiary of the insured state nonmember bank or is otherwise controlled by the insured state nonmember bank.

(b) *Control* means the ability to control in any manner the election of a majority of an organization's directors or trustees; or the ability to exercise a controlling influence over the management and policies of an organization. An insured state nonmember bank is deemed to control an organization of which it is a general partner or its affiliate is a general partner.

(c) *Eligible* insured state nonmember bank means one that has an FDIC-assigned composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (UFIRS); is well-capitalized; received a rating of 1 or 2 under the ''management'' component of the UFIRS at its most recent examination; has a compliance rating of 1 or 2; has a satisfactory or

better Community Reinvestment Act rating; is not subject to a cease and desist order, consent order, prompt corrective action directive, formal or informal written agreement (excluding any board of directors resolution addressing corrective action taken pursuant to regulatory recommendations), or other administrative agreement with any U.S. bank regulatory authority; and has been chartered and operating for at least three years.

(d) *Equity interest* means any ownership interest or rights in an organization, whether through an equity security, contribution to capital, general or limited partnership interest, debt or warrants convertible into ownership interests or rights, loans providing profit participation, binding commitments to acquire any such items, or some other form of business transaction.

(e) *Equity security* means voting or nonvoting shares, stock, investment contracts, or other interests representing ownership or participation in a company or similar enterprise, as well as any instrument convertible to any such interest at the option of the holder without payment of substantial additional consideration.

(f) *FRB* means the Board of Governors of the Federal Reserve System.

(g) *Foreign bank* means a foreign organization that:

(1) Is recognized as a bank by the bank supervisory or monetary authority of the country of its organization or the country in which its principal banking operations are located;

(2) Receives deposits to a substantial extent in the regular course of its business; and

(3) Has the power to accept demand deposits.

(h) *Foreign banking organization* means a foreign organization that is formed for the sole purpose of either holding shares of a foreign bank or performing nominee, fiduciary, or other banking services incidental to the activities of a foreign branch or foreign bank affiliate of the insured state nonmember bank.

(i) *Foreign branch* means an office or place of business of an insured state nonmember bank located in a foreign country at which banking operations are conducted, but does not include a representative office.

(j) *Foreign country* means any country other than the United States and includes any territory, dependency, or possession of any such country or of the United States, and the Commonwealth of Puerto Rico.

(k) *Foreign organization* means an organization that is organized under the laws of a foreign country.

(l) *Indirectly* means investments held or activities conducted by a subsidiary of an organization.

(m) *Loan or extension of credit* means all direct and indirect advances of funds to a person, government, or entity made on the basis of any obligation of that person, government, or entity to repay funds.

(n) *Organization or entity* means a corporation, partnership, association, bank, or other similar entity.

(o) *Representative office* means an office that engages solely in representative functions such as soliciting new business for its home office or acting as liaison between the home office and local customers, but which has no authority to make business or contracting decisions other than those relating to the personnel and premises of the representative office.

(p) *Subsidiary* means any organization more than 50 percent of the voting equity interests of which are directly or indirectly held by another organization.

(q) *Tier 1 capital* means tier 1 capital as defined in § 325.2 of this chapter.

(r) *Well capitalized* means well capitalized as defined in § 325.103 of this chapter.

§ 347.103 Foreign branches of insured state nonmember banks.

(a) *Powers of foreign branches.* To the extent authorized by state law, an insured state nonmember bank may establish a foreign branch. In addition to its general banking powers, and if permitted by state law, a foreign branch of an insured state nonmember bank may conduct the following activities to the extent the activities are consistent with banking practices in the foreign country in which the branch is located:

(1) *Guarantees.* Guarantee debts, or otherwise agree to make payments on the occurrence of readily ascertainable events including without limitation such things as nonpayment of taxes, rentals, customs duties, or costs of transport and loss or nonconformance of shipping documents, if:

(i) The guarantee or agreement specifies a maximum monetary liability; and

(ii) To the extent the guarantee or agreement is not subject to a separate amount limit under state or federal law, the amount of the guarantee or agreement is combined with loans and other obligations for purposes of applying any legal lending limits.

(2) *Local investments.* Acquire and hold the following local investments, so long as aggregate investments (other than those required by the law of the foreign country or permissible under section 5136 of the Revised Statutes (12 U.S.C. 24 Seventh)) by all the bank's branches in one foreign country do not exceed 1 percent of the total deposits in all the bank's branches in that country as reported in the preceding year-end call report: [1]

(i) Equity securities of the central bank, clearing houses, governmental entities, and development banks of the country in which the branch is located;

(ii) Other debt securities eligible to meet local reserve or similar requirements; and

(iii) Shares of automated electronic payment networks, professional societies, schools, and similar entities necessary to the business of the branch.

(3) *Government obligations.* Make the following types of transactions with respect to the obligations of foreign countries, so long as aggregate investments, securities held in connection with distribution and dealing, and underwriting commitments do not exceed 10 percent of the insured state nonmember bank's Tier 1 capital:

(i) Underwrite, distribute and deal, invest in, or trade obligations of:

(A) The national government of the country in which the branch is located or its political subdivisions; and

(B) An agency or instrumentality of such national government if supported by the taxing authority, guarantee, or full faith and credit of the national government.

(ii) Underwrite, distribute and deal, invest in or trade investment-grade obligations [2] of:

(A) The national government of any foreign country or its political subdivisions, to the extent permissible under the law of the issuing foreign country; and

(B) An agency or instrumentality of the national government of any foreign country to the extent permissible under the law of the issuing foreign country, if supported by the taxing authority, guarantee, or full faith and credit of the national government.

(4) Insurance. Act as an insurance agent or broker.

(5) Other activities. Engage in these activities in an additional amount, or in other activities, approved by the FDIC.

(b) *Establishment of foreign branches.* (1) General consent of the FDIC is

[1] If a branch has recently been acquired by the state nonmember bank and the branch was not previously required to file a call report, branch deposits as of the acquisition date must be used.

[2] If the obligation is an equity interest, it must be held through a subsidiary of the foreign branch and the insured state nonmember bank must meet its minimum capital requirements.

granted for an eligible insured state nonmember bank to establish additional foreign branches conducting activities authorized by this section in any foreign country in which the bank already operates one or more foreign branches, or to relocate an existing foreign branch within a foreign country. The insured state nonmember bank must provide written notice of such action to the FDIC within 30 days of establishment or relocation.

(2) An eligible insured state nonmember bank with foreign branches or affiliates in two or more foreign countries may establish a foreign branch conducting activities authorized by this section in an additional foreign country 45 days after the insured state nonmember bank files a completed notice with the FDIC, or upon such earlier time as authorized by the FDIC.

(3) General consent or prior notice under this paragraph does not apply:

(i) If the foreign branch would be located on a site on the World Heritage List or on the foreign country's equivalent of the National Register of Historic Places, in accordance with section 403 of the National Historic Preservation Act Amendments of 1989 (16 U.S.C. 470a–2);

(ii) If the foreign branch would be located in a foreign country in which applicable law or practice would limit the FDIC's access to information for supervisory purposes; or

(iii) If the FDIC at any time notifies the insured state nonmember bank that the FDIC is modifying or suspending its general consent or prior notice procedure.

(4) An insured state nonmember bank may not otherwise establish a foreign branch, or engage in a type or amount of foreign branch activity not authorized by this section, without obtaining the prior specific consent of the FDIC.

(5) An insured state nonmember bank must notify the FDIC at the time it closes a foreign branch.

(6) Procedures for notices and applications under this section are set out in subpart D of this part.

§ 347.104 Investment by insured state nonmember banks in foreign organizations.

(a) *Investment authorized.* To the extent authorized by state law, an insured state nonmember bank may directly or indirectly acquire and retain equity interests in foreign organizations, subject to the requirements of this subpart.

(b) *Authorized financial activities.* An insured state nonmember bank may not directly or indirectly acquire or hold equity interests of a foreign organization resulting in the insured state nonmember bank and its affiliates holding more than 50 percent of a foreign organization's voting equity interests in the aggregate, or the insured state nonmember bank or its affiliates otherwise controlling the foreign organization, unless the activities of the foreign organization are limited to the following financial activities:

(1) Commercial and other banking activities.

(2) Underwriting, distributing, and dealing debt securities outside the United States.

(3) With the prior approval of the FDIC, underwriting, distributing, and dealing equity securities outside the United States.

(4) Organizing, sponsoring, and managing a mutual fund if the fund's shares are not sold or distributed in the United States or to U.S. residents and the fund does not exercise management control over the firms in which it invests.

(5) General insurance agency and brokerage.

(6) Underwriting credit life, credit accident and credit health insurance.

(7) Performing management consulting services provided that such services when rendered with respect to the United States market must be restricted to the initial entry.

(8) Data processing.

(9) Operating a travel agency in connection with financial services offered abroad by the insured state nonmember bank or others.

(10) Engaging in activities that the FRB has determined in Regulation Y (12 CFR 225.28(b)) are closely related to banking under section 4(c)(8) of the Bank Holding Company Act.

(11) Performing services for other direct or indirect operations of a U.S. banking organization, including representative functions, sale of long-term debt, name saving, liquidating assets acquired to prevent loss on a debt previously contracted in good faith, and other activities that are permissible for a bank holding company under sections 4(a)(2)(A) and 4(c)(1)(C) of the Bank Holding Company Act.

(12) Holding the premises of a branch of an Edge corporation or insured state nonmember bank or the premises of a direct or indirect subsidiary, or holding or leasing the residence of an officer or employee of a branch or a subsidiary.

(13) Engaging in the foregoing activities in an additional amount, or in other activities, with the prior approval of the FDIC.

(c) *Going concerns.* If an insured state nonmember bank acquires equity interests of a foreign organization under paragraph (b) of this section and the foreign organization is a going concern, up to 5 percent of either the consolidated assets or revenues of the foreign organization may be attributable to activities that are not permissible under paragraph (b) of this section.

(d) *Joint ventures.* If an insured state nonmember bank directly or indirectly acquires or holds equity interests of a foreign organization resulting in the insured state nonmember bank and its affiliates holding 20 percent or more, but not in excess of 50 percent, of the voting equity interests of a foreign organization in the aggregate, and the insured state nonmember bank or its affiliates do not control the foreign organization, up to 10 percent of either the consolidated assets or revenues of the foreign organization may be attributable to activities that are not permissible under paragraph (b) of this section.

(e) *Portfolio investment.* If an insured state nonmember bank directly or indirectly acquires or holds equity interests of a foreign organization resulting in the insured state nonmember bank and its affiliates holding less than 20 percent of the voting equity interests of a foreign organization in the aggregate, and the insured state nonmember bank or its affiliates do not control the foreign organization:

(1) Up to 10 percent of either the consolidated assets or revenues of the foreign organization may be attributable to activities that are not permissible under paragraph (b) of this section; and

(2) Any loans or extensions of credit made by the insured state nonmember bank and its affiliates to the foreign organization must be on substantially the same terms, including interest rates and collateral, as those prevailing at the same time for comparable transactions between the insured state nonmember bank or its affiliates and nonaffiliated organizations.

(f) *Indirect holding of foreign organizations which are not foreign banks or foreign banking organizations.* Any investment pursuant to the authority of paragraphs (b) through (e) of this section in a foreign organization which is not a foreign bank or foreign banking organization must be held indirectly through a U.S. or foreign subsidiary of the insured state nonmember bank if the foreign organization does not constitute a subsidiary of the insured state nonmember bank, and the insured state nonmember bank must meet its minimum capital requirements.

(g) *Indirect investments in nonfinancial foreign organizations.* An insured state nonmember bank may

indirectly acquire and hold equity interests in an amount up to 15 percent of the insured state nonmember bank's Tier 1 capital in foreign organizations engaged generally in activities beyond those listed in paragraph (b) of this section, subject to the following:

(1) The equity interests must be acquired and held indirectly through a subsidiary authorized by paragraphs (b) or (c) of this section, or an Edge corporation if also authorized by the FRB;

(2) The aggregate holding of voting equity interests of one foreign organization by the insured state nonmember bank and its affiliates must be less than 20 percent of the foreign organization's voting equity interests;

(3) The aggregate holding of voting and nonvoting equity interests of one foreign organization by the insured state nonmember bank and its affiliates must be less than 40 percent of the foreign organization's equity interests;

(4) The insured state nonmember bank or its affiliates must not otherwise control the foreign organization; and

(5) Any loans or extensions of credit made by the insured state nonmember bank and its affiliates to the foreign organization must be on substantially the same terms, including interest rates and collateral, as those prevailing at the same time for comparable transactions between the insured state nonmember bank or its affiliates and nonaffiliated organizations.

(h) *Affiliate holdings.* References in this section to equity interests of foreign organizations held by an affiliate of an insured state nonmember bank includes equity interests held in connection with an underwriting or for distribution or dealing by an affiliate permitted to do so by § 337.4 of this chapter or section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)).

§ 347.105 Underwriting and dealing limits applicable to foreign organizations held by insured state nonmember banks.

If an insured state nonmember bank, in reliance on the authority of § 347.104, holds an equity interest in one or more foreign organizations which underwrite, deal, or distribute equity securities outside the United States as authorized by § 347.104(b)(3):

(a) *Underwriting commitment limits.* The aggregate underwriting commitments by the foreign organizations for the equity securities of a single entity, taken together with underwriting commitments by any affiliate of the insured state nonmember bank under the authority of 12 CFR 211.5, must not exceed the lesser of $60 million or 25 percent of the insured state nonmember bank's Tier 1 capital unless excess amounts are either:

(1) Covered by binding commitments from subunderwriters or purchasers; or

(2) Deducted from the capital of the insured state nonmember bank, with at least 50 percent of the deduction being taken from Tier 1 capital, and the insured state nonmember bank remains well capitalized after this deduction.

(b) *Distribution and dealing limits.* The equity securities of any single entity held for distribution or dealing by the foreign organizations, taken together with equity securities held for distribution or dealing by any affiliate of the insured state nonmember bank under the authority of 12 CFR 211.5:

(1) Must not exceed the lesser of $30 million or 5 percent of the insured state nonmember bank's Tier 1 capital, subject to the following:

(i) Any equity securities acquired pursuant to any underwriting commitment extending up to 90 days after the payment date for the underwriting may be excluded from this limit;

(ii) Any equity securities of the entity held under the authority of § 347.104 or 12 CFR 211.5(b) for purposes other than distribution or dealing must be included in this limit; and

(iii) Up to 75 percent of the position in an equity security may be reduced by netting long and short positions in the same security, or offsetting cash positions against derivative instruments referenced to the same security so long as the derivatives are part of a prudent hedging strategy; and

(2) Must be included in calculating the general consent limits under § 347.108(a)(3) if the insured state nonmember bank relies on the general consent provisions as authority to acquire equity interests of the same foreign entity for investment or trading.

(c) *Additional distribution and dealing limits.* With the exception of equity securities acquired pursuant to any underwriting commitment extending up to 90 days after the payment date for the underwriting, equity securities of a single entity held for distribution or dealing by all affiliates of the state nonmember bank,[3] combined with any equity interests held for investment or trading purposes by all affiliates of the state nonmember bank, must conform to the limits of § 347.104.

(d) *Combined limits.* The aggregate of the following may not exceed 25 percent of the insured state nonmember bank's Tier 1 capital:

(1) All equity interests of foreign organizations held for investment or trading under § 347.104(g) or by an affiliate of the insured state nonmember bank under the corresponding paragraph of 12 CFR 211.5;

(2) All underwriting commitments under paragraph (a) of this section, taken together with all underwriting commitments by any affiliate of the insured state nonmember bank under the authority of 12 CFR 211.5, after excluding the amount of any underwriting commitment:

(i) Covered by binding commitments from subunderwriters or purchasers under paragraph (a)(1) of this section or the comparable provision of 12 CFR 211.5; or

(ii) Already deducted from the insured state nonmember bank's capital under paragraph (a)(2) of this section, or the appropriate affiliate's capital under the comparable provisions of 12 CFR 211.5; and

(3) All equity securities held for distribution or dealing under paragraph (b) of this section, taken together with all equity securities held for distribution or dealing by any affiliate of the insured state nonmember bank under the authority of 12 CFR 211.5, after reducing by up to 75 percent the position in any equity security by netting and offset, as permitted by paragraph (b)(1)(iii) of this section or the comparable provision of 12 CFR 211.5.

§ 347.106 Restrictions on certain activities applicable to foreign organizations held by insured state nonmember banks.

Futures commission merchant. If an insured state nonmember bank, in reliance on the authority of § 347.104, acquires or retains an equity interest in one or more foreign organizations which acts as a futures commission merchant as authorized by § 347.104(b)(10), the foreign organization may not be a member of an exchange or clearing association that requires members to guarantee or otherwise contract to cover losses suffered by other members unless the foreign organization's liability does not exceed 2 percent of the insured state nonmember bank's Tier 1 capital, or the insured state nonmember bank has obtained the prior approval of the FDIC under § 347.108(d).

§ 347.107 U.S. activities of foreign organizations held by insured state nonmember banks.

(a) An insured state nonmember bank may not directly or indirectly hold the equity interests of any foreign organization pursuant to the authority of

[3] This includes shares held in connection with an underwriting or for distribution or dealing by an affiliate permitted to do so by § 337.4 of this chapter or section 4(c)(8) of the Bank Holding Company Act.

this section if the organization engages in the general business of buying or selling goods, wares, merchandise, or commodities in the United States.

(b) An insured state nonmember bank may not directly or indirectly hold more than 5 percent of the equity interests of any foreign organization pursuant to the authority of this subpart unless any activities in which the foreign organization engages directly or indirectly in the United States are incidental to its international or foreign business.

(c) A foreign organization is not engaged in any business or activities in the United States for these purposes unless it maintains an office in the United States other than a representative office.

(d) The following activities are incidental to international or foreign business:

(1) activities that the FRB has determined in Regulation K (12 CFR 211.4) are permissible in the United States for an Edge corporation.

(2) Other activities approved by the FDIC.

§ 347.108 Obtaining FDIC approval to invest in foreign organizations.

(a) *General consent.* General consent of the FDIC is granted for an eligible insured state nonmember bank to make direct or indirect investments in foreign organizations in conformity with the limits and requirements of this subpart if:

(1) The insured state nonmember bank or an affiliate presently have at least one foreign organization subsidiary;

(2) In any case in which the insured state nonmember bank and its affiliates will hold 20 percent or more of the foreign organization's voting equity interests, at least one insured state nonmember bank has a foreign organization subsidiary in the relevant foreign country;

(3) The investment is within one of the following limits:

(i) The investment is acquired at net asset value from an affiliate;

(ii) The investment is a reinvestment of cash dividends received from the same foreign organization during the preceding twelve months; or

(iii) The total investment directly or indirectly in a single foreign organization in any transaction or series of transactions during a twelve-month period does not exceed 2 percent of the insured state nonmember bank's Tier 1 capital, and such investments in all foreign organizations in the aggregate do not exceed:

(A) 5 percent of the insured state nonmember bank's Tier 1 capital during a twelve-month period; and

(B) Up to an additional 5 percent of the insured state nonmember bank's Tier 1 capital if the investments are acquired for trading purposes; and

(4) Within 30 days, the insured state nonmember bank provides the FDIC written notice of the investment, unless the investment was acquired for trading purposes, in which case no notice is required.

(b) *Prior notice.* An investment that does not qualify for general consent but is otherwise in conformity with the limits and requirements of this subpart may be made 45 days after an eligible insured state nonmember bank files a completed notice with the FDIC, or upon such earlier time as authorized by the FDIC.

(c) *Inapplicability of general consent or prior notice.* General consent or prior notice under this section do not apply:

(1) For foreign investments resulting in the insured state nonmember bank holding 20 percent or more of the voting equity interests of a foreign organization or controlling such organization and the foreign organization would be located in a foreign country in which applicable law or practice would limit the FDIC's access to information for supervisory purposes; or

(2) If the FDIC at any time notifies the insured state nonmember bank that the FDIC is modifying or suspending its general consent or prior notice procedure.

(d) *Specific consent.* Any investment that is not authorized under general consent or prior notice procedures must not be made without the prior specific consent of the FDIC.

(e) *Computation of amounts.* In computing the amount that may be invested in any foreign organization under this section, any investments held by an affiliate of the insured state nonmember bank must be included.

(f) *Procedures.* Procedures for applications and notices under this section are set out in subpart D of this part.

§ 347.109 Extensions of credit to foreign organizations held by insured state nonmember banks; shares of foreign organizations held in connection with debts previously contracted.

(a) *Loans or extensions of credit.* An insured state nonmember bank which directly or indirectly holds equity interests in a foreign organization pursuant to the authority of this subpart may make loans or extensions of credit to or for the accounts of the organization without regard to the provisions of section 18(j) of the FDI Act (12 U.S.C. 1828(j)).

(b) *Debts previously contracted.* Equity interests acquired to prevent a loss upon a debt previously contracted in good faith are not subject to the limitations or procedures of this subpart; however they must be disposed of promptly but in no event later than two years after their acquisition, unless the FDIC authorizes retention for a longer period.

§ 347.110 Supervision and recordkeeping of the foreign activities of insured state nonmember banks.

(a) *Records, controls and reports.* An insured state nonmember bank with any foreign branch, any investment in a foreign organization of 20 percent or more of the organization's voting equity interests, or control of a foreign organization must maintain a system of records, controls and reports that, at minimum, provide for the following:

(1) *Risk assets.* To permit assessment of exposure to loss, information furnished or available to the main office should be sufficient to permit periodic and systematic appraisals of the quality of risk assets, including loans and other extensions of credit. Coverage should extend to a substantial proportion of the risk assets in the branch or foreign organization, and include the status of all large credit lines and of credits to customers also borrowing from other offices or affiliates of the insured state nonmember bank. Information on risk assets should include:

(i) A recent financial statement of the borrower or obligee and current information on the borrower's or obligee's financial condition;

(ii) Terms, conditions, and collateral;

(iii) Data on any guarantors;

(iv) Payment history; and

(v) Status of corrective measures employed.

(2) *Liquidity.* To enable assessment of local management's ability to meet its obligations from available resources, reports should identify the general sources and character of the deposits, borrowing, and other funding sources, employed in the branch or foreign organization with special reference to their terms and volatility. Information should be available on sources of liquidity—cash, balances with banks, marketable securities, and repayment flows—such as will reveal their accessibility in time and any risk elements involved.

(3) *Contingencies.* Data on the volume and nature of contingent items such as loan commitments and guarantees or their equivalents that permit analysis of

potential risk exposure and liquidity requirements.

(4) *Controls.* Reports on the internal and external audits of the branch or foreign organization in sufficient detail to permit determination of conformance to auditing guidelines. Such reports should cover:

(i) Verification and identification of entries on financial statements;

(ii) Income and expense accounts, including descriptions of significant chargeoffs and recoveries;

(iii) Operations and dual-control procedures and other internal controls;

(iv) Conformance to head office guidelines on loans, deposits, foreign exchange activities, proper accounting procedures, and discretionary authority of local management;

(v) Compliance with local laws and regulations; and

(vi) Compliance with applicable U.S. laws and regulations.

(b) *Availability of information to examiners; reports.* (1) Information about foreign branches or foreign organizations must be made available to the FDIC by the insured state nonmember bank for examination and other supervisory purposes.

(2) If any applicable law or practice in a particular foreign country would limit the FDIC's access to information for supervisory purposes, no insured state nonmember bank may utilize the general consent or prior notice procedures under §§ 347.103 and 347.108 to:

(i) Establish any foreign branch in the foreign country; or

(ii) Make any investment resulting in the state nonmember bank holding 20 percent or more of the voting equity interests of a foreign organization in the foreign country or controlling such organization.

(3) The FDIC may from time to time require an insured state nonmember bank to make and submit such reports and information as may be necessary to implement and enforce the provisions of this subpart, and the insured state nonmember bank shall submit an annual report of condition for each foreign branch pursuant to instructions provided by the FDIC.

Subpart B—Foreign Banks

§ 347.201 Scope.

(a)(1) Sections 347.203 through 347.207 of this subpart implement the insurance provisions of section 6 of the International Banking Act of 1978 (12 U.S.C. 3104). They set out the FDIC's rules regarding retail deposit activities requiring a foreign bank to establish an insured bank subsidiary; deposit activities permissible for a noninsured branch; authority for a state branch to apply for an exemption from the insurance requirement; and, depositor notification requirements. Sections 347.204, 347.205, 347.206 and 347.207 do not apply to a federal branch. The Comptroller of the Currency's regulations (12 CFR part 28) establish such rules for federal branches. However, federal branches deemed by the Comptroller to require insurance must apply to the FDIC for insurance.

(2) Sections 347.203 through 347.207 of this subpart also set out the FDIC's rules regarding the operation of insured and noninsured branches, whether state or federal, by a foreign bank.

(b) Sections 347.208 through 347.212 of this subpart set out the rules that apply only to a foreign bank that operates or proposes to establish an insured state or federal branch. These rules relate to the following matters: an agreement to provide information and to be examined and provisions concerning recordkeeping, pledge of assets, asset maintenance, and deductions from the assessment base.

§ 347.202 Definitions.

For the purposes of this subpart:

(a) *Affiliate* means any entity that controls, is controlled by, or is under common control with another entity. An entity shall be deemed to ''control'' another entity if the entity directly or indirectly owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the other entity or controls in any manner the election of a majority of the directors or trustees of the other entity.

(b) *Branch* means any office or place of business of a foreign bank located in any state of the United States at which deposits are received. The term does not include any office or place of business deemed by the state licensing authority or the Comptroller of the Currency to be an agency.

(c) *Deposit* has the same meaning as that term in section 3(l) of the Federal Deposit Insurance Act (12 U.S.C. 1813(l)).

(d) *Depository* means any insured state bank, national bank, or insured branch.

(e) *Domestic retail deposit activity* means the acceptance by a state branch of any initial deposit of less than $100,000.

(f) *Federal branch* means a branch of a foreign bank established and operating under the provisions of section 4 of the International Banking Act of 1978 (12 U.S.C. 3102).

(g) *Foreign bank* means any company organized under the laws of a foreign country, any territory of the United States, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands or the Virgin Islands, which engages in the business of banking. The term includes foreign commercial banks, foreign merchant banks and other foreign institutions that engage in banking activities usual in connection with the business of banking in the countries where such foreign institutions are organized and operating. Except as otherwise specifically provided by the Federal Deposit Insurance Corporation, banks organized under the laws of a foreign country, any territory of the United States, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands which are insured banks other than by reason of having an insured branch are not considered to be foreign banks for purposes of §§ 347.208, 347.209, 347.210, and 347.211.

(h) *Foreign business* means any entity including, but not limited to, a corporation, partnership, sole proprietorship, association, foundation or trust, which is organized under the laws of a foreign country or any United States entity which is owned or controlled by an entity which is organized under the laws of a foreign country or a foreign national.

(i) *Foreign country* means any country other than the United States and includes any colony, dependency or possession of any such country.

(j) *Home state* of a foreign bank means the state so determined by the election of the foreign bank, or in default of such election, by the Board of Governors of the Federal Reserve System.

(k) *Immediate family member of a natural person* means the spouse, father, mother, brother, sister, son or daughter of that natural person.

(l) *Initial deposit* means the first deposit transaction between a depositor and the branch. The initial deposit may be placed into different deposit accounts or into different kinds of deposit accounts, such as demand, savings or time. Deposit accounts that are held by a depositor in the same right and capacity may be added together for the purposes of determining the dollar amount of the initial deposit. ''First deposit'' means any deposit made when there is no existing deposit relationship between the depositor and the branch.

(m) *Insured bank* means any bank, including a foreign bank having an insured branch, the deposits of which are insured in accordance with the provisions of the Federal Deposit Insurance Act.

(n) *Insured branch* means a branch of a foreign bank any deposits of which

branch are insured in accordance with the provisions of the Federal Deposit Insurance Act.

(o) *Large United States business* means any entity including, but not limited to, a corporation, partnership, sole proprietorship, association, foundation or trust which is organized under the laws of the United States or any state thereof, and:

(1) Whose securities are registered on a national securities exchange or quoted on the National Association of Securities Dealers Automated Quotation System; or

(2) Has annual gross revenues in excess of $1,000,000 for the fiscal year immediately preceding the initial deposit.

(p) *A majority owned subsidiary* means a company the voting stock of which is more than 50 percent owned or controlled by another company.

(q) *Noninsured branch* means a branch of a foreign bank deposits of which branch are not insured in accordance with the provisions of the Federal Deposit Insurance Act.

(r) *Person* means an individual, bank, corporation, partnership, trust, association, foundation, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity.

(s) *Significant risk to the deposit insurance fund* shall be understood to be present whenever there is a high probability that the Bank Insurance Fund administered by the FDIC may suffer a loss.

(t) *State* means any state of the United States or the District of Columbia.

(u) *State branch* means a branch of a foreign bank established and operating under the laws of any state.

(v) *A wholly owned subsidiary* means a company the voting stock of which is 100 percent owned or controlled by another company except for a nominal number of directors' shares.

§ 347.203 Restriction on operation of insured and noninsured branches.

The FDIC will not insure deposits in any branch of a foreign bank unless the foreign bank agrees that every branch established or operated by the foreign bank in the same state will be an insured branch; provided, that this restriction does not apply to any branch which accepts only initial deposits in an amount of $100,000 or greater.

§ 347.204 Insurance requirement.

(a) *Domestic retail deposit activity*. In order to initiate or conduct domestic retail deposit activity, which requires deposit insurance protection, a foreign bank shall:

(1) Establish 1 or more insured bank subsidiaries in the United States for that purpose; and

(2) Obtain deposit insurance for any such subsidiary in accordance with the Federal Deposit Insurance Act.

(b) *Exception*. For purposes of paragraph (a) of this section, ''foreign bank'' does not include any bank organized under the laws of any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands the deposits of which are insured by the Corporation pursuant to the Federal Deposit Insurance Act.

(c) *Grandfathered insured branches*. Domestic retail deposit accounts with balances of less than $100,000 that require deposit insurance protection may be accepted or maintained in a branch of a foreign bank only if such branch was an insured branch on December 19, 1991.

(d) *Noninsured branches*. A foreign bank may establish or operate a state branch which is not an insured branch whenever:

(1) The branch only accepts initial deposits in an amount of $100,000 or greater; or

(2) The branch meets the criteria set forth in § 347.205 or § 347.206.

§ 347.205 Branches established under section 5 of the International Banking Act.

A foreign bank may operate any state branch as a noninsured branch whenever the foreign bank has entered into an agreement with the Board of Governors of the Federal Reserve System to accept at that branch only those deposits as would be permissible for a corporation organized under section 25(a) of the Federal Reserve Act (12 U.S.C. 611 *et seq.*) and implementing rules and regulations administered by the Board of Governors (12 CFR part 211).

§ 347.206 Exemptions from the insurance requirement.

(a) *Deposit activities not requiring insurance*. A state branch will not be deemed to be engaged in domestic retail deposit activity which requires the foreign bank parent to establish an insured bank subsidiary in accordance with § 347.204(a) if the state branch only accepts initial deposits in an amount of less than $100,000 which are derived solely from the following:

(1) Individuals who are not citizens or residents of the United States at the time of the initial deposit;

(2) Individuals who:

(i) Are not citizens of the United States;

(ii) Are residents of the United States; and

(iii) Are employed by a foreign bank, foreign business, foreign government, or recognized international organization;

(3) Persons (including immediate family members of natural persons) to whom the branch or foreign bank (including any affiliate thereof) has extended credit or provided other nondeposit banking services within the past twelve months or has entered into a written agreement to provide such services within the next twelve months;

(4) Foreign businesses, large United States businesses, and persons from whom an Edge Corporation may accept deposits under § 211.4(e)(1) of Regulation K of the Board of Governors of the Federal Reserve System, 12 CFR 211.4(e)(1);

(5) Any governmental unit, including the United States government, any state government, any foreign government and any political subdivision or agency of any of the foregoing, and recognized international organizations;

(6) Persons who are depositing funds in connection with the issuance of a financial instrument by the branch for the transmission of funds or the transmission of such funds by any electronic means; and

(7) Any other depositor, but only if the branch's average deposits under this paragraph (a)(7) of this section do not exceed one percent of the branch's average total deposits for the last 30 days of the most recent calendar quarter (de minimis exception). In calculating this de minimis exception, both the average deposits under this paragraph (a)(7) of this section and the average total deposits shall be computed by summing the close of business figures for each of the last 30 calendar days, ending with and including the last day of the calendar quarter, and dividing the resulting sum by 30. For days on which the branch is closed, balances from the last previous business day are to be used. In determining its average branch deposits, the branch may exclude deposits in the branch of other offices, branches, agencies or wholly owned subsidiaries of the bank. In addition, the branch must not solicit deposits from the general public by advertising, display of signs, or similar activity designed to attract the attention of the general public. A foreign bank which has more than one state branch in the same state may aggregate deposits in such branches (excluding deposits of other branches, agencies or wholly owned subsidiaries of the bank) for the purpose of this paragraph (a)(7).

(b) *Application for an exemption*. Whenever a foreign bank proposes to accept at a state branch initial deposits of less than $100,000 and such deposits

are not otherwise excepted under paragraph (a) of this section, the foreign bank may apply to the FDIC for consent to operate the branch as a noninsured branch pursuant to § 347.404. The Board of Directors may exempt the branch from the insurance requirement if the branch is not engaged in domestic retail deposit activities requiring insurance protection. The Board of Directors will consider the size and nature of depositors and deposit accounts, the importance of maintaining and improving the availability of credit to all sectors of the United States economy, including the international trade finance sector of the United States economy, whether the exemption would give the foreign bank an unfair competitive advantage over United States banking organizations, and any other relevant factors in making this determination.

(c) *Transition period.* A noninsured state branch may maintain a retail deposit lawfully accepted pursuant to this section prior to April 1, 1996:

(1) If the deposit qualifies pursuant to paragraph (a) or (b) of this section; or

(2) If the deposit does not qualify pursuant to paragraph (a) or (b) of this section, no later than:

(i) In the case of a non-time deposit, five years from April 1, 1996; or

(ii) In the case of a time deposit, the first maturity date of the time deposit after April 1, 1996.

§ 347.207 Notification to depositors.

Any state branch that is exempt from the insurance requirement pursuant to § 347.206 shall:

(a) Display conspicuously at each window or place where deposits are usually accepted a sign stating that deposits are not insured by the FDIC; and

(b) Include in bold face conspicuous type on each signature card, passbook, and instrument evidencing a deposit the statement ''This deposit is not insured by the FDIC''; or require each depositor to execute a statement which acknowledges that the initial deposit and all future deposits at the branch are not insured by the FDIC. This acknowledgment shall be retained by the branch so long as the depositor maintains any deposit with the branch. This provision applies to any negotiable certificates of deposit made in a branch on or after July 6, 1989, as well as to any renewals of such deposits which become effective on or after July 6, 1989.

§ 347.208 Agreement to provide information and to be examined.

(a) A foreign bank that applies for insurance for any branch shall agree in writing to the following terms:

(1)(i) The foreign bank will provide the FDIC with information regarding the affairs of the foreign bank and its affiliates which are located outside of the United States as the FDIC from time to time may request to:

(A) Determine the relations between the insured branch and the foreign bank and its affiliates; and

(B) Assess the financial condition of the foreign bank as it relates to the insured branch.

(ii) If the laws of the country of the foreign bank's domicile or the policy of the Central Bank or other banking authority prohibit or restrict the foreign bank from entering into this agreement, the foreign bank shall agree to provide information to the extent permitted by such law or policy. Information provided shall be in English and in the form requested by the FDIC and shall be made available in the United States. The Board of Directors will consider the existence and extent of this prohibition or restriction in determining whether to grant insurance and may deny the application if the information available is so limited in extent that an unacceptable risk to the insurance fund is presented.

(2)(i) The FDIC may examine the affairs of any office, agency, branch or affiliate of the foreign bank located in the United States as the FDIC deems necessary to:

(A) Determine the relations between the insured branch and such offices, agencies, branches or affiliates; and

(B) Assess the financial condition of the foreign bank as it relates to the insured branch.

(ii) The foreign bank shall also agree to provide the FDIC with information regarding the affairs of such offices, agencies, branches or affiliates as the FDIC deems necessary. The Board of Directors will not grant insurance to any branch if the foreign bank fails to enter into an agreement as required under this paragraph (a).

(b) The agreement shall be signed by an officer of the foreign bank who has been so authorized by the foreign bank's board of directors. The agreement and the authorization shall be included with the foreign bank's application for insurance. Any agreement not in English shall be accompanied by an English translation.

§ 347.209 Records.

(a) Each insured branch shall keep a set of accounts and records in the words and figures of the English language which accurately reflect the business transactions of the insured branch on a daily basis.

(b) The records of each insured branch shall be kept as though it were a separate entity, with its assets and liabilities separate from the other operations of the head office, other branches or agencies of the foreign bank and its subsidiaries or affiliates. A foreign bank which has more than one insured branch in a state may treat such insured branches as one entity for record keeping purposes and may designate one branch to maintain records for all the branches in the state.

§ 347.210 Pledge of assets.

(a) *Purpose.* A foreign bank that has an insured branch shall pledge assets for the benefit of the FDIC or its designee(s). Whenever the FDIC is obligated under section 11(f) of the Federal Deposit Insurance Act (12 U.S.C. 1821(f)) to pay the insured deposits of an insured branch, the assets pledged under this section shall become the property of the FDIC to be used to the extent necessary to protect the deposit insurance fund.

(b) *Amount of assets to be pledged.* (1) A foreign bank shall pledge assets equal to five percent of the average of the insured branch's liabilities for the last 30 days of the most recent calendar quarter. This average shall be computed by using the sum of the close of business figures for the 30 calendar days of the most recent calendar quarter, ending with and including the last day of the calendar quarter, divided by 30.[4] In determining its average liabilities, the insured branch may exclude liabilities to other offices, agencies, branches, and wholly owned subsidiaries of the foreign bank. The value of the pledged assets shall be computed based on the lesser of the principal amount (par value) or market value of such assets at the time of the original pledge and thereafter as of the last day of the most recent calendar quarter.

(2) The initial five-percent deposit for a newly established insured branch shall be based on the branch's projection of liabilities at the end of the first year of its operation.

(3) The FDIC may require a foreign bank to pledge additional assets or to compute its pledge on a daily basis whenever the FDIC determines that the foreign bank's or any insured branch's condition is such that the assets pledged under paragraph (b)(1) or (b)(2) of this section will not adequately protect the deposit insurance fund. In requiring a foreign bank to pledge additional assets, the FDIC will consult with the insured branch's primary regulator. Among the

[4] For days on which the branch is closed, balances from the last previous business day are to be used.

factors to be considered in imposing these requirements are the concentration of risk to any one borrower or group of related borrowers, the concentration of transfer risk to any one country, including the country in which the foreign bank's head office is located or any other factor the FDIC determines is relevant.

(4) Each insured branch shall separately comply with the requirements of this section. However, a foreign bank which has more than one insured branch in a state may treat all of its insured branches in the same state as one entity and shall designate one insured branch to be responsible for compliance with this section.

(c) *Depository.* A foreign bank shall place pledged assets for safekeeping at any depository which is located in any state. However, a depository may not be an affiliate of the foreign bank whose insured branch is seeking to use the depository. A foreign bank must obtain the FDIC's prior written approval of the depository selected, and such approval may be revoked and dismissal of the depository required whenever the depository does not fulfill any one of its obligations under the pledge agreement. A foreign bank shall appoint and constitute the depository as its attorney in fact for the sole purpose of transferring title to pledged assets to the FDIC as may be required to effectuate the provisions of paragraph (a) of this section.

(d) *Assets that may be pledged.* Subject to the right of the FDIC to require substitution, a foreign bank may pledge any of the kinds of assets listed below; such assets must be denominated in United States dollars. A foreign bank shall be deemed to have pledged any such assets for the benefit of the FDIC or its designees at such time as any such asset is placed with the depository.

(1) Certificates of deposit that are payable in the United States and that are issued by any state bank, national bank, or branch of a foreign bank which has executed a valid waiver of offset agreement or similar debt instruments that are payable in the United States and that are issued by any agency of a foreign bank which has executed a valid waiver of offset agreement; provided, that the maturity of any certificate or issuance is not greater than one year; and provided further, that the issuing branch or agency of a foreign bank is not an affiliate of the pledging bank or from the same country as the pledging bank's domicile;

(2) Interest bearing bonds, notes, debentures, or other direct obligations of or obligations fully guaranteed as to principal and interest by the United States or any agency or instrumentality thereof;

(3) Commercial paper that is rated P–1 or P–2, or their equivalent by a nationally recognized rating service; provided, that any conflict in a rating shall be resolved in favor of the lower rating;

(4) Banker's acceptances that are payable in the United States and that are issued by any state bank, national bank, or branch or agency of a foreign bank; provided, that the maturity of any acceptance is not greater than 180 days; and provided further, that the branch or agency issuing the acceptance is not an affiliate of the pledging bank or from the same country as the pledging bank's domicile;

(5) General obligations of any state of the United States, or any county or municipality of any state of the United States, or any agency, instrumentality, or political subdivision of the foregoing or any obligation guaranteed by a state of the United States or any county or municipality of any state of the United States; provided, that such obligations have a credit rating within the top two rating bands of a nationally-recognized rating service (with any conflict in a rating resolved in favor of the lower rating);

(6) Obligations of the African Development Bank, Asian Development Bank, Inter-American Development Bank, and the International Bank for Reconstruction and Development;

(7) Notes issued by bank holding companies or banks organized under the laws of the United States or any state thereof or notes issued by United States branches or agencies of foreign banks, provided, that the notes have a credit rating within the top two rating bands of a nationally-recognized rating service (with any conflict in a rating resolved in favor of the lower rating) and that they are payable in the United States, and provided further, that the issuer is not an affiliate of the foreign bank pledging the note; or

(8) Any other asset determined by the FDIC to be acceptable.

(e) *Pledge agreement.* A foreign bank shall not pledge any assets unless a pledge agreement in form and substance satisfactory to the FDIC has been executed by the foreign bank and the depository. The agreement, in addition to other terms not inconsistent with this paragraph (e), shall give effect to the following terms:

(1) *Original pledge.* The foreign bank shall place with the depository assets of the kind described in § 347.210(d), having an aggregate value in the amount as required pursuant to § 347.210(b).

(2) *Additional assets required to be pledged.* Whenever the foreign bank is required to pledge additional assets for the benefit of the FDIC or its designees pursuant to paragraph (b)(3) of this section, it shall place (within two (2) business days after the last day of the most recent calendar quarter, unless otherwise ordered) additional assets of the kind described in paragraph (d) of this section, having an aggregate value in the amount required by the FDIC.

(3) *Substitution of assets.* The foreign bank, at any time, may substitute any assets for pledged assets, and, upon such substitution, the depository shall promptly release any such assets to the foreign bank. Provided, that:

(i) The foreign bank pledges assets of the kind described in paragraph (d) of this section having an aggregate value not less than the value of the pledged assets for which they are substituted and certified as such by the foreign bank; and

(ii) The FDIC has not by written notification to the foreign bank, a copy of which shall be provided to the depository, suspended or terminated the foreign bank's right of substitution.

(4) *Delivery of other documents.* Concurrently with the pledge of any assets, the foreign bank shall deliver to the depository all documents and instruments necessary or advisable to effectuate the transfer of title to any such assets and thereafter, from time to time, at the request of the FDIC, deliver to the depository any such additional documents or instruments. The foreign bank shall provide copies of all such documents described in this paragraph (e)(4) to the appropriate regional director concurrently with their delivery to the depository.

(5) *Acceptance and safekeeping responsibilities of the depository.* (i) The depository shall accept and hold any assets pledged by the foreign bank pursuant to the pledge agreement for safekeeping free and clear of any lien, charge, right of offset, credit, or preference in connection with any claim the depository may assert against the foreign bank and shall designate any such assets as a special pledge for the benefit of the FDIC or its designees. The depository shall not accept the pledge of any such assets unless concurrently with such pledge the foreign bank delivers to the depository the documents and instruments necessary for the transfer of title thereto as provided in this part.

(ii) The depository shall hold any such assets separate from all other assets of the foreign bank or the depository. Such assets may be held in book-entry form but must at all times be segregated

on the records of the depository and clearly identified as assets subject to the pledge agreement.

(6) *Reporting requirements of the insured branch and the depository*—(i) *Initial reports.* Upon the original pledge of assets as provided in paragraph (e)(1) of this section:

(A) The depository shall provide to the foreign bank and to the appropriate regional director a written report in the form of a receipt identifying each asset pledged and specifying in reasonable detail with respect to each such asset the complete title, interest rate, series, serial number (if any), principal amount (par value), maturity date and call date; and

(B) The foreign bank shall provide to the appropriate regional director a written report certified as correct by the foreign bank which sets forth the value of each pledged asset and the aggregate value of all such assets, and which states that the aggregate value of all such assets is the amount required pursuant to paragraph (b) of this section and that all such assets are of the kind described in paragraph (d) of this section.

(ii) *Quarterly reports.* Within ten (10) calendar days after the end of the most recent calendar quarter:

(A) The depository shall provide to the appropriate regional director a written report specifying in reasonable detail with respect to each asset currently pledged (including any asset pledged to satisfy the requirements of paragraph (b)(3) of this section and identified as such), as of two business days after the end of the most recent calendar quarter, the complete title, interest rate, series, serial number (if any), principal amount (par value), maturity date, and call date, provided, that if no substitution of any asset has occurred during the reporting period, the report need only specify that no substitution of assets has occurred; and

(B) The foreign bank shall provide as of two business days after the end of the most recent calendar quarter to the appropriate regional director a written report certified as correct by the foreign bank which sets forth the value of each pledged asset and the aggregate value of all such assets, which states that the aggregate value of all such assets is the amount required pursuant to paragraph (b) of this section and that all such assets are of the kind described in paragraph (d) of this section, and which states the average of the liabilities of each insured branch of the foreign bank computed in the manner and for the period prescribed in paragraph (b) of this section.

(iii) *Additional reports.* The foreign bank shall, from time to time, as may be required, provide to the appropriate regional director a written report in the form specified containing the information requested with respect to any asset then currently pledged.

(7) *Access to assets.* With respect to any asset pledged pursuant to the pledge agreement, the depository will provide representatives of the FDIC or the foreign bank access (during regular business hours of the depository and at the location where any such asset is held, without other limitation or qualification) to all original instruments, documents, books, and records evidencing or pertaining to any such asset.

(8) *Release upon the order of the FDIC.* The depository shall release to the foreign bank any pledged assets, as specified in a written notification of the appropriate regional director, upon the terms and conditions provided in such notification, including without limitation the waiver of any requirement that any assets be pledged by the foreign bank in substitution of any released assets.

(9) *Release to the FDIC.* Whenever the FDIC is obligated under section 11(f) of the Federal Deposit Insurance Act (12 U.S.C. 1821(f)) to pay insured deposits of an insured branch, the FDIC by written certification shall so inform the depository; and the depository, upon receipt of such certification, shall thereupon promptly release and transfer title to any pledged assets to the FDIC or release such assets to the foreign bank, as specified in the certification. Upon release and transfer of title to all pledged assets specified in the certification, the depository shall be discharged from any further obligation under the pledge agreement.

(10) *Interest earned on assets.* The foreign bank may retain any interest earned with respect to the assets currently pledged unless the FDIC by written notice prohibits retention of interest by the foreign bank, in which case the notice shall specify the disposition of any such interest.

(11) *Expenses of agreement.* The FDIC shall not be required to pay any fees, costs, or expenses for services provided by the depository to the foreign bank pursuant to, or in connection with, the pledge agreement.

(12) *Substitution of depository.* The depository may resign, or the foreign bank may discharge the depository, from its duties and obligations under the pledge agreement by giving at least sixty (60) days' written notice thereof to the other party and to the appropriate regional director. The FDIC, upon thirty (30) days' written notice to the foreign bank and the depository, may require the foreign bank to dismiss the depository if the FDIC in its discretion determines that the depository is in breach of the pledge agreement. The depository shall continue to function as such until the appointment of a successor depository becomes effective and the depository has released to the successor depository the pledged assets and documents and instruments to effectuate transfer of title in accordance with the written instructions of the foreign bank as approved by the FDIC. The appointment by the foreign bank of a successor depository shall not be effective until:

(i) The FDIC has approved in writing the successor depository; and

(ii) A pledge agreement in form and substance satisfactory to the FDIC has been executed.

(13) *Waiver of terms.* The FDIC may by written order waive compliance by the foreign bank or the depository with any term or condition of the pledge agreement.

(f)(1) Authority is delegated to the Director (DOS), the Deputy Director (DOS), and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to enter into pledge agreements with foreign banks and depositories in connection with the pledge of asset requirements pursuant to this section. This authority shall also extend to the power to revoke such approval and require the dismissal of the depository.

(2) Authority is delegated to the General Counsel or designee to modify the terms of the model pledge agreement used for such deposit agreements.

§ 347.211 Asset maintenance.

(a) An insured branch of a foreign bank shall maintain on a daily basis eligible assets in an amount not less than 106% of the preceding quarter's average book value of the insured branch's liabilities or, in the case of a newly-established insured branch, the estimated book value of its liabilities at the end of the first full quarter of operation, exclusive of liabilities due to the foreign bank's head office, other branches, agencies, offices, or wholly owned subsidiaries. The Director of the Division of Supervision or his designee may impose a computation of total liabilities on a daily basis in those instances where it is found necessary for supervisory purposes. The Board of Directors, after consulting with the insured branch's primary regulator, may require that a higher ratio of eligible assets be maintained if the financial condition of the insured branch warrants such action. Among the factors

which will be considered in requiring a higher ratio of eligible assets are the concentration of risk to any one borrower or group of related borrowers, the concentration of transfer risk to any one country, including the country in which the foreign bank's head office is located or any other factor the FDIC determines is relevant. Eligible assets shall be payable in United States dollars.

(b) In determining eligible assets for the purposes of compliance with paragraph (a) of this section, the insured branch shall exclude the following:

(1) Any asset due from the foreign bank's head office, other branches, agencies, offices or affiliates;

(2) Any asset classified ''Value Impaired,'' to the extent of the required Allocated Transfer Risk Reserves or equivalent write down, or ''Loss'' in the most recent state or federal examination report;

(3) Any deposit of the insured branch in a bank unless the bank has executed a valid waiver of offset agreement;

(4) Any asset not supported by sufficient credit information to allow a review of the asset's credit quality, as determined at the most recent state or federal examination;[5]

(5) Any asset not in the insured branch's actual possession unless the insured branch holds title to such asset and the insured branch maintains records sufficient to enable independent verification of the insured branch's ownership of the asset, as determined at the most recent state or federal examination;

(6) Any intangible asset;

(7) Any other asset not considered bankable by the FDIC.

(c) A foreign bank which has more than one insured branch in a state may treat all of its insured branches in the same state as one entity for purposes of compliance with paragraph (a) of this section and shall designate one insured branch to be responsible for maintaining the records of the insured branches' compliance with this section.

(d) The average book value of the insured branch's liabilities for a quarter shall be, at the insured branch's option, either an average of the balances as of the close of business for each day of the quarter or an average of the balances as of the close of business on each Wednesday during the quarter. Quarters end on March 31, June 30, September 30, and December 31 of any given year. For days on which the insured branch is closed, balances from the previous business day are to be used. Calculations of the average book value of the insured branch's liabilities for a quarter shall be retained by the insured branch until the next federal examination.

§ 347.212 Deductions from the assessment base.

An insured branch may deduct from its assessment base deposits in the insured branch to the credit of the foreign bank or any office, branch or agency of and any wholly owned subsidiary of the foreign bank.

§ 347.213 FDIC approval to conduct activities not permissible for federal branches.

(a) *Scope.* A foreign bank operating an insured state branch which desires to engage in or continue to engage in any type of activity that is not permissible for a federal branch, pursuant to the National Bank Act (12 U.S.C. 21 *et seq.*) or any other federal statute, regulation, official bulletin or circular, written order or interpretation, or decision of a court of competent jurisdiction (each an impermissible activity), shall file a written application for permission to conduct such activity with the FDIC pursuant to § 347.405.

(b) *Exceptions.* A foreign bank operating an insured state branch which would otherwise be required to submit an application pursuant to paragraph (a) of this section will not be required to submit such an application if the activity it desires to engage in or continue to engage in has been determined by the FDIC not to present a significant risk to the affected deposit insurance fund pursuant to 12 CFR Part 362, ''Activities and Investment of Insured State Banks''.

(c) *Agency activities.* A foreign bank operating an insured state branch which would otherwise be required to submit an application pursuant to paragraph (a) of this section will not be required to submit such an application if it desires to engage in or continue to engage in an activity conducted as agent which would be a permissible agency activity for a state-chartered bank located in the state which the state-licensed insured branch of the foreign bank is located and is also permissible for a state-licensed branch of a foreign bank located in that state; provided, however, that the agency activity must be permissible pursuant to any other applicable federal law or regulation.

(d) *Conditions of approval.* Approval of such an application may be conditioned on the applicant's agreement to conduct the activity subject to specific limitations, such as but not limited to the pledging of assets in excess of the requirements of § 347.210 and/or the maintenance of eligible assets in excess of the requirements of § 347.211. In the case of an application to initially engage in an activity, as opposed to an application to continue to conduct an activity, the insured branch shall not commence the activity until it has been approved in writing by the FDIC pursuant to this part and the Board of Governors of the Federal Reserve System (Board of Governors), and any and all conditions imposed in such approvals have been satisfied.

(e) *Divestiture or cessation.* (1) If an application for permission to continue to conduct an activity is not approved by the FDIC or the Board of Governors, the applicant shall submit a plan of divestiture or cessation of the activity to the appropriate regional director in accordance with the terms set forth in § 347.405(d).

(2) A foreign bank operating an insured state branch which elects not to apply to the FDIC for permission to continue to conduct an activity which is rendered impermissible by any change in statute, regulation, official bulletin or circular, written order or interpretation, or decision of a court of competent jurisdiction shall submit a plan of divestiture or cessation to the appropriate regional director in accordance with the terms set forth in § 347.405(d).

(3) Divestitures or cessations shall be completed within one year from the date of the disapproval, or within such shorter period of time as the FDIC shall direct.

[5] Whether an asset has sufficient credit information will be a function of the size of the borrower and the location within the foreign bank of the responsibility for authorizing and monitoring extensions of credit to the borrower. For large, well known companies, when credit responsibility is located in an office of the foreign bank outside the insured branch, the insured branch must have adequate documentation to show that the asset is of good quality and is being supervised adequately by the foreign bank. In such cases, copies of periodic memoranda that include an analysis of the borrower's recent financial statements and a report on recent developments in the borrower's operations and borrowing relationships with the foreign bank generally would constitute sufficient information. For other borrowers, periodic memoranda must be supplemented by information such as copies of recent financial statements, recent correspondence concerning the borrower's financial condition and repayment history, credit terms and collateral, data on any guarantors, and where necessary, the status of any corrective measures being employed.

Subsequent to the determination that an asset lacks sufficient credit information, an insured branch may not include the amount of that asset among eligible assets until the FDIC determines that sufficient documentation exists. Such a determination may be made either at the next federal examination, or upon request of the insured branch, by the appropriate regional director.

Subpart C—International Lending

§ 347.301 Allocated transfer risk reserve.

(a) *Definitions.* For the purposes of this subpart:

(1) *Banking institution* means an insured state nonmember bank.

(2) *Federal banking agencies* means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

(3) *International assets* means those assets required to be included in banking institutions' ''Country Exposure Report'' form (FFIEC No. 009).

(4) *Transfer risk* means the possibility that an asset cannot be serviced in the currency of payment because of a lack of, or restraints on the availability of, needed foreign exchange in the country of the obligor.

(b) *Allocated Transfer Risk Reserve*—(1) *Establishment of Allocated Transfer Risk Reserve.* A banking institution shall establish an allocated transfer risk reserve (ATRR) for specified international assets when required by the FDIC in accordance with this section.

(2) *Procedures and standards*—(i) *Joint agency determination.* At least annually, the federal banking agencies shall determine jointly, based on the standards set forth in paragraph (b)(2)(ii) of this section, the following:

(A) Which international assets subject to transfer risk warrant establishment of an ATRR;

(B) The amount of the ATRR for the specified assets; and

(C) Whether an ATRR established for specified assets may be reduced.

(ii) *Standards for requiring ATRR*—(A) *Evaluation of assets.* The federal banking agencies shall apply the following criteria in determining whether an ATRR is required for particular international assets:

(*1*) Whether the quality of a banking institution's assets has been impaired by a protracted inability of public or private obligors in a foreign country to make payments on their external indebtedness as indicated by such factors, among others, as whether:

(*i*) Such obligors have failed to make full interest payments on external indebtedness; or

(*ii*) Such obligors have failed to comply with the terms of any restructured indebtedness; or

(*iii*) A foreign country has failed to comply with any International Monetary Fund or other suitable adjustment program; or

(*2*) Whether no definite prospects exist for the orderly restoration of debt service.

(B) *Determination of amount of ATRR.* (*1*) In determining the amount of the ATRR, the federal banking agencies shall consider:

(*i*) The length of time the quality of the asset has been impaired;

(*ii*) Recent actions taken to restore debt service capability;

(*iii*) Prospects for restored asset quality; and

(*iv*) Such other factors as the federal banking agencies may consider relevant to the quality of the asset.

(*2*) The initial year's provision for the ATRR shall be ten percent of the principal amount of each specified international asset, or such greater or lesser percentage determined by the federal banking agencies. Additional provision, if any, for the ATRR in subsequent years shall be fifteen percent of the principal amount of each specified international asset, or such greater or lesser percentage determined by the federal banking agencies.

(iii) *FDIC notification.* Based on the joint agency determinations under paragraph (b)(2)(i) of this section, the FDIC shall notify each banking institution holding assets subject to an ATRR:

(A) Of the amount of the ATRR to be established by the institution for specified international assets; and

(B) That an ATRR established for specified assets may be reduced.

(3) *Accounting treatment of ATRR*—(i) *Charge to current income.* A banking institution shall establish an *ATRR* by a charge to current income and the amounts so charged shall not be included in the banking institution's capital or surplus.

(ii) *Separate accounting.* A banking institution shall account for an ATRR separately from the Allowance for Loan and Lease Losses, and shall deduct the ATRR from ''gross loans and leases'' to arrive at ''net loans and leases.'' The ATRR must be established for each asset subject to the ATRR in the percentage amount specified.

(iii) *Consolidation.* A banking institution shall establish an ATRR, as required, on a consolidated basis. For banks, consolidation should be in accordance with the procedures and tests of significance set forth in the instructions for preparation of Consolidated Reports of Condition and Income (FFIEC Nos. 031, 032, 033 and 034).

(iv) *Alternative accounting treatment.* A banking institution need not establish an ATRR if it writes down in the period in which the ATRR is required, or has written down in prior periods, the value of the specified international assets in the requisite amount for each such asset. For purposes of this paragraph, international assets may be written down by a charge to the Allowance for Loan and Lease Losses or a reduction in the principal amount of the asset by application of interest payments or other collections on the asset. However, the Allowance for Loan and Lease Losses must be replenished in such amount necessary to restore it to a level which adequately provides for the estimated losses inherent in the banking institution's loan and lease portfolio.

(v) *Reduction of ATRR.* A banking institution may reduce an ATRR when notified by the FDIC or, at any time, by writing down such amount of the international asset for which the ATRR was established.

§ 347.302 Accounting for fees on international loans.

(a) *Restrictions on fees for restructured international loans.* No banking institution shall charge, in connection with the restructuring of an international loan, any fee exceeding the administrative cost of the restructuring unless it amortizes the amount of the fee exceeding the administrative cost over the effective life of the loan.

(b) *Accounting treatment.* Subject to paragraph (a) of this section, banking institutions shall account for fees on international loans in accordance with generally accepted accounting principles.

§ 347.303 Reporting and disclosure of international assets.

(a) *Requirements.* (1) Pursuant to section 907(a) of the International Lending Supervision Act of 1983 (Title IX, Pub. L. 98–181, 97 Stat. 1153) (ILSA), a banking institution shall submit to the FDIC, at least quarterly, information regarding the amounts and composition of its holdings of international assets.

(2) Pursuant to section 907(b) of ILSA, a banking institution shall submit to the FDIC information regarding concentrations in its holdings of international assets that are material in relation to total assets and to capital of the institution, such information to be made publicly available by the FDIC on request.

(b) *Procedures.* The format, content and reporting and filing dates of the reports required under paragraph (a) of this section shall be determined jointly by the federal banking agencies. The requirements to be prescribed by the federal banking agencies may include changes to existing forms (such as revisions to the Country Exposure Report, Form FFIEC No. 009) or such other requirements as the federal

banking agencies deem appropriate. The federal banking agencies also may determine to exempt from the requirements of paragraph (a) of this section banking institutions that, in the federal banking agencies' judgment, have de minimis holdings of international assets.

(c) *Reservation of Authority.* Nothing contained in this subpart shall preclude the FDIC from requiring from a banking institution such additional or more frequent information on the institution's holdings of international assets as the agency may consider necessary.

Subpart D—Applications and Delegations of Authority

§ 347.401 Definitions.

For the purposes of this subpart, the following definitions apply:

(a) *Appropriate regional director or appropriate deputy regional director* means the appropriate regional director or appropriate deputy regional director as defined by § 303.0 of this chapter.

(b) *Board of Governors* means the Board of Governors of the Federal Reserve System.

(c) *Comptroller* means the Office of the Comptroller of the Currency.

(d) *Eligible insured state nonmember bank* means an eligible insured state nonmember bank as defined by § 347.102.

(e) *Federal branch* means a federal branch of a foreign bank as defined by § 347.201.

(f) *FDIC* means the Federal Deposit Insurance Corporation.

(g) *Foreign bank* means a foreign bank as defined by § 347.201.

(h) *Foreign branch* means a foreign branch of an insured state nonmember bank as defined by § 347.201.

(i) *Foreign organization* means a foreign organization as defined by § 347.102.

(j) *Insured branch* means an insured branch of a foreign bank as defined by § 347.201.

(k) *Noninsured branch* means a noninsured branch of a foreign bank as defined by § 347.201.

(l) *State branch* means a state branch of a foreign bank as defined by § 347.201.

§ 347.402 Establishing, moving or closing a foreign branch of a state nonmember bank; § 347.103.

(a) *General consent.* Written notice under § 347.103(b)(1) from an eligible insured state nonmember bank establishing or relocating a foreign branch pursuant to the FDIC's general consent procedure must be provided to the appropriate regional director within thirty days of such action, and include the location of the foreign branch, including a street address, and a statement that the foreign branch will not be located on a site on the World Heritage List or on the foreign country's equivalent of the National Register of Historic Places, in accordance with section 402 of the National Historic Preservation Act Amendments of 1989 (16 U.S.C. 470a–2). The appropriate regional director will provide written acknowledgment of receipt of the notice.

(b) *Prior notice.* (1) Prior notice under § 347.103(b)(2) from an eligible insured state nonmember bank establishing a foreign branch pursuant to the FDIC's prior notice procedure must be filed with the appropriate regional director and contain the following information:

(i) The exact location of the foreign branch, including a street address, and a statement that the foreign branch will not be located on a site on the World Heritage List or on the foreign country's equivalent of the National Register of Historic Places, in accordance with section 402 of the National Historic Preservation Act Amendments of 1989 (16 U.S.C. 470a–2);

(ii) Details concerning any involvement in the proposal by an insider of the bank, including any financial arrangements relating to fees, the acquisition of property, leasing of property, and construction contracts;

(iii) A brief description of the bank's business plan with respect to the foreign branch; and

(iv) A brief description of the activities of the branch.

(2) The appropriate regional director will provide written acknowledgment of the date of receipt of the notice and the bank may establish the foreign branch 45 days after such date, or upon such earlier time as authorized by the FDIC, unless the FDIC promptly provides the bank written notification that the application will be processed under paragraph (d) of this section because:

(i) The application presents a significant supervisory concern; or

(ii) The application presents a significant legal or policy issue.

(c) *Closing.* The notice of closing required by § 347.103(b)(5) should be in letter form to the appropriate regional director and include the name, location, and date of closing of the closed branch.

(d) *Content of branch application.* (1) An application by an insured state nonmember bank required by § 347.103(b) and which is not eligible for treatment under general consent or prior notice, must be in writing and contain the following information:

(i) The exact location of the foreign branch, including a street address;

(ii) Details concerning any involvement in the proposal by an insider of the bank, including any financial arrangements relating to fees, the acquisition of property, leasing of property, and construction contracts;

(iii) A brief description of the bank's business plan with respect to the foreign branch;

(iv) A brief description of the activities of the branch, and to the extent any activities are not authorized by § 347.103(a), the bank's reasons why they should be approved; and

(v) A statement whether the foreign branch would be located on a site on the World Heritage List or on the foreign country's equivalent of the National Register of Historic Places, in accordance with section 402 of the National Historic Preservation Act Amendments of 1989 (16 U.S.C. 470a–2).

(2) The appropriate regional director may request additional information to complete processing.

(3) The application must be filed with the appropriate regional director.

(e) *Delegations of authority.* Authority is hereby delegated to the Director (DOS) and the deputy director, and if confirmed in writing by the Director, to an associate director, appropriate regional director, or appropriate deputy regional director, to approve an application under paragraph (d) of this section so long as:

(1) the requirements of section 402 the National Historic Preservation Act Amendments of 1989 have been favorably resolved; and

(2) the applicant will only conduct activities authorized by § 347.103(a).

§ 347.403 Investment by insured state nonmember banks in foreign organizations; § 347.108.

(a) *General consent.* Written notice under § 347.108(a) from an eligible insured state nonmember bank making direct or indirect investments in a foreign organization pursuant to the FDIC's general consent procedure must be provided to the appropriate regional director within thirty days of such action. The appropriate regional director will provide written acknowledgment of receipt of the notice.

(b) *Prior notice.* (1) Prior notice under § 347.108(b) from an eligible insured state nonmember bank making direct or indirect investments in a foreign organization pursuant to the FDIC's prior notice procedure must be filed with the appropriate regional director and contain the following information:

(i) Basic information about the terms of the transaction, the amount of the

investment in the foreign organization and the proportion of its ownership to be acquired;

(ii) Basic information about the foreign organization, its financial position and income, including any available balance sheet and income statement for the prior year, or financial projections for a new foreign organization, and a brief description of the foreign organization's activities, including any incidental activities in the United States;

(iii) A listing of all shareholders known to hold 10 percent or more of any class of the foreign bank's or other financial entity's stock or other evidence of ownership, and the amount held by each; and

(iv) A brief description of the bank's business plan with respect to the foreign organization, and if the bank seeks approval to engage in underwriting or dealing activities, a description of the bank's plans and procedures to address all relevant risks.

(2) The appropriate regional director will provide written acknowledgment of the date of receipt of the notice and the bank may make the investment 45 days after such date, or upon such earlier time as authorized by the FDIC, unless the FDIC promptly provides the bank written notification that the application will be processed under paragraph (c) of this section because:

(i) The application presents a significant supervisory concern; or

(ii) The application presents a significant legal or policy issue.

(c) *Content of application.* (1) An application by an insured state nonmember bank which is not eligible for treatment under general consent or prior notice required by § 347.108(d), must be in writing and contain the following information:

(i) Basic information about the terms of the transaction, the amount of the investment in the foreign organization and the proportion of its ownership to be acquired;

(ii) Basic information about the foreign organization, its financial position and income, including any available balance sheet and income statement for the prior year, or financial projections for a new foreign organization;

(iii) A listing of all shareholders known to hold 10 percent or more of any class of the foreign bank's or other financial entity's stock or other evidence of ownership, and the amount held by each;

(iv) A brief description of the bank's business plan with respect to the foreign organization, and if the bank seeks approval to engage in underwriting or dealing activities, a description of the bank's plans and procedures to address all relevant risks;

(v) A brief description of the foreign organization's activities, and to the extent such activities are not authorized by subpart A of part 347, the bank's reasons why they should be approved; and

(vi) A brief description of any business or activities which the foreign organization will conduct directly or indirectly in the United States, and to the extent such activities are not authorized by subpart A of part 347, the bank's reasons why they should be approved.

(2) The appropriate regional director may request additional information to complete processing.

(3) The application must be filed with the appropriate regional director.

(d) *Delegations of authority.* Authority is delegated to the Director (DOS) and the deputy director, and if confirmed in writing by the director, to an associate director, appropriate regional director, or appropriate deputy regional director to approve or deny applications under paragraph (c) of this section so long as the investment complies with the activities restrictions, investment limits, and other requirements of § 347.104 through § 347.107.

§ 347.404 Exemptions from insurance requirement for a state branch of a foreign bank; § 347.206(b).

(a) *Application for an exemption.* A foreign bank may apply to the FDIC for consent to operate a branch as a noninsured branch as required by § 347.206(b).

(b) *Contents of application.* The application must be in writing and include the following information and documentation:

(1) The kinds of deposit activities in which the branch proposes to engage;

(2) The expected source of deposits;

(3) The manner in which deposits will be solicited;

(4) How this activity will maintain or improve the availability of credit to all sectors of the United States economy, including the international trade finance sector;

(5) That the activity will not give the foreign bank an unfair competitive advantage over United States banking organizations; and

(6) A resolution by the foreign bank's board of directors authorizing the filing of the application; or if a resolution is not required by the applicant's organizational documents, the request shall include evidence of approval by the foreign bank's senior management.

(c) *Application filing.* The request must be filed with the appropriate regional director.

(d) *Additional information.* The appropriate regional director may request additional information to complete the application processing.

§ 347.405 Approval for an insured state branch of a foreign bank to conduct activities not permissible for federal branches; § 347.213.

(a) *Application for permission.* A foreign bank operating an insured state branch which desires to engage in or continue to engage in any type of activity that is not permissible for a federal branch shall file a written application for permission to conduct such activity with the FDIC as required by § 347.213.

(b) *Contents of application.* An application submitted pursuant to paragraph (a) of this section shall be in letter form and shall include the following information and documentation:

(1) A brief description of the activity, including the manner in which it will be conducted and an estimate of the expected dollar volume associated with the activity;

(2) An analysis of the impact of the proposed activity on the condition of the United States operations of the foreign bank in general and of the branch in particular, including a copy, if available, of any feasibility study, management plan, financial projections, business plan, or similar document concerning the conduct of the activity;

(3) A resolution by the applicant's board of directors or, if a resolution is not required pursuant to the applicant's organizational documents, evidence of approval by senior management authorizing the conduct of such activity and the filing of this application;

(4) A statement by the applicant of whether or not it is in compliance with §§ 347.210 and 347.211, Pledge of Assets and Asset Maintenance, respectively;

(5) A statement by the applicant that it has complied with all requirements of the Board of Governors concerning applications to conduct the activity in question and the status of such application, including a copy of the Board of Governors' disposition of such application, if applicable; and

(6) A statement of why the activity will pose no significant risk to the Bank Insurance Fund.

(c) *Board of Governors application.* An applicant may submit to the FDIC a copy of its application to the Board of Governors, provided that such application contains the information

described in paragraph (b) of this section.

(d) *Divestiture or cessation.* (1) An applicant that is required to submit a plan of divestiture or cessation for any of the reasons set forth in § 347.213(e) shall submit a detailed written plan of divestiture or cessation within 60 days of the disapproval or the triggering event.

(2) The divestiture or cessation plan shall:

(i) Describe in detail the manner in which the applicant will divest itself of or cease the activity in question; and

(ii) Shall include a projected timetable describing how long the divestiture or cessation is expected to take.

(e) *Filing procedures.* Applications and divestiture plans pursuant to this section shall be filed with the appropriate regional director.

(f) *Additional information.* The appropriate regional director may request additional information to complete the application or divestiture plan processing.

(g) *Delegation of authority.* Authority is hereby delegated to the Director (DOS) and the deputy director and, where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to approve plans of divestiture and cessation submitted pursuant to paragraph (d) of this section.

PART 351—[REMOVED]

17. Part 351 is removed.

PART 362—ACTIVITIES AND INVESTMENTS OF INSURED STATE BANKS

18. The authority citation of part 362 continues to read as follows:

Authority: 12 U.S.C. 1816, 1818, 1819 (Tenth), 1831a.

19. In § 362.4, paragraph (c)(3)(i)(A) is revised to read as follows:

§ 362.4 Activities of insured state banks and their subsidiaries.

* * * * *

(c) * * *

(3) * * *

(i) * * *

(A) Directly guarantee the obligations of others as provided for in § 347.103(a)(1) of this chapter; and

* * * * *

By order of the Board of Directors.

Dated at Washington, D.C. this 24th day of June, 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 97–17270 Filed 7–14–97; 8:45 am]

BILLING CODE 6174–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–81–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes Modified in Accordance with Supplemental Type Certificate SA1444SO, SA1509SO, SA1543SO, SA1896SO, SA1740SO, or SA1667SO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger to a cargo-carrying (''freighter'') configuration. This proposal would require limiting the payload on the main cargo deck by revising the Limitations Sections of all Airplane Flight Manuals (AFM), AFM Supplements, and Airplane Weight and Balance Supplements for these airplanes. This proposal also provides for the submission of data and analysis that substantiates the strength of the main cargo deck, or modification of the main cargo deck, as optional terminating action for these payload restrictions. This proposal is prompted by the FAA's determination that unreinforced floor structure of the main cargo deck is not strong enough to enable the airplane to safely carry the maximum payload that is currently allowed in this area. The actions specified by the proposed AD are intended to prevent failure of the floor structure, which could lead to loss of the airplane.

DATES: Comments must be received by August 22, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–81–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.

FOR FURTHER INFORMATION CONTACT: Steven C. Fox, Senior Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2777; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–81–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–81–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has issued supplemental type certificates (STC) for converting certain Boeing Model 727 and 747 series airplanes from a passenger to a cargo-carrying (''freighter'') configuration. These freighter conversions entail such modifications as removal of the passenger interior, the installation of systems to handle cargo containers (such as pallets and other unit load

devices), the installation of a side cargo door for the main cargo deck, and alterations to such systems as the hydraulic, electrical, and smoke detection systems that are associated with the transport of cargo. When a conversion is completed, the weight permitted to be carried (''payload'') on the main cargo deck is significantly greater than the payload allowed in that same area when the airplane was in its original passenger configuration.

On December 27, 1995, the FAA issued Airworthiness Directive (AD) 96–01–03, amendment 39–9479 (61 FR 116, January 3, 1996). The FAA took this action after determining that Model 747 passenger airplanes converted to freighters under certain STC's are not structurally capable of safely carrying the payload allowed on the main cargo deck. This condition is due to structural deficiencies in the floor beams of this deck, as well as in the fuselage structure surrounding the side cargo door for this area. That AD requires operators of those Model 747 freighters to reduce the maximum payload that can be carried on the main cargo deck in order ''[t]o prevent collapse of the aft fuselage due to inadequate strength in the airplane structure and subsequent separation of the aft fuselage from the airplane.'' Model 747 freighters affected by AD 96–01–03 were converted under STC's held by GATX/Airlog Company (''GATX'') when that AD was issued. GATX had acquired the original STC's from Hayes International Corporation (Hayes).

During its investigation of the circumstances that led to the issuance of AD 96–01–03, the FAA determined that similar unsafe conditions were likely to be found on certain Model 727 series airplanes that had been converted to freighters in a comparable manner. The bases for these concerns were that similar procedures and design methods had been used on both the 727 and 747 models, and that these STC's could be traced back to the same companies.

Actions Subsequent to AD 96–01–03

In response to those concerns, the FAA's Transport Airplane Directorate established a design review team of FAA engineers to identify any safety problems pertaining to certain interior and side cargo door STC's for Model 727 series airplanes, and to make recommendations for correcting any unsafe conditions.

The design review team has determined that there are more than 10 STC's for Model 727 freighters (''freighter STC's'' or ''Model 727 freighter STC's'') that need to be reviewed. These freighter STC's are individually held by Aeronautical Engineers, Inc. (AEI), ATAZ, Inc. (ATAZ), Federal Express Corporation (FedEx), and Pemco Aeroplex, Inc. (Pemco). The STC's held by Pemco are SA1444SO, which pertains to the cargo door and cargo compartment interior on Model 727–100 series airplanes; SA1509SO, which pertains to the cargo door on Model 727–100 and –200 series airplanes; SA1543SO, which pertains to the cargo compartment interior of Model 727–100 and –200 series airplanes; SA1896SO, which pertains to the cargo door and cargo compartment interior of Model 727–100 series airplanes; SA1740SO, which pertains to the cargo/passenger compartment interior of Model 727–100 series airplanes; and SA1667SO, which pertains to provisions for a ninth cargo pallet on Model 727–100 series airplanes. Over 300 Model 727 series airplanes of both U.S. and foreign registry have been modified in accordance with these STC's, and more than 32 operators worldwide use these freighters.

In reviewing these freighter STC's, the design review team applied the standards of Civil Air Regulations (CAR) part 4b, applicable to the original Boeing Model 727 airplane. These federal standards establish *minimum* safety requirements. A design which does not meet these standards is presumed to be unsafe.

Between September 1996 and February 1997, members of the design review team made four visits to inspect Model 727 series airplanes that were in the process of being converted or already had been converted under these freighter STC's. Site visits were conducted at Pemco World Air Services in Dothan, Alabama (Pemco STC's); the Tramco repair station in Everett, Washington (FedEx STC's that had originally been developed by Hayes); and Professional Modification Services (PMS), Inc.'s, facility in Miami, Florida (AEI and ATAZ STC's).

On all of the Model 727 series airplanes inspected during these site visits, the design review team observed that the original passenger floor beams, which now support the main cargo deck, had not been structurally reinforced by the STC modification for the heavier payloads these freighters are permitted to carry.

These STC freighters typically are allowed to carry 8,000 pound containers (weight of the cargo and container) on the main cargo deck. Because these containers are 88 inches long, the running load (the weight that can be placed on a longitudinal section of the main cargo deck) is 90 pounds per inch (8,000 pounds divided by 88 inches). This running load of 90 pounds per inch is a safety concern because it is approximately 2.6 times higher than the maximum running load of 34.5 pounds per inch allowed on these same floor beams when the airplane was in a passenger configuration.

FAA Structural Analysis of the Floor Beams of the Main Cargo Deck

The design review team examined the documents that the current or a previous STC holder had submitted when seeking original FAA approval of the STC application. The team was unable to find any data to verify that the unreinforced floor structure of the main cargo deck can safely support the heavier freighter payloads.

To independently evaluate whether these floor beams are strong enough to support the maximum payload permitted by the STC's, the design review team performed a limited structural analysis of the design of each main cargo deck viewed during its site visits.

In analyzing the floor beams of the main cargo deck, the FAA engineers used the payload configuration defined in the weight and balance documents for each STC. (These STC freighters are operated in accordance with FAA-approved Weight and Balance Supplements, which specify the payload that can be carried onboard, as well as the maximum payload and assigned location for individual containers on the main cargo deck.) Most of the containers permitted in the Weight and Balance Supplements for these STC's weigh up to 8,000 pounds each.

In its analysis, the design review team considered the different cargo handling system configurations observed on the STC freighters during the site visits; these systems include roller trays and container locks. The roller trays are attached to the floor of the main cargo deck, and enable cargo to be rolled forward and aft. These trays also support the weight of the cargo containers. The container locks, which hold a container in place, are spaced along the floor of the main cargo deck for all of these STC's but one; that STC also has side vertical cargo container restraints (''side restraints''). The analysis is based on the use of containers that are 88 inches by 125 inches, and the location of the horizontal center of gravity for the total payload in each container was within 8.8 inches from the geometric center of the base of the container for the forward and aft direction and 12.5 inches from the geometric center of the base of the container for the left and right direction.

The design review team used commonly accepted analytical methods in its structural analyses. This methodology, or an equivalent, was applicable when the STC application was originally submitted for approval, and it is applicable today. None of the floor analyses performed by the team involved the application of advanced technologies such as finite element modeling. The results of these structural analyses were consistent with data provided by Boeing, which had originally built these airplanes as passenger transports, and with some of the data provided by these STC holders.

To evaluate the adequacy of the floor, the team determined that the most likely ''critical case'' (the conditions or circumstances that exert the greatest forces on the main cargo deck) would be the ''down gust'' conditions specified in CAR part 4b. Down gusts are downward vertical movements of air that occur in turbulence and storms. Down gusts exert a downward force on the entire airplane. As this force causes the airplane to accelerate downward, containers on the main cargo deck—because of inertia—are pulled upward. This upward force on the containers is transmitted through the container locks and into the floor beams. On these STC freighters, this upward force could bend these floor beams upward to failure, and the failure of even a single beam could result in loss of the airplane.

Even if the floor beams of the main cargo deck only become deformed, the results could be catastrophic. Because flight control system cables and fuel lines pass through small holes in these floor beams, significant—although temporary—deformation of these beams could jam the cables or break fuel lines. Consequently, this could reduce controllability of the airplane, cause fuel starvation of one or more engines, or lead to a fire in the fuselage.

The FAA also has determined that performance of the flight maneuvers defined in CAR part 4b would produce critical case forces on these STC freighters, and consequent deformation or failure of floor beams on the main cargo deck. These maneuvers would cause upward forces on the cargo containers relative to the floor. Because of the location of the container locks, the floor beams at the forward or aft edges of the containers would be more critically loaded, and consequently deflected upward.

Determining Floor Strength (The ''Margin of Safety'')

The measure of the ability of the floor beams of the main cargo deck to support the stresses caused by various load cases (combinations of specific container weights with either wind gust conditions or airplane maneuvers) is its ''margin of safety.'' Because the floor must be designed to withstand the critical case stresses, the design review team calculated the margin of safety when the floor is subject to the turbulent ''down gust'' wind conditions defined in CAR part 4b.

The equation for determining the margin of safety is:

$$\text{Margin of Safety} = \frac{\text{Allowable Stress}}{\text{Applied Stress}} - 1$$

In this equation, ''Allowable Stress'' is the measure of the strength of a floor beam of the main cargo deck. ''Applied Stress'' is the stress level produced in that floor beam multiplied by a ''factor of safety'' of 1.5. The weight of the containers on the floor beam, flight conditions (for example, wind gusts or airplane maneuvers), and other forces, such as pressurization of the fuselage, all combine to create the ''applied stress'' level in that floor beam. CAR 4b.200(a) requires the inclusion of the 1.5 factor of safety in structural designs. (This factor is discussed in the ''Elimination of the 1.5 Factor of Safety'' section of this preamble.)

When the margin of safety is zero for all load cases, the structure meets the minimum requirements of CAR part 4b. A structure with a margin of safety greater than zero exceeds those standards. A structure with a margin of safety of less than zero does not meet these minimum requirements, and is presumed to be unsafe. If the margin of safety reaches -1 (the extreme case), the structure is not strong enough to withstand the stresses generated by any load case without failing.

Using this equation, the design review team calculated margins of safety for the STC floor designs as ranging from approximately -0.55 to -0.63. Because of the large negative margins of safety that were calculated for the down gust condition (the most likely critical case), the FAA did not analyze other load cases.

For the margins of safety to be positive for the ''down gust'' condition, the FAA determined that these STC freighters must be limited to less than 50% of the typical maximum payload of 8,000 pounds per container currently allowed by the STC's. From its analyses, the design review team determined that these main cargo decks are capable of supporting a maximum payload of approximately 3,000 pounds per container (a maximum running load of 34.5 pounds per inch) in all areas of the main cargo deck, except in the area adjacent to the side cargo door. In that side door area, containers would be restricted to a maximum payload of approximately 2,700 pounds per container (a maximum running load of 31.0 pounds per inch) due to structural configurations affecting the strength of the floor beams in this area. These running loads include payload in the lower lobe cargo compartments, and any other load applied to the bottom of the floor beams of the main cargo deck. [The Air Transport Association of America (ATA) recommended a maximum payload of 6,000 pounds per container. This recommendation, which is discussed in the ''ATA Recommendations for a Final Rule'' section of this preamble, is substantially above the safe payload limits calculated by the design review team, and would result in a negative margin of safety.]

Typically, freighters converted under these STC's are allowed to carry 11 or 12 containers on the main cargo deck. Containers in most areas of this deck have a maximum payload of up to 8,000 pounds per container; over the wing and landing gear area, this maximum payload per container can be up to 10,000 pounds. Although it would seem that these STC freighters could carry up to a total of 100,000 pounds, the maximum payload is actually limited by the strength of the fuselage as well as the strength of the floor beams. Consequently, the current maximum payloads on these airplanes range from 54,000 pounds (for a Model 727–100 series airplane) to 62,000 pounds (for a Model 727–200 series airplane), depending on the configuration of the freighter. The FAA's structural analysis shows that the maximum payload should be limited to approximately 35,000 pounds. This maximum payload is approximately 22% less than the average payload of 45,000 pounds that has been reported by some operators of these Model 727 STC freighters.

The FAA has determined that none of these main cargo decks are strong enough for the current maximum payloads, and therefore are unsafe. Furthermore, these decks do not comply with the requirements of CAR part 4b.

Operational Factors Affecting Payload Limitation

The FAA's structural analysis was based on the ''worst case'' conditions of the following operational factors: maximum operating speed limit, airplane in-flight weight, container orientation, and side restraints. The FAA realizes that if restrictions are placed on these factors, higher payloads can be allowed. Although the absolute effects of these restrictions would

require extensive analysis, the FAA has concluded that it is sufficient to estimate the effects of these factors if they are only to be applied for a limited amount of time. The FAA design review team determined that these restrictions would not violate other load cases.

• *Maximum Operational Speed and In-Flight Weight*

Some of these STC freighters are allowed to fly at a maximum operational speed of 390 knots equivalent airspeed (KEAS). During turbulence, the forces experienced by the airplane are, in part, a function of the aircraft's speed, which consequently affects the forces on the floor beams. By reducing the maximum operational speed to 350 knots indicated airspeed (KIAS), the forces on the floor beams during turbulence are reduced.

The forces experienced by the airplane during turbulence also are a function of the weight of the aircraft. A heavy airplane has more inertia, and therefore is less affected by severe gusts than a lighter one. The FAA has estimated that a minimum operational in-flight weight of 100,000 pounds will reduce the gust loads on these airplanes and, therefore, reduce the floor beam loads. Some ways to ensure that the in-flight weight does not fall below a prescribed limit are to have a minimum cargo weight, a minimum quantity of ''tankered'' fuel, sufficient ballast, or a combination of these items.

• *Container Orientation*

Typically, these STC freighters carry National Aerospace Standard (NAS) 3610 class II cargo containers, which have a fixed back wall; a partially or fully removable front wall; and are 88 inches by 125 inches. Due to this method of construction, a large portion of the forces that a container experiences in ''down gust'' wind conditions or turbulence is carried by the container's back wall, which is its strongest element. When cargo containers are oriented back-to-back, a large portion of both container loads is carried by the same container locks. This places higher loads on the floor beam supporting these locks. By requiring the containers to be oriented with the door side of the container facing forward, however, a more uniform distribution of the loads is achieved.

• *Side Restraints*

A better distribution of the container load is achieved by installing side restraints. The FAA estimates that there can be an increase in the maximum payload per container when FAA-approved side restraints are installed.

The FAA estimates that the combined effect of this speed limitation, minimum in-flight weight, and container orientation would result in a total weight of no more than 8,000 pounds for any *two* adjacent containers that are each 88 inches by 125 inches. By installing FAA-approved side restraints, this estimated total weight for any two adjacent containers could be increased to 9,600 pounds. Under no circumstances, however, can the total weight of any individual container exceed 8,000 pounds.

Elimination of the 1.5 Factor of Safety

At the request of industry, the FAA considered the consequences of elimination of the 1.5 factor of safety used in the ''Margin of Safety'' equation discussed above. By eliminating the 1.5 factor of safety, the FAA analysis determined that the proposed payload limits per container would increase by 50%. CAR 4b.200(a) requires that an airplane be designed with a certain amount of ''reserve structural strength'' to minimize the potential for complete structural failure of an airplane. This reserve is the ''1.5 factor of safety.'' Ordinarily, an applicant seeking to reduce or eliminate this requirement must file a request for an exemption. If the applicant uses an approach in its design that is comparable to the 1.5 factor of safety, the applicant can declare that this approach provides ''an equivalent level of safety.'' The applicant, however, must substantiate this declaration to the satisfaction of the FAA.

The FAA has examined the consequences resulting from the elimination of the 1.5 factor of safety, and has concluded that this action would pose unacceptable hazards for these airplanes. The FAA's intent in issuing this proposed AD is to prevent a combination of circumstances that could result in catastrophic loss of a Model 727 freighter converted under these STC's. Elimination of the 1.5 factor of safety in conjunction with the other measures discussed earlier to increase the allowable payload would be contrary to this intent.

CAR part 4b refers to the critical load cases—the down gust and maneuver forces previously described in this preamble—as ''limit loads.'' CAR 4b.200 requires that these limit loads be multiplied by 1.5 (the ''1.5 factor of safety''), thereby becoming ''ultimate loads'' as defined in CAR part 4b. CAR 4b.201(c) further requires that the structure be able to carry these ultimate loads (which provide a reserve of structural strength) without failure. Although it is anticipated that these STC freighters will not be routinely subjected to limit load forces, it sometimes happens during emergencies and unusual environmental conditions such as turbulence.

• *Emergency Conditions*

In an emergency, the pilot may exceed critical case maneuver forces, and fly the STC freighter beyond the airspeed and flight maneuver limits for which the airplane is designed. The failure of an engine, avoidance of a collision, or the opening of a cargo door during flight are conditions that could necessitate these actions.

Emergencies do occur. On February 5, 1997, a Model 727 passenger airplane was flying to John F. Kennedy International Airport in New York when an Air National Guard F–16 jet fighter approached close enough to activate the Model 727's collision avoidance system alarm. The pilot of the passenger airplane, following the system's emergency guidance, maneuvered the Model 727 into a steep dive and then a steep climb. Two flight attendants and a passenger were thrown down by these maneuvers. Although the actual maneuver forces for this incident are unknown, the 1.5 factor of safety may have provided structural strength to maneuver the airplane beyond the forces in CAR part 4b.

In 1991, a pilot performed a flight maneuver that imposed forces of approximately 3g's (three times the force of gravity) on a Model 747 freighter that was carrying a partial payload. The applicable federal regulations require Model 747 and 727 series airplanes to be designed for maneuvers imposing forces of up to 2.5g's. Had this freighter been carrying a full payload and the 1.5 factor of safety not been used in its design, FAA analysis indicates that this freighter would have been lost.

• *Turbulence*

Airplanes may encounter severe turbulence that exerts wind gust forces beyond the critical case forces of CAR part 4b. AD 96–01–03 describes an occasion in 1991 when wind gusts were so severe that an engine separated from a Model 747–100 freighter shortly after take-off.

More recently, severe wind gusts on September 5, 1996, caused numerous passenger injuries and one fatality on a Model 747–400 series airplane. The FAA received reports indicating that those gusts produced downward accelerations of −1.15g's and upward accelerations of +2.09g's on that airplane in less than four seconds. Had a Model 727 STC freighter experienced

similar conditions while transporting close to the maximum payload, FAA analysis indicates that the floor beams of the freighter's main cargo deck would have collapsed.

The FAA has received 87 reports of Model 727 series airplanes experiencing severe turbulence; these reports typically do not include events that have occurred in other countries. The majority of these events were unforeseen and resulted in injuries to the flight crew or passengers. Five of the reports document gusts causing airplane accelerations of at least +1.88g's upward and −1.5g's downward.

• *Hazardous Deformation of the Main Cargo Deck*

CAR 4b.201(a) requires any structure on the freighter, including the floor beams, to be strong enough to withstand—without ''detrimental permanent deformation''—the anticipated critical case forces that could be exerted upon it during its service life. CAR 4b.201(b) requires that any structural deformations caused by these critical case or limit loads not interfere with the safe operation of the airplane. (The catastrophic consequences of deformation are discussed earlier in this preamble.) Using the 1.5 factor of safety in structural analysis takes deformation into account; without the 1.5 factor of safety, the STC holder would be required to provide an analysis that demonstrates these floors would be free from detrimental deformation. Because these STC's lack a deformation analysis, the FAA would not consider a request for reducing the 1.5 factor of safety requirement unless such an analysis was conducted.

• *Other Considerations*

Another reason that reserve structural strength is necessary is that aerodynamic and structural analysis theory is not precise: exact conditions or circumstances are indeterminable; therefore approximations must be made. In addition, the 1.5 factor of safety takes into account such considerations as the variations in the physical properties of materials, the range of fabrication tolerances, and corrosion or damage. For example, all Model 727 series airplanes must have enough structural reserve to cover the corrosion control activities mandated by AD 90–25–03, amendment 39–6787 (55 FR 49258, November 27, 1990). That AD, in order to control corrosion, permits up to 10% of the material thickness of a floor beam of the main deck to be removed by grinding without undertaking repair; the removal of this material further reduces the strength of the floor.

The majority of these modified airplanes are nearing, or past, their design life of 20 years, 60,000 flights, or 50,000 hours of operation. As the airplanes age and are repeatedly flown, they accumulate fatigue damage and corrosion, which degrades the structural capability. Airplanes that are near or past their design life are part of the FAA's Aging Airplane Program and are subject to numerous AD's to correct unsafe conditions resulting from fatigue cracking and corrosion.

During the time period allowed by the AD's to implement the corrective action, it is probable that many of these aging airplanes will continue to have fatigue cracks and corrosion. Because these airplanes have been built with a safety factor of 1.5, there is a sufficient structural strength margin to allow some finite time to implement the AD's to correct the unsafe conditions. Without this factor of safety, a new maintenance program would have to be developed for these airplanes to ensure that all of the Aging Airplane Program fatigue cracks and corrosion problems are continuously identified and immediately eliminated.

Service History of the Model 727 STC Freighters

Although the modification of these airplanes commenced in 1983, the average modification date for these STC freighters is 1991. In fact, approximately 100 of these airplanes (one-third of the STC freighter fleet) have been modified in just the last three years.

Most of these STC freighters fly only two flights each day, resulting in a low number of accumulated flights since conversion. A representative of the largest operator of these airplanes indicates that, on average, the airplanes carry only slightly more than half of the current maximum payload of 8,000 pounds per container. These circumstances may explain why the FAA has not received reports of adverse events relating to the structural strength of these floor beams.

These floor beams, if overstressed, are not likely to give warning prior to total failure. The existing floor beams on these STC freighters are commonly made from 7075–T6511 aluminum alloy, and there is only a 10% difference between the stress level at which the floor beam permanently bends, and the stress level at which the beam breaks. Consequently, once the floor beams are stressed to the point of being permanently bent, it takes only a small amount of additional stress until the floor beams break, which could result in loss of the airplane.

The FAA has concluded that the reported service history of these STC freighters does not demonstrate that these airplanes are safe.

Issuance of an AD is Appropriate Regulatory Action

Because of the unsafe condition found on these STC freighters (the inadequate strength of the floor structure of the main cargo deck to carry the current maximum payloads), the FAA has determined that there are two ways in which it could proceed: Issuance of an AD to correct the unsafe condition of the floor, or suspension or revocation of these STC's.

The Administrator of the FAA has the authority to issue an AD when ''an unsafe condition exists in a product'' [14 CFR 39.1(a)], and ''[t]hat condition is likely to exist or develop in other products of the same type design'' [14 CFR 39.1(b)]. When such a finding is made, the Administrator may, as appropriate, prescribe ''inspections and the conditions and limitations, if any, under which those products may continue to be operated'' (14 CFR 39.11). By using the AD process, the FAA can still allow these STC freighters to operate, although under restrictions which are necessary to eliminate the unsafe condition.

Because the floor structures did not meet CAR part 4b certification standards at the time these STC's were originally issued, the Administrator of the FAA is empowered to suspend or revoke these STC's [49 U.S.C. 44709(b)]. If the Administrator were to take such action against these STC's, the order could result in the immediate grounding of these STC freighters.

In consideration of the disruption of domestic and international commerce that would result from the suspension or revocation of these STC's, as well as the significant impacts on the domestic and international economy that such an action would have, the FAA has concluded that the issuance of an AD with restrictions on the maximum payloads on the main cargo deck is appropriate action. These payload restrictions will enable these freighters to continue operating, and remove the unsafe condition that currently exists in the floor beams of the main cargo deck.

FAA Meetings With STC Holders and Operators

The FAA has met individually with each of the affected STC holders to discuss the FAA design review team's observations, analyses, and findings. In a letter sent prior to these meetings, the

FAA provided its preliminary conclusions to each STC holder. In addition, the agency asked the STC holder to submit data showing that unsafe conditions do not exist, and that the STC designs do meet applicable federal aviation regulations. If the FAA's findings and analyses could not be controverted, the STC holder was asked to specify what actions it would take to bring its designs into compliance. STC holders also were asked to propose actions that would enable these airplanes to operate safely while data or modifications were being developed.

At its meeting with the FAA, Pemco did not present any information to contradict the FAA's analyses, or submit proposals to keep these planes operating safely. The FAA's meetings with the other 3 STC holders produced similar results.

The FAA also has met jointly with the STC holders and the operators of the Model 727 freighters modified under these STC's. On February 14, 1997, the FAA convened this meeting, which was attended by more than 75 industry representatives, to discuss what the design review team had observed during its site visits and determined from its analyses of STC data. During this meeting the operators presented no technical data, but provided the FAA with information about the potential impacts on their businesses if the agency were to reduce the current maximum payload.

Industry Proposal for the Timing of an NPRM and FAA Response

During the February 14 meeting, representatives of the affected operators and STC holders in attendance presented a proposal to the FAA. Generally, industry proposed that the FAA delay issuing an NPRM and imposing payload restrictions; in turn, industry, within 120 days from the end of February 1997, would test floor beams, perform analyses, redesign the floor structure, if necessary, and submit data to the FAA substantiating compliance with CAR part 4b. At the meeting, the FAA responded that its priority is the safety of these airplanes, and the burden is now on industry to establish the ability of these STC freighters to carry more than the 3,000 pounds per container being considered by the FAA.

ATA Recommendations for a Final Rule

ATA followed up on the proposal at the February 14 meeting with a March 10, 1997, letter that contained recommendations in order ''to get the necessary design changes quickly incorporated while permitting the airlines to continue operating their aircraft.'' ATA proposed that a 3,000 pound per pallet weight limit be gradually phased-in as follows:

1. There would be at least 120 days after the effective date of the AD before any payload restrictions would be implemented. According to ATA, this period would enable STC holders or others to redesign the freighter floors and provide enough time for operators to procure parts to modify the floors.

2. Initially, payload restrictions would be reduced from 8,000 pounds per pallet to 6,000 pounds per pallet. These restrictions would be in effect for at least one year or the next ''C'' check, whichever occurs later, and operators would not be required to modify the floor beams during this time.

3. Ultimately, the floor beams of the main cargo deck would not have to be modified until at least 16 months after the effective date of the AD. At that time, the payload per pallet would be reduced to 3,000 pounds if an operator opted not to accomplish that modification.

4. Airplanes would not be subject to any of these restrictions if operators can substantiate to the FAA that the floor beams are strong enough to support the existing payload per pallet.

The FAA considered ATA's recommendations in developing this proposed action. The FAA determined that allowing these airplanes to continue to operate without restrictions for 120 days after the effective date of this AD, and allowing 16 months for modification of the floor structure of the main cargo deck would not address the unsafe condition in a timely manner. The FAA's analysis also determined that ATA's recommended payload limit of 6,000 pounds per container at all locations would result in negative margins of safety. The interim weight restrictions proposed by the FAA allow the carriage of a limited number of individual containers at or above the 6,000 pound per container payload suggested by ATA. In addition, the 120-day period of operation at the interim payloads proposed by the FAA (discussed below) does, in part, meet ATA's suggested time for allowing redesign of these STC freighter floors.

FAA Findings

Based on the observations and analyses of its design review team, and information presented by affected STC holders and the operators of Model 727 series airplanes converted to freighters under these STC's, the FAA has found that:

1. None of the floor beams of the main cargo deck on any of these STC's have been modified from the original passenger configuration to support the heavier payloads carried on a freighter.

2. Based on the FAA's analyses, the floor structures of these STC freighters are not capable of withstanding the forces that would result from the current maximum payload when CAR part 4b conditions are encountered.

3. When the maximum payload of a container is limited to 8,000 pounds or 6,000 pounds (for all container positions) as proposed by ATA, the margins of safety for the floor beams of the main cargo deck are calculated as negative numbers and the structural strength of these beams is not sufficient to meet the requirements of CAR part 4b. When the maximum payload of a container is limited to approximately 3,000 pounds, the margin of safety is calculated as a positive number and these floor beams meet the structural strength requirements of CAR part 4b.

4. The FAA estimates the combined effect of imposing operational restrictions on airplane weight, maximum operating speed, and orientation of containers reduces the forces exerted on the airplane in ''down gust'' conditions, and will permit the maximum payload of a container to be increased on an interim basis. The installation of side restraints can permit a further temporary increase in payload.

5. Typically, these STC freighters are modified by other STC's that change the maximum taxi, take-off, zero fuel, and landing weights of these airplanes. These weight changes permit the airplanes to carry more payload on the main cargo deck.

No compatibility study has been performed showing that these weight changes are safe considering the existing freighter STC modifications and payload limits. In addition, no compatibility study has been done for the addition of auxiliary fuel tanks, engine changes, and other types of modifications that alter the basic loads on these airplanes.

6. When these STC modifications were accomplished, each airplane was modified differently, due to different installer shop practices and the configuration of each airplane prior to modification. Subsequent modifications under other STC's that alter the structure were not shown to be compatible with the freighter modifications. The resulting airplane configuration can be significantly different between individual airplanes. Any modifications that are undertaken to bring these airplanes into compliance with CAR part 4b must be shown to be

compatible with the specific airplanes being modified.

7. The elimination of the 1.5 factor would not eliminate the unsafe condition that occurs when these airplanes are carrying containers weighing more than the payloads specified in this proposed AD.

FAA Conclusions

From these findings, the FAA has concluded that:

1. The lack of strength in the floor structure of the main cargo deck must be corrected by reducing the payload carried on the main cargo deck. This reduced payload includes the payload in the lower lobe cargo compartments.

2. Maximum payloads of approximately 2,700 pounds per container in the areas near the forward side cargo door and approximately 3,000 pounds per container in all other areas of the main cargo deck provide an acceptable level of safety. It is estimated that operational restrictions on airplane weight, maximum operating speed, and orientation of containers, as well as the installation of FAA-approved side restraints, would allow safe operation with higher payloads during an interim period.

3. Because these STC freighters are modified by other STC's that change the maximum taxi, take-off, zero fuel, and landing weights of these airplanes, and permit more payload on the main cargo deck, all of the airplanes' Airplane Flight Manuals (AFM's), AFM Supplements, and Weight and Balance Supplements would have to be revised to show the payload restrictions.

Additional AD Actions

The FAA design review team's scope of review of these STC's was not limited to concerns about the strength of the floor structure that support the main cargo deck. The team also made inspections and gathered information about other areas where additional unsafe conditions may exist. Following this proposed rulemaking, additional rulemaking will be initiated to address these concerns. These concerns include the following structural, door systems, and STC certification and documentation issues:

• *Structural Deficiencies*

Lack of ''Fail-Safe'' Hinges on the Cargo Door

The design review team saw single or double-piece hinge fittings on the side cargo doors of these STC freighters. Should a crack propagate along the hinge line where the hinge attaches either to the upper sill of the fuselage or to the door itself, the cargo door could separate from the airplane, and result in loss of the airplane.

Apparent Lack of Strength of the Structure Surrounding the Side Cargo Door

To install a side cargo door for the main deck, an opening of approximately 7.5 feet by 11 feet (82.5 square feet) must be cut into the side of the fuselage. This opening requires that the cutout area and adjacent structural areas be substantially reinforced. If the fuselage structure that surrounds this cargo door is not strong enough to withstand the forces that may be exerted during flight, it could result in loss of the airplane.

The design review team observed that reinforcing structures used in this area, such as longerons, frames, doublers and triplers, are discontinuous and appear to lack adequate load paths and strength. These discrepancies could result in a fuselage structure that does not meet the strength and deformation requirements of CAR 4b.201, proof of structure standards of CAR 4b.202, or fail safety requirements of CAR 4b.270(b).

In its examination of the data supporting these STC's, the design review team determined that the STC applicants used inadequate methods and/or incomplete analyses to substantiate that their modifications provide adequate strength in this area. The STC applicants typically did not substantiate the strength of numerous structural features, such as splices and runouts. The STC holders also used analytical approaches that failed to consider such impacts as redistribution of the forces in the fuselage, and localized stress effects such as ''buckling.''

Inadequate Cargo Restraint Barriers

CAR 4b.260 requires that the restraint barrier in the cargo compartment of the main deck be strong enough to protect the occupants from injury when the freighter is carrying its maximum payload and emergency landing conditions occur (the ''9.0g standard'').

Based on the observations and analyses of the design review team, the FAA has determined that the bulkhead restraint barriers on all of the observed STC freighters do not meet the 9.0g standard; three of the four STC holders have confirmed the FAA's finding.

• *Deficiencies in Systems for the Side Cargo Door*

Because of cargo door-related accidents, industry and the FAA, during the early 1990s, conducted an extensive design review of cargo doors and agreed on new standards to eliminate safety deficiencies in certain cargo door systems. The FAA agreed to issue AD's requiring compliance with these standards, which are based on Amendment 54 to 14 CFR 25.783, for those freighters that did not comply. These standards are not intended to upgrade the requirements of CAR part 4b after certification, but are to correct potentially unsafe conditions on airplanes already in service that were identified during the design review.

Inadequate Warning System for an ''Unsafe'' Door

Freighters must have a warning system that directly alerts the pilot and co-pilot that the side cargo door is ''unsafe'' (open, unlatched, or unlocked). A ''safe'' cargo door is one that is verified to be closed, latched, and locked prior to taxiing for take-off.

The design review team observed STC freighters that do not have a red cargo door warning light in plain view of both pilots. In the event that the cargo door is unsafe, pilots on those planes would not be directly warned; this situation could lead to pilot inaction or dispatch of the airplane, and consequent opening of this door during flight.

Improper Pressurization of the Fuselage When the Cargo Door is ''Unsafe''

The opening of a door during flight has caused several serious accidents. Some of those accidents have resulted in loss of life; others have resulted in loss of the airplane. Consequently, industry and the FAA adopted standards to prevent pressurization of the fuselage when the cargo door is unsafe. Typically, compliance with these standards involves installation of vent doors that close only when the cargo door is safe.

In its examination of the associated cargo door related systems on these STC freighters, the design review team detected that the fuselage of some of these airplanes could be pressurized when the cargo door vent door is not closed. The team also found that some STC's did not have the required safety analysis that would verify the adequacy of the design's pressurization prevention system when the cargo door is unsafe.

Electrical/hydraulic System Deficiencies That Could Cause an ''Unsafe'' Cargo Door

Electrical short circuits could transmit power to the electrical or hydraulic systems that operate the side cargo door, lead to opening of this door during flight, and could result in the loss of the airplane. To prevent this, all power to this door must be removed during flight,

and the flight crew must not be able to restore this power at any time during flight.

CAR 4b.606 (which has been further refined by the cargo door standards agreed upon by industry and the FAA) requires STC holders to show that the design of the electrical system is adequate to prevent the side cargo door from opening during flight. These STC holders did not accomplish this analysis.

Inability to Visually Verify the Status of the Side Cargo Door

When the system that warns the pilot and co-pilot about an ''unsafe'' cargo door is not working correctly, the red warning light either will fail to light up during pre-flight testing of the system, or will light up when the side cargo door is actually ''safe.'' These STC's have a backup system that allows the flight crew to confirm that the door is actually safe.

The cargo door standards to which industry and the FAA agreed require ''a visual means of directly inspecting the locks.'' The design review team observed that these backup systems enable the flight crew to view only a portion of the locking beam. Because a visual means of directly inspecting the locking mechanism of the door is not available, these STC's do not comply with these standards. When the entire locking mechanism cannot be visually inspected, a false report on the condition of the door may be given to the crew, and the airplane may be dispatched with an unsafe door.

Cargo Compartment Smoke Detection and Warning Systems

CAR 4b.383(e)(2) requires that there be a means for the flight crew to check and assure the proper functioning of each smoke detector circuit. The FAA design review team and STC freighter operators have observed that some STC's contain electrical wiring designs that test only a portion of the smoke detection system—not the entire system as required—when a single button is pressed (the ''press to test'' feature). If the flight crew is not alerted that some smoke detectors are not functioning, the crew may not be able to respond to a cargo compartment fire in a timely manner.

• *The Carriage of Supernumeraries*

Supernumeraries are non-flight crew personnel who are carried on board the airplane. For example, a supernumerary could be an airline employee who is not part of the flight crew, but is specially trained to handle cargo.

These STC freighters have a cargo compartment that is used only for the carriage of cargo. Before supernumeraries can be carried, the STC holder or operator must apply to the FAA for an exemption from CAR 4b.383(e), and from other federal regulations that pertain to seats, berths, and safety belts; emergency evacuation; ventilation; and fire protection. Such exemptions are granted only when the FAA determines that the design contains features that provide an acceptable level of safety for the supernumeraries.

The FAA has become aware of numerous instances where STC holders have made provisions for the carriage of supernumeraries without applying for FAA exemptions and without demonstrating that the safety provisions for supernumeraries are acceptable.

• *STC Data and Documentation Concerns*

When the FAA design review team evaluated data that STC applicants originally submitted to obtain FAA approval of these freighter STC's, the team found a number of deficiencies. Examples include data that is not adequately substantiated; payload limits in Weight and Balance documents that are inconsistent with the structural capability of the fuselage; structural analyses that lack the critical case; no analysis of the floor beams over the wing center section; and documented negative margins of safety that are unresolved.

• *Unsubmitted Instructions for Continued Airworthiness*

Federal regulations require an STC holder to submit ''Instructions for Continued Airworthiness'' to the FAA for review. These instructions include maintenance procedures, maintenance manuals, and maintenance program requirements for the continued safety of the airplane converted under the STC. Only one of the four STC holders has complied with this requirement.

Future FAA Review of Other Transport Airplane Cargo Conversions

The FAA's review of STC's and the safety of airplanes converted from a passenger to a cargo-carrying configuration will not be limited to just Model 727 and 747 series airplanes. Based on the discovery of unsafe conditions on both of these airplane models, the FAA intends to examine all transport category passenger airplanes that have been converted to a cargo-carrying configuration under STC's.

The FAA urges STC holders and operators of these freighters to begin, as soon as possible, an examination of the data supporting the STC's. If problems such as those identified in the Model 727 and 747 conversions are detected, corrective actions should be developed. Self-examination of these conversions prior to formal FAA review may shorten the time needed for any corrective actions, and reduce the impacts on operators of these freighters.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would restrict the payload on the main cargo deck of Model 727 series airplanes modified in accordance with STC SA 1444SO, SA1509SO, SA1543SO, SA1896SO, SA1740SO, or SA1667SO. This proposal would be accomplished by revisions to the Limitations Section of all FAA-approved AFM's, AFM Supplements, and Weight and Balance Supplements. Revision of all these documents would be required because these STC freighters have been modified by other STC's that change the maximum taxi, take-off, zero fuel and landing weights of these airplanes.

The payload limits that are proposed are based on the use of containers that are 88 inches by 125 inches, and a horizontal center of gravity for the total payload in each container that is located within 8.8 inches from the geometric center of the base of the container for the forward and aft direction and 12.5 inches from the geometric center of the base of the container for the left and right direction. The payload limits are also based on a requirement that all containers are loaded with the door side of the container facing forward.

The proposal presents three options for payload limitations: one ''baseline'' [paragraph (a)] and two ''interim'' [paragraphs (b) and (c)], depending upon the floor configuration and other operating limitations.

Paragraph (a) would establish a payload limit of 3,000 pounds per container.

For airplanes equipped with FAA-approved side restraints, paragraph (b) would provide for temporary payload limits in some areas of 9,600 pounds for any *two* adjacent containers, with a limit of 8,000 pounds for any one container. These limits would be available when the following two conditions are met: the maximum operational airspeed does not exceed 350 KIAS *and* the minimum in-flight weight exceeds 100,000 pounds.

For airplanes that are not equipped with FAA-approved side restraints,

paragraph (c) would provide for a temporary payload limit in some areas of 8,000 pounds for any *two* adjacent containers. This limit also would be available when the following two conditions are met: the maximum operational airspeed does not exceed 350 KIAS *and* the minimum in-flight weight exceeds 100,000 pounds.

Because the determination of the effects of operational limitations on payload is based on approximations, the resulting payload limits may be unconservative. Consequently, operation with these payload limits is only acceptable for a limited period of time. Continued use of these operational limits and the associated payload limits must be substantiated. The FAA has determined that an acceptable level of safety is provided if the time period is limited to no more than 120 days, which would also allow sufficient time for an applicant to develop an acceptable analysis regarding the applicability of the operational limitations.

At the February 14 meeting discussed above, the industry participants proposed to complete a redesign of the floor structure within 120 days from the end of February (by the end of June). The FAA bases the proposed 120-day interim period in paragraphs (b) and (c) on the following assumptions:

1. Industry will fulfill this proposal;
2. The final rule will not become effective before October 1, 1997, and thus allow additional time for the industry to modify the main cargo deck floor structure; and
3. Operators and STC holders will work diligently in the meantime to avoid any disruptions to operations.

In light of the seriousness of the unsafe conditions addressed by this proposal, the FAA considers that the 120-day interim period:

1. Provides an acceptable level of safety;
2. Minimizes exposure to any potential unconservatism in the determination of the payload limits;
3. Provides an adequate opportunity for applicants to develop substantiation for continued use of operational limits to enhance payload limits; and
4. Minimizes, for the interim period, the burdens on operators resulting from this AD.

Should an operator desire to transport containers of other dimensions or use a different payload container center of gravity, it would have to apply to the FAA for appropriate payload limits.

At any time, an applicant would be able to present a proposal to modify the floor structure or proposed weight and other limits, data, and analysis to the FAA to substantiate that floor structure of the main cargo deck (existing or modified) is in compliance with the requirements of CAR part 4b when supporting the proposed weight limits. When the FAA determines that these documents are acceptable, the operator would be able to operate its airplane at the payload limits substantiated by its data and analysis.

Regulatory Evaluation Summary

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.

The FAA conducted a ''Cost Analysis and Initial Regulatory Flexibility Determination and Analysis'' to determine the regulatory impacts of this and three other proposed AD's to operators of all 244 U.S.-registered Boeing Model 727–100 and –200 series passenger airplanes that have been converted to cargo-carrying configurations under 10 STC's held by four companies. This analysis is included in the docket for each AD. The FAA has determined that approximately 6 Model 727–100 and 45 Model 727–200 series airplanes operated by 10 carriers were converted under Pemco STC's. (There were 15 Model 727 series airplanes for which the FAA could not identify the STC holder. It is possible that these airplanes were also converted under a Pemco STC. Their costs are not included here.)

Assuming that operators of affected airplanes converted under Pemco STC's would comply with the restricted interim operating conditions set forth in the proposed rule, the FAA estimates in the analysis that each Model 727–100 series airplane modified under the Pemco STC's would lose approximately $32,504 in revenues during the 120-day interim period after the effective date of the proposed AD. Further, the FAA estimates that none of the modified Model 727–200 series airplanes would lose revenues during the interim period.

Based on the ''Cost Analysis and Initial Regulatory Flexibility Determination and Analysis'' included in the docket, the FAA estimates that affected airplanes could be modified at a cost of $100,000 per airplane. The total cost, therefore, to modify the fleet of affected Model 727 series airplanes that were originally modified to Pemco STC's is $5.3 million. This assumes that modifications to the airplane are available and installed within the 120-day time period. If there are any delays in the availability or implementation of modifications, the revenue loss due to operation at the 3,000-pound payload limit would substantially increase the costs. The FAA solicits detailed cost information from the affected carrier concerning the proposed AD's compliance costs.

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by government regulations. The RFA requires a Regulatory Flexibility Analysis if a proposed rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The Regulatory Flexibility Analysis includes the consideration of alternative actions.

FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, establishes threshold cost values and small entity size standards for complying with RFA review requirements in FAA rulemaking actions. The Order defines ''small entities'' in terms of size thresholds, ''significant economic impact'' in terms of annualized cost thresholds, and ''substantial number'' as a number which is not less than eleven and which is more than one-third of the small entities subject to the proposed or final rule.

FAA Order 2100.14A sets the size threshold for small entities operating aircraft for hire at 9 aircraft and the annualized cost threshold at $69,000 for scheduled operations of airplanes with fewer than 60 seats and $5,000 for nonscheduled operations.

Four of the 10 affected carriers operating 13 affected airplanes are considered small entities (i.e., each operates fewer than 9 affected airplanes). The cost of the proposed AD greatly exceeds the threshold values defined in the FAA Order. The proposed AD does not affect a substantial number of small entities, however, because it is a number less than eleven. Therefore, this AD does not have a significant economic impact on a substantial number of small entities and a regulatory flexibility analysis is not required.

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 ''Cost Analysis and Initial Regulatory Flexibility Determination and Analysis'' 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, Airplanes, 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:

Boeing: Docket 97–NM–81–AD.

Applicability: Model 727 series airplanes; modified in accordance with Supplemental Type Certificate SA1444SO, SA1509SO, SA1543SO, SA1896SO, A1740SO, or SA1667SO; 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 (g) 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 structural failure of the floor beams of the main cargo deck, which could lead to loss of the airplane, accomplish the following:

(a) Except as provided in paragraphs (b), (c), and (d) of this AD, within 48 clock hours (not flight hours) after the effective date of this AD, accomplish the requirements of paragraph (a)(1) or (a)(2) of this AD, as applicable:

(1) For airplanes on which only containers that are 88 inches by 125 inches are transported: Revise the Limitations Section of all FAA-approved Airplane Flight Manuals (AFM) and AFM Supplements, and the Limitations Section of all FAA-approved Airplane Weight and Balance Supplements to include the following information. This may be accomplished by inserting a copy of this AD in all AFM's, AFM Supplements, and Weight and Balance Supplements.

''Limitations

All containers must be oriented with the door side of the container facing forward.

The location of the horizontal center of gravity for the total payload within each container shall not vary more than 8.8 inches from the geometric center of the base of the container for the forward and aft direction and 12.5 inches from the geometric center of the base of the container for the left or right direction.

Payload Limitations

Do not exceed a total weight of 3,000 pounds per container on the main cargo deck, except in the area adjacent to the side cargo door. In that side door area (Body Station 440 to Body Station 660), containers are restricted to a maximum payload of 2,700 pounds per container. This payload limit includes the payload in the lower lobe cargo compartments and any other load applied to the bottom of the floor beams of the main cargo deck for the same body station location as the container on the main cargo deck.''

(2) For airplanes on which any containers other than 88 inches by 125 inches are transported: Revise the Limitations Section of all FAA-approved AFM's and AFM Supplements, and the Limitations Section of all FAA-approved Airplane Weight and Balance Supplements in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA Transport Airplane Directorate.

Note 2: The weight restrictions to be approved under paragraph (a)(2) will be consistent with the applicable weight restrictions of paragraph (a)(1), (b), or (c) of this AD.

(b) During the period ending 120 days after the effective date of this AD: For airplanes on which only containers that are 88 inches by 125 inches are transported, and that are equipped with side vertical cargo container restraints that have been approved by the Manager, Standardization Branch, ANM–113, as an optional alternative to compliance with paragraph (a)(1) of this AD, revise the Limitations Section of all FAA-approved AFM's and AFM Supplements, and the Limitations Section of all FAA-approved Airplane Weight and Balance Supplements to include the following limitations. This may be accomplished by inserting a copy of this AD in all AFM's, AFM Supplements, and Weight and Balance Supplements.

''Limitations

Maximum Operating Airspeed of V_{mo} equals 350 knots indicated airspeed (KIAS).

Minimum in-flight weight: 100,000 pounds or greater. All containers must be oriented with the door side of the container facing forward.

The location of the horizontal center of gravity for the total payload within each container shall not vary more than 8.8 inches from the geometric center of the base of the container for the forward and aft direction and 12.5 inches from the geometric center of the base of the container for the left or right direction.

Payload Limitations

Do not exceed a total weight of 9,600 pounds for any two adjacent containers and a total weight of 8,000 pounds for any container, except that the total weight of all containers forward of Body Station 436 shall not exceed 4,000 pounds. This payload limit includes the payload in the lower lobe cargo compartments and any other load applied to the bottom of the floor beams of the main cargo deck for the same body station location as the container on the main cargo deck.''

(c) During the period ending 120 days after the effective date of this AD: For airplanes on which only containers that are 88 inches by 125 inches are transported, and that are NOT equipped with side vertical cargo container restraints that have been approved by the Manager, Standardization Branch, ANM–113, as an optional alternative to compliance with paragraph (a)(1) of this AD, revise the Limitations Section of all FAA-approved AFM's and AFM Supplements, and the Limitations Section of all FAA-approved Airplane Weight and Balance Supplements to include the following limitations. This may be accomplished by inserting a copy of this AD in all AFM's, AFM Supplements, and Weight and Balance Supplements.

''Limitations

Maximum Operating Airspeed of V_{mo} equals 350 knots indicated airspeed (KIAS).

Minimum in-flight weight: 100,000 pounds or greater. All containers must be oriented with the door side of the container facing forward.

The location of the horizontal center of gravity for the total payload within each container shall not vary more than 8.8 inches from the geometric center of the base of the container for the forward and aft direction and 12.5 inches from the geometric center of the base of the container for the left or right direction.

Payload Limitations

Do not exceed a total weight of 8,000 pounds for any *two* adjacent containers and the total weight of all containers forward of Body Station 436 shall not exceed 4,000 pounds. This payload limit includes the payload in the lower lobe cargo compartments and any other load applied to the bottom of the floor beams of the main cargo deck for the same body station location as the container on the main cargo deck.''

(d) For airplanes that operate under the 350 KIAS requirements of paragraph (b) or (c) of this AD: A maximum operating airspeed limitation placard must be installed adjacent to the airspeed indicator and in full view of both pilots. This placard must state: ''Limit V_{mo} to 350 KIAS.''

(e) For airplanes complying with paragraph (b) or (c) of this AD, within 120 days after the effective date of this AD: Revise the Limitations Section of all FAA-approved AFM's and AFM Supplements, and the Limitations Section of all FAA-approved

Airplane Weight and Balance Supplements to include the following information. This may be accomplished by inserting a copy of this AD in all AFM's, AFM Supplements, and Weight and Balance Supplements.

''Limitations

All containers must be oriented with the door side of the container facing forward.

The location of the horizontal center of gravity for the total payload within each container shall not vary more than 8.8 inches from the geometric center of the base of the container for the forward and aft direction and 12.5 inches from the geometric center of the base of the container for the left or right direction.

Payload Limitations

Do not exceed a total weight of 3,000 pounds per container on the main cargo deck, except in the area adjacent to the side cargo door. In that side door area (Body Station 440 to Body Station 660), containers are restricted to a maximum payload of 2,700 pounds per container. This payload limit includes the payload in the lower lobe cargo compartments and any other load applied to the bottom of the floor beams of the main cargo deck for the same body station location as the container on the main cargo deck.''

(f) As an alternative to compliance with paragraphs (a), (b), (c), (d), and (e) of this AD: An applicant may submit a proposal to modify the floor structure or proposed new payload and other limits, and substantiating data and analyses to the Manager, Standardization Branch, ANM–113, in accordance with the procedures of paragraph (g) of this AD, showing that the floor structure of the main cargo deck is in compliance with the requirements of Civil Air Regulations (CAR) part 4b. If the FAA determines that these documents are acceptable and applicable to the specific airplane being analyzed and approves the proposed limits, prior to flight under these new limits, the operator must revise the Limitations Section of all FAA-approved AFM's and AFM Supplements, and the Limitations Section of all FAA-approved Airplane Weight and Balance Supplements in accordance with a method approved by the Manager, Standardization Branch, ANM–113. Accomplishment of these revisions in accordance with the requirements of this paragraph constitutes terminating action for the requirements of this AD.

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

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

(h) 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 .July 8, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–18358 Filed 7–14–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–80–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes Modified in Accordance With Supplemental Type Certificate ST00015AT

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger to a cargo-carrying (''freighter'') configuration. This proposal would require limiting the payload on the main cargo deck by revising the Limitations Sections of all Airplane Flight Manuals (AFM), AFM Supplements, and Airplane Weight and Balance Supplements for these airplanes. This proposal also provides for the submission of data and analysis that substantiates the strength of the main cargo deck, or modification of the main cargo deck, as optional terminating action for these payload restrictions. This proposal is prompted by the FAA's determination that unreinforced floor structure of the main cargo deck is not strong enough to enable the airplane to safely carry the maximum payload that is currently allowed in this area. The actions specified by the proposed AD are intended to prevent failure of the floor structure, which could lead to loss of the airplane.

DATES: Comments must be received by August 22, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–80–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.

FOR FURTHER INFORMATION CONTACT: Steven C. Fox, Senior Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2777; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–80–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–80–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has issued supplemental type certificates (STC) for converting certain Boeing Model 727 and 747 series airplanes from a passenger to a cargo-carrying (''freighter'') configuration. These freighter conversions entail such modifications as removal of the passenger interior, the installation of

systems to handle cargo containers (such as pallets and other unit load devices), the installation of a side cargo door for the main cargo deck, and alterations to such systems as the hydraulic, electrical, and smoke detection systems that are associated with the transport of cargo. When a conversion is completed, the weight permitted to be carried (''payload'') on the main cargo deck is significantly greater than the payload allowed in that same area when the airplane was in its original passenger configuration.

On December 27, 1995, the FAA issued Airworthiness Directive (AD) 96–01–03, amendment 39–9479 (61 FR 116, January 3, 1996). The FAA took this action after determining that Model 747 passenger airplanes converted to freighters under certain STC's are not structurally capable of safely carrying the payload allowed on the main cargo deck. This condition is due to structural deficiencies in the floor beams of this deck, as well as in the fuselage structure surrounding the side cargo door for this area. That AD requires operators of those Model 747 freighters to reduce the maximum payload that can be carried on the main cargo deck in order ''[t]o prevent collapse of the aft fuselage due to inadequate strength in the airplane structure and subsequent separation of the aft fuselage from the airplane.'' Model 747 freighters affected by AD 96–01–03 were converted under STC's held by GATX/Airlog Company (''GATX'') when that AD was issued. GATX had acquired the original STC's from Hayes International Corporation (Hayes).

During its investigation of the circumstances that led to the issuance of AD 96–01–03, the FAA determined that similar unsafe conditions were likely to be found on certain Model 727 series airplanes that had been converted to freighters in a comparable manner. The bases for these concerns were that similar procedures and design methods had been used on both the 727 and 747 models, and that these STC's could be traced back to the same companies.

Actions Subsequent to AD 96–01–03

In response to those concerns, the FAA's Transport Airplane Directorate established a design review team of FAA engineers to identify any safety problems pertaining to certain interior and side cargo door STC's for Model 727 series airplanes, and to make recommendations for correcting any unsafe conditions.

The design review team has determined that there are more than 10 STC's for Model 727 freighters (''freighter STC's'' or ''Model 727 freighter STC's'') that need to be reviewed. These freighter STC's are individually held by Aeronautical Engineers, Inc. (AEI), ATAZ, Inc. (ATAZ), Federal Express Corporation (FedEx), and Pemco Aeroplex, Inc. (Pemco). The STC held by ATAZ is ST00015AT, which pertains to the cargo door and cargo compartment interior. Over 300 Model 727 series airplanes of both U.S. and foreign registry have been modified in accordance with these STC's, and more than 32 operators worldwide use these freighters.

In reviewing these freighter STC's, the design review team applied the standards of Civil Air Regulations (CAR) part 4b, applicable to the original Boeing Model 727 airplane. These federal standards establish *minimum* safety requirements. A design which does not meet these standards is presumed to be unsafe.

Between September 1996 and February 1997, members of the design review team made four visits to inspect Model 727 series airplanes that were in the process of being converted or already had been converted under these freighter STC's. Site visits were conducted at Pemco World Air Services in Dothan, Alabama (Pemco STC's); the Tramco repair station in Everett, Washington (FedEx STC's that had originally been developed by Hayes); and Professional Modification Services (PMS), Inc.'s, facility in Miami, Florida (AEI and ATAZ STC's).

On all of the Model 727 series airplanes inspected during these site visits, the design review team observed that the original passenger floor beams, which now support the main cargo deck, had not been structurally reinforced by the STC modification for the heavier payloads these freighters are permitted to carry.

These STC freighters typically are allowed to carry 8,000 pound containers (weight of the cargo and container) on the main cargo deck. Because these containers are 88 inches long, the running load (the weight that can be placed on a longitudinal section of the main cargo deck) is 90 pounds per inch (8,000 pounds divided by 88 inches). This running load of 90 pounds per inch is a safety concern because it is approximately 2.6 times higher than the maximum running load of 34.5 pounds per inch allowed on these same floor beams when the airplane was in a passenger configuration.

FAA Structural Analysis of the Floor Beams of the Main Cargo Deck

The design review team examined the documents that the current or a previous STC holder had submitted when seeking original FAA approval of the STC application. The team was unable to find any data to verify that the unreinforced floor structure of the main cargo deck can safely support the heavier freighter payloads.

To independently evaluate whether these floor beams are strong enough to support the maximum payload permitted by the STC's, the design review team performed a limited structural analysis of the design of each main cargo deck viewed during its site visits.

In analyzing the floor beams of the main cargo deck, the FAA engineers used the payload configuration defined in the weight and balance documents for each STC. (These STC freighters are operated in accordance with FAA-approved Weight and Balance Supplements, which specify the payload that can be carried onboard, as well as the maximum payload and assigned location for individual containers on the main cargo deck.) Most of the containers permitted in the Weight and Balance Supplements for these STC's weigh up to 8,000 pounds each.

In its analysis, the design review team considered the different cargo handling system configurations observed on the STC freighters during the site visits; these systems include roller trays and container locks. The roller trays are attached to the floor of the main cargo deck, and enable cargo to be rolled forward and aft. These trays also support the weight of the cargo containers. The container locks, which hold a container in place, are spaced along the floor of the main cargo deck for all of these STC's but one; that STC also has side vertical cargo container restraints (''side restraints''). The analysis is based on the use of containers that are 88 inches by 125 inches, and the location of the horizontal center of gravity for the total payload in each container was within 8.8 inches from the geometric center of the base of the container for the forward and aft direction and 12.5 inches from the geometric center of the base of the container for the left and right direction.

The design review team used commonly accepted analytical methods in its structural analyses. This methodology, or an equivalent, was applicable when the STC application was originally submitted for approval, and it is applicable today. None of the floor analyses performed by the team involved the application of advanced technologies such as finite element modeling. The results of these structural analyses were consistent with data provided by Boeing, which had originally built these airplanes as

passenger transports, and with some of the data provided by these STC holders.

To evaluate the adequacy of the floor, the team determined that the most likely ''critical case'' (the conditions or circumstances that exert the greatest forces on the main cargo deck) would be the ''down gust'' conditions specified in CAR part 4b. Down gusts are downward vertical movements of air that occur in turbulence and storms. Down gusts exert a downward force on the entire airplane. As this force causes the airplane to accelerate downward, containers on the main cargo deck—because of inertia—are pulled upward. This upward force on the containers is transmitted through the container locks and into the floor beams. On these STC freighters, this upward force could bend these floor beams upward to failure, and the failure of even a single beam could result in loss of the airplane.

Even if the floor beams of the main cargo deck only become deformed, the results could be catastrophic. Because flight control system cables and fuel lines pass through small holes in these floor beams, significant—although temporary—deformation of these beams could jam the cables or break fuel lines. Consequently, this could reduce controllability of the airplane, cause fuel starvation of one or more engines, or lead to a fire in the fuselage.

The FAA also has determined that performance of the flight maneuvers defined in CAR part 4b would produce critical case forces on these STC freighters, and consequent deformation or failure of floor beams on the main cargo deck. These maneuvers would cause upward forces on the cargo containers relative to the floor. Because of the location of the container locks, the floor beams at the forward or aft edges of the containers would be more critically loaded, and consequently deflected upward.

Determining Floor Strength (the ''Margin of Safety'')

The measure of the ability of the floor beams of the main cargo deck to support the stresses caused by various load cases (combinations of specific container weights with either wind gust conditions or airplane maneuvers) is its ''margin of safety.'' Because the floor must be designed to withstand the critical case stresses, the design review team calculated the margin of safety when the floor is subject to the turbulent ''down gust'' wind conditions defined in CAR part 4b.

The equation for determining the margin of safety is:

$$\text{Margin of Safety} = \frac{\text{Allowable Stress}}{\text{Applied Stress}} - 1$$

In this equation, ''Allowable Stress'' is the measure of the strength of a floor beam of the main cargo deck. ''Applied Stress'' is the stress level produced in that floor beam multiplied by a ''factor of safety'' of 1.5. The weight of the containers on the floor beam, flight conditions (for example, wind gusts or airplane maneuvers), and other forces, such as pressurization of the fuselage, all combine to create the ''applied stress'' level in that floor beam. CAR 4b.200(a) requires the inclusion of the 1.5 factor of safety in structural designs. (This factor is discussed in the ''Elimination of the 1.5 Factor of Safety'' section of this preamble.)

When the margin of safety is zero for all load cases, the structure meets the minimum requirements of CAR part 4b. A structure with a margin of safety greater than zero exceeds those standards. A structure with a margin of safety of less than zero does not meet these minimum requirements, and is presumed to be unsafe. If the margin of safety reaches -1 (the extreme case), the structure is not strong enough to withstand the stresses generated by any load case without failing.

Using this equation, the design review team calculated margins of safety for the STC floor designs as ranging from approximately -0.55 to -0.63. Because of the large negative margins of safety that were calculated for the down gust condition (the most likely critical case), the FAA did not analyze other load cases.

For the margins of safety to be positive for the ''down gust'' condition, the FAA determined that these STC freighters must be limited to less than 50% of the typical maximum payload of 8,000 pounds per container currently allowed by the STC's. From its analyses, the design review team determined that these main cargo decks are capable of supporting a maximum payload of approximately 3,000 pounds per container (a maximum running load of 34.5 pounds per inch) in all areas of the main cargo deck, except in the area adjacent to the side cargo door. In that side door area, containers would be restricted to a maximum payload of approximately 2,700 pounds per container (a maximum running load of 31.0 pounds per inch) due to structural configurations affecting the strength of the floor beams in this area. These running loads include payload in the lower lobe cargo compartments, and any other load applied to the bottom of the floor beams of the main cargo deck. [The Air Transport Association of America (ATA) recommended a maximum payload of 6,000 pounds per container. This recommendation, which is discussed in the ''ATA Recommendations for a Final Rule'' section of this preamble, is substantially above the safe payload limits calculated by the design review team, and would result in a negative margin of safety.]

Typically, freighters converted under these STC's are allowed to carry 11 or 12 containers on the main cargo deck. Containers in most areas of this deck have a maximum payload of up to 8,000 pounds per container; over the wing and landing gear area, this maximum payload per container can be up to 10,000 pounds. Although it would seem that these STC freighters could carry up to a total of 100,000 pounds, the maximum payload is actually limited by the strength of the fuselage as well as the strength of the floor beams. Consequently, the current maximum payloads on these airplanes range from 54,000 pounds (for a Model 727–100 series airplane) to 62,000 pounds (for a Model 727–200 series airplane), depending on the configuration of the freighter. The FAA's structural analysis shows that the maximum payload should be limited to approximately 35,000 pounds. This maximum payload is approximately 22% less than the average payload of 45,000 pounds that has been reported by some operators of these Model 727 STC freighters.

The FAA has determined that none of these main cargo decks are strong enough for the current maximum payloads, and therefore are unsafe. Furthermore, these decks do not comply with the requirements of CAR part 4b.

Operational Factors Affecting Payload Limitation

The FAA's structural analysis was based on the ''worst case'' conditions of the following operational factors: maximum operating speed limit, airplane in-flight weight, container orientation, and side restraints. The FAA realizes that if restrictions are placed on these factors, higher payloads can be allowed. Although the absolute effects of these restrictions would require extensive analysis, the FAA has concluded that it is sufficient to estimate the effects of these factors if they are only to be applied for a limited amount of time. The FAA design review team determined that these restrictions would not violate other load cases.

• *Maximum Operational Speed and In-Flight Weight*

Some of these STC freighters are allowed to fly at a maximum operational speed of 390 knots equivalent airspeed

(KEAS). During turbulence, the forces experienced by the airplane are, in part, a function of the aircraft's speed, which consequently affects the forces on the floor beams. By reducing the maximum operational speed to 350 knots indicated airspeed (KIAS), the forces on the floor beams during turbulence are reduced.

The forces experienced by the airplane during turbulence also are a function of the weight of the aircraft. A heavy airplane has more inertia, and therefore is less affected by severe gusts than a lighter one. The FAA has estimated that a minimum operational in-flight weight of 100,000 pounds will reduce the gust loads on these airplanes and, therefore, reduce the floor beam loads. Some ways to ensure that the in-flight weight does not fall below a prescribed limit is to have a minimum cargo weight, a minimum quantity of ''tankered'' fuel, sufficient ballast, or a combination of these items.

- *Container Orientation*

Typically, these STC freighters carry National Aerospace Standard (NAS) 3610 class II cargo containers, which have a fixed back wall; a partially or fully removable front wall; and are 88 inches by 125 inches. Due to this method of construction, a large portion of the forces that a container experiences in ''down gust'' wind conditions or turbulence is carried by the container's back wall, which is its strongest element. When cargo containers are oriented back-to-back, a large portion of both container loads is carried by the same container locks. This places higher loads on the floor beam supporting these locks. By requiring the containers to be oriented with the door side of the container facing forward, however, a more uniform distribution of the loads is achieved.

- *Side Restraints*

A better distribution of the container load is achieved by installing side restraints. The FAA estimates that there can be an increase in the maximum payload per container when FAA-approved side restraints are installed.

The FAA estimates that the combined effect of this speed limitation, minimum in-flight weight, and container orientation would result in a total weight of no more than 8,000 pounds for any *two* adjacent containers that are each 88 inches by 125 inches. By installing FAA-approved side restraints, this estimated total weight for any two adjacent containers could be increased to 9,600 pounds. Under no circumstances, however, can the total weight of any individual container exceed 8,000 pounds.

Elimination of the 1.5 Factor of Safety

At the request of industry, the FAA considered the consequences of elimination of the 1.5 factor of safety used in the ''Margin of Safety'' equation discussed above. By eliminating the 1.5 factor of safety, the FAA analysis determined that the proposed payload limits per container would increase by 50%. CAR 4b.200(a) requires that an airplane be designed with a certain amount of ''reserve structural strength'' to minimize the potential for complete structural failure of an airplane. This reserve is the ''1.5 factor of safety.'' Ordinarily, an applicant seeking to reduce or eliminate this requirement must file a request for an exemption. If the applicant uses an approach in its design that is comparable to the 1.5 factor of safety, the applicant can declare that this approach provides ''an equivalent level of safety.'' The applicant, however, must substantiate this declaration to the satisfaction of the FAA.

The FAA has examined the consequences resulting from the elimination of the 1.5 factor of safety, and has concluded that this action would pose unacceptable hazards for these airplanes. The FAA's intent in issuing this proposed AD is to prevent a combination of circumstances that could result in catastrophic loss of a Model 727 freighter converted under these STC's. Elimination of the 1.5 factor of safety in conjunction with the other measures discussed earlier to increase the allowable payload would be contrary to this intent.

CAR part 4b refers to the critical load cases—the down gust and maneuver forces previously described in this preamble—as ''limit loads.'' CAR 4b.200 requires that these limit loads be multiplied by 1.5 (the ''1.5 factor of safety''), thereby becoming ''ultimate loads'' as defined in CAR part 4b. CAR 4b.201(c) further requires that the structure be able to carry these ultimate loads (which provide a reserve of structural strength) without failure. Although it is anticipated that these STC freighters will not be routinely subjected to limit load forces, it sometimes happens during emergencies and unusual environmental conditions such as turbulence.

- *Emergency Conditions*

In an emergency, the pilot may exceed critical case maneuver forces, and fly the STC freighter beyond the airspeed and flight maneuver limits for which the airplane is designed. The failure of an engine, avoidance of a collision, or the opening of a cargo door during flight are conditions that could necessitate these actions.

Emergencies do occur. On February 5, 1997, a Model 727 passenger airplane was flying to John F. Kennedy International Airport in New York when an Air National Guard F–16 jet fighter approached close enough to activate the Model 727's collision avoidance system alarm. The pilot of the passenger airplane, following the system's emergency guidance, maneuvered the Model 727 into a steep dive and then a steep climb. Two flight attendants and a passenger were thrown down by these maneuvers. Although the actual maneuver forces for this incident are unknown, the 1.5 factor of safety may have provided structural strength to maneuver the airplane beyond the forces in CAR part 4b.

In 1991, a pilot performed a flight maneuver that imposed forces of approximately 3g's (three times the force of gravity) on a Model 747 freighter that was carrying a partial payload. The applicable federal regulations require Model 747 and 727 series airplanes to be designed for maneuvers imposing forces of up to 2.5g's. Had this freighter been carrying a full payload and the 1.5 factor of safety not been used in its design, FAA analysis indicates that this freighter would have been lost.

- *Turbulence*

Airplanes may encounter severe turbulence that exerts wind gust forces beyond the critical case forces of CAR part 4b. AD 96–01–03 describes an occasion in 1991 when wind gusts were so severe that an engine separated from a Model 747–100 freighter shortly after take-off.

More recently, severe wind gusts on September 5, 1996, caused numerous passenger injuries and one fatality on a Model 747–400 series airplane. The FAA received reports indicating that those gusts produced downward accelerations of –1.15g's and upward accelerations of +2.09g's on that airplane in less than four seconds. Had a Model 727 STC freighter experienced similar conditions while transporting close to the maximum payload, FAA analysis indicates that the floor beams of the freighter's main cargo deck would have collapsed.

The FAA has received 87 reports of Model 727 series airplanes experiencing severe turbulence; these reports typically do not include events that have occurred in other countries. The majority of these events were unforeseen and resulted in injuries to

the flight crew or passengers. Five of the reports document gusts causing airplane accelerations of at least +1.88g's upward and 1.5g's downward.

• *Hazardous Deformation of the Main Cargo Deck*

CAR 4b.201(a) requires any structure on the freighter, including the floor beams, to be strong enough to withstand—without ''detrimental permanent deformation''—the anticipated critical case forces that could be exerted upon it during its service life. CAR 4b.201(b) requires that any structural deformations caused by these critical case or limit loads not interfere with the safe operation of the airplane. (The catastrophic consequences of deformation are discussed earlier in this preamble.) Using the 1.5 factor of safety in structural analysis takes deformation into account; without the 1.5 factor of safety, the STC holder would be required to provide an analysis that demonstrates these floors would be free from detrimental deformation. Because these STC's lack a deformation analysis, the FAA would not consider a request for reducing the 1.5 factor of safety requirement unless such an analysis was conducted.

• *Other Considerations*

Another reason that reserve structural strength is necessary is that aerodynamic and structural analysis theory is not precise: exact conditions or circumstances are indeterminable; therefore approximations must be made. In addition, the 1.5 factor of safety takes into account such considerations as the variations in the physical properties of materials, the range of fabrication tolerances, and corrosion or damage. For example, all Model 727 series airplanes must have enough structural reserve to cover the corrosion control activities mandated by AD 90–25–03, amendment 39–6787 (55 FR 49258, November 27, 1990). That AD, in order to control corrosion, permits up to 10 % of the material thickness of a floor beam of the main deck to be removed by grinding without undertaking repair; the removal of this material further reduces the strength of the floor.

The majority of these modified airplanes are nearing, or past, their design life of 20 years, 60,000 flights, or 50,000 hours of operation. As the airplanes age and are repeatedly flown, they accumulate fatigue damage and corrosion, which degrades the structural capability. Airplanes that are near or past their design life are part of the FAA's Aging Airplane Program and are subject to numerous AD's to correct unsafe conditions resulting from fatigue cracking and corrosion.

During the time period allowed by the AD's to implement the corrective action, it is probable that many of these aging airplanes will continue to have fatigue cracks and corrosion. Because these airplanes have been built with a safety factor of 1.5, there is a sufficient structural strength margin to allow some finite time to implement the AD's to correct the unsafe conditions. Without this factor of safety, a new maintenance program would have to be developed for these airplanes to ensure that all of the Aging Airplane Program fatigue cracks and corrosion problems are continuously identified and immediately eliminated.

Service History of the Model 727 STC Freighters

Although the modification of these airplanes commenced in 1983, the average modification date for these STC freighters is 1991. In fact, approximately 100 of these airplanes (one-third of the STC freighter fleet) have been modified in just the last three years.

Most of these STC freighters fly only two flights each day, resulting in a low number of accumulated flights since conversion. A representative of the largest operator of these airplanes indicates that, on average, the airplanes carry only slightly more than half of the current maximum payload of 8,000 pounds per container. These circumstances may explain why the FAA has not received reports of adverse events relating to the structural strength of these floor beams.

These floor beams, if overstressed, are not likely to give warning prior to total failure. The existing floor beams on these STC freighters are commonly made from 7075–T6511 aluminum alloy, and there is only a 10% difference between the stress level at which the floor beam permanently bends, and the stress level at which the beam breaks. Consequently, once the floor beams are stressed to the point of being permanently bent, it takes only a small amount of additional stress until the floor beams break, which could result in loss of the airplane.

The FAA has concluded that the reported service history of these STC freighters does not demonstrate that these airplanes are safe.

Issuance of an AD Is Appropriate Regulatory Action

Because of the unsafe condition found on these STC freighters (the inadequate strength of the floor structure of the main cargo deck to carry the current maximum payloads), the FAA has determined that there are two ways in which it could proceed: Issuance of an AD to correct the unsafe condition of the floor, or suspension or revocation of these STC's.

The Administrator of the FAA has the authority to issue an AD when ''an unsafe condition exists in a product'' [14 CFR 39.1(a)], and ''[t]hat condition is likely to exist or develop in other products of the same type design'' [14 CFR 39.1(b)]. When such a finding is made, the Administrator may, as appropriate, prescribe ''inspections and the conditions and limitations, if any, under which those products may continue to be operated'' (14 CFR 39.11). By using the AD process, the FAA can still allow these STC freighters to operate, although under restrictions which are necessary to eliminate the unsafe condition.

Because the floor structures did not meet CAR part 4b certification standards at the time these STC's were originally issued, the Administrator of the FAA is empowered to suspend or revoke these STC's [49 U.S.C. 44709(b)]. If the Administrator were to take such action against these STC's, the order could result in the immediate grounding of these STC freighters.

In consideration of the disruption of domestic and international commerce that would result from the suspension or revocation of these STC's, as well as the significant impacts on the domestic and international economy that such an action would have, the FAA has concluded that the issuance of an AD with restrictions on the maximum payloads on the main cargo deck is appropriate action. These payload restrictions will enable these freighters to continue operating, and remove the unsafe condition that currently exists in the floor beams of the main cargo deck.

FAA Meetings With STC Holders and Operators

The FAA has met individually with each of the affected STC holders to discuss the FAA design review team's observations, analyses, and findings. In a letter sent prior to these meetings, the FAA provided its preliminary conclusions to each STC holder. In addition, the agency asked the STC holder to submit data showing that unsafe conditions do not exist, and that the STC designs do meet applicable federal aviation regulations. If the FAA's findings and analyses could not be controverted, the STC holder was asked to specify what actions it would take to bring its designs into compliance. STC holders also were asked to propose actions that would enable these

airplanes to operate safely while data or modifications were being developed.

At its meeting with the FAA, ATAZ did not present any information to contradict the FAA's analyses, or submit proposals to keep these planes operating safely. The FAA's meetings with the other 3 STC holders produced similar results.

The FAA also has met jointly with the STC holders and the operators of the Model 727 freighters modified under these STC's. On February 14, 1997, the FAA convened this meeting, which was attended by more than 75 industry representatives, to discuss what the design review team had observed during its site visits and determined from its analyses of STC data. During this meeting the operators presented no technical data, but provided the FAA with information about the potential impacts on their businesses if the agency were to reduce the current maximum payload.

Industry Proposal for the Timing of an NPRM and FAA Response

During the February 14 meeting, representatives of the affected operators and STC holders in attendance presented a proposal to the FAA. Generally, industry proposed that the FAA delay issuing an NPRM and imposing payload restrictions; in turn, industry, within 120 days from the end of February 1997, would test floor beams, perform analyses, redesign the floor structure, if necessary, and submit data to the FAA substantiating compliance with CAR part 4b. At the meeting, the FAA responded that its priority is the safety of these airplanes, and the burden is now on industry to establish the ability of these STC freighters to carry more than the 3,000 pounds per container being considered by the FAA.

ATA Recommendations for a Final Rule

ATA followed up on the proposal at the February 14 meeting with a March 10, 1997, letter that contained recommendations in order ''to get the necessary design changes quickly incorporated while permitting the airlines to continue operating their aircraft.'' ATA proposed that a 3,000 pound per pallet weight limit be gradually phased-in as follows:

1. There would be at least 120 days after the effective date of the AD before any payload restrictions would be implemented. According to ATA, this period would enable STC holders or others to redesign the freighter floors and provide enough time for operators to procure parts to modify the floors.

2. Initially, payload restrictions would be reduced from 8,000 pounds per pallet to 6,000 pounds per pallet. These restrictions would be in effect for at least one year or the next ''C'' check, whichever occurs later, and operators would not be required to modify the floor beams during this time.

3. Ultimately, the floor beams of the main cargo deck would not have to be modified until at least 16 months after the effective date of the AD. At that time, the payload per pallet would be reduced to 3,000 pounds if an operator opted not to accomplish that modification.

4. Airplanes would not be subject to any of these restrictions if operators can substantiate to the FAA that the floor beams are strong enough to support the existing payload per pallet.

The FAA considered ATA's recommendations in developing this proposed action. The FAA determined that allowing these airplanes to continue to operate without restrictions for 120 days after the effective date of this AD, and allowing 16 months for modification of the floor structure of the main cargo deck would not address the unsafe condition in a timely manner. The FAA's analysis also determined that ATA's recommended payload limit of 6,000 pounds per container at all locations would result in negative margins of safety. The interim weight restrictions proposed by the FAA allow the carriage of a limited number of individual containers at or above the 6,000 pound per container payload suggested by ATA. In addition, the 120-day period of operation at the interim payloads proposed by the FAA (discussed below) does, in part, meet ATA's suggested time for allowing redesign of these STC freighter floors.

FAA Findings

Based on the observations and analyses of its design review team, and information presented by affected STC holders and the operators of Model 727 series airplanes converted to freighters under these STC's, the FAA has found that:

1. None of the floor beams of the main cargo deck on any of these STC's have been modified from the original passenger configuration to support the heavier payloads carried on a freighter.

2. Based on the FAA's analyses, the floor structures of these STC freighters are not capable of withstanding the forces that would result from the current maximum payload when CAR part 4b conditions are encountered.

3. When the maximum payload of a container is limited to 8,000 pounds or 6,000 pounds (for all container positions) as proposed by ATA, the margins of safety for the floor beams of the main cargo deck are calculated as negative numbers and the structural strength of these beams is not sufficient to meet the requirements of CAR part 4b. When the maximum payload of a container is limited to approximately 3,000 pounds, the margin of safety is calculated as a positive number and these floor beams meet the structural strength requirements of CAR part 4b.

4. The FAA estimates the combined effect of imposing operational restrictions on airplane weight, maximum operating speed, and orientation of containers reduces the forces exerted on the airplane in ''down gust'' conditions, and will permit the maximum payload of a container to be increased on an interim basis. The installation of side restraints can permit a further temporary increase in payload.

5. Typically, these STC freighters are modified by other STC's that change the maximum taxi, take-off, zero fuel, and landing weights of these airplanes. These weight changes permit the airplanes to carry more payload on the main cargo deck.

No compatibility study has been performed showing that these weight changes are safe considering the existing freighter STC modifications and payload limits. In addition, no compatibility study has been done for the addition of auxiliary fuel tanks, engine changes, and other types of modifications that alter the basic loads on these airplanes.

6. When these STC modifications were accomplished, each airplane was modified differently, due to different installer shop practices and the configuration of each airplane prior to modification. Subsequent modifications under other STC's that alter the structure were not shown to be compatible with the freighter modifications. The resulting airplane configuration can be significantly different between individual airplanes. Any modifications that are undertaken to bring these airplanes into compliance with CAR part 4b must be shown to be compatible with the specific airplanes being modified.

7. The elimination of the 1.5 factor would not eliminate the unsafe condition that occurs when these airplanes are carrying containers weighing more than the payloads specified in this proposed AD.

FAA Conclusions

From these findings, the FAA has concluded that:

1. The lack of strength in the floor structure of the main cargo deck must be corrected by reducing the payload

carried on the main cargo deck. This reduced payload includes the payload in the lower lobe cargo compartments.

2. Maximum payloads of approximately 2,700 pounds per container in the areas near the forward side cargo door and approximately 3,000 pounds per container in all other areas of the main cargo deck provide an acceptable level of safety. It is estimated that operational restrictions on airplane weight, maximum operating speed, and orientation of containers, as well as the installation of FAA-approved side restraints, would allow safe operation with higher payloads during an interim period.

3. Because these STC freighters are modified by other STC's that change the maximum taxi, take-off, zero fuel, and landing weights of these airplanes, and permit more payload on the main cargo deck, all of the airplanes' Airplane Flight Manuals (AFM's), AFM Supplements, and Weight and Balance Supplements would have to be revised to show the payload restrictions.

Additional AD Actions

The FAA design review team's scope of review of these STC's was not limited to concerns about the strength of the floor structure that support the main cargo deck. The team also made inspections and gathered information about other areas where additional unsafe conditions may exist. Following this proposed rulemaking, additional rulemaking will be initiated to address these concerns. These concerns include the following structural, door systems, and STC certification and documentation issues:

• *Structural Deficiencies*

Lack of ''Fail-Safe'' Hinges on the Cargo Door

The design review team saw single or double-piece hinge fittings on the side cargo doors of these STC freighters. Should a crack propagate along the hinge line where the hinge attaches either to the upper sill of the fuselage or to the door itself, the cargo door could separate from the airplane, and result in loss of the airplane.

Apparent Lack of Strength of the Structure Surrounding the Side Cargo Door

To install a side cargo door for the main deck, an opening of approximately 7.5 feet by 11 feet (82.5 square feet) must be cut into the side of the fuselage. This opening requires that the cutout area and adjacent structural areas be substantially reinforced. If the fuselage structure that surrounds this cargo door is not strong enough to withstand the forces that may be exerted during flight, it could result in loss of the airplane.

The design review team observed that reinforcing structures used in this area, such as longerons, frames, doublers and triplers, are discontinuous and appear to lack adequate load paths and strength. These discrepancies could result in a fuselage structure that does not meet the strength and deformation requirements of CAR 4b.201, proof of structure standards of CAR 4b.202, or fail safety requirements of CAR 4b.270(b).

In its examination of the data supporting these STC's, the design review team determined that the STC applicants used inadequate methods and/or incomplete analyses to substantiate that their modifications provide adequate strength in this area. The STC applicants typically did not substantiate the strength of numerous structural features, such as splices and runouts. The STC holders also used analytical approaches that failed to consider such impacts as redistribution of the forces in the fuselage, and localized stress effects such as ''buckling.''

Inadequate Cargo Restraint Barriers

CAR 4b.260 requires that the restraint barrier in the cargo compartment of the main deck be strong enough to protect the occupants from injury when the freighter is carrying its maximum payload and emergency landing conditions occur (the ''9.0g standard'').

Based on the observations and analyses of the design review team, the FAA has determined that the bulkhead restraint barriers on all of the observed STC freighters do not meet the 9.0g standard; three of the four STC holders have confirmed the FAA's finding.

• *Deficiencies in Systems for the Side Cargo Door*

Because of cargo door-related accidents, industry and the FAA, during the early 1990s, conducted an extensive design review of cargo doors and agreed on new standards to eliminate safety deficiencies in certain cargo door systems. The FAA agreed to issue AD's requiring compliance with these standards, which are based on Amendment 54 to 14 CFR 25.783, for those freighters that did not comply. These standards are not intended to upgrade the requirements of CAR part 4b after certification, but are to correct potentially unsafe conditions on airplanes already in service that were identified during the design review.

Inadequate Warning System for an ''Unsafe'' Door

Freighters must have a warning system that directly alerts the pilot and co-pilot that the side cargo door is ''unsafe'' (open, unlatched, or unlocked). A ''safe'' cargo door is one that is verified to be closed, latched, and locked prior to taxiing for take-off.

The design review team observed STC freighters that do not have a red cargo door warning light in plain view of both pilots. In the event that the cargo door is unsafe, pilots on those planes would not be directly warned; this situation could lead to pilot inaction or dispatch of the airplane, and consequent opening of this door during flight.

Improper Pressurization of the Fuselage When the Cargo Door Is ''Unsafe''

The opening of a door during flight has caused several serious accidents. Some of those accidents have resulted in loss of life; others have resulted in loss of the airplane. Consequently, industry and the FAA adopted standards to prevent pressurization of the fuselage when the cargo door is unsafe. Typically, compliance with these standards involves installation of vent doors that close only when the cargo door is safe.

In its examination of the associated cargo door related systems on these STC freighters, the design review team detected that the fuselage of some of these airplanes could be pressurized when the cargo door vent door is not closed. The team also found that some STC's did not have the required safety analysis that would verify the adequacy of the design's pressurization prevention system when the cargo door is unsafe.

Electrical/Hydraulic System Deficiencies That Could Cause an ''Unsafe'' Cargo Door

Electrical short circuits could transmit power to the electrical or hydraulic systems that operate the side cargo door, lead to opening of this door during flight, and could result in the loss of the airplane. To prevent this, all power to this door must be removed during flight, and the flight crew must not be able to restore this power at any time during flight.

CAR 4b.606 (which has been further refined by the cargo door standards agreed upon by industry and the FAA) requires STC holders to show that the design of the electrical system is adequate to prevent the side cargo door from opening during flight. These STC holders did not accomplish this analysis.

Inability to Visually Verify the Status of the Side Cargo Door

When the system that warns the pilot and co-pilot about an ''unsafe'' cargo door is not working correctly, the red warning light either will fail to light up during pre-flight testing of the system, or will light up when the side cargo door is actually ''safe.'' These STC's have a backup system that allows the flight crew to confirm that the door is actually safe.

The cargo door standards to which industry and the FAA agreed require ''a visual means of directly inspecting the locks.'' The design review team observed that these backup systems enable the flight crew to view only a portion of the locking beam. Because a visual means of directly inspecting the locking mechanism of the door is not available, these STC's do not comply with these standards. When the entire locking mechanism cannot be visually inspected, a false report on the condition of the door may be given to the crew, and the airplane may be dispatched with an unsafe door.

Cargo Compartment Smoke Detection and Warning Systems

CAR 4b.383(e)(2) requires that there be a means for the flight crew to check and assure the proper functioning of each smoke detector circuit. The FAA design review team and STC freighter operators have observed that some STC's contain electrical wiring designs that test only a portion of the smoke detection system—not the entire system as required—when a single button is pressed (the ''press to test'' feature). If the flight crew is not alerted that some smoke detectors are not functioning, the crew may not be able to respond to a cargo compartment fire in a timely manner.

• *The Carriage of Supernumeraries*

Supernumeraries are non-flight crew personnel who are carried on board the airplane. For example, a supernumerary could be an airline employee who is not part of the flight crew, but is specially trained to handle cargo.

These STC freighters have a cargo compartment that is used only for the carriage of cargo. Before supernumeraries can be carried, the STC holder or operator must apply to the FAA for an exemption from CAR 4b.383(e), and from other federal regulations that pertain to seats, berths, and safety belts; emergency evacuation; ventilation; and fire protection. Such exemptions are granted only when the FAA determines that the design contains features that provide an acceptable level of safety for the supernumeraries.

The FAA has become aware of numerous instances where STC holders have made provisions for the carriage of supernumeraries without applying for FAA exemptions and without demonstrating that the safety provisions for supernumeraries are acceptable.

• *STC Data and Documentation Concerns*

When the FAA design review team evaluated data that STC applicants originally submitted to obtain FAA approval of these freighter STC's, the team found a number of deficiencies. Examples include data that is not adequately substantiated; payload limits in Weight and Balance documents that are inconsistent with the structural capability of the fuselage; structural analyses that lack the critical case; no analysis of the floor beams over the wing center section; and documented negative margins of safety that are unresolved.

• *Unsubmitted Instructions for Continued Airworthiness*

Federal regulations require an STC holder to submit ''Instructions for Continued Airworthiness'' to the FAA for review. These instructions include maintenance procedures, maintenance manuals, and maintenance program requirements for the continued safety of the airplane converted under the STC. Only one of the four STC holders has complied with this requirement.

Future FAA Review of Other Transport Airplane Cargo Conversions

The FAA's review of STC's and the safety of airplanes converted from a passenger to a cargo-carrying configuration will not be limited to just Model 727 and 747 series airplanes. Based on the discovery of unsafe conditions on both of these airplane models, the FAA intends to examine all transport category passenger airplanes that have been converted to a cargo-carrying configuration under STC's.

The FAA urges STC holders and operators of these freighters to begin, as soon as possible, an examination of the data supporting the STC's. If problems such as those identified in the Model 727 and 747 conversions are detected, corrective actions should be developed. Self-examination of these conversions prior to formal FAA review may shorten the time needed for any corrective actions, and reduce the impacts on operators of these freighters.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would restrict the payload on the main cargo deck of Model 727 series airplanes modified in accordance with STC ST00015AT. This proposal would be accomplished by revisions to the Limitations Section of all FAA-approved AFM's, AFM Supplements, and Weight and Balance Supplements. Revision of all these documents would be required because these STC freighters have been modified by other STC's that change the maximum taxi, take-off, zero fuel and landing weights of these airplanes.

The payload limits that are proposed are based on the use of containers that are 88 inches by 125 inches, and a horizontal center of gravity for the total payload in each container that is located within 8.8 inches from the geometric center of the base of the container for the forward and aft direction and 12.5 inches from the geometric center of the base of the container for the left and right direction. The payload limits are also based on a requirement that all containers are loaded with the door side of the container facing forward.

The proposal presents three options for payload limitations: one ''baseline'' [paragraph (a)] and two ''interim'' [paragraphs (b) and (c)], depending upon the floor configuration and other operating limitations.

Paragraph (a) would establish a payload limit of 3,000 pounds per container.

For airplanes equipped with FAA-approved side restraints, paragraph (b) would provide for temporary payload limits in some areas of 9,600 pounds for any *two* adjacent containers, with a limit of 8,000 pounds for any one container. These limits would be available when the following two conditions are met: the maximum operational airspeed does not exceed 350 KIAS *and* the minimum in-flight weight exceeds 100,000 pounds.

For airplanes that are not equipped with FAA-approved side restraints, paragraph (c) would provide for a temporary payload limit in some areas of 8,000 pounds for any *two* adjacent containers. This limit also would be available when the following two conditions are met: the maximum operational airspeed does not exceed 350 KIAS *and* the minimum in-flight weight exceeds 100,000 pounds.

Because the determination of the effects of operational limitations on

payload is based on approximations, the resulting payload limits may be unconservative. Consequently, operation with these payload limits is only acceptable for a limited period of time. Continued use of these operational limits and the associated payload limits must be substantiated. The FAA has determined that an acceptable level of safety is provided if the time period is limited to no more than 120 days, which would also allow sufficient time for an applicant to develop an acceptable analysis regarding the applicability of the operational limitations.

At the February 14 meeting discussed above, the industry participants proposed to complete a redesign of the floor structure within 120 days from the end of February (by the end of June). The FAA bases the proposed 120-day interim period in paragraphs (b) and (c) on the following assumptions:

1. Industry will fulfill this proposal;

2. The final rule will not become effective before October 1, 1997, and thus allow additional time for the industry to modify the main cargo deck floor structure; and

3. Operators and STC holders will work diligently in the meantime to avoid any disruptions to operations.

In light of the seriousness of the unsafe conditions addressed by this proposal, the FAA considers that the 120-day interim period:

1. Provides an acceptable level of safety;

2. Minimizes exposure to any potential unconservatism in the determination of the payload limits;

3. Provides an adequate opportunity for applicants to develop substantiation for continued use of operational limits to enhance payload limits; and

4. Minimizes, for the interim period, the burdens on operators resulting from this AD.

Should an operator desire to transport containers of other dimensions or use a different payload container center of gravity, it would have to apply to the FAA for appropriate payload limits.

At any time, an applicant would be able to present a proposal to modify the floor structure or proposed weight and other limits, data, and analysis to the FAA to substantiate that floor structure of the main cargo deck (existing or modified) is in compliance with the requirements of CAR part 4b when supporting the proposed weight limits. When the FAA determines that these documents are acceptable, the operator would be able to operate its airplane at the payload limits substantiated by its data and analysis.

Regulatory Evaluation Summary

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.

The FAA conducted a ''Cost Analysis and Initial Regulatory Flexibility Determination and Analysis'' to determine the regulatory impacts of this and three other proposed AD's to operators of all 244 U.S.-registered Boeing Model 727–100 and -200 series passenger airplanes that have been converted to cargo-carrying configurations under 10 STC's held by four companies. This analysis is included in the docket for each AD. The FAA has determined that approximately 4 Model 727–200 series airplanes were converted under the ATAZ STC. (There were 15 Model 727 series airplanes for which the FAA could not identify the STC holder. It is possible that these airplanes were also converted under an ATAZ STC. Their costs are not included here.)

Assuming that the operator of affected airplanes converted under the ATAZ STC would comply with the restricted interim operating conditions set forth in the proposed rule, the FAA estimates in the analysis that none of the modified Model 727–200 series airplanes would lose revenues during the interim period.

Based on the ''Cost Analysis and Initial Regulatory Flexibility Determination and Analysis'' included in the docket, the FAA estimates that affected airplanes could be modified at a cost of $100,000 per airplane. The total cost, therefore, to modify the fleet of affected Model 727 series airplanes that were originally modified to the ATAZ STC is $400,000. This assumes that modifications to the airplane are available and installed within the 120-day time period. If there are any delays in the availability or implementation of modifications, the revenue loss due to operation at the 3,000 pound payload limit would substantially increase the costs. The FAA solicits detailed cost information from the affected carriers concerning the proposed AD's compliance costs.

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by government regulations. The RFA requires a Regulatory Flexibility Analysis if a proposed rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The Regulatory Flexibility Analysis includes the consideration of alternative actions.

FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, establishes threshold cost values and small entity size standards for complying with RFA review requirements in FAA rulemaking actions. The Order defines ''small entities'' in terms of size thresholds, ''significant economic impact'' in terms of annualized cost thresholds, and ''substantial number'' as a number which is not less than eleven and which is more than one-third of the small entities subject to the proposed or final rule.

FAA Order 2100.14A sets the size threshold for small entities operating aircraft for hire at 9 aircraft and the annualized cost threshold at $69,000 for scheduled operations of airplanes with fewer than 60 seats and $5,000 for nonscheduled operations.

The affected carrier is not considered a small entity (it operates 13 affected airplanes, including 4 modified under the ATAZ STC). Therefore, this AD does not have a significant economic impact on a substantial number of small entities and a regulatory flexibility analysis is not required.

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 ''Cost Analysis and Initial Regulatory Flexibility Determination and Analysis'' 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, Airplanes, 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:

Boeing: Docket 97–NM–80–AD.

Applicability: Model 727 series airplanes; modified in accordance with Supplemental Type Certificate ST00015AT; 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 (g) 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 structural failure of the floor beams of the main cargo deck, which could lead to loss of the airplane, accomplish the following:

(a) Except as provided in paragraphs (b), (c), and (d) of this AD, within 48 clock hours (not flight hours) after the effective date of this AD, accomplish the requirements of paragraph (a)(1) or (a)(2) of this AD, as applicable:

(1) For airplanes on which only containers that are 88 inches by 125 inches are transported: Revise the Limitations Section of all FAA-approved Airplane Flight Manuals (AFM) and AFM Supplements, and the Limitations Section of all FAA-approved Airplane Weight and Balance Supplements to include the following information. This may be accomplished by inserting a copy of this AD in all AFM's, AFM Supplements, and Weight and Balance Supplements.

''Limitations

All containers must be oriented with the door side of the container facing forward.

The location of the horizontal center of gravity for the total payload within each container shall not vary more than 8.8 inches from the geometric center of the base of the container for the forward and aft direction and 12.5 inches from the geometric center of the base of the container for the left or right direction.

Payload Limitations

Do not exceed a total weight of 3,000 pounds per container on the main cargo deck, except in the area adjacent to the side cargo door. In that side door area (Body Station 440 to Body Station 660), containers are restricted to a maximum payload of 2,700 pounds per container. This payload limit includes the payload in the lower lobe cargo compartments and any other load applied to the bottom of the floor beams of the main cargo deck for the same body station location as the container on the main cargo deck.

(2) For airplanes on which any containers other than 88 inches by 125 inches are transported: Revise the Limitations Section of all FAA-approved AFM's and AFM Supplements, and the Limitations Section of all FAA-approved Airplane Weight and Balance Supplements in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA Transport Airplane Directorate.

Note 2: The weight restrictions to be approved under paragraph (a)(2) will be consistent with the applicable weight restrictions of paragraph (a)(1), (b), or (c) of this AD.

(b) During the period ending 120 days after the effective date of this AD: For airplanes on which only containers that are 88 inches by 125 inches are transported, and that are equipped with side vertical cargo container restraints that have been approved by the Manager, Standardization Branch, ANM–113, as an optional alternative to compliance with paragraph (a)(1) of this AD, revise the Limitations Section of all FAA-approved AFM's and AFM Supplements, and the Limitations Section of all FAA-approved Airplane Weight and Balance Supplements to include the following limitations. This may be accomplished by inserting a copy of this AD in all AFM's, AFM Supplements, and Weight and Balance Supplements.

''Limitations

Maximum Operating Airspeed of V_{mo} equals 350 knots indicated airspeed (KIAS).

Minimum in-flight weight: 100,000 pounds or greater.

All containers must be oriented with the door side of the container facing forward.

The location of the horizontal center of gravity for the total payload within each container shall not vary more than 8.8 inches from the geometric center of the base of the container for the forward and aft direction and 12.5 inches from the geometric center of the base of the container for the left or right direction.

Payload Limitations

Do not exceed a total weight of 9,600 pounds for any *two* adjacent containers and a total weight of 8,000 pounds for any container, except that the total weight of all containers forward of Body Station 436 shall not exceed 4,000 pounds. This payload limit includes the payload in the lower lobe cargo compartments and any other load applied to the bottom of the floor beams of the main cargo deck for the same body station location as the container on the main cargo deck.''

(c) During the period ending 120 days after the effective date of this AD: For airplanes on which only containers that are 88 inches by 125 inches are transported, and that are NOT equipped with side vertical cargo container restraints that have been approved by the Manager, Standardization Branch, ANM–113, as an optional alternative to compliance with paragraph (a)(1) of this AD, revise the Limitations Section of all FAA-approved AFM's and AFM Supplements, and the Limitations Section of all FAA-approved Airplane Weight and Balance Supplements to include the following limitations. This may be accomplished by inserting a copy of this AD in all AFM's, AFM Supplements, and Weight and Balance Supplements.

''Limitations

Maximum Operating Airspeed of V_{mo} equals 350 knots indicated airspeed (KIAS).

Minimum in-flight weight: 100,000 pounds or greater.

All containers must be oriented with the door side of the container facing forward.

The location of the horizontal center of gravity for the total payload within each container shall not vary more than 8.8 inches from the geometric center of the base of the container for the forward and aft direction and 12.5 inches from the geometric center of the base of the container for the left or right direction.

Payload Limitations

Do not exceed a total weight of 8,000 pounds for any *two* adjacent containers and the total weight of all containers forward of Body Station 436 shall not exceed 4,000 pounds. This payload limit includes the payload in the lower lobe cargo compartments and any other load applied to the bottom of the floor beams of the main cargo deck for the same body station location as the container on the main cargo deck.''

(d) For airplanes that operate under the 350 KIAS requirements of paragraph (b) or (c) of this AD: A maximum operating airspeed limitation placard must be installed adjacent to the airspeed indicator and in full view of both pilots. This placard must state: ''Limit V_{mo} to 350 KIAS.''

(e) For airplanes complying with paragraph (b) or (c) of this AD, within 120 days after the effective date of this AD: Revise the Limitations Section of all FAA-approved AFM's and AFM Supplements, and the Limitations Section of all FAA-approved Airplane Weight and Balance Supplements to include the following information. This may be accomplished by inserting a copy of this AD in all AFM's, AFM Supplements, and Weight and Balance Supplements.

''Limitations

All containers must be oriented with the door side of the container facing forward.

The location of the horizontal center of gravity for the total payload within each container shall not vary more than 8.8 inches from the geometric center of the base of the container for the forward and aft direction and 12.5 inches from the geometric center of the base of the container for the left or right direction.

Payload Limitations

Do not exceed a total weight of 3,000 pounds per container on the main cargo deck, except in the area adjacent to the side cargo door. In that side door area (Body Station 440 to Body Station 660), containers are restricted to a maximum payload of 2,700 pounds per container. This payload limit includes the payload in the lower lobe cargo compartments and any other load applied to

the bottom of the floor beams of the main cargo deck for the same body station location as the container on the main cargo deck.''

(f) As an alternative to compliance with paragraphs (a), (b), (c), (d), and (e) of this AD: An applicant may submit a proposal to modify the floor structure or proposed new payload and other limits, and substantiating data and analyses to the Manager, Standardization Branch, ANM–113, in accordance with the procedures of paragraph (g) of this AD, showing that the floor structure of the main cargo deck is in compliance with the requirements of Civil Air Regulations (CAR) part 4b. If the FAA determines that these documents are acceptable and applicable to the specific airplane being analyzed and approves the proposed limits, prior to flight under these new limits, the operator must revise the Limitations Section of all FAA-approved AFM's and AFM Supplements, and the Limitations Section of all FAA-approved Airplane Weight and Balance Supplements in accordance with a method approved by the Manager, Standardization Branch, ANM–113. Accomplishment of these revisions in accordance with the requirements of this paragraph constitutes terminating action for the requirements of this AD.

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

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

(h) 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 July 8, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–18356 Filed 7–14–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–09–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes Modified in Accordance With Supplemental Type Certificate SA1767SO, SA1768SO, or SA7447SW

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger to a cargo-carrying (''freighter'') configuration. This proposal would require limiting the payload on the main cargo deck by revising the Limitations Sections of all Airplane Flight Manuals (AFM), AFM Supplements, and Airplane Weight and Balance Supplements for these airplanes. This proposal also provides for the submission of data and analysis that substantiates the strength of the main cargo deck, or modification of the main cargo deck, as optional terminating action for these payload restrictions. This proposal is prompted by the FAA's determination that unreinforced floor structure of the main cargo deck is not strong enough to enable the airplane to safely carry the maximum payload that is currently allowed in this area. The actions specified by the proposed AD are intended to prevent failure of the floor structure, which could lead to loss of the airplane.

DATES: Comments must be received by August 22, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–09–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.

FOR FURTHER INFORMATION CONTACT: Steven C. Fox, Senior Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2777; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–09–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–09–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has issued supplemental type certificates (STC) for converting certain Boeing Model 727 and 747 series airplanes from a passenger to a cargo-carrying (''freighter'') configuration. These freighter conversions entail such modifications as removal of the passenger interior, the installation of systems to handle cargo containers (such as pallets and other unit load devices), the installation of a side cargo door for the main cargo deck, and alterations to such systems as the hydraulic, electrical, and smoke detection systems that are associated with the transport of cargo. When a conversion is completed, the weight permitted to be carried (''payload'') on the main cargo deck is significantly

greater than the payload allowed in that same area when the airplane was in its original passenger configuration.

On December 27, 1995, the FAA issued Airworthiness Directive (AD) 96–01–03, amendment 39–9479 (61 FR 116, January 3, 1996). The FAA took this action after determining that Model 747 passenger airplanes converted to freighters under certain STC's are not structurally capable of safely carrying the payload allowed on the main cargo deck. This condition is due to structural deficiencies in the floor beams of this deck, as well as in the fuselage structure surrounding the side cargo door for this area. That AD requires operators of those Model 747 freighters to reduce the maximum payload that can be carried on the main cargo deck in order ''[t]o prevent collapse of the aft fuselage due to inadequate strength in the airplane structure and subsequent separation of the aft fuselage from the airplane.'' Model 747 freighters affected by AD 96–01–03 were converted under STC's held by GATX/Airlog Company (''GATX'') when that AD was issued. GATX had acquired the original STC's from Hayes International Corporation (Hayes).

During its investigation of the circumstances that led to the issuance of AD 96–01–03, the FAA determined that similar unsafe conditions were likely to be found on certain Model 727 series airplanes that had been converted to freighters in a comparable manner. The bases for these concerns were that similar procedures and design methods had been used on both the 727 and 747 models, and that these STC's could be traced back to the same companies.

Actions Subsequent to AD 96–01–03

In response to those concerns, the FAA's Transport Airplane Directorate established a design review team of FAA engineers to identify any safety problems pertaining to certain interior and side cargo door STC's for Model 727 series airplanes, and to make recommendations for correcting any unsafe conditions.

The design review team has determined that there are more than 10 STC's for Model 727 freighters (''freighter STC's'' or ''Model 727 freighter STC's'') that need to be reviewed. These freighter STC's are individually held by Aeronautical Engineers, Inc. (AEI), ATAZ, Inc. (ATAZ), Federal Express Corporation (FedEx), and Pemco Aeroplex, Inc. (Pemco). The STC's held by FedEx are SA1767SO, which pertains to the cargo door of Model 727 –100 and –200 series airplanes; SA1768SO, which pertains to the cargo compartment interior of Model 727 –100 and –200 series airplanes; and SA7447SW, which pertains to the increase in the number of unit load devices of Model 727 –100 and –200 series airplanes. Over 300 Model 727 series airplanes of both U.S. and foreign registry have been modified in accordance with these STC's, and more than 32 operators worldwide use these freighters.

In reviewing these freighter STC's, the design review team applied the standards of Civil Air Regulations (CAR) part 4b, applicable to the original Boeing Model 727 airplane. These federal standards establish *minimum* safety requirements. A design which does not meet these standards is presumed to be unsafe.

Between September 1996 and February 1997, members of the design review team made four visits to inspect Model 727 series airplanes that were in the process of being converted or already had been converted under these freighter STC's. Site visits were conducted at Pemco World Air Services in Dothan, Alabama (Pemco STC's); the Tramco repair station in Everett, Washington (FedEx STC's that had originally been developed by Hayes); and Professional Modification Services (PMS), Inc.'s, facility in Miami, Florida (AEI and ATAZ STC's).

On all of the Model 727 series airplanes inspected during these site visits, the design review team observed that the original passenger floor beams, which now support the main cargo deck, had not been structurally reinforced by the STC modification for the heavier payloads these freighters are permitted to carry.

These STC freighters typically are allowed to carry 8,000 pound containers (weight of the cargo and container) on the main cargo deck. Because these containers are 88 inches long, the running load (the weight that can be placed on a longitudinal section of the main cargo deck) is 90 pounds per inch (8,000 pounds divided by 88 inches). This running load of 90 pounds per inch is a safety concern because it is approximately 2.6 times higher than the maximum running load of 34.5 pounds per inch allowed on these same floor beams when the airplane was in a passenger configuration.

FAA Structural Analysis of the Floor Beams of the Main Cargo Deck

The design review team examined the documents that the current or a previous STC holder had submitted when seeking original FAA approval of the STC application. The team was unable to find any data to verify that the unreinforced floor structure of the main cargo deck can safely support the heavier freighter payloads.

To independently evaluate whether these floor beams are strong enough to support the maximum payload permitted by the STC's, the design review team performed a limited structural analysis of the design of each main cargo deck viewed during its site visits.

In analyzing the floor beams of the main cargo deck, the FAA engineers used the payload configuration defined in the weight and balance documents for each STC. (These STC freighters are operated in accordance with FAA-approved Weight and Balance Supplements, which specify the payload that can be carried onboard, as well as the maximum payload and assigned location for individual containers on the main cargo deck.) Most of the containers permitted in the Weight and Balance Supplements for these STC's weigh up to 8,000 pounds each.

In its analysis, the design review team considered the different cargo handling system configurations observed on the STC freighters during the site visits; these systems include roller trays and container locks. The roller trays are attached to the floor of the main cargo deck, and enable cargo to be rolled forward and aft. These trays also support the weight of the cargo containers. The container locks, which hold a container in place, are spaced along the floor of the main cargo deck for all of these STC's but one; that STC also has side vertical cargo container restraints (''side restraints''). The analysis is based on the use of containers that are 88 inches by 125 inches, and the location of the horizontal center of gravity for the total payload in each container was within 8.8 inches from the geometric center of the base of the container for the forward and aft direction and 12.5 inches from the geometric center of the base of the container for the left and right direction.

The design review team used commonly accepted analytical methods in its structural analyses. This methodology, or an equivalent, was applicable when the STC application was originally submitted for approval, and it is applicable today. None of the floor analyses performed by the team involved the application of advanced technologies such as finite element modeling. The results of these structural analyses were consistent with data provided by Boeing, which had originally built these airplanes as passenger transports, and with some of the data provided by these STC holders.

To evaluate the adequacy of the floor, the team determined that the most likely ''critical case'' (the conditions or circumstances that exert the greatest forces on the main cargo deck) would be the ''down gust'' conditions specified in CAR part 4b. Down gusts are downward vertical movements of air that occur in turbulence and storms. Down gusts exert a downward force on the entire airplane. As this force causes the airplane to accelerate downward, containers on the main cargo deck—because of inertia—are pulled upward. This upward force on the containers is transmitted through the container locks and into the floor beams. On these STC freighters, this upward force could bend these floor beams upward to failure, and the failure of even a single beam could result in loss of the airplane.

Even if the floor beams of the main cargo deck only become deformed, the results could be catastrophic. Because flight control system cables and fuel lines pass through small holes in these floor beams, significant—although temporary—deformation of these beams could jam the cables or break fuel lines. Consequently, this could reduce controllability of the airplane, cause fuel starvation of one or more engines, or lead to a fire in the fuselage.

The FAA also has determined that performance of the flight maneuvers defined in CAR part 4b would produce critical case forces on these STC freighters, and consequent deformation or failure of floor beams on the main cargo deck. These maneuvers would cause upward forces on the cargo containers relative to the floor. Because of the location of the container locks, the floor beams at the forward or aft edges of the containers would be more critically loaded, and consequently deflected upward.

Determining Floor Strength (The ''Margin of Safety'')

The measure of the ability of the floor beams of the main cargo deck to support the stresses caused by various load cases (combinations of specific container weights with either wind gust conditions or airplane maneuvers) is its ''margin of safety.'' Because the floor must be designed to withstand the critical case stresses, the design review team calculated the margin of safety when the floor is subject to the turbulent ''down gust'' wind conditions defined in CAR part 4b.

The equation for determining the margin of safety is:

$$\text{Margin of Safety} = \frac{\text{Allowable Stress}}{\text{Applied Stress}} - 1$$

In this equation, ''Allowable Stress'' is the measure of the strength of a floor beam of the main cargo deck. ''Applied Stress'' is the stress level produced in that floor beam multiplied by a ''factor of safety'' of 1.5. The weight of the containers on the floor beam, flight conditions (for example, wind gusts or airplane maneuvers), and other forces, such as pressurization of the fuselage, all combine to create the ''applied stress'' level in that floor beam. CAR 4b.200(a) requires the inclusion of the 1.5 factor of safety in structural designs. (This factor is discussed in the ''Elimination of the 1.5 Factor of Safety'' section of this preamble.)

When the margin of safety is zero for all load cases, the structure meets the minimum requirements of CAR part 4b. A structure with a margin of safety greater than zero exceeds those standards. A structure with a margin of safety of less than zero does not meet these minimum requirements, and is presumed to be unsafe. If the margin of safety reaches -1 (the extreme case), the structure is not strong enough to withstand the stresses generated by any load case without failing.

Using this equation, the design review team calculated margins of safety for the STC floor designs as ranging from approximately -0.55 to -0.63. Because of the large negative margins of safety that were calculated for the down gust condition (the most likely critical case), the FAA did not analyze other load cases.

For the margins of safety to be positive for the ''down gust'' condition, the FAA determined that these STC freighters must be limited to less than 50% of the typical maximum payload of 8,000 pounds per container currently allowed by the STC's. From its analyses, the design review team determined that these main cargo decks are capable of supporting a maximum payload of approximately 3,000 pounds per container (a maximum running load of 34.5 pounds per inch) in all areas of the main cargo deck, except in the area adjacent to the side cargo door. In that side door area, containers would be restricted to a maximum payload of approximately 2,700 pounds per container (a maximum running load of 31.0 pounds per inch) due to structural configurations affecting the strength of the floor beams in this area. These running loads include payload in the lower lobe cargo compartments, and any other load applied to the bottom of the floor beams of the main cargo deck. [The Air Transport Association of America (ATA) recommended a maximum payload of 6,000 pounds per container. This recommendation, which is discussed in the ''ATA Recommendations for a Final Rule'' section of this preamble, is substantially above the safe payload limits calculated by the design review team, and would result in a negative margin of safety.]

Typically, freighters converted under these STC's are allowed to carry 11 or 12 containers on the main cargo deck. Containers in most areas of this deck have a maximum payload of up to 8,000 pounds per container; over the wing and landing gear area, this maximum payload per container can be up to 10,000 pounds. Although it would seem that these STC freighters could carry up to a total of 100,000 pounds, the maximum payload is actually limited by the strength of the fuselage as well as the strength of the floor beams. Consequently, the current maximum payloads on these airplanes range from 54,000 pounds (for a Model 727–100 series airplane) to 62,000 pounds (for a Model 727–200 series airplane), depending on the configuration of the freighter. The FAA's structural analysis shows that the maximum payload should be limited to approximately 35,000 pounds. This maximum payload is approximately 22% less than the average payload of 45,000 pounds that has been reported by some operators of these Model 727 STC freighters.

The FAA has determined that none of these main cargo decks are strong enough for the current maximum payloads, and therefore are unsafe. Furthermore, these decks do not comply with the requirements of CAR part 4b.

Operational Factors Affecting Payload Limitation

The FAA's structural analysis was based on the ''worst case'' conditions of the following operational factors: maximum operating speed limit, airplane in-flight weight, container orientation, and side restraints. The FAA realizes that if restrictions are placed on these factors, higher payloads can be allowed. Although the absolute effects of these restrictions would require extensive analysis, the FAA has concluded that it is sufficient to estimate the effects of these factors if they are only to be applied for a limited amount of time. The FAA design review team determined that these restrictions would not violate other load cases.

• *Maximum Operational Speed and In-Flight Weight*

Some of these STC freighters are allowed to fly at a maximum operational speed of 390 knots equivalent airspeed (KEAS). During turbulence, the forces experienced by the airplane are, in part, a function of the aircraft's speed, which

consequently affects the forces on the floor beams. By reducing the maximum operational speed to 350 knots indicated airspeed (KIAS), the forces on the floor beams during turbulence are reduced.

The forces experienced by the airplane during turbulence also are a function of the weight of the aircraft. A heavy airplane has more inertia, and therefore is less affected by severe gusts than a lighter one. The FAA has estimated that a minimum operational in-flight weight of 100,000 pounds will reduce the gust loads on these airplanes and, therefore, reduce the floor beam loads. Some ways to ensure that the in-flight weight does not fall below a prescribed limit is to have a minimum cargo weight, a minimum quantity of ''tankered'' fuel, sufficient ballast, or a combination of these items.

• *Container Orientation*

Typically, these STC freighters carry National Aerospace Standard (NAS) 3610 class II cargo containers, which have a fixed back wall; a partially or fully removable front wall; and are 88 inches by 125 inches. Due to this method of construction, a large portion of the forces that a container experiences in ''down gust'' wind conditions or turbulence is carried by the container's back wall, which is its strongest element. When cargo containers are oriented back-to-back, a large portion of both container loads is carried by the same container locks. This places higher loads on the floor beam supporting these locks. By requiring the containers to be oriented with the door side of the container facing forward, however, a more uniform distribution of the loads is achieved.

• *Side Restraints*

A better distribution of the container load is achieved by installing side restraints. The FAA estimates that there can be an increase in the maximum payload per container when FAA-approved side restraints are installed.

The FAA estimates that the combined effect of this speed limitation, minimum in-flight weight, and container orientation would result in a total weight of no more than 8,000 pounds for any *two* adjacent containers that are each 88 inches by 125 inches. By installing FAA-approved side restraints, this estimated total weight for any *two* adjacent containers could be increased to 9,600 pounds. Under no circumstances, however, can the total weight of any individual container exceed 8,000 pounds.

Elimination of the 1.5 Factor of Safety

At the request of industry, the FAA considered the consequences of elimination of the 1.5 factor of safety used in the ''Margin of Safety'' equation discussed above. By eliminating the 1.5 factor of safety, the FAA analysis determined that the proposed payload limits per container would increase by 50%. CAR 4b.200(a) requires that an airplane be designed with a certain amount of ''reserve structural strength'' to minimize the potential for complete structural failure of an airplane. This reserve is the ''1.5 factor of safety.'' Ordinarily, an applicant seeking to reduce or eliminate this requirement must file a request for an exemption. If the applicant uses an approach in its design that is comparable to the 1.5 factor of safety, the applicant can declare that this approach provides ''an equivalent level of safety.'' The applicant, however, must substantiate this declaration to the satisfaction of the FAA.

The FAA has examined the consequences resulting from the elimination of the 1.5 factor of safety, and has concluded that this action would pose unacceptable hazards for these airplanes. The FAA's intent in issuing this proposed AD is to prevent a combination of circumstances that could result in catastrophic loss of a Model 727 freighter converted under these STC's. Elimination of the 1.5 factor of safety in conjunction with the other measures discussed earlier to increase the allowable payload would be contrary to this intent.

CAR part 4b refers to the critical load cases—the down gust and maneuver forces previously described in this preamble—as ''limit loads.'' CAR 4b.200 requires that these limit loads be multiplied by 1.5 (the ''1.5 factor of safety''), thereby becoming ''ultimate loads'' as defined in CAR part 4b. CAR 4b.201(c) further requires that the structure be able to carry these ultimate loads (which provide a reserve of structural strength) without failure. Although it is anticipated that these STC freighters will not be routinely subjected to limit load forces, it sometimes happens during emergencies and unusual environmental conditions such as turbulence.

• *Emergency Conditions*

In an emergency, the pilot may exceed critical case maneuver forces, and fly the STC freighter beyond the airspeed and flight maneuver limits for which the airplane is designed. The failure of an engine, avoidance of a collision, or the opening of a cargo door during flight are conditions that could necessitate these actions.

Emergencies do occur. On February 5, 1997, a Model 727 passenger airplane was flying to John F. Kennedy International Airport in New York when an Air National Guard F–16 jet fighter approached close enough to activate the Model 727's collision avoidance system alarm. The pilot of the passenger airplane, following the system's emergency guidance, maneuvered the Model 727 into a steep dive and then a steep climb. Two flight attendants and a passenger were thrown down by these maneuvers. Although the actual maneuver forces for this incident are unknown, the 1.5 factor of safety may have provided structural strength to maneuver the airplane beyond the forces in CAR part 4b.

In 1991, a pilot performed a flight maneuver that imposed forces of approximately 3g's (three times the force of gravity) on a Model 747 freighter that was carrying a partial payload. The applicable federal regulations require Model 747 and 727 series airplanes to be designed for maneuvers imposing forces of up to 2.5g's. Had this freighter been carrying a full payload and the 1.5 factor of safety not been used in its design, FAA analysis indicates that this freighter would have been lost.

• *Turbulence*

Airplanes may encounter severe turbulence that exerts wind gust forces beyond the critical case forces of CAR part 4b. AD 96–01–03 describes an occasion in 1991 when wind gusts were so severe that an engine separated from a Model 747–100 freighter shortly after take-off.

More recently, severe wind gusts on September 5, 1996, caused numerous passenger injuries and one fatality on a Model 747–400 series airplane. The FAA received reports indicating that those gusts produced downward accelerations of −1.15g's and upward accelerations of +2.09g's on that airplane in less than four seconds. Had a Model 727 STC freighter experienced similar conditions while transporting close to the maximum payload, FAA analysis indicates that the floor beams of the freighter's main cargo deck would have collapsed.

The FAA has received 87 reports of Model 727 series airplanes experiencing severe turbulence; these reports typically do not include events that have occurred in other countries. The majority of these events were unforeseen and resulted in injuries to the flight crew or passengers. Five of the reports document gusts causing airplane

accelerations of at least +1.88g's upward and −1.5g's downward.

• *Hazardous Deformation of the Main Cargo Deck*

CAR 4b.201(a) requires any structure on the freighter, including the floor beams, to be strong enough to withstand—without ''detrimental permanent deformation''—the anticipated critical case forces that could be exerted upon it during its service life. CAR 4b.201(b) requires that any structural deformations caused by these critical case or limit loads not interfere with the safe operation of the airplane. (The catastrophic consequences of deformation are discussed earlier in this preamble.) Using the 1.5 factor of safety in structural analysis takes deformation into account; without the 1.5 factor of safety, the STC holder would be required to provide an analysis that demonstrates these floors would be free from detrimental deformation. Because these STC's lack a deformation analysis, the FAA would not consider a request for reducing the 1.5 factor of safety requirement unless such an analysis was conducted.

• *Other Considerations*

Another reason that reserve structural strength is necessary is that aerodynamic and structural analysis theory is not precise: exact conditions or circumstances are indeterminable; therefore approximations must be made. In addition, the 1.5 factor of safety takes into account such considerations as the variations in the physical properties of materials, the range of fabrication tolerances, and corrosion or damage. For example, all Model 727 series airplanes must have enough structural reserve to cover the corrosion control activities mandated by AD 90–25–03, amendment 39–6787 (55 FR 49258, November 27, 1990). That AD, in order to control corrosion, permits up to 10% of the material thickness of a floor beam of the main deck to be removed by grinding without undertaking repair; the removal of this material further reduces the strength of the floor.

The majority of these modified airplanes are nearing, or past, their design life of 20 years, 60,000 flights, or 50,000 hours of operation. As the airplanes age and are repeatedly flown, they accumulate fatigue damage and corrosion, which degrades the structural capability. Airplanes that are near or past their design life are part of the FAA's Aging Airplane Program and are subject to numerous AD's to correct unsafe conditions resulting from fatigue cracking and corrosion.

During the time period allowed by the AD's to implement the corrective action, it is probable that many of these aging airplanes will continue to have fatigue cracks and corrosion. Because these airplanes have been built with a safety factor of 1.5, there is a sufficient structural strength margin to allow some finite time to implement the AD's to correct the unsafe conditions. Without this factor of safety, a new maintenance program would have to be developed for these airplanes to ensure that all of the Aging Airplane Program fatigue cracks and corrosion problems are continuously identified and immediately eliminated.

Service History of the Model 727 STC Freighters

Although the modification of these airplanes commenced in 1983, the average modification date for these STC freighters is 1991. In fact, approximately 100 of these airplanes (one-third of the STC freighter fleet) have been modified in just the last three years.

Most of these STC freighters fly only two flights each day, resulting in a low number of accumulated flights since conversion. A representative of the largest operator of these airplanes indicates that, on average, the airplanes carry only slightly more than half of the current maximum payload of 8,000 pounds per container. These circumstances may explain why the FAA has not received reports of adverse events relating to the structural strength of these floor beams.

These floor beams, if overstressed, are not likely to give warning prior to total failure. The existing floor beams on these STC freighters are commonly made from 7075-T6511 aluminum alloy, and there is only a 10% difference between the stress level at which the floor beam permanently bends, and the stress level at which the beam breaks. Consequently, once the floor beams are stressed to the point of being permanently bent, it takes only a small amount of additional stress until the floor beams break, which could result in loss of the airplane.

The FAA has concluded that the reported service history of these STC freighters does not demonstrate that these airplanes are safe.

Issuance of an AD is Appropriate Regulatory Action

Because of the unsafe condition found on these STC freighters (the inadequate strength of the floor structure of the main cargo deck to carry the current maximum payloads), the FAA has determined that there are two ways in which it could proceed: Issuance of an AD to correct the unsafe condition of the floor, or suspension or revocation of these STC's.

The Administrator of the FAA has the authority to issue an AD when ''an unsafe condition exists in a product'' [14 CFR 39.1(a)], and ''[t]hat condition is likely to exist or develop in other products of the same type design'' [14 CFR 39.1(b)]. When such a finding is made, the Administrator may, as appropriate, prescribe ''inspections and the conditions and limitations, if any, under which those products may continue to be operated'' (14 CFR 39.11). By using the AD process, the FAA can still allow these STC freighters to operate, although under restrictions which are necessary to eliminate the unsafe condition.

Because the floor structures did not meet CAR part 4b certification standards at the time these STC's were originally issued, the Administrator of the FAA is empowered to suspend or revoke these STC's [49 U.S.C. 44709(b)]. If the Administrator were to take such action against these STC's, the order could result in the immediate grounding of these STC freighters.

In consideration of the disruption of domestic and international commerce that would result from the suspension or revocation of these STC's, as well as the significant impacts on the domestic and international economy that such an action would have, the FAA has concluded that the issuance of an AD with restrictions on the maximum payloads on the main cargo deck is appropriate action. These payload restrictions will enable these freighters to continue operating, and remove the unsafe condition that currently exists in the floor beams of the main cargo deck.

FAA Meetings With STC Holders and Operators

The FAA has met individually with each of the affected STC holders to discuss the FAA design review team's observations, analyses, and findings. In a letter sent prior to these meetings, the FAA provided its preliminary conclusions to each STC holder. In addition, the agency asked the STC holder to submit data showing that unsafe conditions do not exist, and that the STC designs do meet applicable federal aviation regulations. If the FAA's findings and analyses could not be controverted, the STC holder was asked to specify what actions it would take to bring its designs into compliance. STC holders also were asked to propose actions that would enable these airplanes to operate safely while data or modifications were being developed.

At its meeting with the FAA, FedEx did not present any information to contradict the FAA's analyses, or submit proposals to keep these planes operating safely. In fact, FedEx submitted data prior to the meeting that actually confirmed the FAA's analysis. The FAA's meetings with the other 3 STC holders produced similar results.

The FAA also has met jointly with the STC holders and the operators of the Model 727 freighters modified under these STC's. On February 14, 1997, the FAA convened this meeting, which was attended by more than 75 industry representatives, to discuss what the design review team had observed during its site visits and determined from its analyses of STC data. During this meeting the operators presented no technical data, but provided the FAA with information about the potential impacts on their businesses if the agency were to reduce the current maximum payload.

Industry Proposal for the Timing of an NPRM and FAA Response

During the February 14 meeting, representatives of the affected operators and STC holders in attendance presented a proposal to the FAA. Generally, industry proposed that the FAA delay issuing an NPRM and imposing payload restrictions; in turn, industry, within 120 days from the end of February 1997, would test floor beams, perform analyses, redesign the floor structure, if necessary, and submit data to the FAA substantiating compliance with CAR part 4b. At the meeting, the FAA responded that its priority is the safety of these airplanes, and the burden is now on industry to establish the ability of these STC freighters to carry more than the 3,000 pounds per container being considered by the FAA.

ATA Recommendations for a Final Rule

ATA followed up on the proposal at the February 14 meeting with a March 10, 1997, letter that contained recommendations in order ''to get the necessary design changes quickly incorporated while permitting the airlines to continue operating their aircraft.'' ATA proposed that a 3,000 pound per pallet weight limit be gradually phased-in as follows:

1. There would be at least 120 days after the effective date of the AD before any payload restrictions would be implemented. According to ATA, this period would enable STC holders or others to redesign the freighter floors and provide enough time for operators to procure parts to modify the floors.

2. Initially, payload restrictions would be reduced from 8,000 pounds per pallet to 6,000 pounds per pallet. These restrictions would be in effect for at least one year or the next ''C'' check, whichever occurs later, and operators would not be required to modify the floor beams during this time.

3. Ultimately, the floor beams of the main cargo deck would not have to be modified until at least 16 months after the effective date of the AD. At that time, the payload per pallet would be reduced to 3,000 pounds if an operator opted not to accomplish that modification.

4. Airplanes would not be subject to any of these restrictions if operators can substantiate to the FAA that the floor beams are strong enough to support the existing payload per pallet.

The FAA considered ATA's recommendations in developing this proposed action. The FAA determined that allowing these airplanes to continue to operate without restrictions for 120 days after the effective date of this AD, and allowing 16 months for modification of the floor structure of the main cargo deck would not address the unsafe condition in a timely manner. The FAA's analysis also determined that ATA's recommended payload limit of 6,000 pounds per container at all locations would result in negative margins of safety. The interim weight restrictions proposed by the FAA allow the carriage of a limited number of individual containers at or above the 6,000 pound per container payload suggested by ATA. In addition, the 120-day period of operation at the interim payloads proposed by the FAA (discussed below) does, in part, meet ATA's suggested time for allowing redesign of these STC freighter floors.

FAA Findings

Based on the observations and analyses of its design review team, and information presented by affected STC holders and the operators of Model 727 series airplanes converted to freighters under these STC's, the FAA has found that:

1. None of the floor beams of the main cargo deck on any of these STC's have been modified from the original passenger configuration to support the heavier payloads carried on a freighter.

2. Based on the FAA's analyses, the floor structures of these STC freighters are not capable of withstanding the forces that would result from the current maximum payload when CAR part 4b conditions are encountered.

3. When the maximum payload of a container is limited to 8,000 pounds or 6,000 pounds (for all container positions) as proposed by ATA, the margins of safety for the floor beams of the main cargo deck are calculated as negative numbers and the structural strength of these beams is not sufficient to meet the requirements of CAR part 4b. When the maximum payload of a container is limited to approximately 3,000 pounds, the margin of safety is calculated as a positive number and these floor beams meet the structural strength requirements of CAR part 4b.

4. The FAA estimates the combined effect of imposing operational restrictions on airplane weight, maximum operating speed, and orientation of containers reduces the forces exerted on the airplane in ''down gust'' conditions, and will permit the maximum payload of a container to be increased on an interim basis. The installation of side restraints can permit a further temporary increase in payload.

5. Typically, these STC freighters are modified by other STC's that change the maximum taxi, take-off, zero fuel, and landing weights of these airplanes. These weight changes permit the airplanes to carry more payload on the main cargo deck.

No compatibility study has been performed showing that these weight changes are safe considering the existing freighter STC modifications and payload limits. In addition, no compatibility study has been done for the addition of auxiliary fuel tanks, engine changes, and other types of modifications that alter the basic loads on these airplanes.

6. When these STC modifications were accomplished, each airplane was modified differently, due to different installer shop practices and the configuration of each airplane prior to modification. Subsequent modifications under other STC's that alter the structure were not shown to be compatible with the freighter modifications. The resulting airplane configuration can be significantly different between individual airplanes. Any modifications that are undertaken to bring these airplanes into compliance with CAR part 4b must be shown to be compatible with the specific airplanes being modified.

7. The elimination of the 1.5 factor would not eliminate the unsafe condition that occurs when these airplanes are carrying containers weighing more than the payloads specified in this proposed AD.

FAA Conclusions

From these findings, the FAA has concluded that:

1. The lack of strength in the floor structure of the main cargo deck must be corrected by reducing the payload

carried on the main cargo deck. This reduced payload includes the payload in the lower lobe cargo compartments.

2. Maximum payloads of approximately 2,700 pounds per container in the areas near the forward side cargo door and approximately 3,000 pounds per container in all other areas of the main cargo deck provide an acceptable level of safety. It is estimated that operational restrictions on airplane weight, maximum operating speed, and orientation of containers, as well as the installation of FAA-approved side restraints, would allow safe operation with higher payloads during an interim period.

3. Because these STC freighters are modified by other STC's that change the maximum taxi, take-off, zero fuel, and landing weights of these airplanes, and permit more payload on the main cargo deck, all of the airplanes' Airplane Flight Manuals (AFM's), AFM Supplements, and Weight and Balance Supplements would have to be revised to show the payload restrictions.

Additional AD Actions

The FAA design review team's scope of review of these STC's was not limited to concerns about the strength of the floor structure that support the main cargo deck. The team also made inspections and gathered information about other areas where additional unsafe conditions may exist. Following this proposed rulemaking, additional rulemaking will be initiated to address these concerns. These concerns include the following structural, door systems, and STC certification and documentation issues:

• *Structural Deficiencies*

Lack of ''Fail-Safe'' Hinges on the Cargo Door

The design review team saw single or double-piece hinge fittings on the side cargo doors of these STC freighters. Should a crack propagate along the hinge line where the hinge attaches either to the upper sill of the fuselage or to the door itself, the cargo door could separate from the airplane, and result in loss of the airplane.

Apparent Lack of Strength of the Structure Surrounding the Side Cargo Door

To install a side cargo door for the main deck, an opening of approximately 7.5 feet by 11 feet (82.5 square feet) must be cut into the side of the fuselage. This opening requires that the cutout area and adjacent structural areas be substantially reinforced. If the fuselage structure that surrounds this cargo door is not strong enough to withstand the forces that may be exerted during flight, it could result in loss of the airplane.

The design review team observed that reinforcing structures used in this area, such as longerons, frames, doublers and triplers, are discontinuous and appear to lack adequate load paths and strength. These discrepancies could result in a fuselage structure that does not meet the strength and deformation requirements of CAR 4b.201, proof of structure standards of CAR 4b.202, or fail safety requirements of CAR 4b.270(b).

In its examination of the data supporting these STC's, the design review team determined that the STC applicants used inadequate methods and/or incomplete analyses to substantiate that their modifications provide adequate strength in this area. The STC applicants typically did not substantiate the strength of numerous structural features, such as splices and runouts. The STC holders also used analytical approaches that failed to consider such impacts as redistribution of the forces in the fuselage, and localized stress effects such as ''buckling.''

Inadequate Cargo Restraint Barriers

CAR 4b.260 requires that the restraint barrier in the cargo compartment of the main deck be strong enough to protect the occupants from injury when the freighter is carrying its maximum payload and emergency landing conditions occur (the ''9.0g standard'').

Based on the observations and analyses of the design review team, the FAA has determined that the bulkhead restraint barriers on all of the observed STC freighters do not meet the 9.0g standard; three of the four STC holders have confirmed the FAA's finding.

• *Deficiencies in Systems for the Side Cargo Door*

Because of cargo door-related accidents, industry and the FAA, during the early 1990s, conducted an extensive design review of cargo doors and agreed on new standards to eliminate safety deficiencies in certain cargo door systems. The FAA agreed to issue AD's requiring compliance with these standards, which are based on Amendment 54 to 14 CFR 25.783, for those freighters that did not comply. These standards are not intended to upgrade the requirements of CAR part 4b after certification, but are to correct potentially unsafe conditions on airplanes already in service that were identified during the design review.

Inadequate Warning System for an ''Unsafe'' Door

Freighters must have a warning system that directly alerts the pilot and co-pilot that the side cargo door is ''unsafe'' (open, unlatched, or unlocked). A ''safe'' cargo door is one that is verified to be closed, latched, and locked prior to taxiing for take-off.

The design review team observed STC freighters that do not have a red cargo door warning light in plain view of both pilots. In the event that the cargo door is unsafe, pilots on those planes would not be directly warned; this situation could lead to pilot inaction or dispatch of the airplane, and consequent opening of this door during flight.

Improper Pressurization of the Fuselage When the Cargo Door Is ''Unsafe''

The opening of a door during flight has caused several serious accidents. Some of those accidents have resulted in loss of life; others have resulted in loss of the airplane. Consequently, industry and the FAA adopted standards to prevent pressurization of the fuselage when the cargo door is unsafe. Typically, compliance with these standards involves installation of vent doors that close only when the cargo door is safe.

In its examination of the associated cargo door related systems on these STC freighters, the design review team detected that the fuselage of some of these airplanes could be pressurized when the cargo door vent door is not closed. The team also found that some STC's did not have the required safety analysis that would verify the adequacy of the design's pressurization prevention system when the cargo door is unsafe.

Electrical/Hydraulic System Deficiencies That Could Cause an ''Unsafe'' Cargo Door

Electrical short circuits could transmit power to the electrical or hydraulic systems that operate the side cargo door, lead to opening of this door during flight, and could result in the loss of the airplane. To prevent this, all power to this door must be removed during flight, and the flight crew must not be able to restore this power at any time during flight.

CAR 4b.606 (which has been further refined by the cargo door standards agreed upon by industry and the FAA) requires STC holders to show that the design of the electrical system is adequate to prevent the side cargo door from opening during flight. These STC holders did not accomplish this analysis.

Inability to Visually Verify the Status of the Side Cargo Door

When the system that warns the pilot and co-pilot about an ''unsafe'' cargo door is not working correctly, the red warning light either will fail to light up during pre-flight testing of the system, or will light up when the side cargo door is actually ''safe.'' These STC's have a backup system that allows the flight crew to confirm that the door is actually safe.

The cargo door standards to which industry and the FAA agreed require ''a visual means of directly inspecting the locks.'' The design review team observed that these backup systems enable the flight crew to view only a portion of the locking beam. Because a visual means of directly inspecting the locking mechanism of the door is not available, these STC's do not comply with these standards. When the entire locking mechanism cannot be visually inspected, a false report on the condition of the door may be given to the crew, and the airplane may be dispatched with an unsafe door.

Cargo Compartment Smoke Detection and Warning Systems

CAR 4b.383(e)(2) requires that there be a means for the flight crew to check and assure the proper functioning of each smoke detector circuit. The FAA design review team and STC freighter operators have observed that some STC's contain electrical wiring designs that test only a portion of the smoke detection system—not the entire system as required—when a single button is pressed (the ''press to test'' feature). If the flight crew is not alerted that some smoke detectors are not functioning, the crew may not be able to respond to a cargo compartment fire in a timely manner.

• *The Carriage of Supernumeraries*

Supernumeraries are non-flight crew personnel who are carried on board the airplane. For example, a supernumerary could be an airline employee who is not part of the flight crew, but is specially trained to handle cargo.

These STC freighters have a cargo compartment that is used only for the carriage of cargo. Before supernumeraries can be carried, the STC holder or operator must apply to the FAA for an exemption from CAR 4b.383(e), and from other federal regulations that pertain to seats, berths, and safety belts; emergency evacuation; ventilation; and fire protection. Such exemptions are granted only when the FAA determines that the design contains features that provide an acceptable level of safety for the supernumeraries.

The FAA has become aware of numerous instances where STC holders have made provisions for the carriage of supernumeraries without applying for FAA exemptions and without demonstrating that the safety provisions for supernumeraries are acceptable.

• *STC Data and Documentation Concerns*

When the FAA design review team evaluated data that STC applicants originally submitted to obtain FAA approval of these freighter STC's, the team found a number of deficiencies. Examples include data that is not adequately substantiated; payload limits in Weight and Balance documents that are inconsistent with the structural capability of the fuselage; structural analyses that lack the critical case; no analysis of the floor beams over the wing center section; and documented negative margins of safety that are unresolved.

• *Unsubmitted Instructions for Continued Airworthiness*

Federal regulations require an STC holder to submit ''Instructions for Continued Airworthiness'' to the FAA for review. These instructions include maintenance procedures, maintenance manuals, and maintenance program requirements for the continued safety of the airplane converted under the STC. Only one of the four STC holders has complied with this requirement.

Future FAA Review of Other Transport Airplane Cargo Conversions

The FAA's review of STC's and the safety of airplanes converted from a passenger to a cargo-carrying configuration will not be limited to just Model 727 and 747 series airplanes. Based on the discovery of unsafe conditions on both of these airplane models, the FAA intends to examine all transport category passenger airplanes that have been converted to a cargo-carrying configuration under STC's.

The FAA urges STC holders and operators of these freighters to begin, as soon as possible, an examination of the data supporting the STC's. If problems such as those identified in the Model 727 and 747 conversions are detected, corrective actions should be developed. Self-examination of these conversions prior to formal FAA review may shorten the time needed for any corrective actions, and reduce the impacts on operators of these freighters.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would restrict the payload on the main cargo deck of Model 727 series airplanes modified in accordance with STC SA1767SO, SA1768SO, or SA7447SW. This proposal would be accomplished by revisions to the Limitations Section of all FAA-approved AFM's, AFM Supplements, and Weight and Balance Supplements. Revision of all these documents would be required because these STC freighters have been modified by other STC's that change the maximum taxi, take-off, zero fuel, and landing weights of these airplanes.

The payload limits that are proposed are based on the use of containers that are 88 inches by 125 inches, and a horizontal center of gravity for the total payload in each container that is located is within 8.8 inches from the geometric center of the base of the container for the forward and aft direction and 12.5 inches from the geometric center of the base of the container for the left and right direction. The payload limits are also based on a requirement that all containers are loaded with the door side of the container facing forward.

The proposal presents three options for payload limitations: one ''baseline'' [paragraph (a)] and two ''interim'' [paragraphs (b) and (c)], depending upon the floor configuration and other operating limitations.

Paragraph (a) would establish a payload limit of 3,000 pounds per container.

For airplanes equipped with FAA-approved side restraints, paragraph (b) would provide for temporary payload limits in some areas of 9,600 pounds for any *two* adjacent containers, with a limit of 8,000 pounds for any one container. These limits would be available when the following two conditions are met: the maximum operational airspeed does not exceed 350 KIAS *and* the minimum in-flight weight exceeds 100,000 pounds.

For airplanes that are not equipped with FAA-approved side restraints, paragraph (c) would provide for a temporary payload limit in some areas of 8,000 pounds for any *two* adjacent containers. This limit also would be available when the following two conditions are met: the maximum operational airspeed does not exceed 350 KIAS *and* the minimum in-flight weight exceeds 100,000 pounds.

Because the determination of the effects of operational limitations on

payload is based on approximations, the resulting payload limits may be unconservative. Consequently, operation with these payload limits is only acceptable for a limited period of time. Continued use of these operational limits and the associated payload limits must be substantiated. The FAA has determined that an acceptable level of safety is provided if the time period is limited to no more than 120 days, which would also allow sufficient time for an applicant to develop an acceptable analysis regarding the applicability of the operational limitations.

At the February 14 meeting discussed above, the industry participants proposed to complete a redesign of the floor structure within 120 days from the end of February (by the end of June). The FAA bases the proposed 120-day interim period in paragraphs (b) and (c) on the following assumptions:

1. Industry will fulfill this proposal;

2. The final rule will not become effective before October 1, 1997, and thus allow additional time for the industry to modify the main cargo deck floor structure; and

3. Operators and STC holders will work diligently in the meantime to avoid any disruptions to operations.

In light of the seriousness of the unsafe conditions addressed by this proposal, the FAA considers that the 120-day interim period:

1. Provides an acceptable level of safety;

2. Minimizes exposure to any potential unconservatism in the determination of the payload limits;

3. Provides an adequate opportunity for applicants to develop substantiation for continued use of operational limits to enhance payload limits; and

4. Minimizes, for the interim period, the burdens on operators resulting from this AD.

Should an operator desire to transport containers of other dimensions or use a different payload container center of gravity, it would have to apply to the FAA for appropriate payload limits.

At any time, an applicant would be able to present a proposal to modify the floor structure or proposed weight and other limits, data, and analysis to the FAA to substantiate that floor structure of the main cargo deck (existing or modified) is in compliance with the requirements of CAR part 4b when supporting the proposed weight limits. When the FAA determines that these documents are acceptable, the operator would be able to operate its airplane at the payload limits substantiated by its data and analysis.

Regulatory Evaluation Summary

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.

The FAA conducted a ''Cost Analysis and Initial Regulatory Flexibility Determination and Analysis'' to determine the regulatory impacts of this and three other proposed AD's to operators of all 244 U.S.-registered Boeing Model 727–100 and −200 series passenger airplanes that have been converted to cargo-carrying configurations under 10 STC's held by four companies. This analysis is included in the docket for each AD. The FAA has determined that approximately 38 Model 727–100 and 79 Model 727–200 series airplanes were converted under FedEx STC's. (There were 15 Model 727 series airplanes for which the FAA could not identify the STC holder. It is possible that these airplanes were also converted under a FedEx STC. Their costs are not included here.)

Assuming that the operator would comply with the restricted interim operating conditions specified in the proposed rule, the FAA estimates that airplanes modified under the FedEx STC's would not lose revenues during the 120-day interim period after the effective date of the proposed AD. Both Model 727–100 and 727–200 series airplanes modified under the FedEx STC's have side restraints and would be limited to a total of 9,600 pounds for each pair of adjacent containers, with an 8,000 pound single container limit aft of body station 436 and 4,000 pounds forward of body station 436.

Based on the Cost Analysis and Initial Regulatory Flexibility Determination and Analysis included in the docket, the FAA estimates that affected airplanes could be modified at a cost of $100,000 per airplane to carry the maximum payloads currently allowed. The total cost, therefore, to modify the fleet of affected Model 727 series airplanes that were originally modified to the FedEx STC's is $11.7 million. This assumes that modifications to the airplane are available and installed within the 120 day time period. If there are any delays in the availability or implementation of modifications, the revenue loss due to operation at the 3,000 pound payload limit would substantially increase the costs. The FAA solicits detailed cost information from the affected carrier concerning the proposed AD's compliance costs.

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by government regulations. The RFA requires a Regulatory Flexibility Analysis if a proposed rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The Regulatory Flexibility Analysis includes the consideration of alternative actions.

FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, establishes threshold cost values and small entity size standards for complying with RFA review requirements in FAA rulemaking actions. The Order defines ''small entities'' in terms of size thresholds, ''significant economic impact'' in terms of annualized cost thresholds, and ''substantial number'' as a number which is not less than eleven and which is more than one-third of the small entities subject to the proposed or final rule.

FAA Order 2100.14A sets the size threshold for small entities operating aircraft for hire at 9 aircraft and the annualized cost threshold at $69,000 for scheduled operations of airplanes with fewer than 60 seats and $5,000 for nonscheduled operations.

This proposed AD would affect only one operator. The proposed AD does not affect a substantial number of small entities, however, because it is a number less than eleven and more than 9 aircraft are operated by this entity. Therefore, this AD does not have a significant economic impact on a substantial number of small entities and a regulatory flexibility analysis is not required.

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 ''Cost Analysis and Initial Regulatory Flexibility Determination and Analysis'' 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, Airplanes, 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:

Boeing: Docket 97–NM–09–AD.

Applicability: Model 727 series airplanes; modified in accordance with Supplemental Type Certificate SA1767SO, SA1768SO, or SA7447SW; 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 (g) 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 structural failure of the floor beams of the main cargo deck, which could lead to loss of the airplane, accomplish the following:

(a) Except as provided in paragraphs (b), (c), and (d) of this AD, within 48 clock hours (not flight hours) after the effective date of this AD, accomplish the requirements of paragraph (a)(1) or (a)(2) of this AD, as applicable:

(1) For airplanes on which only containers that are 88 inches by 125 inches are transported: Revise the Limitations Section of all FAA-approved Airplane Flight Manuals (AFM) and AFM Supplements, and the Limitations Section of all FAA-approved Airplane Weight and Balance Supplements to include the following information. This may be accomplished by inserting a copy of this AD in all AFM's, AFM Supplements, and Weight and Balance Supplements.

''Limitations

All containers must be oriented with the door side of the container facing forward.

The location of the horizontal center of gravity for the total payload within each container shall not vary more than 8.8 inches from the geometric center of the base of the container for the forward and aft direction and 12.5 inches from the geometric center of the base of the container for the left or right direction.

Payload Limitations

Do not exceed a total weight of 3,000 pounds per container on the main cargo deck, except in the area adjacent to the side cargo door. In that side door area (Body Station 440 to Body Station 660), containers are restricted to a maximum payload of 2,700 pounds per container. This payload limit includes the payload in the lower lobe cargo compartments and any other load applied to the bottom of the floor beams of the main cargo deck for the same body station location as the container on the main cargo deck.''

(2) For airplanes on which any containers other than 88 inches by 125 inches are transported: Revise the Limitations Section of all FAA-approved AFM's and AFM Supplements, and the Limitations Section of all FAA-approved Airplane Weight and Balance Supplements in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA Transport Airplane Directorate.

Note 2: The weight restrictions to be approved under paragraph (a)(2) will be consistent with the applicable weight restrictions of paragraph (a)(1), (b), or (c) of this AD.

(b) During the period ending 120 days after the effective date of this AD: For airplanes on which only containers that are 88 inches by 125 inches are transported, and that are equipped with side vertical cargo container restraints that have been approved by the Manager, Standardization Branch, ANM–113, as an optional alternative to compliance with paragraph (a)(1) of this AD, revise the Limitations Section of all FAA-approved AFM's and AFM Supplements, and the Limitations Section of all FAA-approved Airplane Weight and Balance Supplements to include the following limitations. This may be accomplished by inserting a copy of this AD in all AFM's, AFM Supplements, and Weight and Balance Supplements.

''Limitations

Maximum Operating Airspeed of V_{mo} equals 350 knots indicated airspeed (KIAS).

Minimum in-flight weight: 100,000 pounds or greater.

All containers must be oriented with the door side of the container facing forward.

The location of the horizontal center of gravity for the total payload within each container shall not vary more than 8.8 inches from the geometric center of the base of the container for the forward and aft direction and 12.5 inches from the geometric center of the base of the container for the left or right direction.

Payload Limitations

Do not exceed a total weight of 9,600 pounds for any *two* adjacent containers and a total weight of 8,000 pounds for any container, except that the total weight of all containers forward of Body Station 436 shall not exceed 4,000 pounds. This payload limit includes the payload in the lower lobe cargo compartments and any other load applied to the bottom of the floor beams of the main cargo deck for the same body station location as the container on the main cargo deck.''

(c) During the period ending 120 days after the effective date of this AD: For airplanes on which only containers that are 88 inches by 125 inches are transported, and that are NOT equipped with side vertical cargo container restraints that have been approved by the Manager, Standardization Branch, ANM–113, as an optional alternative to compliance with paragraph (a)(1) of this AD, revise the Limitations Section of all FAA-approved AFM's and AFM Supplements, and the Limitations Section of all FAA-approved Airplane Weight and Balance Supplements to include the following limitations. This may be accomplished by inserting a copy of this AD in all AFM's, AFM Supplements, and Weight and Balance Supplements.

''Limitations

Maximum Operating Airspeed of V_{mo} equals 350 knots indicated airspeed (KIAS).

Minimum in-flight weight: 100,000 pounds or greater.

All containers must be oriented with the door side of the container facing forward.

The location of the horizontal center of gravity for the total payload within each container shall not vary more than 8.8 inches from the geometric center of the base of the container for the forward and aft direction and 12.5 inches from the geometric center of the base of the container for the left or right direction.

Payload Limitations

Do not exceed a total weight of 8,000 pounds for any *two* adjacent containers and the total weight of all containers forward of Body Station 436 shall not exceed 4,000 pounds. This payload limit includes the payload in the lower lobe cargo compartments and any other load applied to the bottom of the floor beams of the main cargo deck for the same body station location as the container on the main cargo deck.''

(d) For airplanes that operate under the 350 KIAS requirements of paragraph (b) or (c) of this AD: A maximum operating airspeed limitation placard must be installed adjacent to the airspeed indicator and in full view of both pilots. This placard must state: ''Limit V_{mo} to 350 KIAS.''

(e) For airplanes complying with paragraph (b) or (c) of this AD, within 120 days after the effective date of this AD: Revise the Limitations Section of all FAA-approved AFM's and AFM Supplements, and the Limitations Section of all FAA-approved Airplane Weight and Balance Supplements to include the following information. This may be accomplished by inserting a copy of this AD in all AFM's, AFM Supplements, and Weight and Balance Supplements.

''Limitations

All containers must be oriented with the door side of the container facing forward.

The location of the horizontal center of gravity for the total payload within each container shall not vary more than 8.8 inches from the geometric center of the base of the container for the forward and aft direction and 12.5 inches from the geometric center of

the base of the container for the left or right direction.

Payload Limitations

Do not exceed a total weight of 3,000 pounds per container on the main cargo deck, except in the area adjacent to the side cargo door. In that side door area (Body Station 440 to Body Station 660), containers are restricted to a maximum payload of 2,700 pounds per container. This payload limit includes the payload in the lower lobe cargo compartments and any other load applied to the bottom of the floor beams of the main cargo deck for the same body station location as the container on the main cargo deck.''

(f) As an alternative to compliance with paragraphs (a), (b), (c), (d), and (e) of this AD: An applicant may submit a proposal to modify the floor structure or proposed new payload and other limits, and substantiating data and analyses to the Manager, Standardization Branch, ANM–113, in accordance with the procedures of paragraph (g) of this AD, showing that the floor structure of the main cargo deck is in compliance with the requirements of Civil Air Regulations (CAR) part 4b. If the FAA determines that these documents are acceptable and applicable to the specific airplane being analyzed and approves the proposed limits, prior to flight under these new limits, the operator must revise the Limitations Section of all FAA-approved AFM's and AFM Supplements, and the Limitations Section of all FAA-approved Airplane Weight and Balance Supplements in accordance with a method approved by the Manager, Standardization Branch, ANM–113. Accomplishment of these revisions in accordance with the requirements of this paragraph constitutes terminating action for the requirements of this AD.

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

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

(h) 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 July 8, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–18355 Filed 7–14–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–79–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes Modified in Accordance With Supplemental Type Certificate SA1368SO, SA1797SO, or SA1798SO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger to a cargo-carrying (''freighter'') configuration. This proposal would require limiting the payload on the main cargo deck by revising the Limitations Sections of all Airplane Flight Manuals (AFM), AFM Supplements, and Airplane Weight and Balance Supplements for these airplanes. This proposal also provides for the submission of data and analysis that substantiates the strength of the main cargo deck, or modification of the main cargo deck, as optional terminating action for these payload restrictions. This proposal is prompted by the FAA's determination that unreinforced floor structure of the main cargo deck is not strong enough to enable the airplane to safely carry the maximum payload that is currently allowed in this area. The actions specified by the proposed AD are intended to prevent failure of the floor structure, which could lead to loss of the airplane.

DATES: Comments must be received by August 22, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–79–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.

FOR FURTHER INFORMATION CONTACT: Steven C. Fox, Senior Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2777; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–79–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–79–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has issued supplemental type certificates (STC) for converting certain Boeing Model 727 and 747 series airplanes from a passenger to a cargo-carrying (''freighter'') configuration. These freighter conversions entail such modifications as removal of the passenger interior, the installation of systems to handle cargo containers (such as pallets and other unit load devices), the installation of a side cargo door for the main cargo deck, and alterations to such systems as the hydraulic, electrical, and smoke detection systems that are associated with the transport of cargo. When a conversion is completed, the weight permitted to be carried (''payload'') on the main cargo deck is significantly

greater than the payload allowed in that same area when the airplane was in its original passenger configuration.

On December 27, 1995, the FAA issued Airworthiness Directive (AD) 96–01–03, amendment 39–9479 (61 FR 116, January 3, 1996). The FAA took this action after determining that Model 747 passenger airplanes converted to freighters under certain STC's are not structurally capable of safely carrying the payload allowed on the main cargo deck. This condition is due to structural deficiencies in the floor beams of this deck, as well as in the fuselage structure surrounding the side cargo door for this area. That AD requires operators of those Model 747 freighters to reduce the maximum payload that can be carried on the main cargo deck in order ''[t]o prevent collapse of the aft fuselage due to inadequate strength in the airplane structure and subsequent separation of the aft fuselage from the airplane.'' Model 747 freighters affected by AD 96–01–03 were converted under STC's held by GATX/Airlog Company (''GATX'') when that AD was issued. GATX had acquired the original STC's from Hayes International Corporation (Hayes).

During its investigation of the circumstances that led to the issuance of AD 96–01–03, the FAA determined that similar unsafe conditions were likely to be found on certain Model 727 series airplanes that had been converted to freighters in a comparable manner. The bases for these concerns were that similar procedures and design methods had been used on both the 727 and 747 models, and that these STC's could be traced back to the same companies.

Actions Subsequent to AD 96–01–03

In response to those concerns, the FAA's Transport Airplane Directorate established a design review team of FAA engineers to identify any safety problems pertaining to certain interior and side cargo door STC's for Model 727 series airplanes, and to make recommendations for correcting any unsafe conditions.

The design review team has determined that there are more than 10 STC's for Model 727 freighters (''freighter STC's'' or ''Model 727 freighter STC's'') that need to be reviewed. These freighter STC's are individually held by Aeronautical Engineers, Inc. (AEI), ATAZ, Inc. (ATAZ), Federal Express Corporation (FedEx), and Pemco Aeroplex, Inc. (Pemco). The STC's held by AEI are SA1368SO, which pertains to the cargo door on Model 727–100 series airplanes; SA1797SO, which pertains to the cargo door on Model 727–200 series airplanes; and SA1798SO, which pertains to the cargo compartment on Model 727–200 series airplanes. Over 300 Model 727 series airplanes of both U.S. and foreign registry have been modified in accordance with these STC's, and more than 32 operators worldwide use these freighters.

In reviewing these freighter STC's, the design review team applied the standards of Civil Air Regulations (CAR) part 4b, applicable to the original Boeing Model 727 airplane. These federal standards establish *minimum* safety requirements. A design which does not meet these standards is presumed to be unsafe.

Between September 1996 and February 1997, members of the design review team made four visits to inspect Model 727 series airplanes that were in the process of being converted or already had been converted under these freighter STC's. Site visits were conducted at Pemco World Air Services in Dothan, Alabama (Pemco STC's); the Tramco repair station in Everett, Washington (FedEx STC's that had originally been developed by Hayes); and Professional Modification Services (PMS), Inc.'s, facility in Miami, Florida (AEI and ATAZ STC's).

On all of the Model 727 series airplanes inspected during these site visits, the design review team observed that the original passenger floor beams, which now support the main cargo deck, had not been structurally reinforced by the STC modification for the heavier payloads these freighters are permitted to carry.

These STC freighters typically are allowed to carry 8,000 pound containers (weight of the cargo and container) on the main cargo deck. Because these containers are 88 inches long, the running load (the weight that can be placed on a longitudinal section of the main cargo deck) is 90 pounds per inch (8,000 pounds divided by 88 inches). This running load of 90 pounds per inch is a safety concern because it is approximately 2.6 times higher than the maximum running load of 34.5 pounds per inch allowed on these same floor beams when the airplane was in a passenger configuration.

FAA Structural Analysis of the Floor Beams of the Main Cargo Deck

The design review team examined the documents that the current or a previous STC holder had submitted when seeking original FAA approval of the STC application. The team was unable to find any data to verify that the unreinforced floor structure of the main cargo deck can safely support the heavier freighter payloads.

To independently evaluate whether these floor beams are strong enough to support the maximum payload permitted by the STC's, the design review team performed a limited structural analysis of the design of each main cargo deck viewed during its site visits.

In analyzing the floor beams of the main cargo deck, the FAA engineers used the payload configuration defined in the weight and balance documents for each STC. (These STC freighters are operated in accordance with FAA-approved Weight and Balance Supplements, which specify the payload that can be carried onboard, as well as the maximum payload and assigned location for individual containers on the main cargo deck.) Most of the containers permitted in the Weight and Balance Supplements for these STC's weigh up to 8,000 pounds each.

In its analysis, the design review team considered the different cargo handling system configurations observed on the STC freighters during the site visits; these systems include roller trays and container locks. The roller trays are attached to the floor of the main cargo deck, and enable cargo to be rolled forward and aft. These trays also support the weight of the cargo containers. The container locks, which hold a container in place, are spaced along the floor of the main cargo deck for all of these STC's but one; that STC also has side vertical cargo container restraints (''side restraints''). The analysis is based on the use of containers that are 88 inches by 125 inches, and the location of the horizontal center of gravity for the total payload in each container was within 8.8 inches from the geometric center of the base of the container for the forward and aft direction and 12.5 inches from the geometric center of the base of the container for the left and right direction.

The design review team used commonly accepted analytical methods in its structural analyses. This methodology, or an equivalent, was applicable when the STC application was originally submitted for approval, and it is applicable today. None of the floor analyses performed by the team involved the application of advanced technologies such as finite element modeling. The results of these structural analyses were consistent with data provided by Boeing, which had originally built these airplanes as passenger transports, and with some of the data provided by these STC holders.

To evaluate the adequacy of the floor, the team determined that the most likely ''critical case'' (the conditions or

circumstances that exert the greatest forces on the main cargo deck) would be the ''down gust'' conditions specified in CAR part 4b. Down gusts are downward vertical movements of air that occur in turbulence and storms. Down gusts exert a downward force on the entire airplane. As this force causes the airplane to accelerate downward, containers on the main cargo deck—because of inertia—are pulled upward. This upward force on the containers is transmitted through the container locks and into the floor beams. On these STC freighters, this upward force could bend these floor beams upward to failure, and the failure of even a single beam could result in loss of the airplane.

Even if the floor beams of the main cargo deck only become deformed, the results could be catastrophic. Because flight control system cables and fuel lines pass through small holes in these floor beams, significant—although temporary—deformation of these beams could jam the cables or break fuel lines. Consequently, this could reduce controllability of the airplane, cause fuel starvation of one or more engines, or lead to a fire in the fuselage.

The FAA also has determined that performance of the flight maneuvers defined in CAR part 4b would produce critical case forces on these STC freighters, and consequent deformation or failure of floor beams on the main cargo deck. These maneuvers would cause upward forces on the cargo containers relative to the floor. Because of the location of the container locks, the floor beams at the forward or aft edges of the containers would be more critically loaded, and consequently deflected upward.

Determining Floor Strength (The ''Margin of Safety'')

The measure of the ability of the floor beams of the main cargo deck to support the stresses caused by various load cases (combinations of specific container weights with either wind gust conditions or airplane maneuvers) is its ''margin of safety.'' Because the floor must be designed to withstand the critical case stresses, the design review team calculated the margin of safety when the floor is subject to the turbulent ''down gust'' wind conditions defined in CAR part 4b.

The equation for determining the margin of safety is:

$$\text{Margin of Safety} = \frac{\text{Allowable Stress}}{\text{Applied Stress}} - 1$$

In this equation, ''Allowable Stress'' is the measure of the strength of a floor beam of the main cargo deck. ''Applied Stress'' is the stress level produced in that floor beam multiplied by a ''factor of safety'' of 1.5. The weight of the containers on the floor beam, flight conditions (for example, wind gusts or airplane maneuvers), and other forces, such as pressurization of the fuselage, all combine to create the ''applied stress'' level in that floor beam. CAR 4b.200(a) requires the inclusion of the 1.5 factor of safety in structural designs. (This factor is discussed in the ''Elimination of the 1.5 Factor of Safety'' section of this preamble.)

When the margin of safety is zero for all load cases, the structure meets the minimum requirements of CAR part 4b. A structure with a margin of safety greater than zero exceeds those standards. A structure with a margin of safety of less than zero does not meet these minimum requirements, and is presumed to be unsafe. If the margin of safety reaches -1 (the extreme case), the structure is not strong enough to withstand the stresses generated by any load case without failing.

Using this equation, the design review team calculated margins of safety for the STC floor designs as ranging from approximately -0.55 to -0.63. Because of the large negative margins of safety that were calculated for the down gust condition (the most likely critical case), the FAA did not analyze other load cases.

For the margins of safety to be positive for the ''down gust'' condition, the FAA determined that these STC freighters must be limited to less than 50% of the typical maximum payload of 8,000 pounds per container currently allowed by the STC's. From its analyses, the design review team determined that these main cargo decks are capable of supporting a maximum payload of approximately 3,000 pounds per container (a maximum running load of 34.5 pounds per inch) in all areas of the main cargo deck, except in the area adjacent to the side cargo door. In that side door area, containers would be restricted to a maximum payload of approximately 2,700 pounds per container (a maximum running load of 31.0 pounds per inch) due to structural configurations affecting the strength of the floor beams in this area. These running loads include payload in the lower lobe cargo compartments, and any other load applied to the bottom of the floor beams of the main cargo deck. [The Air Transport Association of America (ATA) recommended a maximum payload of 6,000 pounds per container. This recommendation, which is discussed in the ''ATA Recommendations for a Final Rule'' section of this preamble, is substantially above the safe payload limits calculated by the design review team, and would result in a negative margin of safety.]

Typically, freighters converted under these STC's are allowed to carry 11 or 12 containers on the main cargo deck. Containers in most areas of this deck have a maximum payload of up to 8,000 pounds per container; over the wing and landing gear area, this maximum payload per container can be up to 10,000 pounds. Although it would seem that these STC freighters could carry up to a total of 100,000 pounds, the maximum payload is actually limited by the strength of the fuselage as well as the strength of the floor beams. Consequently, the current maximum payloads on these airplanes range from 54,000 pounds (for a Model 727–100 series airplane) to 62,000 pounds (for a Model 727–200 series airplane), depending on the configuration of the freighter. The FAA's structural analysis shows that the maximum payload should be limited to approximately 35,000 pounds. This maximum payload is approximately 22% less than the average payload of 45,000 pounds that has been reported by some operators of these Model 727 STC freighters.

The FAA has determined that none of these main cargo decks are strong enough for the current maximum payloads, and therefore are unsafe. Furthermore, these decks do not comply with the requirements of CAR part 4b.

Operational Factors Affecting Payload Limitation

The FAA's structural analysis was based on the ''worst case'' conditions of the following operational factors: maximum operating speed limit, airplane in-flight weight, container orientation, and side restraints. The FAA realizes that if restrictions are placed on these factors, higher payloads can be allowed. Although the absolute effects of these restrictions would require extensive analysis, the FAA has concluded that it is sufficient to estimate the effects of these factors if they are only to be applied for a limited amount of time. The FAA design review team determined that these restrictions would not violate other load cases.

• *Maximum Operational Speed and In-Flight Weight*

Some of these STC freighters are allowed to fly at a maximum operational speed of 390 knots equivalent airspeed (KEAS). During turbulence, the forces experienced by the airplane are, in part, a function of the aircraft's speed, which consequently affects the forces on the floor beams. By reducing the maximum operational speed to 350 knots indicated

airspeed (KIAS), the forces on the floor beams during turbulence are reduced.

The forces experienced by the airplane during turbulence also are a function of the weight of the aircraft. A heavy airplane has more inertia, and therefore is less affected by severe gusts than a lighter one. The FAA has estimated that a minimum operational in-flight weight of 100,000 pounds will reduce the gust loads on these airplanes and, therefore, reduce the floor beam loads. Some ways to ensure that the in-flight weight does not fall below a prescribed limit is to have a minimum cargo weight, a minimum quantity of ''tankered'' fuel, sufficient ballast, or a combination of these items.

• *Container Orientation*

Typically, these STC freighters carry National Aerospace Standard (NAS) 3610 class II cargo containers, which have a fixed back wall; a partially or fully removable front wall; and are 88 inches by 125 inches. Due to this method of construction, a large portion of the forces that a container experiences in ''down gust'' wind conditions or turbulence is carried by the container's back wall, which is its strongest element. When cargo containers are oriented back-to-back, a large portion of both container loads is carried by the same container locks. This places higher loads on the floor beam supporting these locks. By requiring the containers to be oriented with the door side of the container facing forward, however, a more uniform distribution of the loads is achieved.

• *Side Restraints*

A better distribution of the container load is achieved by installing side restraints. The FAA estimates that there can be an increase in the maximum payload per container when FAA-approved side restraints are installed.

The FAA estimates that the combined effect of this speed limitation, minimum in-flight weight, and container orientation would result in a total weight of no more than 8,000 pounds for any *two* adjacent containers that are each 88 inches by 125 inches. By installing FAA-approved side restraints, this estimated total weight for any two adjacent containers could be increased to 9,600 pounds. Under no circumstances, however, can the total weight of any individual container exceed 8,000 pounds.

Elimination of the 1.5 Factor of Safety

At the request of industry, the FAA considered the consequences of elimination of the 1.5 factor of safety used in the ''Margin of Safety'' equation discussed above. By eliminating the 1.5 factor of safety, the FAA analysis determined that the proposed payload limits per container would increase by 50%. CAR 4b.200(a) requires that an airplane be designed with a certain amount of ''reserve structural strength'' to minimize the potential for complete structural failure of an airplane. This reserve is the ''1.5 factor of safety.'' Ordinarily, an applicant seeking to reduce or eliminate this requirement must file a request for an exemption. If the applicant uses an approach in its design that is comparable to the 1.5 factor of safety, the applicant can declare that this approach provides ''an equivalent level of safety.'' The applicant, however, must substantiate this declaration to the satisfaction of the FAA.

The FAA has examined the consequences resulting from the elimination of the 1.5 factor of safety, and has concluded that this action would pose unacceptable hazards for these airplanes. The FAA's intent in issuing this proposed AD is to prevent a combination of circumstances that could result in catastrophic loss of a Model 727 freighter converted under these STC's. Elimination of the 1.5 factor of safety in conjunction with the other measures discussed earlier to increase the allowable payload would be contrary to this intent.

CAR part 4b refers to the critical load cases—the down gust and maneuver forces previously described in this preamble—as ''limit loads.'' CAR 4b.200 requires that these limit loads be multiplied by 1.5 (the ''1.5 factor of safety''), thereby becoming ''ultimate loads'' as defined in CAR part 4b. CAR 4b.201(c) further requires that the structure be able to carry these ultimate loads (which provide a reserve of structural strength) without failure. Although it is anticipated that these STC freighters will not be routinely subjected to limit load forces, it sometimes happens during emergencies and unusual environmental conditions such as turbulence.

• *Emergency Conditions*

In an emergency, the pilot may exceed critical case maneuver forces, and fly the STC freighter beyond the airspeed and flight maneuver limits for which the airplane is designed. The failure of an engine, avoidance of a collision, or the opening of a cargo door during flight are conditions that could necessitate these actions.

Emergencies do occur. On February 5, 1997, a Model 727 passenger airplane was flying to John F. Kennedy International Airport in New York when an Air National Guard F–16 jet fighter approached close enough to activate the Model 727's collision avoidance system alarm. The pilot of the passenger airplane, following the system's emergency guidance, maneuvered the Model 727 into a steep dive and then a steep climb. Two flight attendants and a passenger were thrown down by these maneuvers. Although the actual maneuver forces for this incident are unknown, the 1.5 factor of safety may have provided structural strength to maneuver the airplane beyond the forces in CAR part 4b.

In 1991, a pilot performed a flight maneuver that imposed forces of approximately 3g's (three times the force of gravity) on a Model 747 freighter that was carrying a partial payload. The applicable federal regulations require Model 747 and 727 series airplanes to be designed for maneuvers imposing forces of up to 2.5g's. Had this freighter been carrying a full payload and the 1.5 factor of safety not been used in its design, FAA analysis indicates that this freighter would have been lost.

• *Turbulence*

Airplanes may encounter severe turbulence that exerts wind gust forces beyond the critical case forces of CAR part 4b. AD 96–01–03 describes an occasion in 1991 when wind gusts were so severe that an engine separated from a Model 747–100 freighter shortly after take-off.

More recently, severe wind gusts on September 5, 1996, caused numerous passenger injuries and one fatality on a Model 747–400 series airplane. The FAA received reports indicating that those gusts produced downward accelerations of −1.15g's and upward accelerations of +2.09g's on that airplane in less than four seconds. Had a Model 727 STC freighter experienced similar conditions while transporting close to the maximum payload, FAA analysis indicates that the floor beams of the freighter's main cargo deck would have collapsed.

The FAA has received 87 reports of Model 727 series airplanes experiencing severe turbulence; these reports typically do not include events that have occurred in other countries. The majority of these events were unforeseen and resulted in injuries to the flight crew or passengers. Five of the reports document gusts causing airplane accelerations of at least +1.88g's upward and −1.5g's downward.

• *Hazardous Deformation of the Main Cargo Deck*

CAR 4b.201(a) requires any structure on the freighter, including the floor beams, to be strong enough to withstand—without ''detrimental permanent deformation''—the anticipated critical case forces that could be exerted upon it during its service life. CAR 4b.201(b) requires that any structural deformations caused by these critical case or limit loads not interfere with the safe operation of the airplane. (The catastrophic consequences of deformation are discussed earlier in this preamble.) Using the 1.5 factor of safety in structural analysis takes deformation into account; without the 1.5 factor of safety, the STC holder would be required to provide an analysis that demonstrates these floors would be free from detrimental deformation. Because these STC's lack a deformation analysis, the FAA would not consider a request for reducing the 1.5 factor of safety requirement unless such an analysis was conducted.

• *Other Considerations*

Another reason that reserve structural strength is necessary is that aerodynamic and structural analysis theory is not precise: exact conditions or circumstances are indeterminable; therefore approximations must be made. In addition, the 1.5 factor of safety takes into account such considerations as the variations in the physical properties of materials, the range of fabrication tolerances, and corrosion or damage. For example, all Model 727 series airplanes must have enough structural reserve to cover the corrosion control activities mandated by AD 90–25–03, amendment 39–6787 (55 FR 49258, November 27, 1990). That AD, in order to control corrosion, permits up to 10% of the material thickness of a floor beam of the main deck to be removed by grinding without undertaking repair; the removal of this material further reduces the strength of the floor.

The majority of these modified airplanes are nearing, or past, their design life of 20 years, 60,000 flights, or 50,000 hours of operation. As the airplanes age and are repeatedly flown, they accumulate fatigue damage and corrosion, which degrades the structural capability. Airplanes that are near or past their design life are part of the FAA's Aging Airplane Program and are subject to numerous AD's to correct unsafe conditions resulting from fatigue cracking and corrosion.

During the time period allowed by the AD's to implement the corrective action, it is probable that many of these aging airplanes will continue to have fatigue cracks and corrosion. Because these airplanes have been built with a safety factor of 1.5, there is a sufficient structural strength margin to allow some finite time to implement the AD's to correct the unsafe conditions. Without this factor of safety, a new maintenance program would have to be developed for these airplanes to ensure that all of the Aging Airplane Program fatigue cracks and corrosion problems are continuously identified and immediately eliminated.

Service History of the Model 727 STC Freighters

Although the modification of these airplanes commenced in 1983, the average modification date for these STC freighters is 1991. In fact, approximately 100 of these airplanes (one-third of the STC freighter fleet) have been modified in just the last three years.

Most of these STC freighters fly only two flights each day, resulting in a low number of accumulated flights since conversion. A representative of the largest operator of these airplanes indicates that, on average, the airplanes carry only slightly more than half of the current maximum payload of 8,000 pounds per container. These circumstances may explain why the FAA has not received reports of adverse events relating to the structural strength of these floor beams.

These floor beams, if overstressed, are not likely to give warning prior to total failure. The existing floor beams on these STC freighters are commonly made from 7075–T6511 aluminum alloy, and there is only a 10% difference between the stress level at which the floor beam permanently bends, and the stress level at which the beam breaks. Consequently, once the floor beams are stressed to the point of being permanently bent, it takes only a small amount of additional stress until the floor beams break, which could result in loss of the airplane.

The FAA has concluded that the reported service history of these STC freighters does not demonstrate that these airplanes are safe.

Issuance of an AD Is Appropriate Regulatory Action

Because of the unsafe condition found on these STC freighters (the inadequate strength of the floor structure of the main cargo deck to carry the current maximum payloads), the FAA has determined that there are two ways in which it could proceed: Issuance of an AD to correct the unsafe condition of the floor, or suspension or revocation of these STC's.

The Administrator of the FAA has the authority to issue an AD when ''an unsafe condition exists in a product'' [14 CFR 39.1(a)], and ''[t]hat condition is likely to exist or develop in other products of the same type design'' [14 CFR 39.1(b)]. When such a finding is made, the Administrator may, as appropriate, prescribe ''inspections and the conditions and limitations, if any, under which those products may continue to be operated'' (14 CFR 39.11). By using the AD process, the FAA can still allow these STC freighters to operate, although under restrictions which are necessary to eliminate the unsafe condition.

Because the floor structures did not meet CAR part 4b certification standards at the time these STC's were originally issued, the Administrator of the FAA is empowered to suspend or revoke these STC's [49 U.S.C. 44709(b)]. If the Administrator were to take such action against these STC's, the order could result in the immediate grounding of these STC freighters.

In consideration of the disruption of domestic and international commerce that would result from the suspension or revocation of these STC's, as well as the significant impacts on the domestic and international economy that such an action would have, the FAA has concluded that the issuance of an AD with restrictions on the maximum payloads on the main cargo deck is appropriate action. These payload restrictions will enable these freighters to continue operating, and remove the unsafe condition that currently exists in the floor beams of the main cargo deck.

FAA Meetings With STC Holders and Operators

The FAA has met individually with each of the affected STC holders to discuss the FAA design review team's observations, analyses, and findings. In a letter sent prior to these meetings, the FAA provided its preliminary conclusions to each STC holder. In addition, the agency asked the STC holder to submit data showing that unsafe conditions do not exist, and that the STC designs do meet applicable federal aviation regulations. If the FAA's findings and analyses could not be controverted, the STC holder was asked to specify what actions it would take to bring its designs into compliance. STC holders also were asked to propose actions that would enable these airplanes to operate safely while data or modifications were being developed.

At its meeting with the FAA, AEI did not present any information to

contradict the FAA's analyses, or submit proposals to keep these planes operating safely. The FAA's meetings with the other 3 STC holders produced similar results.

The FAA also has met jointly with the STC holders and the operators of the Model 727 freighters modified under these STC's. On February 14, 1997, the FAA convened this meeting, which was attended by more than 75 industry representatives, to discuss what the design review team had observed during its site visits and determined from its analyses of STC data. During this meeting the operators presented no technical data, but provided the FAA with information about the potential impacts on their businesses if the agency were to reduce the current maximum payload.

Industry Proposal for the Timing of an NPRM and FAA Response

During the February 14 meeting, representatives of the affected operators and STC holders in attendance presented a proposal to the FAA. Generally, industry proposed that the FAA delay issuing an NPRM and imposing payload restrictions; in turn, industry, within 120 days from the end of February 1997, would test floor beams, perform analyses, redesign the floor structure, if necessary, and submit data to the FAA substantiating compliance with CAR part 4b. At the meeting, the FAA responded that its priority is the safety of these airplanes, and the burden is now on industry to establish the ability of these STC freighters to carry more than the 3,000 pounds per container being considered by the FAA.

ATA Recommendations for a Final Rule

ATA followed up on the proposal at the February 14 meeting with a March 10, 1997, letter that contained recommendations in order ''to get the necessary design changes quickly incorporated while permitting the airlines to continue operating their aircraft.'' ATA proposed that a 3,000 pound per pallet weight limit be gradually phased-in as follows:

1. There would be at least 120 days after the effective date of the AD before any payload restrictions would be implemented. According to ATA, this period would enable STC holders or others to redesign the freighter floors and provide enough time for operators to procure parts to modify the floors.

2. Initially, payload restrictions would be reduced from 8,000 pounds per pallet to 6,000 pounds per pallet. These restrictions would be in effect for at least one year or the next ''C'' check, whichever occurs later, and operators would not be required to modify the floor beams during this time.

3. Ultimately, the floor beams of the main cargo deck would not have to be modified until at least 16 months after the effective date of the AD. At that time, the payload per pallet would be reduced to 3,000 pounds if an operator opted not to accomplish that modification.

4. Airplanes would not be subject to any of these restrictions if operators can substantiate to the FAA that the floor beams are strong enough to support the existing payload per pallet.

The FAA considered ATA's recommendations in developing this proposed action. The FAA determined that allowing these airplanes to continue to operate without restrictions for 120 days after the effective date of this AD, and allowing 16 months for modification of the floor structure of the main cargo deck would not address the unsafe condition in a timely manner. The FAA's analysis also determined that ATA's recommended payload limit of 6,000 pounds per container at all locations would result in negative margins of safety. The interim weight restrictions proposed by the FAA allow the carriage of a limited number of individual containers at or above the 6,000 pound per container payload suggested by ATA. In addition, the 120-day period of operation at the interim payloads proposed by the FAA (discussed below) does, in part, meet ATA's suggested time for allowing redesign of these STC freighter floors.

FAA Findings

Based on the observations and analyses of its design review team, and information presented by affected STC holders and the operators of Model 727 series airplanes converted to freighters under these STC's, the FAA has found that:

1. None of the floor beams of the main cargo deck on any of these STC's have been modified from the original passenger configuration to support the heavier payloads carried on a freighter.

2. Based on the FAA's analyses, the floor structures of these STC freighters are not capable of withstanding the forces that would result from the current maximum payload when CAR part 4b conditions are encountered.

3. When the maximum payload of a container is limited to 8,000 pounds or 6,000 pounds (for all container positions) as proposed by ATA, the margins of safety for the floor beams of the main cargo deck are calculated as negative numbers and the structural strength of these beams is not sufficient to meet the requirements of CAR part 4b. When the maximum payload of a container is limited to approximately 3,000 pounds, the margin of safety is calculated as a positive number and these floor beams meet the structural strength requirements of CAR part 4b.

4. The FAA estimates the combined effect of imposing operational restrictions on airplane weight, maximum operating speed, and orientation of containers reduces the forces exerted on the airplane in ''down gust'' conditions, and will permit the maximum payload of a container to be increased on an interim basis. The installation of side restraints can permit a further temporary increase in payload.

5. Typically, these STC freighters are modified by other STC's that change the maximum taxi, take-off, zero fuel, and landing weights of these airplanes. These weight changes permit the airplanes to carry more payload on the main cargo deck.

No compatibility study has been performed showing that these weight changes are safe considering the existing freighter STC modifications and payload limits. In addition, no compatibility study has been done for the addition of auxiliary fuel tanks, engine changes, and other types of modifications that alter the basic loads on these airplanes.

6. When these STC modifications were accomplished, each airplane was modified differently, due to different installer shop practices and the configuration of each airplane prior to modification. Subsequent modifications under other STC's that alter the structure were not shown to be compatible with the freighter modifications. The resulting airplane configuration can be significantly different between individual airplanes. Any modifications that are undertaken to bring these airplanes into compliance with CAR part 4b must be shown to be compatible with the specific airplanes being modified.

7. The elimination of the 1.5 factor would not eliminate the unsafe condition that occurs when these airplanes are carrying containers weighing more than the payloads specified in this proposed AD.

FAA Conclusions

From these findings, the FAA has concluded that:

1. The lack of strength in the floor structure of the main cargo deck must be corrected by reducing the payload carried on the main cargo deck. This reduced payload includes the payload in the lower lobe cargo compartments.

2. Maximum payloads of approximately 2,700 pounds per container in the areas near the forward side cargo door and approximately 3,000 pounds per container in all other areas of the main cargo deck provide an acceptable level of safety. It is estimated that operational restrictions on airplane weight, maximum operating speed, and orientation of containers, as well as the installation of FAA-approved side restraints, would allow safe operation with higher payloads during an interim period.

3. Because these STC freighters are modified by other STC's that change the maximum taxi, take-off, zero fuel, and landing weights of these airplanes, and permit more payload on the main cargo deck, all of the airplanes' Airplane Flight Manuals (AFM's), AFM Supplements, and Weight and Balance Supplements would have to be revised to show the payload restrictions.

Additional AD Actions

The FAA design review team's scope of review of these STC's was not limited to concerns about the strength of the floor structure that support the main cargo deck. The team also made inspections and gathered information about other areas where additional unsafe conditions may exist. Following this proposed rulemaking, additional rulemaking will be initiated to address these concerns. These concerns include the following structural, door systems, and STC certification and documentation issues:

• *Structural Deficiencies*

Lack of ''Fail-Safe'' Hinges on the Cargo Door

The design review team saw single or double-piece hinge fittings on the side cargo doors of these STC freighters. Should a crack propagate along the hinge line where the hinge attaches either to the upper sill of the fuselage or to the door itself, the cargo door could separate from the airplane, and result in loss of the airplane.

Apparent Lack of Strength of the Structure Surrounding the Side Cargo Door

To install a side cargo door for the main deck, an opening of approximately 7.5 feet by 11 feet (82.5 square feet) must be cut into the side of the fuselage. This opening requires that the cutout area and adjacent structural areas be substantially reinforced. If the fuselage structure that surrounds this cargo door is not strong enough to withstand the forces that may be exerted during flight, it could result in loss of the airplane.

The design review team observed that reinforcing structures used in this area, such as longerons, frames, doublers and triplers, are discontinuous and appear to lack adequate load paths and strength. These discrepancies could result in a fuselage structure that does not meet the strength and deformation requirements of CAR 4b.201, proof of structure standards of CAR 4b.202, or fail safety requirements of CAR 4b.270(b).

In its examination of the data supporting these STC's, the design review team determined that the STC applicants used inadequate methods and/or incomplete analyses to substantiate that their modifications provide adequate strength in this area. The STC applicants typically did not substantiate the strength of numerous structural features, such as splices and runouts. The STC holders also used analytical approaches that failed to consider such impacts as redistribution of the forces in the fuselage, and localized stress effects such as ''buckling.''

Inadequate Cargo Restraint Barriers

CAR 4b.260 requires that the restraint barrier in the cargo compartment of the main deck be strong enough to protect the occupants from injury when the freighter is carrying its maximum payload and emergency landing conditions occur (the ''9.0g standard'').

Based on the observations and analyses of the design review team, the FAA has determined that the bulkhead restraint barriers on all of the observed STC freighters do not meet the 9.0g standard; three of the four STC holders have confirmed the FAA's finding.

• *Deficiencies in Systems for the Side Cargo Door*

Because of cargo door-related accidents, industry and the FAA, during the early 1990s, conducted an extensive design review of cargo doors and agreed on new standards to eliminate safety deficiencies in certain cargo door systems. The FAA agreed to issue AD's requiring compliance with these standards, which are based on Amendment 54 to 14 CFR 25.783, for those freighters that did not comply. These standards are not intended to upgrade the requirements of CAR part 4b after certification, but are to correct potentially unsafe conditions on airplanes already in service that were identified during the design review.

Inadequate Warning System for an ''Unsafe'' Door

Freighters must have a warning system that directly alerts the pilot and co-pilot that the side cargo door is ''unsafe'' (open, unlatched, or unlocked). A ''safe'' cargo door is one that is verified to be closed, latched, and locked prior to taxiing for take-off.

The design review team observed STC freighters that do not have a red cargo door warning light in plain view of both pilots. In the event that the cargo door is unsafe, pilots on those planes would not be directly warned; this situation could lead to pilot inaction or dispatch of the airplane, and consequent opening of this door during flight.

Improper Pressurization of the Fuselage When the Cargo Door Is ''Unsafe''

The opening of a door during flight has caused several serious accidents. Some of those accidents have resulted in loss of life; others have resulted in loss of the airplane. Consequently, industry and the FAA adopted standards to prevent pressurization of the fuselage when the cargo door is unsafe. Typically, compliance with these standards involves installation of vent doors that close only when the cargo door is safe.

In its examination of the associated cargo door related systems on these STC freighters, the design review team detected that the fuselage of some of these airplanes could be pressurized when the cargo door vent door is not closed. The team also found that some STC's did not have the required safety analysis that would verify the adequacy of the design's pressurization prevention system when the cargo door is unsafe.

Electrical/hydraulic System Deficiencies That Could Cause an ''Unsafe'' Cargo Door

Electrical short circuits could transmit power to the electrical or hydraulic systems that operate the side cargo door, lead to opening of this door during flight, and could result in the loss of the airplane. To prevent this, all power to this door must be removed during flight, and the flight crew must not be able to restore this power at any time during flight.

CAR 4b.606 (which has been further refined by the cargo door standards agreed upon by industry and the FAA) requires STC holders to show that the design of the electrical system is adequate to prevent the side cargo door from opening during flight. These STC holders did not accomplish this analysis.

Inability to Visually Verify the Status of the Side Cargo Door

When the system that warns the pilot and co-pilot about an ''unsafe'' cargo door is not working correctly, the red warning light either will fail to light up

during pre-flight testing of the system, or will light up when the side cargo door is actually ''safe.'' These STC's have a backup system that allows the flight crew to confirm that the door is actually safe.

The cargo door standards to which industry and the FAA agreed require ''a visual means of directly inspecting the locks.'' The design review team observed that these backup systems enable the flight crew to view only a portion of the locking beam. Because a visual means of directly inspecting the locking mechanism of the door is not available, these STC's do not comply with these standards. When the entire locking mechanism cannot be visually inspected, a false report on the condition of the door may be given to the crew, and the airplane may be dispatched with an unsafe door.

Cargo Compartment Smoke Detection and Warning Systems

CAR 4b.383(e)(2) requires that there be a means for the flight crew to check and assure the proper functioning of each smoke detector circuit. The FAA design review team and STC freighter operators have observed that some STC's contain electrical wiring designs that test only a portion of the smoke detection system—not the entire system as required—when a single button is pressed (the ''press to test'' feature). If the flight crew is not alerted that some smoke detectors are not functioning, the crew may not be able to respond to a cargo compartment fire in a timely manner.

• *The Carriage of Supernumeraries*

Supernumeraries are non-flight crew personnel who are carried on board the airplane. For example, a supernumerary could be an airline employee who is not part of the flight crew, but is specially trained to handle cargo.

These STC freighters have a cargo compartment that is used only for the carriage of cargo. Before supernumeraries can be carried, the STC holder or operator must apply to the FAA for an exemption from CAR 4b.383(e), and from other federal regulations that pertain to seats, berths, and safety belts; emergency evacuation; ventilation; and fire protection. Such exemptions are granted only when the FAA determines that the design contains features that provide an acceptable level of safety for the supernumeraries.

The FAA has become aware of numerous instances where STC holders have made provisions for the carriage of supernumeraries without applying for FAA exemptions and without demonstrating that the safety provisions for supernumeraries are acceptable.

STC Data and Documentation Concerns

When the FAA design review team evaluated data that STC applicants originally submitted to obtain FAA approval of these freighter STC's, the team found a number of deficiencies. Examples include data that is not adequately substantiated; payload limits in Weight and Balance documents that are inconsistent with the structural capability of the fuselage; structural analyses that lack the critical case; no analysis of the floor beams over the wing center section; and documented negative margins of safety that are unresolved.

• *Unsubmitted Instructions for Continued Airworthiness*

Federal regulations require an STC holder to submit ''Instructions for Continued Airworthiness'' to the FAA for review. These instructions include maintenance procedures, maintenance manuals, and maintenance program requirements for the continued safety of the airplane converted under the STC. Only one of the four STC holders has complied with this requirement.

Future FAA Review of Other Transport Airplane Cargo Conversions

The FAA's review of STC's and the safety of airplanes converted from a passenger to a cargo-carrying configuration will not be limited to just Model 727 and 747 series airplanes. Based on the discovery of unsafe conditions on both of these airplane models, the FAA intends to examine all transport category passenger airplanes that have been converted to a cargo-carrying configuration under STC's.

The FAA urges STC holders and operators of these freighters to begin, as soon as possible, an examination of the data supporting the STC's. If problems such as those identified in the Model 727 and 747 conversions are detected, corrective actions should be developed. Self-examination of these conversions prior to formal FAA review may shorten the time needed for any corrective actions, and reduce the impacts on operators of these freighters.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would restrict the payload on the main cargo deck of Model 727 series airplanes modified in accordance with STC SA1368SO, STC SA1797SO, or SA1798SO. This proposal would be accomplished by revisions to the Limitations Section of all FAA-approved AFM's, AFM Supplements, and Weight and Balance Supplements. Revision of all these documents would be required because these STC freighters have been modified by other STC's that change the maximum taxi, take-off, zero fuel, and landing weights of these airplanes.

The payload limits that are proposed are based on the use of containers that are 88 inches by 125 inches, and a horizontal center of gravity for the total payload in each container that is located within 8.8 inches from the geometric center of the base of the container for the forward and aft direction and 12.5 inches from the geometric center of the base of the container for the left and right direction. The payload limits are also based on a requirement that all containers are loaded with the door side of the container facing forward.

The proposal presents three options for payload limitations: one ''baseline'' [paragraph (a)] and two ''interim'' [paragraphs (b) and (c)], depending upon the floor configuration and other operating limitations.

Paragraph (a) would establish a payload limit of 3,000 pounds per container.

For airplanes equipped with FAA-approved side restraints, paragraph (b) would provide for temporary payload limits in some areas of 9,600 pounds for any *two* adjacent containers, with a limit of 8,000 pounds for any one container. These limits would be available when the following two conditions are met: the maximum operational airspeed does not exceed 350 KIAS *and* the minimum in-flight weight exceeds 100,000 pounds.

For airplanes that are not equipped with FAA-approved side restraints, paragraph (c) would provide for a temporary payload limit in some areas of 8,000 pounds for any *two* adjacent containers. This limit also would be available when the following two conditions are met: the maximum operational airspeed does not exceed 350 KIAS *and* the minimum in-flight weight exceeds 100,000 pounds.

Because the determination of the effects of operational limitations on payload is based on approximations, the resulting payload limits may be unconservative. Consequently, operation with these payload limits is only acceptable for a limited period of time. Continued use of these operational limits and the associated payload limits must be substantiated. The FAA has determined that an acceptable level of safety is provided if the time period is

limited to no more than 120 days, which would also allow sufficient time for an applicant to develop an acceptable analysis regarding the applicability of the operational limitations.

At the February 14 meeting discussed above, the industry participants proposed to complete a redesign of the floor structure within 120 days from the end of February (by the end of June). The FAA bases the proposed 120-day interim period in paragraphs (b) and (c) on the following assumptions:

1. Industry will fulfill this proposal;
2. The final rule will not become effective before October 1, 1997, and thus allow additional time for the industry to modify the main cargo deck floor structure; and
3. Operators and STC holders will work diligently in the meantime to avoid any disruptions to operations.

In light of the seriousness of the unsafe conditions addressed by this proposal, the FAA considers that the 120-day interim period:

1. Provides an acceptable level of safety;
2. Minimizes exposure to any potential unconservatism in the determination of the payload limits;
3. Provides an adequate opportunity for applicants to develop substantiation for continued use of operational limits to enhance payload limits; and
4. Minimizes, for the interim period, the burdens on operators resulting from this AD.

Should an operator desire to transport containers of other dimensions or use a different payload container center of gravity, it would have to apply to the FAA for appropriate payload limits.

At any time, an applicant would be able to present a proposal to modify the floor structure or proposed weight and other limits, data, and analysis to the FAA to substantiate that floor structure of the main cargo deck (existing or modified) is in compliance with the requirements of CAR part 4b when supporting the proposed weight limits. When the FAA determines that these documents are acceptable, the operator would be able to operate its airplane at the payload limits substantiated by its data and analysis.

Regulatory Evaluation Summary

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.

The FAA conducted a ''Cost Analysis and Initial Regulatory Flexibility Determination and Analysis'' to determine the regulatory impacts of this and three other proposed AD's to operators of all 244 U.S.-registered Boeing Model 727–100 and –200 series passenger airplanes that have been converted to cargo-carrying configurations under 10 STC's held by four companies. This analysis is included in the docket for each AD. The FAA has determined that approximately 20 Model 727–100 and 37 Model 727–200 series airplanes operated by 13 carriers were converted under AEI STC's. (There were 15 Model 727 series airplanes for which the FAA could not identify the STC holder. It is possible that these airplanes were also converted under an AEI STC. Their costs are not included here.)

Assuming that the operators of affected airplanes converted under AEI STC's would comply with the restricted interim operating conditions set forth in the proposed rule, the FAA estimates in the analysis that each Model 727–100 series airplane modified under the AEI STC's would lose approximately $32,504 in revenues during the 120-day interim period after the effective date of the proposed AD. Further, the FAA estimates that none of the modified Model 727–200 series airplanes would lose revenues during the interim period.

Based on the ''Cost Analysis and Initial Regulatory Flexibility Determination and Analysis'' included in the docket, the FAA estimates that affected airplanes could be modified at a cost of $100,000 per airplane. The total cost, therefore, to modify the fleet of affected Model 727 series airplanes that were originally modified to the AEI STC's is $6.4 million. This assumes that modifications to the airplane are available and installed within the 120-day time period. If there are any delays in the availability or implementation of modifications, the revenue loss due to operation at the 3,000-pound payload limit would substantially increase the costs. The FAA solicits detailed cost information from the affected carrier concerning the proposed AD's compliance costs.

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by government regulations. The RFA requires a Regulatory Flexibility Analysis if a proposed rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The Regulatory Flexibility Analysis includes the consideration of alternative actions.

FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, establishes threshold cost values and small entity size standards for complying with RFA review requirements in FAA rulemaking actions. The Order defines ''small entities'' in terms of size thresholds, ''significant economic impact'' in terms of annualized cost thresholds, and ''substantial number'' as a number which is not less than eleven and which is more than one-third of the small entities subject to the proposed or final rule.

FAA Order 2100.14A sets the size threshold for small entities operating aircraft for hire at 9 aircraft and the annualized cost threshold at $69,000 for scheduled operations of airplanes with fewer than 60 seats and $5,000 for nonscheduled operations.

Eight of the 13 affected carriers operating 16 affected airplanes are considered small entities (i.e., each operates fewer than 9 affected airplanes). The cost of the proposed AD greatly exceeds the threshold values defined in the FAA Order. The proposed AD does not affect a substantial number of small entities, however, because it is a number less than eleven. Therefore, this AD does not have an significant economic impact on a substantial number of small entities and a regulatory flexibility analysis is not required.

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 ''Cost Analysis and Initial Regulatory Flexibility Determination and Analysis'' 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, Airplanes, 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:

Boeing: Docket 97–NM–79–AD.

Applicability: Model 727 series airplanes; modified in accordance with Supplemental Type Certificate SA1368SO, SA1797SO, or SA1798SO; 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 (g) 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 structural failure of the floor beams of the main cargo deck, which could lead to loss of the airplane, accomplish the following:

(a) Except as provided in paragraphs (b), (c), and (d) of this AD, within 48 clock hours (not flight hours) after the effective date of this AD, accomplish the requirements of paragraph (a)(1) or (a)(2) of this AD, as applicable:

(1) For airplanes on which only containers that are 88 inches by 125 inches are transported: Revise the Limitations Section of all FAA-approved Airplane Flight Manuals (AFM) and AFM Supplements, and the Limitations Section of all FAA-approved Airplane Weight and Balance Supplements to include the following information. This may be accomplished by inserting a copy of this AD in all AFM's, AFM Supplements, and Weight and Balance Supplements.

''Limitations

All containers must be oriented with the door side of the container facing forward.

The location of the horizontal center of gravity for the total payload within each container shall not vary more than 8.8 inches from the geometric center of the base of the container for the forward and aft direction and 12.5 inches from the geometric center of the base of the container for the left or right direction.

Payload Limitations

Do not exceed a total weight of 3,000 pounds per container on the main cargo deck, except in the area adjacent to the side cargo door. In that side door area (Body Station 440 to Body Station 660), containers are restricted to a maximum payload of 2,700 pounds per container. This payload limit includes the payload in the lower lobe cargo compartments and any other load applied to the bottom of the floor beams of the main cargo deck for the same body station location as the container on the main cargo deck.''

(2) For airplanes on which any containers other than 88 inches by 125 inches are transported: Revise the Limitations Section of all FAA-approved AFM's and AFM Supplements, and the Limitations Section of all FAA-approved Airplane Weight and Balance Supplements in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA Transport Airplane Directorate.

Note 2: The weight restrictions to be approved under paragraph (a)(2) will be consistent with the applicable weight restrictions of paragraph (a)(1), (b), or (c) of this AD.

(b) During the period ending 120 days after the effective date of this AD: For airplanes on which only containers that are 88 inches by 125 inches are transported, and that are equipped with side vertical cargo container restraints that have been approved by the Manager, Standardization Branch, ANM–113, as an optional alternative to compliance with paragraph (a)(1) of this AD, revise the Limitations Section of all FAA-approved AFM's and AFM Supplements, and the Limitations Section of all FAA-approved Airplane Weight and Balance Supplements to include the following limitations. This may be accomplished by inserting a copy of this AD in all AFM's, AFM Supplements, and Weight and Balance Supplements.

''Limitations

Maximum Operating Airspeed of V_{mo} equals 350 knots indicated airspeed (KIAS).

Minimum in-flight weight: 100,000 pounds or greater.

All containers must be oriented with the door side of the container facing forward.

The location of the horizontal center of gravity for the total payload within each container shall not vary more than 8.8 inches from the geometric center of the base of the container for the forward and aft direction and 12.5 inches from the geometric center of the base of the container for the left or right direction.

Payload Limitations

Do not exceed a total weight of 9,600 pounds for any *two* adjacent containers and a total weight of 8,000 pounds for any container, except that the total weight of all containers forward of Body Station 436 shall not exceed 4,000 pounds. This payload limit includes the payload in the lower lobe cargo compartments and any other load applied to the bottom of the floor beams of the main cargo deck for the same body station location as the container on the main cargo deck.

(c) During the period ending 120 days after the effective date of this AD: For airplanes on which only containers that are 88 inches by 125 inches are transported, and that are NOT equipped with side vertical cargo container restraints that have been approved by the Manager, Standardization Branch, ANM–113, as an optional alternative to compliance with paragraph (a)(1) of this AD, accomplish the following: Revise the Limitations Section of all FAA-approved AFM's and AFM Supplements, and the Limitations Section of all FAA-approved Airplane Weight and Balance Supplements to include the following limitations. This may be accomplished by inserting a copy of this AD in all AFM's, AFM Supplements, and Weight and Balance Supplements.

''Limitations

Maximum Operating Airspeed of V_{mo} equals 350 knots indicated airspeed (KIAS).

Minimum in-flight weight: 100,000 pounds or greater.

All containers must be oriented with the door side of the container facing forward.

The location of the horizontal center of gravity for the total payload within each container shall not vary more than 8.8 inches from the geometric center of the base of the container for the forward and aft direction and 12.5 inches from the geometric center of the base of the container for the left or right direction.

Payload Limitations

Do not exceed a total weight of 8,000 pounds for any *two* adjacent containers and the total weight of all containers forward of Body Station 436 shall not exceed 4,000 pounds. This payload limit includes the payload in the lower lobe cargo compartments and any other load applied to the bottom of the floor beams of the main cargo deck for the same body station location as the container on the main cargo deck.''

(d) For airplanes that operate under the 350 KIAS requirements of paragraph (b) or (c) of this AD: A maximum operating airspeed limitation placard must be installed adjacent to the airspeed indicator and in full view of both pilots. This placard must state: ''Limit V_{mo} to 350 KIAS.''

(e) For airplanes complying with paragraph (b) or (c) of this AD, within 120 days after the effective date of this AD: Revise the Limitations Section of all FAA-approved AFM's and AFM Supplements, and the Limitations Section of all FAA-approved Airplane Weight and Balance Supplements to include the following information. This may be accomplished by inserting a copy of this AD in all AFM's, AFM Supplements, and Weight and Balance Supplements.

''Limitations

All containers must be oriented with the door side of the container facing forward.

The location of the horizontal center of gravity for the total payload within each container shall not vary more than 8.8 inches from the geometric center of the base of the container for the forward and aft direction and 12.5 inches from the geometric center of the base of the container for the left or right direction.

Payload Limitations

Do not exceed a total weight of 3,000 pounds per container on the main cargo deck, except in the area adjacent to the side cargo door. In that side door area (Body Station 440 to Body Station 660), containers are restricted to a maximum payload of 2,700 pounds per container. This payload limit includes the payload in the lower lobe cargo compartments and any other load applied to the bottom of the floor beams of the main cargo deck for the same body station location as the container on the main cargo deck.''

(f) As an alternative to compliance with paragraphs (a), (b), (c), (d), and (e) of this AD: An applicant may submit a proposal to modify the floor structure or proposed new payload and other limits, and substantiating data and analyses to the Manager, Standardization Branch, ANM–113, in accordance with the procedures of paragraph (g) of this AD, showing that the floor structure of the main cargo deck is in compliance with the requirements of Civil Air Regulations (CAR) part 4b. If the FAA determines that these documents are acceptable and applicable to the specific airplane being analyzed and approves the proposed limits, prior to flight under these new limits, the operator must revise the Limitations Section of all FAA-approved AFM's and AFM Supplements, and the Limitations Section of all FAA-approved Airplane Weight and Balance Supplements in accordance with a method approved by the Manager, Standardization Branch, ANM–113. Accomplishment of these revisions in accordance with the requirements of this paragraph constitutes terminating action for the requirements of this AD.

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

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

(h) 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 July 8, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97–18357 Filed 7–14–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 950609150–7080–03]

RIN 0648–AI06

Jade Collection in the Monterey Bay National Marine Sanctuary; Public Hearing

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Proposed rule; public hearing.

SUMMARY: The National Oceanic and Atmospheric Administration's Sanctuaries and Reserves Division (SRD) has issued a proposed rule to amend the regulations for the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) to allow limited, small-scale jade collection. The proposed rule published June 13, 1997 (62 FR 32246) discusses the reasons SRD is proposing allowing this activity in the Sanctuary. A 60-day comment period closes on August 12, 1997. To maximize public input on this issue, a public hearing has been scheduled whereby the public will be allowed to provide written or oral comments. Individuals wishing to make a statement will be required to sign up at the door and will be limited to three minutes.

DATES: The public hearing will be on Wednesday, July 30, 1997, starting at 7:00 p.m.

ADDRESSES: The public hearing will be held at the Pacific Valley School #1, DOS Lab Room, California Highway 1, South Monterey County (approximately 1 mile south of Gorda, California and 30 miles north of San Simon, California).

FOR FURTHER INFORMATION CONTACT: Scott Kathey at (408) 647–4251 or Elizabeth Moore at (301) 713–3141 ext. 170.

Dated: July 3, 1997.

Nancy Foster,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 97–18507 Filed 7–14–97; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–107644–97]

RIN 1545–AV26

Permitted Elimination of Preretirement Optional Forms of Benefit; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Change of location of public hearing.

SUMMARY: This document changes the location of the public hearing on proposed regulations that would permit an amendment to a qualified plan that eliminates certain Preretirement optional forms of benefit.

DATES: The public hearing is being held on Tuesday, October 28, 1997, beginning at 10:00 a.m.

ADDRESSES: The public hearing originally scheduled in the IRS Auditorium, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC, is changed to room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing appearing in the **Federal Register** on Wednesday, July 2, 1997 (62 FR 35752), announced that a public hearing relating to proposed regulations under section 411(d) of the Internal Revenue Code will be held Tuesday, October 28, 1997, beginning at 10:00 a.m. in the IRS Auditorium, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC and that requests to speak and outlines of oral comments should be received by Tuesday, September 30, 1997.

The location of the public hearing has changed. The hearing is being held in room 2615 on Tuesday, October 28, 1997, beginning at 10:00 a.m. The requests to speak and outlines of oral comments should have been received by Tuesday, September 30, 1997. Because of controlled access restrictions, attenders cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

Copies of the agenda are available free of charge at the hearing.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 97–18443 Filed 7–14–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–252487–96]

RIN 1545–AU90

Inbound Grantor Trusts With Foreign Grantors; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to a notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to the notice of proposed rulemaking and notice of public hearing (REG–252487–96), which was published in the **Federal Register** Thursday, June 5, 1997 (62 FR 30785), relating to the application of the grantor trust rules to certain trusts established by foreign persons.

FOR FURTHER INFORMATION CONTACT: James Quinn, (202) 622–3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking and notice of public hearing that is the subject of these corrections is under sections 643, 671 and 672 of the Internal Revenue Code.

Need for Correction

As published, REG–252487–96 contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking and notice of public hearing (REG–252487–96), which was the subject of FR Doc. 97–14735, is corrected as follows:

1. On page 30786, column 1, in the preamble under the paragraph heading ''*1. Prior Law*'', paragraph 2, line 5, the language ''the grantor, a distribution of income'' is corrected to read ''the owner, a distribution of income''.

2. On page 30787, column 2, in the preamble under the paragraph heading ''*3. Section 1.672(f)–1: Foreign Persons Not Treated as Owners*'', fourth full paragraph in the column, line 7, the language ''basic grantor trust rules from treating a'' is corrected to read ''basic grantor trust rules from treating a foreign''.

§ 1.672(f)–2 [Corrected]

3. On page 30793, column 1, § 1.672(f)–2 (d), *Example 3*, second line from the bottom of the column, the language ''no deductions or losses for 199X. Under'' is corrected to read ''no deductions or losses for 1999. Under''.

4. On page 30793, column 2, § 1.672(f)–2, paragraph (d) is correctly designated as paragraph (e).

§ 1.672(f)–3 [Corrected]

5. On page 30793, column 3, § 1.672(f)–3 (a)(3), *Example 1*, line 1, the paragraph heading ''*Owner is grantor.*'' is corrected to read ''*Death of Grantor.*''.

6. On page 30793, column 3, § 1.672(f)–3 (a)(3), *Example 2*, line 1, the paragraph heading ''*Owner not grantor.*'' is corrected to read ''*Death of grantor.*''.

§ 1.672(f)–4 [Corrected]

7. On page 30795, column 3, § 1.672(f)–4 (d), line 6, the language ''value) to a person who is not a partner'' is corrected to read ''value, within the meaning of § 1.671–2 (e)(4)(i)(A)) to a person who is not a partner''.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 97–18444 Filed 7–14–97; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC37

Blowout Preventer (BOP) Testing Requirements for Drilling and Completion Operations

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: MMS proposes to revise the testing requirements in its regulations for blowout preventer (BOP) systems used in drilling and completion operations. The revision would allow a lessee up to 14 days between BOP pressure tests. MMS bases this revision on the results of a recently completed study of BOP performance. This study concluded that no statistical difference exists in failure rates for BOP's tested between 0 and 7 day intervals and between 8- and 14-day intervals. MMS estimates that the revised testing timeframe could save industry $35 to $46 million a year without compromising safety.

DATES: MMS will consider all comments we receive by September 15, 1997. We will begin reviewing comments then and may not fully consider comments we receive after September 15, 1997.

ADDRESSES: Mail or hand-carry written comments to the Department of the Interior; Minerals Management Service; Mail Stop 4700; 381 Elden Street; Herndon, Virginia 20170–4817; Attention: Rules Processing Team.

FOR FURTHER INFORMATION CONTACT: Bill Hauser, Engineering and Research Division, (703) 787–1613.

SUPPLEMENTARY INFORMATION:

I. Background

In 1992, the offshore oil and gas industry asked MMS to revise its requirements for testing BOP systems and equipment. Specifically, industry requested an extension of the minimum testing frequency for BOP's and associated equipment to 14 days. Current regulations require lessees to test BOP systems at least once a week, but not to exceed 7 days between tests. After reviewing the information and data submitted by industry, MMS allowed lessees and operators to test BOP systems on a 14-day interval on a case-by-case basis. In addition, MMS decided that we must examine BOP performance on the OCS before revising the regulations.

MMS conducted two reviews of BOP performance. The initial review examined BOP test results collected during inspections of drilling activities in mid-1993. MMS inspectors reviewed BOP test charts and noted equipment failures. This review showed higher failure rates than those cited by industry. However, MMS decided this review did not accurately assess BOP performance and that a more comprehensive study was necessary.

The second review examined BOP test data from wells drilled during 1994. MMS collected this data from wells drilled between January and October 1994. Lessees submitted copies of BOP test data after drilling each well. Test data included BOP test charts, reports, and observations about problems during the tests. Results of this study also showed higher failure rates than those cited by industry. After discussing the results of the second review with industry, MMS decided another study of BOP performance was necessary. This study would have industry involvement

from the beginning and must provide sufficient information to make regulatory decisions.

Industry and MMS formed a technical assessment group to set the parameters for this performance study. This group would also select the contractor, provide funding, and monitor progress of the study. The following organizations participated in this group:

American Petroleum Institute
Independent Petroleum Association of America
International Association of Drilling Contractors
National Ocean Industries Association
Offshore Operators Committee

The group hired Tetrahedron Incorporated on February 13, 1996, to conduct the study. After discussing data and study requirements with the group, Tetrahedron began collecting data and analyzing BOP performance data in April 1996. Tetrahedron completed the study in December 1996 and presented its findings at MMS' BOP workshop on January 15, 1997. The study found that no statistical difference in failure rates existed between BOP systems tested on a 0- to 7-day interval and those tested between an 8- to 14-day interval.

MMS determined that the study showed that BOP performance during a longer test interval statistically equaled the performance under the current requirement. Thus, this performance satisfied the criteria (described in 30 CFR 250.3, Performance requirements) for allowing the use of alternative procedures to those prescribed in the regulations. Based on this finding, MMS issued a Notice to Lessees and Operators (NTL) on January 31, 1997, informing lessees that they could begin testing BOP systems on intervals up to 14 days. The new timeframe applied to drilling, sidetrack, and completion activities.

II. Discussion of Proposed Rule

14-Day BOP Testing Timeframe

The major revision proposed by this rule allows a lessee up to 14 days between BOP pressure tests versus the weekly tests required by the current regulations. These proposed changes are contained in §§ 250.57(a)(3) and 250.86(a)(2). This revision applies only to drilling and completion operations. It does not apply to BOP testing during workover activities because MMS did not address workover rigs in the BOP performance study. MMS has determined that this new testing timeframe will continue to provide the same level of BOP performance and will not compromise the safety of drilling operations. As noted above, MMS has already informed lessees via NTL of this revision.

One of the major advantages of the new 14-day testing timeframe is improved drilling efficiency. Lessees can better plan the timing of BOP tests to coincide with drilling operations. Under the 7-day testing requirements, lessees often requested and received approval from District Supervisors to test 2 or more days beyond the weekly test to accommodate routine drilling operations. These operations included dulling a bit, drilling to a casing point or total depth, and well logging. Now lessees will have more time to fit BOP tests into the overall drilling and completion activities.

MMS policy will be to deny any requests to extend testing beyond the 14-day testing timeframe. The only exception to this policy will be if a lessee has well control problems and cannot safely test the system within the 14-day timeframe. The lessee must test the BOP system as soon as possible after resolving the problem and before resuming normal operations.

The proposed rule requires a lessee to begin testing the BOP system prior to 12 p.m. (midnight) on the 14th day following the conclusion of the previous test. This wording clearly tells lessees when they must begin testing.

Test Pressures

The proposed rule continues to require a lessee to test BOP components at their rated working pressures (70 percent for an annular preventer) or as otherwise approved by the District Supervisor. However, MMS is considering the use of maximum anticipated surface pressure (MASP) in determining appropriate BOP test pressures. For many wells, MMS has approved the use of MASP as the basis for determining test pressures through an application for permit to drill (APD).

District Supervisors base the approval of alternate test pressures on a comparison of the anticipated surface pressure calculations submitted with the APD to MASP calculations by MMS drilling engineers. If the two calculations compare favorably, then the District Supervisor approves the requested test pressures. If the calculations for anticipated surface pressure are less than those calculated by MMS, the District Supervisor advises the lessee of any necessary revisions to the APD.

A rule change to use MASP as the basis for setting test pressures may be more consistent with current industry practice than requiring testing at the rated working pressures. However, our main concern with using MASP is the many different methods used by operators to calculate anticipated surface pressures. If we use MASP as the basis for determining test pressures, the final rule will need to include appropriate guidelines. MMS requests comments on using MASP for establishing required BOP-test pressures and we may include the MASP requirements in the final rule if the comments support that approval. Comments should include methodologies and criteria for calculating an acceptable MASP.

Duration of a BOP Pressure Test

The proposed rule requires that each test must hold the required pressure for 5 minutes. This is a new provision, but MMS has used 5 minutes as the standard for holding the required pressure for many years. However, the rule allows a lessee to conduct a 3-minute test on surface BOP systems and surface equipment for a subsea system if the test is recorded on the outer most half of a 4-hour chart, on a 1-hour chart, or on a digital recorder. MMS will accept a 3-minute test on the outer half of the 4-hour chart or on a 1-hour chart because the length of the line on these charts is sufficient to determine if the tested component(s) held the required pressure. A 3-minute test using a digital recorder provides sufficient information to determine if the tested component held the required pressure. A 5-minute test is required for subsea BOP equipment because of the larger volume of fluid in the system. This use of a 3-minute test reflects the policy discussed in a Letter to Lessees issued by the Gulf of Mexico Region on January 14, 1994. These revisions apply to both drilling and completion operations (§§ 250.57 and 250.86).

BOP Testing at Casing and Liner Points

The proposed rule requires the lessee to test the BOP system before drilling out each string of casing or a liner. This is similar to the current requirement to test the system before drilling out each string. However, with the advancement of drilling technology and new procedures for installing casing strings, MMS agrees with industry comments that it is not necessary to test the BOP system at all casing or liner points.

MMS has identified one situation where a District Supervisor will likely allow a lessee to not test before drilling out the string. This situation occurs when the lessee does not remove the BOP stack to run the string and the required BOP-test pressures for the next section of the hole are not greater than the test pressures for the previous BOP test. Since there would be no

connections to test and test pressures do not increase, the test would not be necessary. To skip testing in these situations, the lessee must clearly indicate in its APD which casing strings and liners meet these criteria. Test pressures less than the equipment's rated working pressure must be approved by the District Supervisor (see discussion on test pressures above).

The lessee must continue to test the BOP system before 14 days have elapsed from the previous test. If a lessee runs casing or liner near the end of the 14-day interval, MMS recommends that the lessee test the BOP system at that time.

Weekly Actuation of Annular and Rams. The proposed rule requires a lessee to actuate the annular and rams preventers at least once each week. Weekly actuation will ensure that the preventers will function if needed. It takes minimal time to conduct this simple test. This requirement was unnecessary before because a lessee had to pressure test the entire system on a weekly basis. This revision applies to both drilling and completion operations (§§ 250.57 and 250.86).

Format of the Proposed Rule. We have written this proposed rule in a ''plain English'' format. We have tried to lay out these requirements in a straightforward and uncomplicated manner. The plain English format uses the term ''you'' which means that the lessee, or the approved designated party, is responsible for ensuring that all requirements are met. We encourage your comments on our use of the plain English format in this proposed rule as well as future rulemaking.

III. Procedural Matters

Executive Order (E.O.) 12866

This rule is not a significant rule under Executive Order 12866 and does not require Office of Management and Budget review. MMS estimates that this proposed rule will save the oil and gas industry $34.5 to $46 million per year. The savings result from having to conduct fewer BOP tests and increased drilling efficiency. Direct economic effects are reduced drilling costs for each well drilled on the OCS. The rule does not add any new costs to industry, and it will not reduce the level of safety to personnel or the environment. Since the rule will have an annual effect on the economy of less than $100 million, the rule does not have a significant economic effect as defined by Executive Order 12866.

The proposed rule will not affect the level of drilling activity on the OCS. It will reduce the number of BOP tests conducted, which should result in reduced drilling time for each well. Once the lessee completes a well, the rig will move on to the next well. This will not have any adverse effects on employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in other markets because the economic effects are minor. The rule will have no effect on competition. Therefore, in accordance with Executive Order (E.O.) 12866, a review by the Office of Management and Budget (OMB) is not necessary.

Regulatory Flexibility Act

This proposed rule will not have any significant effects on a substantial number of small entities. The rule will not have a significant economic effect on any entities, small or large. This rule will affect only two groups that operate on the OCS: (1) Lessees that contract drilling operations and (2) drilling contractors. A lessee that qualifies as a small entity could see a minor economic benefit from this rule. The average annual cost savings per rig is from $240,000 to $340,000, spread among all lessees that drill wells. However, the savings would probably be offset by increased costs to contract a drilling rig. While the savings to lessees could represent lost income to contractors, the proposed rule should not have a significant economic effect on these businesses. Rig utilization rates are very high, leading to increased day rates for drilling rigs; therefore, the contractors are not expected to have declining income as a result of this proposed rule.

In general, entities that engage in offshore activities are not small due to technical and financial resources and experience needed to safely conduct such operations. Small entities are more likely to operate onshore or in State waters—areas not covered by this rule. When small entities do work in the OCS, they are likely to be contractors and not owner/operators of OCS platforms or drilling rigs.

Paperwork Reduction Act

This proposed rule contains collections of information which MMS has submitted to OMB for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995. As part of our continuing effort to reduce paperwork and respondent burdens, MMS invites the public and other Federal agencies to comment on any aspect of the reporting burden. Submit your comments to the Office of Information and Regulatory Affairs; OMB; Attention: Desk Officer for the Department of the Interior (OMB control numbers 1010–0053 or 1010–0067); Washington, D.C. 20503. Send a copy of your comments to the Rules Processing Team; Mail Stop 4020; Minerals Management Service; 381 Elden Street; Herndon, Virginia 20170–4817. You may obtain a copy of the supporting statements for the collections of information by contacting the Bureau's Information Collection Clearance Officer at (202) 208–7744.

The Paperwork Reduction Act of 1995 provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

The titles of the collections of information affected by this proposed rule are ''30 CFR 250, Subpart D, Oil and Gas Drilling Operations'' (OMB Control Number 1010-0053) and ''30 CFR 250 Subpart E, Oil and Gas Well-Completion Operations'' (OMB Control Number 1010–0067).

The collections of information in these subparts consist of reporting and recordkeeping requirements on the conditions of a drilling site and well-completion operations in the OCS. MMS uses the information to determine if lessees are properly providing for safe operations and protection of human life or health and the environment. The proposed rule does not actually revise any of the information collection requirements in the current regulation. However, it will reduce the recordkeeping burden by reducing the number of BOP tests that a lessee must conduct. Respondents are approximately 130 Federal OCS oil and gas or sulphur lessees. The frequency of response is on occasion and varies by section in the subparts. The requirement to respond is mandatory.

MMS estimates the total annual burden for subpart D (OMB control number 1010-0053) is 108,581 hours. This reflects a decrease of 12,499 recordkeeping hours as a result of the proposed rule. The total annual burden estimated for subpart E (OMB control number 1010–0067) is 4,841 hours. In developing the estimate for subpart E, MMS had to revise the method of calculating some of the burden

requirements. Although the proposed rule will result in a decrease of 2,563 recordkeeping hours, it is offset by the revised calculations.

In calculating the burdens, MMS assumed that respondents perform some of the requirements and maintain some of the records in the normal course of their activities. MMS considers these to be usual and customary and did not include them in the burden estimates. If commenters disagree with this assumption, they should provide more appropriate burden hours and costs.

MMS will summarize written responses to this notice and address them in the final rule. All comments will become a matter of public record.

1. MMS specifically solicits comments on the following questions:

(a) Is the proposed collection of information necessary for the proper performance of MMS's functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

2. In addition, the Paperwork Reduction Act of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. MMS needs your comments on this item. Your response should split the cost estimate into two components:

(a) Total capital and startup cost component and

(b) Annual operation, maintenance, and purchase of services component.

Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: before October 1, 1995; to comply with requirements not associated with the information collection; for reasons other than to provide information or keep records for the Government; or as part of customary and usual business or private practices.

Takings Implication Assessment

DOI certifies that the proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Unfunded Mandates Reform Act of 1995

DOI has determined and certifies according to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on State, local, and tribal governments, or the private sector.

E.O. 12988

DOI has certified to OMB that the rule meets the applicable reform standards provided in sections 3(a) and 3(b)(2) of E.O. 12988, ''Civil Justice Reform.''

National Environmental Policy Act

DOI has also determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, an Environmental Impact Statement is not required.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: July 2, 1997.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, MMS proposes to amend 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: U.S.C. 1334.

2. Section 250.57 is revised to read as follows:

§ 250.57 Blowout preventer (BOP) system tests, inspections, and maintenance.

(a) *BOP pressure testing timeframes*. You must pressure test your BOP system:

(1) When installed;

(2) Before 14 days have elapsed since your last BOP pressure test. You must begin to test your BOP system before 12 p.m. (midnight) on the 14th day following the conclusion of the previous test. However, the District Supervisor may require testing every 7 days if conditions or BOP performance warrant; and

(3) Before drilling out each string of casing or a liner.

(b) *BOP test pressures*. When you test the BOP system, you must conduct a low pressure and a high pressure test for each BOP component. Each individual pressure test must hold pressure long enough to demonstrate that the tested component(s) holds the required pressure. Required test pressures are as follows:

(1) All low pressure tests must be between 200 and 300 psi. Any initial pressure above 300 psi must be bled back to a pressure between 200 and 300 psi before starting the test. If the initial pressure exceeds 500 psi, you must bleed back to zero and reinitiate the test. You must conduct the low pressure test before the high pressure test.

(2) For ram-type BOP's, choke manifold, and other BOP equipment, the high pressure test must equal the rated working pressure of the equipment or the pressure otherwise approved by the District Supervisor; and

(3) For annular-type BOP's, the high pressure test must equal 70 percent of the rated working pressure of the equipment or the pressure otherwise approved by the District Supervisor.

(c) *Duration of pressure test*. Each test must hold the required pressure for 5 minutes.

(1) For surface BOP systems and surface equipment of a subsea BOP system, a 3-minute test duration is acceptable if you record your test pressures on the outermost half of a 4-hour chart; on a 1-hour chart; or on a digital recorder.

(2) If the equipment does not hold the required pressure during a test, you must remedy the problem and retest the affected component(s).

(d) *Additional BOP testing requirements*. You must:

(1) Use water to test a surface BOP system;

(2) Stump test a subsurface BOP system before installation. You must use water to stump test a subsea BOP system. You may use drilling fluids to conduct subsequent tests of a subsea BOP system;

(3) Alternate tests between control stations and pods. If a control station or pod is not functional, you must suspend further drilling operations until that station or pod is operable;

(4) Pressure test the blind or blind-shear ram during a stump test and at all casing points. In addition, you must test the blind or blind-shear ram at least once every 30 days;

(5) Function test annulars and rams every 7 days between pressure tests;

(6) Pressure-test variable bore-pipe rams against all sizes of pipe in use, excluding drill collars and bottom-hole tools;

(7) Test affected BOP components following the disconnection or repair of any well-pressure containment seal in the wellhead or BOP stack assembly;

(8) Actuate the casing safety valve before running casing; and

(9) Upon installation of casing rams, you must test the ram bonnet before running casing.

(e) *Postponing BOP tests*. You may postpone a BOP test if you have well-control problems such as lost circulation, formation fluid influx, or stuck drill pipe. If this occurs, you must conduct the required BOP test as soon as possible (i.e., first trip out of the hole) after the problem has been remedied. You must record the reason for postponing any test in the driller's report.

(f) *BOP inspections*. You must visually inspect your BOP system and marine riser at least once each day if weather and sea conditions permit. You may use television cameras to inspect this equipment. The District Supervisor may approve alternate methods and frequencies to inspect a marine riser. Casing risers on fixed structures and jackup rigs are not subject to the daily underwater inspections.

(g) *BOP maintenance*. You must maintain your BOP system to ensure that the equipment functions properly.

(h) *BOP test records*. You must record the time, date, and results of all pressure tests, actuations, and inspections of the BOP system, system components, and marine riser in the driller's report. In addition, you must:

(1) Record BOP test pressures on pressure charts;

(2) Have your onsite representative certify (sign and date) BOP test charts and reports as correct;

(3) Document the sequential order of BOP and auxiliary equipment testing and the pressure and duration of each test. You may reference a BOP test plan if it is available at the facility;

(4) Identify the control station or pod used during the test;

(5) Identify any problems or irregularities observed during BOP system testing and record actions taken to remedy the problems or irregularities;

(6) Retain all records, including pressure charts, driller's report, and referenced documents, pertaining to BOP tests, actuations, and inspections at the facility for the duration of drilling; and

(7) After drilling is completed, you must retain all the records listed in paragraph (h)(6) of this section for a period of two years at the facility, at the lessee's field office nearest the Outer Continental Shelf (OCS) facility, or at another location conveniently available to the District Supervisor.

(i) *Alternate methods*. The District Supervisor may require, or approve, more frequent testing, as well as different test pressures and inspection methods, or other practices.

3. Section 250.86 is revised to read as follows:

§ 250.86 Blowout preventer system tests, inspections, and maintenance.

(a) *BOP pressure testing timeframes*. You must pressure test your BOP system:

(1) When installed; and

(2) Before 14 days have elapsed since your last BOP pressure test. You must begin to test your BOP system before 12 p.m. (midnight) on the 14th day following the conclusion of the previous test. However, the District Supervisor may require testing every 7 days if conditions or BOP performance warrant.

(b) *BOP test pressures*. When you test the BOP system, you must conduct a low pressure and a high pressure test for each BOP component. Each individual pressure test must hold pressure long enough to demonstrate that the tested component(s) holds the required pressure. The District Supervisor may approve or require other test pressures or practices. Required test pressures are as follows:

(1) All low pressure tests must be between 200 and 300 psi. Any initial pressure above 300 psi must be bled back to a pressure between 200 and 300 psi before starting the test. If the initial pressure exceeds 500 psi, you must bleed back to zero and reinitiate the test. You must conduct the low pressure test before the high pressure test.

(2) For ram-type BOP's, choke manifold, and other BOP equipment, the high pressure test must equal the rated working pressure of the equipment.

(3) For annular-type BOP's, the high pressure test must equal 70 percent of the rated working pressure of the equipment.

(c) *Duration of pressure test*. Each test must hold the required pressure for 5 minutes.

(1) For surface BOP systems and surface equipment of a subsea BOP system, a 3-minute test duration is acceptable if you record your test pressures on the outermost half of a 4-hour chart; on a 1-hour chart; or on a digital recorder.

(2) If the equipment does not hold the required pressure during a test, you must remedy the problem and retest the affected component(s).

(d) *Additional BOP testing requirements*. You must:

(1) Use water to test the surface BOP system;

(2) Stump test a subsurface BOP system before installation. You must use water to stump test a subsea BOP system. You may use drilling or completion fluids to conduct subsequent tests of a subsea BOP system;

(3) Alternate tests between control stations and pods. If a control station or pod is not functional, you must suspend further completion operations until that station or pod is operable;

(4) Pressure test the blind or blind-shear ram at least every 30 days;

(5) Function test annulars and rams every 7 days;

(6) Pressure-test variable bore-pipe rams against all sizes of pipe in use, excluding drill collars and bottom-hole tools; and

(7) Test affected BOP components following the disconnection or repair of any well-pressure containment seal in the wellhead or BOP stack assembly;

(e) *Postponing BOP tests*. You may postpone a BOP test if you have well-control problems. You must conduct the required BOP test as soon as possible (i.e., first trip out of the hole) after the problem has been remedied. You must record the reason for postponing any test in the driller's report.

(f) *Weekly crew drills*. You must conduct a weekly drill to familiarize all personnel engaged in well-completion operations with appropriate safety measures.

(g) *BOP inspections*. You must visually inspect your BOP system and marine riser at least once each day if weather and sea conditions permit. You may use television cameras to inspect this equipment. The District Supervisor may approve alternate methods and frequencies to inspect a marine riser.

(h) *BOP maintenance*. You must maintain your BOP system to ensure that the equipment functions properly.

(i) *BOP test records*. You must record the time, date, and results of all pressure tests, actuations, crew drills, and inspections of the BOP system, system components, and marine riser in the driller's report. In addition, you must:

(1) Record BOP test pressures on pressure charts;

(2) Have your onsite representative certify (sign and date) BOP test charts and reports as correct;

(3) Document the sequential order of BOP and auxiliary equipment testing and the pressure and duration of each test. You may reference a BOP test plan if it is available at the facility;

(4) Identify the control station or pod used during the test;

(5) Identify any problems or irregularities observed during BOP system and equipment testing and record actions taken to remedy the problems or irregularities;

(6) Retain all records including pressure charts, driller's report, and referenced documents pertaining to BOP tests, actuations, and inspections at the facility for the duration of the completion activity; and

(7) After completion of the well, you must retain all the records listed in paragraph (i)(6) of this section for a period of two years at the facility, at the lessee's field office nearest the OCS facility, or at another location conveniently available to the District Supervisor.

(j) *Alternate methods*. The District Supervisor may require, or approve, more frequent testing, as well as different test pressures and inspection methods, or other practices.

[FR Doc. 97–18546 Filed 7–14–97; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AH23

Loan Guaranty: VA Guaranteed Loans on the Automatic Basis, Withdrawal of Automatic Processing Authority, Record Retention Requirements, and Elimination of Late Reporting Waivers

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: VA is proposing to amend its loan guaranty regulations in the areas of automatic-processing authority, loan reporting, and record-retention requirements. It is proposed that if a lender does not report the loan within 60 days following full disbursement, the lender no longer would have to provide a request for a waiver; but, as a condition of receiving an evidence of guaranty the lender must continue to provide the required explanation of why the lender was late in reporting the loan. This will have no impact on whether or not VA guarantees the loan but would help VA determine whether action should be taken against a lender.

VA also is proposing to amend its lender record-retention requirements. Currently, lenders are required to retain loan origination records for at least one year from the date of loan closing. VA is proposing to extend this to two years from the date of loan closing. This would improve VA's ability to monitor lender performance and conduct underwriting reviews.

Further, VA is proposing to amend its loan guaranty regulations regarding criteria used to approve non-supervised lenders to process VA guaranteed loans on the automatic basis. These changes would reduce the experience requirements for lenders and their underwriters, thereby making it easier for them to qualify for automatic-processing authority. High underwriting standards would be maintained by requiring that all VA-approved underwriters receive training in VA credit underwriting procedures. This document also requests Paperwork Reduction Act comments concerning the collections of information contained in this document.

DATES: Comments must be received on or before September 15, 1997.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AH23.'' All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Ms. Judith Caden, Assistant Director for Loan Policy (264) Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 273–7368.

SUPPLEMENTARY INFORMATION: 38 CFR 36.4335 provides that, whenever a loan is not reported to VA for issuance of evidence of guaranty within 60 days of full disbursement, evidence of guaranty will be issued only if the timeliness requirement for reporting is formally waived by VA field station personnel. This waiver is essentially a formality and is routinely granted where the lender is able to certify that the loan is current and can provide VA with a valid explanation for the late reporting. The issuance of these waivers is a time-consuming process that appears to be no longer warranted. In order to improve efficiency, VA is proposing to insert a new paragraph (f) in 38 CFR 36.4303 to state that, upon receipt of a statement of the reasons for late reporting, evidence of guaranty will be issued. It is proposed that the statement of the reasons for late reporting continue to be submitted to VA so that these reasons could be considered in deciding if the lenders' personnel might need additional training or whether automatic lending authority should be withdrawn. Since the waiver procedure would be eliminated, 38 CFR 36.4335 (a) and (b), which provide for delegation of waiver authority to field stations, would also be eliminated as unnecessary.

38 CFR 36.4330 requires that lenders maintain loan origination records on VA-guaranteed home loans for a period of at least one year from the date of loan closing. This one-year retention requirement has not been long enough to enable VA monitoring unit audit teams to review loan records for as many lenders as necessary to properly administer the VA loan guaranty program. Moreover, industry standards, including Federal Housing Administration (FHA) regulations and the Equal Credit Opportunity Act (ECOA), require that lenders keep loan origination records for at least 24 months. This proposal would amend VA's record-retention requirement to require that lenders maintain loan origination records for at least 2 years from the date of loan closing. This not only would conform with industry standards but it also appears that it would improve VA's ability to monitor loan performance and to identify lenders who may be having particular trouble underwriting loans.

VA has completed a study of the criteria and process used to approve lenders to process VA loans on the automatic basis. In the course of conducting this review, VA reviewed procedures used by the FHA, the Government National Mortgage Association (GNMA), the Federal National Mortgage Association (FNMA), and the Federal Home Loan Mortgage Corporation (FHLMC). Based on this review it is proposed to amend the loan guaranty regulations. As explained

below, we are proposing changes in the following requirements for lender participation in the automatic lender program: Lender experience, working capital, lines of credit, and VA-approved underwriter eligibility and training. Also, as explained below, we propose to add a requirement for annual recertification of lenders and provide for withdrawal of automatic authority from lenders who fail to meet the recertification criteria. These changes would (1) streamline VA's approval process; (2) update the standards employed in granting automatic authority to reflect changes in the mortgage banking industry; and (3) simplify lender submissions by adopting requirements used by other Government agencies.

VA defines an ''agent'' as any party performing loan-related functions on behalf of, or in the name of, a sponsoring lender. The extent of the relationship between lender and agent is at their discretion. VA does not restrict who may act as agent. Any individual, including a real estate agent or broker, may be authorized by a lender to act as its agent, provided the lender accepts full responsibility for the acts, errors, or omissions of the agent in processing and/or closing loans.

The Department is proposing changes in requirements for lender and agent experience. Currently, VA requires that in order for a lender to close VA loans on the automatic basis the lender must either (1) be a supervised lender or a wholly owned subsidiary or affiliate of a supervised lender, i.e., subject to examination and supervision by a Federal or State agency, or (2) meet certain minimum requirements. These requirements are: (a) Maintenance of a minimum of $50,000 of working capital; (b) the firm's active engagement in originating VA mortgages for at least 3 recent years, or 3 recent years of experience of each principal officer of the firm who is actively involved in managing origination functions with VA mortgages in managerial functions in either the present company or other companies; (c) the approval, by VA, of a full-time qualified underwriter who will personally review and make underwriting decisions on VA loans to be closed on the automatic basis; (d) one or more lines of credit totaling at least $1 million: (e) if the lender customarily sells loans it originates, a minimum of two permanent investors; (f) all prospective VA loans must be reviewed and approved or rejected by a VA-approved underwriter at the lender's home or main office or a VA-approved regional underwriting office prior to closing; (g) a designated liaison, plus an alternate, to deal with VA, other than the underwriter, if possible; and (h) a written quality control plan ensuring compliance with VA requirements.

Instead of these current requirements, VA is proposing several changes to 38 CFR § 36.4348. First, regarding experience requirements, lenders would be required to have 2 recent years of VA experience and have closed a minimum of 10 loans within the past 24 months. In the alternative, if the firm has been making VA loans for less than 2 years, they must have closed at least 25 loans without repeated deficiencies in underwriting or a high rate of rejection by VA. As another alternative, each of the operating officers responsible for loan origination activities must have two recent years of VA loan experience in that capacity. Also, firms may meet the experience requirement if they have functioned for at least 2 recent years as an agent for lender(s) making VA loans, and they provide letters of recommendation from the sponsoring lender(s). VA offers these alternative experience requirements to make it easier for more mortgage lenders to participate in the VA loan guaranty program. This proposed regulatory change eases these requirements by reducing the number of years' of experience from 3 to 2. However, to ensure that a potential program participant has sufficient recent experience, VA proposes to require that lenders have closed a minimum of 10 loans within the past 24 months.

VA is also proposing to amend this section's requirements concerning working capital and lines of credit. VA currently requires that a lender have a minimum of $50,000 working capital. This proposal would ease VA requirements by accepting, as an alternative, a demonstrated net worth of $250,000, as defined by the Department of Housing and Urban Development (HUD) and reported to VA in the lender's annual financial statements, prepared by a certified public accountant (CPA). The alternative net worth requirement is the standard currently in use by HUD. Since most VA program participants are also HUD lenders, with this regulatory amendment, it will be less burdensome for these lenders to comply with VA requirements and would still provide adequate protection for VA loans. In addition, VA's proposed change concerning lines of credit clarifies that by an ''unrestricted'' line of credit VA means that the funds must be available based upon the loan meeting VA requirements and not restricted to those VA loans that the investor wants to fund.

Finally, VA is proposing changes to its requirements for approved underwriter eligibility and training. Currently, VA requires that an underwriter must have a minimum of 3 years' experience in mortgage lending in reviewing credit and making underwriting decisions, with at least 2 recent years in connection with loans submitted to VA for guaranty. This experience must have been with an institutional investor originating for its own portfolio or purchasing VA loans, or with an originator selling this type of loan to investors. VA is proposing to amend 38 CFR 36.4348 to provide that these experience requirements will be satisfied if the nominee has 3 years of combined experience in processing, pre-underwriting, and underwriting, at least 1 recent year of which must be related to underwriting. Alternatively, the nominee must be designated as an Accredited Residential Underwriter (ARU) by the Mortgage Bankers Association (MBA) within the last 3 years. This change is proposed because VA has determined that recognition as an ARU by the MBA demonstrates proficiency in mortgage underwriting. This change will make it easier for more qualified lenders to become program participants than before. In addition, an applicant must be employed on a full-time basis by the lender and he or she must attend training sponsored by the VA Regional Office within 90 days of approval as a VA underwriter. This is in order to make sure that the underwriter receives up-to-date training in VA program requirements and to enable him or her to become familiar with the local VA Regional Office.

VA also proposes to stop requiring that the underwriter be located in the lender's home office or in an approved regional underwriting office, provided the lender certifies that the underwriter is not supervised by a branch manager or other person with production responsibilities. The reason for this is that VA recognizes that changes in the lending industry may dictate more flexible corporate structures. Since the lender is responsible to VA for the quality of the underwriting performed by its employees, VA can be flexible about the location of the lender's underwriters.

It also is proposed to amend § 36.4349 to clarify the current practice regarding withdrawal of automatic-processing authority for non-supervised lenders during their probationary period. In this regard, it is proposed that automatic authority may be withdrawn for any of the reasons applicable to non-probationary automatic lenders regardless of whether deficiencies

previously have been brought to the attention of the probationary lender.

Minor changes are proposed to § 36.4349 to conform the language to proposed changes in § 36.4348 regarding the alternate financial criteria of adjusted net worth and the provision that automatic-processing authority may be withdrawn at any time for failure to meet basic qualifying and/or annual recertification requirements. Also, other nonsubstantitive changes would be made for purposes of clarification.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), proposed 38 CFR 36.4303(a), (c), (d), (e), (f), (g), (i), and (l); 36.4330(a) and (b); and 36.4348(b), (c), and (d), which are set forth in full in the text portion of this document, contain collections of information. These provisions, which include republished provisions, prescribe the information to be submitted by lenders in order to qualify for participation in the VA Loan Guaranty Program as ''automatic'' lenders, i.e., lenders who VA has approved as qualified to close loans to veterans without submitting the paperwork to VA for prior approval (38 CFR 36.4348–36.4349). These sections contain material that explains what information is necessary and the quality of the information needed for lenders to qualify as ''automatic'' lenders (§ 36.4348(b), (c), and (d)). These sections also include a requirement for explanations of delays in reporting loans (§ 36.4303); and maintenance of records requirements (§ 36.4330(a) and (b)). Also, as required under section 3507(d) of the Act, VA has submitted a copy of this proposed rulemaking action to the Office of Management and Budget (OMB) for its review of the collection of information.

OMB assigns control numbers to collections of information it approves. VA 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.

Comments on the collections of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AH23.''

Title: VA-Guaranteed Loans on the Automatic Basis, Withdrawal of Automatic-processing Authority, Record-retention Requirements, and Elimination of Late Reporting Waivers.

Summary of collection of information: Pursuant to 38 U.S.C. 3702(d), mortgage lenders can be authorized to participate in the VA Loan Guaranty Program as ''automatic'' lenders, i.e., lenders qualified to close loans to veterans without submitting the paperwork to VA for prior approval. The proposed regulatory amendments would require that prospective ''automatic'' lenders provide VA with a certification (38 CFR 36.4348(b)(2)) and other limited information (§ 36.4348((b), (c), and (d)) in order to be approved as qualified to close loans to veterans without submitting the loan to VA for prior approval.

Description of the need for information and proposed use of information: If a lender is going to obligate VA to guarantee loans without VA's prior approval, VA must be able to determine that such a lender is sufficiently qualified to do so. At the same time, VA needs to stay current with industry standards with regard to underwriter qualifications, methods of obtaining information, and other Government agency lending practices.

Description of likely respondents: Mortgage lenders who make VA-guaranteed home loans.

Estimated number of respondents: Approximately 4,630 per year.

Estimated frequency of responses: Most of this information is collected on a ''one-time'' basis or on an annual basis.

Estimated average burden per collection: The information collected for submission to VA is, in large part, already being prepared for participation in other government lending programs. Most lenders who participate in the VA Loan Guaranty Program also participate in other Government lending programs. The remaining information collections will have an estimated annual burden of about 1 hour per respondent.

Estimated total annual reporting and recordkeeping burden: The information collected for submission to VA is prepared, for the most part, as a customary business practice. These information collections are elements of a package of information prepared by lenders who participate in any Government lending program. The remaining information collections are usually already being provided to VA lenders who are or who wish to be automatic VA lenders. These regulatory changes merely make minor adjustments in the manner of collection to conform VA requirements to industry norms. The result, for the most part, is that lenders will be able to provide to VA information they have already prepared for use in other Government lending programs.

The volume of cases is estimated to be about 4,630. Not all this information will be required in all cases, depending on the circumstances of each lender. Information collection per case is approximately 1 hour. Most of this information is already being collected by lenders who have Direct Endorsement authority from HUD.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the proposed collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulations.

Regulatory Flexibility Act

The Secretary hereby certifies that these proposed regulatory amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Industry norms for other lending programs already require lenders to comply with most of the proposed standards set forth in this regulatory package. Further, activities concerning loans subject to the VA Loan Guaranty Program do not constitute a significant portion of activities of small businesses.

The Catalog of Federal Domestic Assistance Program numbers are 64.114 and 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan programs—housing and community development, Manufactured homes, Veterans.

Approved: July 3, 1997.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36 is proposed to be amended as set forth below:

PART 36—LOAN GUARANTY

1. The authority citation for part 36, §§ 36.4300 through 36.4375 continues to read as follows:

Authority: Sections 36.4300 through 36.4374 issued under 38 U.S.C. §§ 101, 501, 3701–3704, 3710, 3712–3714, 3720, 3729, 3732, unless otherwise noted.

2. Section 36.4303 is revised to read follows:

§ 36.4303 Reporting requirements.

(a) With respect to loans automatically guaranteed under 38 U.S.C. 3703(a)(1), evidence of the guaranty will be issuable to a lender of a class described under 38 U.S.C. 3702(d) if the loan is reported to the Secretary within 60 days following full disbursement and upon the certification of the lender that:

(1) No default exists thereunder which has continued for more than 30 days;

(2) Except for acquisition and improvement loans as defined in § 36.4301, any construction, repairs. alterations, or improvements effected subsequent to the appraisal of reasonable value, and paid for out of the proceeds of the loan, which have not been inspected and approved upon completion by a compliance inspector designated by the Secretary, have been completed properly in full accordance with the plans and specifications upon which the original appraisal was based; and any deviations or changes of identity in said property have been approved as required in § 36.4304 concerning guaranty or insurance of loans to veterans;

(3) The loan conforms otherwise with the applicable provisions of 38 U.S.C. Chapter 37 and of the regulations concerning guaranty or insurance of loans to veterans.

(Authority: 38 U.S.C. 3703(c)(1))

(b) Loans made pursuant to 38 U.S.C. 3703(a), although not entitled to automatic insurance thereunder, may, when made by a lender of a class described in 38 U.S.C. 3702(d)(1), be reported for issuance of an insurance credit.

(Authority: 38 U.S.C. 3702(d), 3703(a)(2))

(c) Each loan proposed to be made to an eligible veteran by a lender not within a class described in 38 U.S.C. 3702(d) shall be submitted to the Secretary for approval prior to closing. Lenders described in 38 U.S.C. 3702(d) shall have the optional right to submit any loan for such prior approval. The Secretary, upon determining any loan so submitted to be eligible for a guaranty, or for insurance, will issue a certificate of commitment with respect thereto.

(d) A certificate of commitment shall entitle the holder to the issuance of the evidence of guaranty or insurance upon the ultimate actual payment of the full proceeds of the loan for the purposes described in the original report and upon the submission within 60 days thereafter of a supplemental report showing that fact and:

(1) The identity of any property purchased therewith,

(2) That all property purchased or acquired with the proceeds of the loan has been encumbered as required by the regulations concerning guaranty or insurance of loans to veterans,

(3) Except for acquisition and improvement loans as defined in § 36.4301(c), any construction, repairs, alterations, or improvements paid for out of the proceeds of the loan, which have not been inspected and approved subsequent to completion by a compliance inspector designated by the Secretary, have been completed properly in full accordance with the plans and specifications upon which the original appraisal was based; and that any deviations or changes of identity in said property have been approved as required by § 36.4304, and

(4) That the loan conforms otherwise with the applicable provisions of 38 U.S.C. Chapter 37 and the regulations concerning guaranty or insurance of loans to veterans.

(Authority: 38 U.S.C. 3703(c)(1))

(e) Upon the failure of the lender to report in accordance with the provisions of paragraph (d) of this section, the certificate of commitment shall have no further effect, or the amount of guaranty or insurance shall be reduced pro rata, as may be appropriate under the facts of the case: Provided, nevertheless, that if the loan otherwise meets the requirements of this section, said certificate of commitment may be given effect by the Secretary, notwithstanding the report is received after the date otherwise required.

(f) For loans not reported within 60 days, evidence of guaranty will be issued only if the loan report is accompanied by a statement signed by a corporate officer of the lending institution which explains why the loan was reported late. The statement must identify the case or cases in issue and must set forth the specific reason or reasons why the loan was not submitted on time. Upon receipt of such a statement evidence of guaranty will be issued. A pattern of late reporting and the reasons therefore will be considered by VA in taking action under § 36.4349.

(g) Evidence of a guaranty will be issued by the Secretary by appropriate endorsement on the note or other instrument evidencing the obligation, or by a separate certificate at the option of the lender. Notice of credit to an insurance account will be given to the lender. Unused certificates of eligibility issued prior to March 1, 1946, are void. No certificate of commitment shall be issued and no loan shall be guaranteed or insured unless the lender, the veteran, and the loan are shown to be eligible. Evidence of guaranty or insurance will not be issued on any loan for the purchase or construction of residential property unless the veteran, or the veteran's spouse in the case of a veteran who cannot occupy the property because of active duty status with the Armed Forces, certifies in such form as the Secretary shall prescribe, that the veteran, or spouse of the active duty veteran, intends to occupy the property as his or her home. Guaranty or insurance evidence will not be issued on any loan for the alteration, improvement, or repair of any residential property or on a refinancing loan unless the veteran, or spouse of an active duty service member, certifies that he or she presently occupies the property as his or her home. An exception to this is if the home improvement or refinancing loan is for extensive changes to the property which will prevent the veteran or the spouse of the active duty veteran from occupying the property while the work is being completed. In such a case the veteran or spouse of the active duty veteran must certify that he or she intends to occupy or reoccupy the property as his or her home upon completion of the substantial improvements or repairs. All of the mentioned certifications must take place at the time of loan application and closing except in the case of loans automatically guaranteed, in which case veterans or in the case of an active duty veteran, the veteran's spouse shall make

the required certification only at the time the loan is closed.

(Authority: 38 U.S.C. 3704(c))

(h) Subject to compliance with the regulations concerning guaranty or insurance of loans to veterans, the certificate of guaranty or the evidence of insurance credit will be issuable within the available entitlement of the veteran on the basis of the loan stated in the final loan report or certification of loan disbursement, except for refinancing loans for interest rate reductions. The available entitlement of a veteran will be determined by the Secretary as of the date of receipt of an application for guaranty or insurance of a loan or of a loan report. Such date of receipt shall be the date the application or loan report is date-stamped into VA. Eligibility derived from the most recent period of service.

(1) Shall cancel any unused entitlement derived from any earlier period of service, and

(2) Shall be reduced by the amount by which entitlement from service during any earlier period has been used to obtain a direct, guaranteed, or insured loan.

(i) On property which the veteran owns at the time of application, or

(ii) As to which the Secretary has incurred actual liability or loss, unless in the event of loss or the incurrence and payment of such liability by the Secretary, the resulting indebtedness of the veteran to the United States has been paid in full. *Provided,* That if the Secretary issues or has issued a certificate of commitment covering the loan described in the application for guaranty or insurance or in the loan report, the amount and percentage of guaranty or the amount of the insurance credit contemplated by the certificate of commitment shall not be subject to reduction if the loan has been or is closed on a date which is not later than the expiration date of the certificate of commitment, notwithstanding that the Secretary in the meantime and prior to the issuance of the evidence of guaranty or insurance shall have incurred actual liability or loss on a direct, guaranteed, or insured loan previously obtained by the borrower. For the purposes of this paragraph, the Secretary will be deemed to have incurred actual loss on a guaranteed or insured loan if the Secretary has paid a guaranty or insurance claim thereon and the veteran's resultant indebtedness to the Government has not been paid in full, and to have incurred actual liability on a guaranteed or insured loan if the Secretary is in receipt of a claim on the guaranty or insurance or is in receipt of a notice of default. In the case of a direct loan, the Secretary will be deemed to have incurred an actual loss if the loan is in default. A loan, the proceeds of which are to be disbursed progressively or at intervals, will be deemed to have been closed for the purposes of this paragraph if the loan has been completed in all respects excepting the actual ''payout'' of the entire loan proceeds.

(Authority: 38 U.S.C. 3702(a), 3710(c))

(i) Any amounts that are disbursed for an ineligible purpose shall be excluded in computing the amount of guaranty or insurance credit.

(j) Notwithstanding the lender has erroneously, but without intent to misrepresent, made certification with respect to paragraph (a)(1) of this section, the guaranty or insurance will become effective upon the curing of such default and its continuing current for a period of not less than 60 days thereafter. For the purpose of this paragraph a loan will be deemed current so long as the installment is received within 30 days after its due date.

(k) No guaranty or insurance commitment or evidence of guaranty or insurance will be issuable in respect to any loan to finance a contract which:

(1) Is for the purchase, construction, repair, alteration, or improvement of a dwelling or farm residence;

(2) Is dated on or after June 4, 1969;

(3) Provides for a purchase price or cost to the veteran in excess of the reasonable value established by the Secretary; and

(4) Was signed by the veteran prior to the veteran's receipt of notice of such reasonable value; unless such contract includes, or is amended to include, a provision substantially as follows:

It is expressly agreed that, notwithstanding any other provisions of this contract, the purchaser shall not incur any penalty by forfeiture of earnest money or otherwise or be obligated to complete the purchase of the property described herein, if the contract purchase price or cost exceeds the reasonable value of the property established by the Department of Veterans Affairs. The purchaser shall, however, have the privilege and option of proceeding with the consummation of this contract without regard to the amount of the reasonable value established by the Department of Veterans Affairs.

(Authority: 38 U.S.C. 501, 3703(c)(1))

(l) With respect to any loan for which a commitment was made on or after March 1, 1988, the Secretary must be notified whenever the holder receives knowledge of disposition of the residential property securing a VA guaranteed loan.

(1) If the seller applies for prior approval of the assumption of the loan, then:

(i) A holder (or its authorized servicing agent) who is an automatic lender must examine the creditworthiness of the purchaser and determine compliance with the provisions of 38 U.S.C. 3714. The creditworthiness review must be performed by the party that has automatic authority. If both the holder and its servicing agent are automatic lenders, then they must decide between themselves which one will make the determination of creditworthiness, whether the loan is current and whether there is a contractual obligation to assume the loan, as required by 38 U.S.C. 3714. If the actual loan holder does not have automatic authority and its servicing agent is an automatic lender, then the servicing agent must make the determinations required by 38 U.S.C. 3714 on behalf of the holder. The actual holder will remain ultimately responsible for any failure of its servicing agent to comply with the applicable law and VA. regulations.

(A) If the assumption is approved and the transfer of the security is completed, then the notice required by this paragraph shall consist of the credit package (unless previously provided in accordance with paragraph (k)(1)(i)(B) of this section) and a copy of the executed deed and/or assumption agreement as required by VA office of jurisdiction. The notice shall be submitted to the Department with VA receipt for the funding fee provided for in § 36.4312(e)(3) of this part.

(B) If the application for assumption is disapproved, the holder shall notify the seller and the purchaser that the decision may be appealed to VA office of jurisdiction within 30 days. The holder shall make available to that VA office all items used by the holder in making the holder's decision in case the decision is appealed to VA. If the application remains disapproved after 60 days (to allow time for appeal to and review by VA), then the holder must refund $50 of any fee previously collected under the provisions of § 36.4312(d)(8) of this part. If the application is subsequently approved and the sale is completed, then the holder (or its authorized servicing agent) shall provide the notice described in paragraph (k)(1)(i)(A) of this section.

(C) In performing the requirements of paragraph (k)(1)(i)(A) or (k)(1)(i)(B) of this section, the holder must complete its examination of the creditworthiness of the prospective purchaser and advise the seller no later than 45 days after the date of receipt by the holder of a

complete application package for the approval of the assumption. The 45-day period may be extended by an interval not to exceed the time caused by delays in processing of the application that are documented as beyond the control of the holder, such as employers or depositories not responding to requests for verifications, which were timely forwarded, or follow-ups on those requests.

(ii) If neither the holder nor its authorized servicing agent is an automatic lender, the notice to VA shall include:

(A) Advice regarding whether the loan is current or in default;

(B) A copy of the purchase contract; and

(C) A complete credit package developed by the holder which the Secretary may use for determining the creditworthiness of the purchaser.

(D) The notice and documents required by this section must be submitted to VA office of jurisdiction no later than 35 days after the date of receipt by the holder of a complete application package for the approval of the assumption, subject to the same extensions as provided in paragraph (k)(1)(i) of this section. If the assumption is not automatically approved by the holder or its authorized agent, pursuant to the automatic authority provisions, $50 of any fee collected in accordance with § 36.4312(d)(8) of this part must be refunded. If the Department of Veterans Affairs does not approve the assumption, the holder will be notified and an additional $50 of any fee collected under § 36.4312(d)(8) must be refunded following the expiration of the 30-day appeal period set out in paragraph (k)(1)(i)(B) of this section. If such an appeal is made to the Department of Veterans Affairs, then the review will be conducted at the Department of Veterans Affairs office of jurisdiction by an individual who was not involved in the original disapproval decision. If the application for assumption is approved and the transfer of security is completed, then the holder (or its authorized servicing agent) shall provide the notice required in paragraph (k)(1)(i)(A) of this section.

(2) If the seller fails to notify the holder before disposing of property securing the loan, the holder shall notify the Secretary within 60 days after learning of the transfer. Such notice shall advise whether or not the holder intends to exercise its option to immediately accelerate the loan and whether or not an opportunity will be extended to the transferor and transferee to apply for retroactive approval of the assumption under the terms of this paragraph.

(Authority: 38 U.S.C. 3714)

(Approved by the Office of Management and Budget (OMB) under control number 2900–0516)

3. Section 36.4330 is revised to read as follows:

§ 36.4330 Maintenance of records.

(a) The holder shall maintain a record of the amounts of payments received on the obligation and disbursements chargeable thereto and the dates thereof. This record shall be maintained until the Secretary ceases to be liable as guarantor or insurer of the loan. For the purpose of any accounting with the Secretary or computation of a claim, any holder who fails to maintain such record shall be presumed to have received on the dates due all sums which by the terms of the contract are payable prior to date of claim for default, and the burden of going forward with evidence and of ultimate proof of the contrary shall be on such holder.

(b) The lender shall retain copies of all loan origination records on a VA guaranteed loan for at least two years from the date of loan closing. Loan origination records include the loan application, including any preliminary application, verifications of employment and deposit, all credit reports, including preliminary credit reports, copies of each sales contract and addendums, letters of explanation for adverse credit items, discrepancies and the like, direct references from creditors, correspondence with employers, appraisal and compliance inspection reports, reports on termite and other inspections of the property, builder change orders, and all closing papers and documents.

(Authority: 38 U.S.C. 501, 3703(c)(1))

(c) The Secretary has the right to inspect, examine, or audit, at a reasonable time and place, the records or accounts of a lender or holder pertaining to loans guaranteed or insured by the Secretary.

(Approved by OMB under control number 2900–0515)

§ 36.4335 [Amended]

4. In § 36.4335, paragraphs (a) and (b) are removed; and paragraphs (c), (d), (e), (f), (g), and (h) are redesignated as paragraphs (a), (b), (c), (d), (e), and (f), respectively. In addition, the authority citation after the newly redesignated paragraph (e) is removed.

5. In § 36.4348, paragraphs (d), (e), and (f) are redesignated as paragraphs (e), (f), and (g), respectively; paragraphs (b), (c), and newly redesignated (e) are revised and a new paragraph (d) is added to read as follows:

§ 36.4348 Authority to close loans on the automatic basis.

* * * * *

(b) Non-supervised lenders of the class described in 38 U.S.C. 3702(d)(3) must apply to the Secretary for authority to process loans on the automatic basis. Each of the minimum requirements listed below must be met by applicant lenders.

(1) *Experience.* The firm must meet one of the following experience requirements:

(i) The firm must have been actively engaged in originating VA loans for at least two years, have a VA Lender ID number and have originated and closed a minimum of ten VA loans within the past two years, excluding interest rate reduction refinance loans (IRRRLs), that have been properly documented and submitted in compliance with VA requirements and procedures; or

(ii) The firm must have a VA ID number and, if active for less than two years, have originated and closed at least 25 VA loans, excluding IRRRLs, that have been properly documented and submitted in compliance with VA requirements and procedures; or

(iii) Each principal officer of the firm, who is actively involved in managing origination functions, must have a minimum of two recent years' management experience in the origination of VA loans. This experience may be with the current or prior employer. For the purposes of this requirement, principal officer is defined as president or vice president; or

(iv) If the firm has been operating as an agent for a non-supervised automatic lender (sponsoring lender), the firm must submit documentation confirming that it has a VA Lender ID number and has originated a minimum of ten VA loans, excluding IRRRLs, over the past two years. If active for less than two years, the agent must have originated at least 25 VA loans. The required documentation is a copy of the VA letter approving the firm as an agent for the sponsoring lender; a copy of the corporate resolution, describing the functions the agent was to perform, submitted to VA by the sponsoring lender; and a letter from a senior officer of the sponsoring lender indicating the number of VA loans submitted by the agent each year and that the loans have been properly documented and submitted in compliance with VA requirements and procedures.

(2) *Underwriter.* A senior officer of the firm must nominate a full-time qualified employee(s) to act in the firm's behalf as

underwriter(s) to personally review and make underwriting decisions on VA loans to be closed on the automatic basis.

(i) Nominees for underwriter must have a minimum of three years experience in processing, pre-underwriting or underwriting mortgage loans. At least one recent year of this experience must have included making underwriting decisions on VA loans. (Recent is defined as within the past three years.) A VA nomination and current resume, outlining the underwriter's specific experience with VA loans, must be submitted for each underwriter nominee.

(ii) Alternatively, if an underwriter does not have the experience outlined above, the underwriter must submit documentation verifying that he or she is a current Accredited Residential Underwriter (ARU) as designated by the Mortgage Bankers Association (MBA).

(iii) If an underwriter is not located in the lender's corporate office, then a senior officer must certify that the underwriter reports to and is supervised by an individual who is not a branch manager or other person with production responsibilities.

(iv) All VA approved underwriters must attend a 1-day (eight-hour) training course on underwriter responsibilities, VA underwriting requirements, and VA administrative requirements, including the usage of VA forms, within 90 days of approval (if VA is unable to make such training available within 90 days, the underwriter must attend the first available training). Immediately upon approval of a VA underwriter, the office of jurisdiction will contact the underwriter to schedule this training at a VA regional office (VARO) of the underwriter's choice. This training is required for all newly approved VA underwriters, including those who qualified for approval based on an ARU designation, as well as VA approved underwriters who have not underwritten VA guaranteed loans in the past 24 months. Furthermore, and at the discretion of any VARO in whose jurisdiction the lender is originating VA loans, VA approved underwriters who consistently approve loans that do not meet VA credit standards may be required to retake this training.

(3) *Underwriter Certification.* The lender must certify that all underwriting decisions as to whether to accept or reject a VA loan will be made by a VA approved underwriter. In addition each VA approved underwriter will be required to certify on each VA loan that he or she approves that the loan has been personally reviewed and approved by the underwriter.

(4) *Financial Requirements.* Each application must include the most recent annual financial statement audited and certified by a certified public accountant (CPA). If the date of the annual financial statement precedes that of the application by more than six months, the lender must also attach a copy of its latest internal financial statement. Lenders are required to meet either the working capital or the minimum net worth financial requirement as defined below.

(i) *Working Capital.* A minimum of $50,000 in working capital must be demonstrated.

(A) Working capital is a measure of a firm's liquidity, or the ability to pay its short-term debts. Working capital is defined as the excess of current assets over current liabilities. Current assets are defined as cash or other liquid assets convertible into cash within a 1-year period. Current liabilities are defined as debts that must be paid within the same 1-year time frame.

(B) The VA determination of whether a lender has the required minimum working capital is based on the balance sheet of the lender's annual audited financial statement. Therefore, either the balance sheet must be classified to distinguish between current and fixed assets and between current and long-term liabilities or the information must be provided in a footnote to the statement.

(ii) *Net Worth.* Lenders must show evidence of a minimum of $250,000 in adjusted net worth. Net worth is a measure of a firm's solvency, or its ability to exist in the long run, quantified by the payment of long-term debts. Net worth as defined by generally accepted accounting principles (GAAP) is total assets minus total liabilities. Adjusted net worth for VA purposes is the same as the adjusted net worth required by the Department of Housing and Urban Development (HUD), net worth less certain unacceptable assets including:

(A) Any assets of the lender pledged to secure obligations of another person or entity.

(B) Any asset due from either officers or stockholders of the lender or related entities, in which the lender's officers or stockholders have a personal interest, unrelated to their position as an officer or stockholder.

(C) Any investment in related entities in which the lender's officers or stockholders have a personal interest unrelated to their position as an officer or stockholder.

(D) That portion of an investment in joint ventures, subsidiaries, affiliates and/or other related entities which is carried at a value greater than equity, as adjusted. ''Equity as adjusted'' means the book value of the related entity reduced by the amount of unacceptable assets carried by the related entity.

(E) All intangibles, such as goodwill, covenants not to compete, franchisee fees, organization costs, etc., except unamortized servicing costs carried at a value established by an arm's-length transaction and presented in accordance with generally accepted accounting principles.

(F) That portion of an asset not readily marketable and for which appraised values are very subjective, carried at a value in excess of a substantially discounted appraised value. Assets such as antiques, art work and gemstones are subject to this provision and should be carried at the lower of cost or market.

(G) Any asset that is principally used for the personal enjoyment of an officer or stockholder and not for normal business purposes. Adjusted net worth must be calculated by a CPA using an audited and certified balance sheet from the lender's latest financial statements. ''Personal interest'' as used in this section indicates a relationship between the lender and a person or entity in which that specified person (e.g., spouse, parent, grandparent, child, brother, sister, aunt, uncle or in-law) has a financial interest in or is employed in a management position by the lender.

(5) *Lines of credit.* The lender applicant must have one or more lines of credit aggregating at least $1 million. The identity of the source(s) of warehouse lines of credit must be submitted to VA and the applicant must agree that VA may contact the named source(s) for the purpose of verifying the information. A line of credit must be unrestricted, that is, funds are available upon demand to close loans and are not dependent on prior investor approval. A letter from the company(ies) verifying the unrestricted line(s) of credit must be submitted with the application for automatic authority.

(6) *Permanent investors.* If the lender customarily sells loans it originates, it must have a minimum of two permanent investors. The names, addresses and telephone numbers of the permanent investors must be submitted with the application.

(7) *Liaison.* The lender applicant must designate an employee and an alternate to be the primary liaison with VA. The liaison officers should be thoroughly familiar with the lender's entire operation and be able to respond to any query from VA concerning a particular VA loan or the firm's automatic authority.

(8) *Other considerations.* All applications will also be reviewed in light of the following considerations:

(i) There must be no factors which indicate that the firm would not exercise the care and diligence required of a lender originating and closing VA loans on the automatic basis; and

(ii) In the event the firm, any member of the board of directors, or any principal officer has ever been debarred or suspended by any Federal agency or department, or any of its directors or officers has been a director or officer of any other lender or corporation that was so debarred or suspended, or if the lender applicant ever had a servicing contract with an investor terminated for cause, a statement of the facts must be submitted with the application for automatic authority.

(9) *Quality Control System.* In order to be approved as a non-supervised lender for automatic-processing authority, the lender must implement a written quality control system which ensures compliance with VA requirements. The lender must agree to furnish findings under its systems to VA on demand. The elements of the quality control system must include the following:

(i) *Underwriting policies.* Each office of the lender shall maintain copies of VA credit standards and all available VA underwriting guidelines.

(ii) *Corrective measures.* The system should ensure that effective corrective measures are taken promptly when deficiencies in loan originations are identified by either the lender or VA. Any cases involving major discrepancies which are discovered under the system must be reported to VA.

(iii) *System integrity.* The quality control system should be independent of the mortgage loan production function.

(iv) *Scope.* The review of underwriting decisions and certifications must include compliance with VA underwriting requirements, sufficiency of documentation and soundness of underwriting judgments.

(v) *Appraisal quality.* For lenders approved for the Lender Appraisal Processing Program (LAPP), the quality control system must specifically contain provisions concerning the adequacy and quality of real property appraisals. While the lender's quality control personnel need not be appraisers, they should have basic familiarity with appraisal theory and techniques so that they can select appropriate cases for review if discretionary sampling is used, and prescribe appropriate corrective action(s) in the appraisal review process when discrepancies or problems are identified. Copies of the lender's quality control plan or self-policing system evidencing appraisal related matters must be provided to the VA office of jurisdiction.

(10) *Courtesy closing.* The lender-applicant must certify to VA that it will not close loans on an automatic basis as a courtesy or accommodation for other mortgage lenders, whether or not such lenders are themselves approved to close on an automatic basis without the express approval of VA. However, a lender with automatic authority may close loans for which information and supporting credit data have been developed on its behalf by a duly authorized agent.

(11) *Probation.* Lenders meeting these requirements will be approved to close VA loans on an automatic basis for a 1-year period. At the end of this period, the lender's quality of underwriting, the completeness of loan submissions, compliance with VA requirements and procedures, and the delinquency and foreclosure rates will be reviewed.

(12) *Extensions of Automatic Authority.* When a lender wants its automatic authority extended to another State, the request must be submitted, with the fee designated in paragraph (e)(5) of this section, to the VA regional office having jurisdiction in the State where the lender's corporate office is located.

(i) When a lender wants its automatic authority to include loans involving a real estate brokerage and/or a residential builder or developer in which it has a financial interest, owns, is owned by, or with which it is affiliated, the following documentation must be submitted:

(A) A corporate resolution from the lender and each affiliate indicating that they are separate entities operating independently of each other. The lender's corporate resolution must indicate that it will not give more favorable underwriting consideration to its affiliate's loans, and the affiliate's corporate resolution must indicate that it will not seek to influence the lender to give their loans more favorable underwriting consideration.

(B) Letters from permanent investors indicating the percentage of all VA loans based on the affiliate's production originated by the lender over a 1-year period that are past due 90 days or more. This delinquency ratio must be no higher than the national average for the same period for all mortgage loans.

(ii) When a lender wants its automatic authority extended to additional States, the lender must indicate how it plans to originate VA loans in those States. Unless a lender proposes a telemarketing plan, VA requires that a lender have a presence in the State, that is, a branch office, an agent relationship, or that it is a reasonable distance from one of its offices in an adjacent State, i.e., 50 miles. If the request is based on an agency relationship, the documentation outlined in paragraph (b)(13) of this section must be submitted with the request for extension.

(13) *Use of Agents.* A lender using an agent to perform a portion of the work involved in originating and closing a VA guaranteed loan on an automatic basis must take full responsibility by certification for all acts, errors and omissions of the agent or other entity and its employees for the work performed. Any such acts, errors or omissions will be treated as those of the lender and appropriate sanctions may be imposed against the lender and its agent. Lenders requesting an agent must submit the following documentation to the VA regional office having jurisdiction for the lender's corporate office:

(i) A corporate resolution certifying that the lender takes full responsibility for all acts, errors and omissions of the agent that it is requesting. The corporate resolution must also identify the agent's name and address, the geographic area in which the agent will be originating and/or closing VA loans; whether the agent is authorized to issue interest rate lock-in agreements on behalf of the lender; and outline the functions the agent is to perform. Alternatively, the lender may submit a blanket corporate resolution which sets forth the functions of any and all agents and identifies individual agents by name, address, and geographic area in separate letters which refer to the blanket resolution.

(ii) When the VA regional office having jurisdiction for the lender's corporate office acknowledges receipt of the lender's request in writing, the agent is thereby authorized to originate VA loans on the lender's behalf.

(Authority: 38 U.S.C. 501(a), 3702(d))

(c) A lender approved to close loans on the automatic basis who subsequently fails to meet the requirements of this section must report to VA the circumstances surrounding the deficiency and the remedial action to be taken to cure it. Failure to advise VA in a timely manner could result in a lender's loss of its approval to close VA loans on the automatic basis.

(Authority: 38 U.S.C. 501(a), 3702(d))

(d) Annual recertification. Non-supervised lenders of the class described in 38 U.S.C. 3702(d)(3) must be recertified annually for authority to process loans on the automatic basis.

The following minimum annual recertification requirements must be met by each lender approved for automatic authority:

(1) *Financial requirements.* A lender must submit, within 120 days following the end of its fiscal year, an audited and certified financial statement with a classified balance sheet or a separate footnote for adjusted net worth to VA Central Office (264) for review. The same minimum financial requirements described in § 36.4348(b)(5) must be maintained and verified annually in order to be recertified for automatic authority.

(2) *Processing annual lender data.* The VA regional office having jurisdiction for the lender's corporate office will mail an annual notice to the lender requesting current information on the lender's personnel and operation. The lender is required to complete the form and return it with the appropriate annual renewal fees to the VA regional office.

(Authority: 38 U.S.C. 501(a), 3702(d))

(e) Lender fees. To participate as a VA automatic lender, non-supervised lenders of the class described in 38 U.S.C. 3702(d)(3) shall pay fees as follows:

(1) $500 for new applications;

(2) $200 for reinstatement of lapsed or terminated automatic authority;

(3) $100 for each underwriter approval;

(4) $100 for each agent approval;

(5) A minimum fee of $100 for any other VA administrative action pertaining to a lender's status as an automatic lender;

(6) $200 annually for certification of home offices; and

(7) $100 annually for each agent renewal.

* * * * *

5. In § 36.4349, paragraph (a)(2) is revised to read as follows:

§ 36.4349 Withdrawal of authority to close loans on the automatic basis.

(a)(1) * * *

(2) Automatic processing authority may be withdrawn at any time for failure to meet basic qualifying and/or annual recertification criteria.

(i) *Non-supervised lenders.* (A) Automatic authority may be withdrawn for lack of a VA approved underwriter, failure to maintain $50,000 in working capital or $250,000 in adjusted net worth, or failure to file required financial information.

(B) During the 1-year probationary period for newly approved lenders, automatic authority may be temporarily or permanently withdrawn for any of the reasons set forth in this section regardless of whether deficiencies previously have been brought to the attention of the probationary lender.

(ii) *Supervised lenders.* Automatic authority will be withdrawn for loss of status as an entity subject to examination and supervision by a Federal or State supervisory agency as required by 38 U.S.C. 3702(d).

(Authority: 38 U.S.C. 501(a), 3702(d))

* * * * *

[FR Doc. 97–18496 Filed 7–14–97; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE030–1008b; FRL–5856–2]

Approval and Promulgation of Air Quality Implementation Plans; State of Delaware, General Conformity Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Delaware for the purpose of establishing the requirements for determining conformity of general federal actions to applicable air quality implementation plans (General Conformity). In the Final Rules section of this **Federal Register**, EPA is approving Delaware's SIP revision as a direct final rule without prior proposal because the Agency views it as noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by August 14, 1997.

ADDRESSES: Comments may be mailed to David L. Arnold, Chief, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the EPA office listed above; and the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 566–2182, at the EPA Region III address above.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title (Delaware General Conformity Rule) which is located in the Rules and Regulations section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 30, 1997.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 97–18565 Filed 7–14–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MS–21–1–9718b; MS–22–1–9719b: FRL–5857–4]

Approval and Promulgation of Implementation Plans; Mississippi: Approval of Revisions to the Mississippi State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On September 30, 1996, the Mississippi Department of Environmental Quality (MDEQ) submitted revisions to the Mississippi State implementation plan (SIP) incorporating changes to Regulation APC–S–1, ''Air Emission Regulations for the Prevention, Abatement and Control of Air Contaminants,'' and to Regulation APC–S–5, ''Regulations for the Prevention of Significant Deterioration of Air Quality.'' Public hearings for these revisions were held on August 20, 1996, and they became state effective September 21, 1996. EPA is approving these amendments because these revisions are consistent with the requirements of the Clean Air Act and EPA guidance.

In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial

revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by August 14, 1997.

ADDRESSES: Written comments should be addressed to: Scott M. Martin, Regulatory Planning Section, Air Planning Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303–3104.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, Atlanta, Georgia 30303–3104

Mississippi Department of Environmental Quality, Bureau of Pollution Control, Air Quality Division, P.O. Box 10385, Jackson, Mississippi 39289–0385

FOR FURTHER INFORMATION CONTACT: Mr. Scott M. Martin, Regulatory Planning Section, Air Planning Branch, Air Pesticides and Toxics Management Division, Region 4 Environmental Protection Agency, 61 Forsyth Street, Atlanta, Georgia 30303. The telephone number is (404) 562–9036.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: June 11, 1997.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 97–18567 Filed 7–14–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPPTS–42187I; FRL–5732–2]

RIN 2070–AC76

Proposed Test Rule for Hazardous Air Pollutants; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is extending the public comment period from August 15, 1997, to September 30, 1997, on the proposed rule published in the **Federal Register** of June 26, 1996 (61 FR 33178)(FRL–4869–1) requiring the testing of 21 hazardous air pollutants (HAPs) for certain health effects. This extension is needed to allow the Agency more time to respond to the proposals for pharmacokinetics (PK) studies and to finalize the test guidelines to be referenced in the proposed HAPs test rule.

DATES: Written comments on the proposed rule must be received by EPA on or before September 30, 1997.

ADDRESSES: Submit three copies of written comments on the proposed HAPs test rule, identified by docket control number (OPPTS–42187A; FRL–4869–1) to: Environmental Protection Agency, Office of Pollution Prevention and Toxics (OPPT), Document Control Office (7407), Rm. G–099, 401 M St., SW., Washington, DC 20460.

Comments and data may also be submitted electronically by following the instructions under Unit II. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Rm. ET–543B, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone (202) 554–1404; TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

For technical information contact: Richard W. Leukroth, Jr., Project Manager, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–0321; fax: (202) 260–8850; e-mail: leukroth.rich@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background and General Information

On June 26, 1996 (61 FR 33178), EPA proposed health effects testing, under section 4(a) of the Toxic Substances Control Act (TSCA), of the following hazardous air pollutants (HAPs): 1,1'-biphenyl, carbonyl sulfide, chlorine, chlorobenzene, chloroprene, cresols [3 isomers: ortho-, meta-, para-], diethanolamine, ethylbenzene, ethylene dichloride, ethylene glycol, hydrochloric acid, hydrogen fluoride, maleic anhydride, methyl isobutyl ketone, methyl methacrylate, naphthalene, phenol, phthalic anhydride, 1,2,4-trichlorobenzene, 1,1,2-trichloroethane, and vinylidene chloride. EPA would use the data generated under the rule to implement several provisions of section 112 of the Clean Air Act and to meet other EPA data needs and those of other Federal agencies. In the HAPs proposal, EPA invited the submission of proposals for pharmacokinetics (PK) studies for the HAPs chemicals, which could provide the basis for negotiation of enforceable consent agreements (ECAs). These PK studies would be used to conduct route-to-route extrapolation of toxicity data from routes other than inhalation to predict the effects of inhalation exposure, as an alternative to testing proposed under the HAPs rule.

On October 18, 1996, EPA extended the public comment period on the proposed rule from December 23, 1996, to January 31, 1997 (61 FR 54383) (FRL–5571–3). This extension was for the purpose of allowing more time for the submission of PK proposals and adequate time for comments on the proposed rule to be submitted after the Agency had responded to the proposals. EPA has received eight PK proposals (for diethanolamine, ethylene dichloride, ethylene glycol, hydrogen fluoride, maleic anhydride, phthalic anhydride, 1,2,4-trichlorobenzene, and 1,1,2-trichloroethane). In addition, the Agency has received a proposal to develop a non-PK-related ECA for methyl isobutyl ketone. EPA has agreed to review the contents of this proposal and to provide comments on its technical merit and relevance to the proposed HAPs testing requirements.

Due to the complexity of the issues raised by the PK proposals and other issues related to test guidelines, EPA successively extended the public comment period (61 FR 67516, December 23, 1996 (FRL–5580–6); 62 FR 9142, February 28, 1997 (FRL–5592–1); 62 FR 14850, March 28, 1997 (FRL–5598–4); 62 FR 29318, May 30, 1997 (FRL–5722–1)) to allow the Agency

more time to respond to the PK proposals and to finalize the test guidelines to be referenced in the proposed HAPs test rule.

The proposed HAPs rule published on June 26, 1996 (61 FR 33178) provides that testing would be conducted using the harmonized guidelines developed by the Office of Prevention, Pesticides and Toxic Substances (OPPTS) that were published as public drafts on June 20, 1996 (61 FR 31522)(FRL–5367–7). The process of developing these harmonized guidelines is proceeding at the same time as the development of the HAPs test rule. For the purposes of the proposed HAPs test rule and testing under TSCA section 4(a), the Office of Pollution Prevention and Toxics (OPPT) intends to publish final TSCA test guidelines developed from the OPPTS harmonized guidelines. The Agency will solicit public comment on the applicability of the test guidelines as they are cross-referenced in the HAPs rule and will follow this practice with respect to all future TSCA section 4(a) test rules. These guidelines will be published in the **Federal Register** as soon as possible but in any event no later than August 29, 1997.

EPA has developed preliminary technical analyses of three PK proposals (hydrogen fluoride, 1,1,2-trichlorethane, and ethylene dichloride). Copies of these preliminary technical analyses have been sent to the submitters and placed in the public record for this action (OPPTS–42187B, FRL–4869–1). The Agency intends to provide comments to the submitters of the other PK proposals as soon as possible but in any event prior to the close of the comment period. EPA also recognizes that submitters may need to revise their proposals based on EPA comments. EPA finds that the public should have adequate opportunity to comment on the development of ECAs based on the PK proposals. If the Agency decides to proceed with the ECA process, EPA will announce, in the **Federal Register**, one or more public meetings to discuss the proposals and to negotiate ECAs based on the proposals. In that document, the Agency will solicit persons interested in participating in or monitoring negotiations for the development of ECAs based on the revised PK testing proposals. The procedures for ECA negotiations are described at 40 CFR 790.22(b).

The Agency emphasizes that the submission of proposals to develop ECAs to conduct alternative testing using PK is no guarantee that EPA and the submitters will, in fact, conclude such agreements. Therefore, EPA urges all submitters of PK proposals to comment on the HAPs proposed rule as an activity separate from the PK proposal/ECA process.

II. Public Record

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number [OPPTS–42187A; FRL–4869–1] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number [OPPTS–42187A; FRL–4869–1]. Electronic comments on the proposed rule may be filed online at many Federal Depository Libraries.

List of Subjects in 40 CFR Part 799

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: July 9, 1997.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Accordingly, EPA is extending the comment period on the proposed rule to September 30, 1997.

[FR Doc.97–18563 Filed: 7–14–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7223]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Frederick H. Sharrocks, Jr., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–2796.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Executive Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed 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.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 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.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Alabama	Chickasaw (City) Mobile County.	Chickasaw Creek	Downstream side of U.S. Route 43	*10	*11
			Upstream side of I–65	*10	*12
Maps available for inspection at the Chickasaw City Hall, 224 North Craft Highway, Chickasaw, Alabama.					
Send comments to The Honorable J.C. Davis, Jr., Mayor of the City of Chickasaw, P.O. Box 11307, Chickasaw, Alabama 36671.					
Alabama	Dauphin Island (Town) Mobile County.	Gulf of Mexico	Approximately 570 feet due south of intersection of Audubon and Admiral Streets.	None	*9
			Approximately 660 feet due south of intersection of Audubon and Admiral Streets.	*9	*12
			Approximately 700 feet due south of intersection of Audubon and Admiral Streets.	*11	*12
Maps available for inspection at the Dauphin Island Town Hall, 1011 Bienville Boulevard, Dauphin Island, Alabama.					
Send comments to The Honorable William C. Patronas, Mayor of the Town of Dauphin Island, P.O. Box 610, Dauphin Island, Alabama 36528.					
Alabama	Mobile (City) Mobile County.	Bolton Branch East	Upstream side of Halls Mill Road	*10	*11
			Approximately 50 feet upstream of Grayson Drive.	None	*27
		Bolton Branch West	At confluence with Montlimer Creek	*33	*35
			Approximately 130 feet upstream of University Boulevard.	None	*119
		Campground Branch	Approximately 120 feet downstream of Girby Road.	None	*36
			Approximately 1.1 miles upstream of Girby Road.	None	*96
		Eightmile Creek	At the upstream side of Bear Fork Road	*40	*43
			Approximately 4,450 feet upstream of Bear Fork Road.	*42	*43
		East Eslava Creek	Approximately 400 feet downstream of Government Boulevard (U.S. Highway 90).	*10	*11
			Approximately 0.64 mille upstream of Airport Boulevard.	None	*26
		West Eslava Creek	Approximately 75 feet upstream of confluence with Montlimar Creek.	*39	*38
			Approximately 120 feet upstream of Soost Court.	None	*105
		Halls Mill Creek	Approximately 1,700 feet upstream of Interstate 10.	*10	*11
			Just downstream of Sollie Road	*43	*41
		Little Stickney	At confluence with Threemile Creek	*14	*12
			At Tuscaloosa Street	None	*26

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Milkhouse Creek	At the confluence with Halls Mill Creek	*27	*31
			Approximately 480 feet downstream of Cody Road.	*106	*105
		Milkhouse Creek Tributary No. 1.	At the confluence with Milkhouse Creek	*82	*83
			Approximately 0.7 mile upstream of the confluence of Milkhouse Creek Tributary No. 2.	None	*153
		Milkhouse Creek Tributary No. 2.	At confluence with Milkhouse Creek Tributary No. 1.	None	*111
			Approximately 400 feet upstream of Wall Street.	None	*135
		Montlimar Creek	Upstream side of Azalea Road	*10	*11
			Approximately 120 feet upstream of College Road South.	None	*48
		Moore Creek	Approximately 25 feet upstream of confluence with Montlimar Creek.	10	*11
			At confluence of Spencer Branch	*38	*42
		Saltwater Branch	At confluence with Eslava Creek East	None	*10
			Approximately 75 feet upstream of Cardinal Drive.	None	*24
		Second Creek	At confluence with Milkhouse Crrek	*30	*31
			At confluence of Second Creek Tributary	*64	*66
		Spencer Branch	At confluence with Moore Creek	*38	*42
			Approximately 75 feet upstream of Wildwood Place.	None	*123
		Spring Creek	Approximately 550 feet downstream of Halls Mill Road.	*12	*11
			Approximately 885 feet upstream of Woodland Road.	None	*140
		Spring Creek Tributary	At the confluence with Spring Creek	None	*107
			Approximately 75 feet upstream of Woodland Road.	None	*130
		Tennessee Street Drainage.	At Baker Street	None	*12
			Approximately 750 feet upstream of Owens Street.	None	*30
		Threemile Creek	Approximately 600 feet upstream of Saint Stephens Road.	*13	*12
			Approximately 1,250 feet upstream of Orangeburg Drive south.	None	*186
		Threemile Creek Tributary	At confluence with Threemile Creek	*91	*90
			Approximately 1,040 feet upstream of Overlook Road.	None	*148
		Toulmins Spring Branch	Approximately 100 feet downstream of Craft Highway.	*12	*13
			At downstream side of West Prichard Avenue.	None	*24
		Toulmins Spring Branch Tributary No. 2.	At confluence with Toulmins Spring Branch.	None	*19
			Approximately 125 feet upstream of O'Connor Street.	None	*29
		Twelvemile Creek	At Arnold Road	None	*161
			Approximately 65 feet upstream of Dickens Ferry Road.	None	*199
		Woodcock Branch	Approximately 900 feet upstream of confluence with East Eslava Creek.	*10	*11
			Approximately 480 feet upstream of Brierwood Drive.	None	*24
		Woodcock Branch East	At confluence with Woodcock Branch	None	*15
			Approximately 290 feet upstream of Westwood Street.	None	*19

Maps available for inspection at the Mobile City Hall, 205 Government Street, 3rd Floor, Mobile, Alabama.

Send comments to The Honorable Michael C. Dow, Mayor of the City of Mobile, P.O. Box 1827, Mobile, Alabama 36633–1827.

Alabama	Mobile County (Unincorporated Areas).	Chickasaw Creek	Approximately 1,440 feet upstream of Old Saint Stevens Road.	*36	*35
			Approximately 1.04 miles downstream of confluence of Coon Branch.	*41	*42

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Clear Creek	Approximately 650 feet downstream of the Illinois Central Gulf Railroad.	*106	*107
			Approximately 170 feet downstream of the Illinois Central Gulf Railroad.	*110	*111
		Crooked Creek	Approximately 2.75 miles downstream of Wulff Road (County Highway 68).	*118	*119
			Approximately 0.8 mile upstream of Wulff Road (County Highway 68).	*175	*176
		Halls Mill Creek	Approximately 1,800 feet upstream of Interstate Route 10.	*10	*11
			Approximately 1,110 feet upstream of Leroy Stevens Road.	*81	*84
		Long Branch	On the west bank, approximately 1,200 feet upstream of the confluence with Big Creek Lake.	None	*113
			On the west bank, approximately 2,200 feet upstream of the confluence with Big Creek Lake.	None	*113
		Milkhouse Creek	At Cody Road	*109	*110
			Approximately 100 feet downstream of Airport Boulevard.	*163	*162
		Miller Creek	Approximately 0.7 mile downstream of Johnson Road.	*95	*94
			Approximately 0.2 mile upstream of Snow Road.	*139	*140
		Miller Creek Tributary	At confluence with Miller Creek	None	*119
			Approximately 140 feet upstream of Snow Road.	None	*157
		Muddy Creek	Approximately 1.9 miles downstream of Laurendine Road.	*9	*8
			Approximately 1,050 feet upstream of Swedetown Road.	*63	*64
		Rabbit Creek	Approximately 820 feet upstream of U.S. Highway 90.	*43	*42
			Approximately 0.5 mile upstream of Old Pascagoula Road.	*82	*81
		Second Creek	Upstream side of Solle Road	*45	*44
			Approximately 650 feet downstream of the confluence of Second Creek Tributary.	*62	*63
		Second Creek Tributary	Approximately 110 feet upstream of confluence with Second Creek.	*66	*67
			Downstream side of Schillinger Road	*97	*96
Maps available for inspection at the Mobile County Public Works Department, Mobile County Government Building, 205 Government Street, Mobile, Alabama.					
Send comments to Mr. Douglas C. Modling, Mobile County Administrator, 205 Government Street, 8th Floor, Mobile, Alabama 36644.					
Alabama	Mount Vernon (Town) Mobile County.	Cedar Creek	Approximately 3,000 feet downstream of U.S. Route 43.	None	*17
			Approximately 250 feet downstream of U.S. Route 43.	None	*17
Maps available for inspection at the Mount Vernon Town Hall, 1565 Boyles Avenue, Mount Vernon Alabama.					
Send comments to The Honorable Cleon Bolden, Mayor of the Town of Mount Vernon, P.O. Box 309, Mount Vernon, Alabama 36560.					
Alabama	Prichard (City) Mobile County.	Chickasaw Creek	At upstream side of Interstate Route 65	*14	*12
			Approximately 1,450 feet upstream of Old Saint Stevens Road.	*36	*35
		Eightmile Creek	At upstream side of Bear Fork Road	*41	*40
			Approximately 100 feet upstream of Bear Fork Road.	*41	*40
		Magee Creek	At confluence with Chickasaw Creek	*36	*35
			Approximately 1,160 feet upstream of Illinois Central Gulf Railroad.	*37	*36
		Toulmins Spring Branch	Approximately 760 feet downstream of Craft Highway.	*11	*12
			Approximately 400 feet downstream of Chastang Avenue.	*25	*24

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Prichard City Hall, 216 East Prichard Avenue, Prichard, Alabama.					
Send comments to the Honorable Jesse Norwood, Mayor of the City of Prichard, P.O. Box 10427, Prichard, Alabama 36610.					
Alabama	Saraland (City) Mobile County.	Chickasaw Creek	Downstream corporate limits	*10	*11
			Upstream corporate limits	*10	*11
Maps available for inspection at the Saraland City Hall, 716 Highway 43, Saraland, Alabama.					
Send comments to The Honorable Ken Williams, Mayor of the City of Saraland, 716 Highway 43, Saraland, Alabama 36571.					
Georgia	Alpharetta (City) Fulton County.	Foe Killer Creek	Confluence with Big Creek	*962	*965
			Approximately 2,600 feet upstream of Mayfield Road.	*1,084	*1,085
		Tributary No. 5 to Big Creek.	Confluence with Big Creek	*983	*984
			Approximately 2,500 feet upstream of confluence with Bid Creek.	*983	*984
		Tributary No. 2 to Big Creek.	Confluence with Bid Creek	*966	*969
			Approximately 1,600 feet upstream of Morrison Parkway.	None	*1,035
		Long Indian Creek	At its confluence with Big Creek	*972	*973
			Approximately 1,400 feet upstream of confluence with Big Creek.	*972	*973
		Camp Creek No. 1	Confluence with Big Creek	*992	*993
			Approximately 150 feet upstream of Windward Parkway.	*993	*994
		Big Creek	Approximately 6,000 feet upstream of Old Holcomb Bridge Road.	*960	*964
			At McGinnis Ferry Road	*998	*997
		Tributary No. 3 to Big Creek.	At confluence with Big Creek	*976	*974
			At Norcross Street	None	*1,090
		Caney Creek	At confuence with Big Creek	*992	*994
			Approximately 0.19 mile upstream of Lake Windward Drive.	*993	*994
Maps available for inspection at the City Engineer's Office, 11875 Haynes Bridge Road, Alpharetta, Georgia.					
Send comments to Mr. Michael Wilkes, Alpharetta City Administrator, City Hall, 2 South Main Street, Alpharetta, Georgia 30201.					
Georgia	Atlanta (City) Fulton County.	Caldwell Branch	Approximately 0.37 mile downstream of Melvin Road.	*824	*826
			Approximately 0.32 mile downstream of Melvin Road.	*825	*826
		South Utoy Creek	Approximately 800 feet upstream of Interstate Route 285.	None	*817
			Approximately 0.4 mile upstream of Interstate Route 285.	None	*821
		Long Island Creek	At its confluence with Chattahoochee River.	None	*778
			Approximately 750 feet upstream of the confluence with Chattahoochee River.	None	*778
		North Fork Camp Creek	At confluence with South Fork Camp Creek.	*818	*819
			Approximately 100 feet upstream of the confluence with South Fork Camp Creek.	*818	*819
Maps available for inspection at the Atlanta City Hall, Bureau of Planning, 55 Trinity Avenue, S.W., Suite 3350, Atlanta, Georgia.					
Send comments to The Honorable William Campbell, Mayor of the City of Atlanta, 55 Trinity Avenue, S.W., Atlanta, Georgia 30335.					
Georgia	College Park (City) Fulton County.	Fur Creek	Approximately 400 feet upstream of Pelot Road at the downstream corporate limits.	None	*879
			Approximately 600 feet upstream of the corporate limits.	None	*879
		Sun Valley Creek	Approximately 120 feet downstream of the corporate limits.	None	*918
			Approximately 50 feet upstream of Janice Drive.	None	*934
		Unnamed Tributary to Flint River West Fork.	At confluence with Flint River West Fork (Approximately 400 feet downstream of Myrtle Street).	None	*986
			Approximately 100 feet upstream of Jackson Street.	None	*1001

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the City Engineer's Office, 3667 Main Street, College Park, Georgia.					
Send comments to The Honorable Jack Longino, Mayor of the City of College Park, City Hall, 3667 Main Street, College Park, Georgia 30337.					
Georgia	East Point (City) Fulton County.	Smith Creek	Approximately 600 feet upstream of confluence with north Fork Camp Creek.	None	*828
			Approximately 0.22 mile upstream of confluence with North Fork Camp Creek.	*827	*828
		Headland Branch	At confluence with South Utoy Creek	*858	*855
			Approximately 600 feet upstream of the confluence with South Utoy Creek.	*858	*857
		Farley Branch	At confluence with Headland Branch	*858	*855
			Approximately 400 feet upstream of the confluence with Headland Branch.	*858	*857
		North Fork Camp Creek	At downstream corporate limit	*852	*856
			Approximately 500 feet downstream of Dogwood Drive.	*860	*861
Maps available for inspection at the City Engineer's Office, 2777 East Point Street, East Point, Georgia.					
Send comments to The Honorable Patsy Jo Hilliard, Mayor of the City of East Point, 2777 East Point Street, East Point, Georgia 30344.					
Georgia	Fairburn (City) Fulton County.	Whitewater Creek	Approximately 0.4 mile upstream of Fayetteville Road.	None	*921
			Approximately 0.5 mile upstream of Fayetteville Road.	None	*925
		Line Creek	Approximately 1.3 miles downstream of Rivertown Road.	*906	*909
			Approximately 1.2 miles downstream of Rivertown Road.	*910	*911
Maps available for inspection at the Fairburn City Administrator's Office, Fairburn City Hall, 56 Malone Street, Fairburn, Georgia.					
Send comments to The Honorable Betty Hannah, Mayor of the City of Fairburn, P.O. Box 145, Fairburn, Georgia 30213.					
Georgia	Fulton County (Unincorporated Areas).	Deep Creek	Approximately 600 feet upstream of Cascade Palmetto Highway.	*749	*750
			Approximately 0.5 mile upstream of Koweta Road.	*829	*833
		Camp Creek	Approximately 350 feet downstream of Cascade Palmetto Highway.	*749	*750
			Approximately 750 feet upstream of Welcome All Road.	*817	*819
		South Fork Camp Creek	Approximately 750 feet upstream of Welcome All Road.	*817	*819
			Approximately 0.93 mile upstream of Welcome All Road.	*826	*828
		Line Creek	At confluence with Deep Creek	*754	*759
			Approximately 0.38 mile upstream of White Mill Road.	*906	*909
		Little River	Downstream county boundary	None	*889
			Approximately 1,700 feet upstream of county boundary.	None	*891
		Rocky Creek	Approximately 1,650 feet upstream of Mountain Park Road.	None	*915
			Approximately 2,800 feet upstream of Mountain Park Road.	None	*919
		Foe Killer Creek	Approximately 2,000 feet upstream of Alpharetta Road.	*1,017	*1,019
			Approximately 1,950 feet upstream of Mayfield Road.	None	*1,078
		Big Creek	Approximately 2,750 feet upstream of Mansell Road.	*967	*969
			Approximately 2,000 feet upstream of Webb Road Bridge.	*990	*991
		Johns Creek	Approximately 2,050 feet upstream of confluence with Chattahoochee River.	*893	*892
			At McGinnis Ferry Road	*1,023	*1,024
		South Fork Marsh Creek	At confluence with Marsh Creek	*916	*920
			Approximately 75 feet upstream of confluence with Marsh Creek.	*919	*920

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Marsh Creek	Approximately 550 feet downstream of Riverside Drive.	*812	*811
			At Turner McDonald Parkway (Route 400).	*950	*947
		Tributary to Camp Creek	At its confluence with Camp Creek	*777	*781
			Approximately 0.5 mile upstream of Erin Road.	None	*830
		Red Mill Creek	At its confluence with Deep Creek	*789	*793
			Approximately 0.5 mile upstream of South Fulton Parkway.	*804	*805
		Long Island Creek	Approximately 1,400 feet upstream of confluence with Chattahoochee River.	*778	*779
			Approximately 1,150 feet upstream of Kingsport Drive.	*900	*898
		Cowart Lake Tributary	At confluence of Camp Creek	*795	*794
			Approximately 1.2 miles upstream of Cowart Lake Dam at the upstream corporate limits.	None	*830
		North Fork Camp Creek	At confluence with Camp Creek	None	*819
			Approximately 0.1 mile upstream of confluence with Camp Creek.	None	*822
		Wolf Creek	At confluence with Camp Creek	*787	*789
			Approximately 1,300 feet upstream of confluence with Camp Creek.	*788	*789
		Niskey Creek	At confluence with Utoy Creek	None	*776
			Approximately 1,750 feet upstream of Danforth Road.	None	*808
		Long Indian Creek	Approximately 2,000 feet upstream of the confluence of Big Creek.	*973	*974
			Approximately 800 feet upstream of State Bridge Road (State Route 120).	*1,080	*1,081
		Tributary No. 2 to Big Creek.	Approximately 250 feet upstream of State Route 400.	None	*990
		Enon Creek	At confluence with Camp Creek	*767	*768
			Approximately 0.5 mile upstream of the confluence with Camp Creek.	*767	*768
		Morning Creek	Approximately 1,000 feet downstream of Jonesboro Road.	*841	*842
			Approximately 50 feet downstream of Jonesboro Road.	*841	*842
		Valley Brook Creek	At confluence with Camp Creek	*817	*818
			Approximately 0.2 mile downstream of Ben Hill Road.	*818	*819

Maps available for inspection at the Fulton County Government Building, 141 Pryor Street, S.W., 10th Floor, Atlanta, Georgia.

Send comments to Mr. Mitch Skandalakis, Chairman of the Fulton County Board of Commissioners, 141 Pryor Street, S.W., 10th Floor, Atlanta, Georgia 30308.

Georgia	Roswell (City), Fulton County.	Foe Killer Creek	Approximately 200 feet upstream of Old Roswell Road.	*976	*977
			Approximately 1,100 feet upstream of Upper Hembree Road.	None	*1,027
		Crossville Creek	Approximately 500 feet upstream of confluence with Hog Wallow Creek.	*1,020	*1,018
			Approximately 3,300 feet upstream of Wavetree Drive.	None	*1,077
		Strickland Creek	Confluence with Foe Killer Creek	*1,014	*1,017
			Approximately 1,250 feet upstream of confluence with Foe Killer Creek.	*1,016	*1,017
		Crossville Branch	Confluence with Crossville Creek	*1,059	*1,062
			Approximately 450 feet upstream of confluence with Crossville Creek.	*1,061	*1,062
		Hog Wallow Creek	Confluence with Big Creek	*946	*952
			Approximately 1,050 feet upstream of confluence with Big Creek.	*951	*952
		Riverside Creek	Approximately 100 feet downstream of Azalea Drive.	*863	*864
			Approximately 600 feet upstream of Corinth Road.	None	*987
		Seven Branches	Approximately 50 feet upstream of Martins Lake Dam.	*889	*887

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 2,000 feet upstream of Calibree Creek Parkway.	None	*966
		Big Creek	Approximately 400 feet upstream of Riverside Drive.	*868	*867
			Approximately 1,000 feet upstream of Mansell Road.	*966	*968
		Tributary No. 2 to Big Creek.	Approximately 1,000 feet upstream of Morrison Parkway.	None	*1,032
			At Maxwell Street	None	*1,054
		Hughes Creek	Confluence with Foe Killer Creek	*1,024	*1,026
			Approximately 750 feet upstream of confluence with Foe Killer Creek.	*1,025	*1,026
Maps available for inspection at the Fulton County City Hall, Suite G–50, 38 Hill Street, Roswell, Georgia.					
Send Comments to The Honorable W. L. ''Pug'' Mabry, Mayor of the City of Roswell, Fulton County City Hall, 38 Hill Street, Roswell, Georgia 30075					
Georgia	Union (City) Fulton County.	Deep Creek	Approximately 500 feet upstream of Koweta Road.	*823	*826
			Approximately 0.9 mile upstream of Koweta Road.	*836	*839
Maps available for inspection at the Union City Hall Map Room, 5047 Union Street, Union City, Georgia.					
Send comments to Ms. Sonya Carter, Union City Administrator, City Hall, 5047 Union Street, Union City, Georgia 30291.					
Indiana	Allen County (Unincorporated Areas).	Roy Delagrange Ditch	At upstream face of Auburn Road	None	*827
			Approximately 500 feet upstream of Grass Lane.	None	*842
Maps available for inspection at the Allen County Planning Services, City-County Building, Room 630, 1 Main Street, Fort Wayne, Indiana.					
Send comments to Mr. Jack McComb, Allen County Commissioner, City-County Building, East Main Street, Room 220, Fort Wayne, Indiana 46802.					
Indiana	Boone County (Unincorporated Areas).	New Reynolds Ditch	Approximately 500 feet downstream of Golf Course Road.	*932	*930
			At downstream side of Elm Swamp Road	*940	*937
Maps available for inspection at the Boone Area Planning Commission, Building Inspector's office, Boone County Courthouse Square, Room B–3, Lebanon, Indiana.					
Send comments to Mr. Paul Green, President of the Boone County Council, Boone County Auditor's Office, 201 Courthouse Square, Lebanon, Indiana 46052.					
Indiana	Peru (City) Miami County.	Prairie Ditch	Approximately 0.8 mile downstream of North Broadway Street.	None	*646
			At downstream side of Lovers Lane (upstream corporate limits).	None	*670
		Shallow Flooding Area	Approximately 800 feet south of Lovers Lane.	None	*2
			Approximately 400 feet west of Chili Street.	None	*2
			Approximately 1,000 feet north of Harrison Avenue.	None	*2
			Approximately 1,800 feet west of Chili Street.	None	*2
Maps available for inspection at the Miami County Courthouse, Room 102, Corner of Main and Broadway Streets, Peru, Indiana.					
Send comments to The Honorable Richard Blair, Mayor of the City of Peru, 35 South Broadway Street, Peru, Indiana 46970.					
Maine	Alfred (Town) York County.	Mousam River	At downstream corporate limits	None	*154
			At downstream side of Estes Lake Dam	None	*184
		Tributary to Middle Branch Mousam River.	Approximately 225 feet downstream of Middle Branch Drive.	None	*349
			Approximately 0.53 mile upstream of Middle Branch Drive.	None	*379
Maps available for inspection at the Alfred Town Hall, Saco Road, Alfred, Maine.					
Send comments to Mr. Earland Morrison, Chairman of the Town of Alfred Board of Selectmen, P.O. Box 667, Alfred, Maine 04002.					
Michigan	Cherry Grove (Township) Wexford County.	Lake Mitchell	Entire shoreline within the community	None	*1,291

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Cherry Grove Township Hall, South 33 Mile Road, Cadillac, Michigan. Send comments to Mr. Lawrence Jobson, Cherry Grove Township Supervisor, 492 Horseshoe Drive, Cadillac, Michigan 49601.					
Michigan	Clam Lake (Township) Wexford County.	Lake Cadillac	Entire shoreline within the community	None	*1,291
Maps available for inspection at the Clam Lake Township Hall, South 43 Road, Cadillac, Michigan. Send comments to Mrs. Diane C. Powell, Clam Lake Township Supervisor, 10631 East 46 Road, Cadillac, Michigan 49601.					
Michigan	Haring (Charter Township) Wexford County.	Clam River	At Seeley Road No. 49	None	*1,265
			At 13th Street and No. 36 Road	None	*1,287
Maps available for inspection at the Haring Township Hall, 505 Bell Avenue, Cadillac, Michigan Send comments to Mr. John L. Long, Haring Charter Township Supervisor, P.O. Box 282, Cadillac, Michigan 49601.					
Minnesota	Cambridge (City) Isanti County.	Rum River	Approximately 3.1 miles downstream of 2nd Avenue SW (most downstream corporate limit).	None	*915
			Approximately 1.0 mile upstream of 1st Avenue West (most upstream corporate limit).	None	*918
Maps available for inspection at the Cambridge City Hall, 626 North Main Street, Cambridge, Minnesota. Send comments to The Honorable Carsten Seecamp, Mayor of the City of Cambridge, 626 North Main Street, Cambridge, Minnesota 55008.					
Minnesota	Isanti County (Unincorporated Areas).	Rum River	Approximately 3.1 miles downstream of 2nd Avenue SW (most downstream corporate limit of the City of Cambridge).	None	*915
			Approximately 1.6 miles upstream of 1st Avenue West.	None	*918
Maps available for inspection at the Isanti County Zoning Office, 555 18th Avenue, SW., Cambridge, Minnesota. Send comments to Mr. Lyle Schlief, Chairman of the Isanti County Board of Commissioners, 555 18th Avenue, SW., Cambridge, Minnesota 55008.					
New Jersey	Glen Rock (Borough) Bergen County.	Diamond Brook	At Harristown Road	*49	*50
			Approximately 0.4 mile upstream of Rutland Road.	*81	*82
Maps available for inspection at the Borough of Glen Rock Municipal Building, Rock Road, Glen Rock, New Jersey. Send comments to The Honorable Jacqueline Kort, Mayor of the Borough of Glen Rock, Glen Rock Municipal Building, Glen Rock, New Jersey 07452–1798.					
New Jersey	Midland Park (Borough) Bergen County.	Goffle Brook Tributary	At the confluence with Goffle Brook	*261	*262
			Approximately 900 feet upstream of Myrtle Avenue.	*273	*275
		Goffle Brook	Approximately 70 feet downstream of Lake Avenue.	*172	*171
			Approximately 125 feet upstream of CONRAIL.	*267	*268
Maps available for inspection at the Midland Park Borough Hall, 280 Godwin Avenue, Midland Park, New Jersey. Send comments to The Honorable Ester Vierheilig, Mayor of the Borough of Midland Park, 280 Godwin Avenue, Midland Park, New Jersey 07432.					
New Jersey	Ramsey (Borough) Bergen County.	Pleasant Brook Tributary	At the southeast intersection of Sherwood Drive and Nottingham Road.	None	*278
Maps available for inspection at the Ramsey Engineering Department, 33 North Central Avenue, Ramsey, New Jersey. Send comments to The Honorable John Scerbo, Mayor of the Borough of Ramsey, 33 North Central Avenue, Ramsey, New Jersey 07466.					
New Jersey	Ridgewood (Village) Bergen County.	Diamond Brook	At the downstream corporate limits	None	*82
			Approximately 450 feet upstream of the downstream corporate limits.	None	*82
Maps available for inspection at the Department of Public Works, Engineering Division, 131 North Maple Avenue, Ridgewood, New Jersey. Send comments to The Honorable Patrick Mancuso, Mayor of the Village of Ridgewood, 131 North Maple Avenue, Ridgewood, New Jersey 07451.					
New Jersey	Saddle River (Borough) Bergen County.	Saddle River	Approximately 0.9 mile downstream of Lower Cross Road.	*106	*105
			At Locust Lane	*172	*173

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Saddle River Municipal Building, 100 East Allendale Road, Saddle River, New Jersey.					
Send comments to The Honorable Theodore E. Anthony, Mayor of the Borough of Saddle River, 100 East Allendale Road, Saddle River, New Jersey 07458.					
New Jersey	Upper Saddle River (Borough) Bergen County.	Saddle River	Approximately 1,275 feet downstream of confluence of Pleasant Brook.	*165	*166
			At the confluence of West Branch and East Branch Saddle Rivers.	*205	*207
		East Branch Saddle River	At the confluence with Saddle River	*205	*207
			At the State boundary	*284	*286
		Oost Val Brook	At the confluence with East Branch Saddle River.	*248	*249
			At the State boundary	None	*305
		Pleasant Brook	At the confluence with Saddle River	*170	*171
			Approximately 80 feet upstream of Blue Spruce Road.	None	*368
		West Branch Saddle River	At the confluence with Saddle River	*205	*207
			Approximately 70 feet upstream of Hillside Road.	*326	*325
		Sparrow Bush Brook	At the confluence with West Branch Saddle River.	*263	*262
			Approximately 1,556 feet upstream of West Saddle River Road.	None	*324
		Kroner's Brook	Approximately 275 feet upstream of confluence with Saddle River.	None	*179
			Approximately 70 feet downstream of Old Chimney Road.	None	*277
			Approximately 0.72 mile upstream of Lake Street.	None	*277
		Pleasant Brook Tributary	At the confluence with Pleasant Brook	None	*261
			Approximately 1,200 feet upstream of Ware Road.	None	*361
Maps available for inspection at the Upper Saddle River Borough Hall, 376 West Saddle River Road, Upper Saddle River, New Jersey.					
Send comments to The Honorable Francis J. Grout, Mayor of the Borough of Upper Saddle River, 376 West Saddle River Road, Upper Saddle River, New Jersey 07458.					
New Jersey	Waldwick (Borough)	Saddle River	Approximately 0.9 mile downstream of Lower Cross Road.	*106	*105
	Bergen County		At the upstream corporate limits	*113	*111
Maps available for inspection at the Waldwick Borough Clerk's Office, 15 East Prospect Street, Waldwick, New Jersey.					
Send comments to The Honorable Rick Vander Wende, Mayor of the Borough of Waldwick, 15 East Prospect Street, Waldwick, New Jersey 07463.					
New York	Andover (Town) Allegany County.	Andover Pond	Approximately 500 feet southwest of intersection of State Route 21 and Bines Hill Road.	None	*1,669
			Approximately 0.45 mile southwest of intersection of State Route 21 and Bines Hill Road.	None	*1,669
		Dyke Creek	Approximately 1,200 feet downstream of CONRAIL.	None	*1,573
			Approximately 1.03 mile upstream of State Route 417.	None	*1,641
		Dyke Creek Split Flow	At confluence with Dyke Creek	None	*1,580
			At divergence from Dyke Creek	None	*1,587
Maps available for inspection at the Andover Town Hall, Main and West Center Streets, Andover, New York.					
Send comments to Mr. Karl E. Graves, Supervisor of the Town of Andover, 25 Elm Street, Andover, New York 14806.					
New York	Elma (Town) Erie County.	Little Buffalo Creek	Just upstream of Hall Road	None	*745
			At upstream corporate limits	None	*782
		Pond Creek	Approximately 500 feet upstream	*715	*716
			Just downstream of Rice Road	None	*809
		South Branch Slate Bottom Creek.	Approximately 0.7 mile downstream of Aurora Road.	None	*674
			Approximately 840 feet upstream of Aurora Road.	None	*684
		Cazenovia Creek	At downstream corporate limits	*685	*687
			At upstream corporate limits	*770	*773

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Elma Town Hall, 1910 Bowen Road, Elma, New York.					
Send comments to Ms. Audrey Murdoch, Supervisor of the Town of Elma, 1910 Bowen Road, Elma, New York 14059.					
New York	Vestal (Town) Broome County.	Susquehanna River	Approximately 600 feet upstream of Main Street.	*831	*830
			Approximately 200 feet upstream of the downstream corporate limits.	*828	*827
Maps available for inspection at the Vestal Engineering Department, 601 Vestal Parkway West, Vestal, New York.					
Send comments to Mr. Robert J. Nasiatka, Vestal Town Supervisor, 605 Vestal Parkway West, Vestal, New York 13850.					
North Carolina	Brevard (City) Transylvania County.	Davidson River Original Channel.	Confluence with Davidson River	*2,115	*2,114
			Divergence from Davidson River	*2,126	*2,123
		Davidson River	Confluence with French Broad River	*2,104	*2,103
			Downstream side of U.S. Highway 64/276 Eastbound.	*2,126	*2,124
		French Broad River	Approximately 400 feet downstream of confluence of Davidson River.	*2,104	*2,103
			Approximately 0.53 mile upstream of confluence of Unnamed Tributary to French Broad River.	*2,127	*2,124
		Lamb Creek	Confluence with French Broad River	*2,106	*2,104
			Approximately 1,630 feet upstream of Lambs Creek Road.	*2,250	*2,251
		Lambo Creek	Confluence with French Broad River	*2,107	*2,104
			At footbridge dam	None	*2,184
		Nicholson Creek	Confluence with French Broad River	*2,119	*2,116
			Approximately 25 feet downstream of Southern Railway.	*2,150	*2,149
		King Creek	Confluence with French Broad River	*2,109	*2,105
			Approximately 1,430 feet upstream of Mill Brook Drive.	*2,265	*2,266
		Long Branch	Confluence with King Creek	*2,140	*2,139
			Approximately 600 feet downstream of Southern Railway.	*2,144	*2,143
		Unnamed Tributary to Davidson River.	Confluence with Davidson River	*2,109	*2,108
			Approximately 260 feet upstream Southern Railway Spur.	*2,109	*2,108
		Gilbreath Branch	Confluence with Lambo Creek	*2,108	*2,105
			Approximately 320 feet downstream of Old U.S. Highway 64.	*2,108	*2,107
		Unnamed Tributary to French Broad River.	Confluence with French Broad River	*2,126	*2,124
			Approximately 620 feet downstream of Country Club Road.	*2,129	*2,128
Maps available for inspection at the City of Brevard Planning Department, 151 West Main Street, Brevard, North Carolina.					
Send comments to Mr. Steve Warren, Brevard City Planner, 151 West Main Street, Brevard, North Carolina 28712.					
North Carolina	North Wilkesboro (City) Wilkes County.	Yadkin River	Approximately 2.3 miles downstream of confluence with Reddies River.	*964	*957
			Approximately 1.4 miles upstream of confluence with Reddies River.	*970	*967
		Reddies River	At confluence with Yadkin River	*970	*963
			Approximately 2,950 feet upstream of confluence with Yadkin River.	*970	*969
		Tributary M–1	Approximately 375 feet downstream of confluence with Tributary M–1–1.	None	*1,065
			Approximately 225 feet upstream of confluence with Tributary M–1–1.	None	*1,075
		Tributary Y–1	From confluence with Yadkin River	*965	*959
			Approximately 750 feet upstream of confluence with Yadkin River.	*965	*959
Maps available for inspection at the North Wilkesboro Town Hall, 801 Main Street, North Wilkesboro, North Carolina.					
Send comments to Mr. James H. Bently, North Wilkesboro City Manager, P.O. Box 218, North Wilkesboro, North Carolina 28659.					
North Carolina	Rosman (Town) Transylvania County.	French Broad River	Approximately 0.55 mile downstream of U.S. Highway 178.	*2,183	*2,182
			Approximately 0.55 mile upstream of Turnpike Road.	*2,203	*2,202

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Rosman Town Hall, Main Street, Rosman, North Carolina. Send comments to The Honorable John H. Rodgers, Mayor of the Town of Rosman, P.O. Box 636, Rosman, North Carolina 28772.					
North Carolina	Transylvania County (Unincorporated Areas).	Davidson River	Confluence with French Broad River	*2,104	*2,103
			Approximately 5,200 feet upstream of U.S. Highway 64/276.	*2,143	*2,142
		East Fork of French Broad River.	Confluence with French Broad River	*2,180	*2,177
			Approximately 4.45 miles upstream of confluence with French Broad River.	*2,292	*2,291
		Cathey's Creek	Confluence with French Broad River	*2,148	*2,147
			Approximately 1,250 feet upstream of U.S. Highway 64.	*2,196	*2,193
		Patterson Creek	At confluence with French Broad River	*2,151	*2,150
			Approximately 1,500 feet upstream of Cathey's Creek Church Road.	*2,202	*2,203
		Carson Creek	Confluence with French Broad River	*2,140	*2,136
			Approximately 1,225 feet upstream of confluence with French Broad River.	*2,140	*2,139
		Little River	Confluence of French Broad River	*2,095	*2,093
			Approximately 1,795 feet downstream of confluence of Crab Creek.	*2,095	*2,094
		Lamb Creek	Approximately 1,675 feet upstream of Lambs Creek Road.	None	*2,252
			Approximately 0.4 mile upstream of Lambs Creek Road.	None	*2,261
		French Broad River	Upstream side of Crab Creek Road	*2,094	*2,093
			Approximately 1 mile upstream of Turnpike Road.	*2,209	*2,206
		North Fork French Broad River.	At confluence with French Broad River	*2,209	*2,206
			Upstream side of U.S. Highway 64	*2,209	*2,208
		West Fork French Broad River.	At confluence with French Broad River	*2,209	*2,206
			Approximately 475 feet upstream from confluence with North Fork French Broad River.	*2,209	*2,208
		Middle Fork French Broad River.	At confluence with French Broad River	*2,181	*2,177
			Approximately 26 feet downstream of East Fork Road.	*2,182	*2,181
Maps available for inspection at the Transylvania County Community Services Building, 203 East Morgan Street, Brevard, North Carolina. Send comments to Mr. Robert Masengill, Chairman of the Transylvania County Board of Commissioners, 28 East Main Street, Brevard, North Carolina 28712.					
North Carolina	Wayne County (Unincorporated Areas).	Mills Creek	Approximately 1,000 feet upstream of confluence with West Bear Creek.	None	*95
			Approximately 0.45 mile upstream of confluence with West Bear Creek.	None	*98
Maps available for inspection at the Wayne County Planning Department, 224 East Walnut Street, Goldsboro, North Carolina. Send comments to Mr. Will Sullivan, Wayne County Manager, P.O. Box 227, Goldsboro, North Carolina 27533.					
Ohio	Butler County (Unincorporated Areas).	Mill Creek	At East Crescentville Road	*583	*585
			Approximately 0.9 mile upstream of Tylersville Road.	None	*628
		East Fork MIll Creek	At East Crescentville Road	None	*586
			Approximately 1,450 feet upstream of Station Road.	None	*661
		Tributary to East Fork Mill Creek.	At confluence with East Fork Mill Creek	None	*602
			Approximately 1,900 feet upstream of Dimmick Road.	None	*655
		Gregory Creek	Approximately 1,280 feet downstream of Hamilton Mason Road.	None	*703
			Approximately 1,160 feet upstream of Shawnee Lane.	None	*737

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Butler County Administrative Center, 130 High Street, 3rd Floor, Hamilton, Ohio.					
Send comments to Ms. Janet Clemmons, President of the Butler County Commissioners, 130 High Street, 6th Floor, Hamilton, Ohio 45011.					
Pennsylvania	Etna (Borough), Allegheny County.	Little Pine Creek West	At confluence with Pine Creek	*745	*747
			Approximately 600 feet upstream of Greely Avenue.	*761	*763
		Pine Creek	Confluence with Allegheny River	*735	*736
			Approximately 1,250 feet upstream of Grant Avenue.	*752	*751
Maps available for inspection at the Etna Borough Hall, 437 Butler Street, Pittsburgh, Pennsylvania.					
Send comments to Mr. Peter Ramage, President of the Etna Borough Council, 437 Butler Street, Pittsburgh, Pennsylvania 15223.					
Pennsylvania	Franklin Park (Borough) Allegheny County.	Pine Creek	Approximately 1,550 feet upstream of Meinert Road.	None	*1,030
			Approximately 0.43 mile upstream of Meinert Road.	None	*1,033
Maps available for inspection at the Franklin Park Borough Hall, 2428 Rochester Road, Sewickley, Pennsylvania.					
Send comments to Mr. Ronald Merriman, Franklin Park Acting Borough Manager, 2428 Rochester Road, Sewickley, Pennsylvania 15143.					
Pennsylvania	Hampton (Township) Allegheny County.	Gourdhead Run	At confluence with Pine Creek	*847	*850
			Approximately 0.62 mile upstream of Harts Run Road.	None	*989
		Harts Run	At confluence with Gourdhead Run	*921	*925
			Approximately 350 feet upstream of Harts Run Road.	None	*1,034
		McCaslin Run	At confluence with Gourdhead Run	None	*894
			Approximately 320 feet upstream of McCully Road.	None	*1,002
		Montour Run No. 1	At confluence with Pine Creek	None	*939
			Approximately 1.53 miles upstream of Wildwood Road.	None	*990
		Pine Creek	Approximately 1,500 feet downstream of State Route 8.	*839	*846
			Approximately 160 feet upstream of Wildwood Road.	None	*944
		Crouse Run	At confluence with Pine Creek	*887	*889
			Approximately 50 feet downstream of Royalview Drive.	*888	*889
Maps available for inspection at the Hampton Township Hall, 3101 McCully Road, Allison Park, Pennsylvania.					
Send comments to Mr. W. Christopher Lochner, Municipal Manager for the Township of Hampton, 3101 McCully Road, Allison Park, Pennsylvania.					
Pennsyvlania	Indiana (Township) Allegheny County.	Little Pine Creek East	Approximately 575 feet downstream of Saxonburg Boulevard.	None	*897
			Approximately 1,850 feet upstream of Klein Road.	None	*955
Maps available for inspection at the Indiana Township Municipal Building, Route 910, Indianola, Pennsylvania.					
Send comments to Mr. Kevin Brozek, Indiana Township Secretary, P.O. Box 788, Indianola, Pennsylvania 15051.					
Pennsylvania	McCandless (Township) Allegheny County.	Little Pine Creek West	Approximately 900 feet upstream of McIntyre Road.	*1,016	*1,015
			Approximately 40 feet upstream of Babcock Boulevard.	None	*1,060
		Pine Creek	Approximately 650 feet downstream of Wildwood Road.	None	*942
			Approximately 1,800 feet upstream of Meinert Road.	*1,028	*1,030
Maps available for inspection at the McCandless Township Hall, 9955 Grubbs Road, Wexford, Pennsylvania.					
Send comments to Mr. Tobias Cordek, McCandless Township Manager, 9955 Grubbs Road, Wexford, Pennsylvania 15090.					
Pennsylvania	O'Hara (Township) Allegheny County.	Little Pine Creek East	Approximately 650 feet downstream of Saxonburg Boulevard.	None	*799

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 0.43 mile upstream of Browns Hill Road.	None	*897
Maps available for inspection at the O'Hara Township Hall, 325 Fox Chapel Road, Pittsburgh, Pennsylvania.					
Send comments to Mr. Douglas C. Arndt, O'Hara Township Manager, 325 Fox Chapel Road, Pittsburgh, Pennsylvania 15238.					
Pennsylvania	Ross (Township) Allegheny County.	Little Pine Creek West	Approximately 0.39 mile downstream of Sutter Road.	*977	978
			Approximately 1,050 feet upstream of McIntyre Road.	*1,016	*1,015
Maps available for inspection at the Ross Township Hall, 5325 Perrysville Avenue, Pittsburgh, Pennsylvania.					
Send comments to Mr. Thomas Lavorini, Ross Township Manager, 5325 Perrysville Avenue, Pittsburgh, Pennsylvania 15229.					
Pennsylvania	Shaler (Township) Allegheny County.	Little Pine Creek East	At confluence with Pine Creek	*757	*753
			Approximately 750 feet upstream of Saxonburg Boulevard.	*796	*799
		Little Pine Creek West	Approximately 850 feet upstream of confluence with Pine Creek.	*745	*747
			Approximately 733 feet upstream of Clair Street.	*976	*975
		Pine Creek	Approximately 375 feet upstream of Bridge Street.	*736	*738
			Approximately 1,600 feet upstream of Elfinwild Road.	*839	*846
Maps available for inspection at the Shaler Township Building, 300 Wetzel Road, Glenshaw, Pennsyvania.					
Send comments to Mr. Timothy Rogers, Shaler Township Manager, 300 Wetzel Road, Glenshaw, Pennsylvania 15116.					
Pennsylvania	Sharpsburg (Borough) Allegheny County.	Pine Creek	Backwater area between Main Street and CONRAIL.	*736	*737
Maps available for inspection at the Sharpsburg Borough Office, 1021 North Canal, Pittsburgh, Pennsylvania.					
Send comments to The Honorable Marion Gerardi, Mayor of the Borough of Sharpsburg, 121 13th Street, Pittsburgh, Pennsylvania 15215.					

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

Dated: June 19, 1997.

Richard W. Krimm,

Executive Associate Director, Mitigation Directorate.

[FR Doc. 97–18539 Filed 7–14–97; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12, 14, 15, 19, 33, 52, and 53

[FAR Case 97–004]

RIN 9000–AH59

Federal Acquisition Regulation; Reform of Affirmative Action in Federal Procurement

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule—extension of comment period.

SUMMARY: The public comment period on this proposed rule, which was published in the **Federal Register** at 62 FR 25786, May 9, 1997, is extended from July 8, 1997, through August 8, 1997. The rule conforms to a Department of Justice proposal to reform affirmative action in Federal procurement. The comment period is extended in order to accommodate public requests for an extension.

DATES: Comments on the proposed rule should be submitted in writing to the FAR Secretariat at the address shown below on or before August 8, 1997.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW., Room 4035, Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to farcase.97–004@gsa.gov. Please cite FAR case 97–004 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Victoria Moss (202) 501–4764.

List of Subjects in 48 CFR Parts 12, 14, 15, 19, 33, 52, and 53

Governemnt procurement.

Dated: July 9, 1997.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 97–18558 Filed 7–14–97; 8:45 am]

BILLING CODE 6820–EP–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 594

[Docket No. 97–046; Notice 1]

RIN 2127–AG73

Schedule of Fees Authorized by 49 U.S.C. 30141; Fee for Review and Processing of Conformity Certificates for Nonconforming Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to amend NHTSA's regulations that prescribe a schedule of fees authorized by 49 U.S.C. § 30141 for various functions performed by the agency with respect to the importation of motor vehicles. The amendment would establish a fee for the agency's review and processing of statements that registered importers submit to certify that vehicles that were not originally manufactured to conform to all applicable Federal motor vehicle safety standards have been brought into conformity with those standards. The fee would apply to all vehicles for which conformity certificates are submitted to NHTSA, including vehicles imported from Canada, which currently account for over 98 percent of the nonconforming vehicles that are processed by NHTSA.

DATES: *Comments.* Comments must be received on or before August 14, 1997.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted to: Docket Section, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Clive Van Orden, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202–366–2830). For legal issues: Coleman Sachs, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202–366–5238).

SUPPLEMENTARY INFORMATION:

A. Background

Laws relating to motor vehicle safety are found in Chapter 301 of Title 49, U.S. Code. NHTSA is authorized under 49 U.S.C. § 30111 to issue Federal motor vehicle safety standards (FMVSS). Subject to certain exceptions, 49 U.S.C. § 30112(a) prohibits any person from importing into the United States a motor vehicle manufactured on or after the date an applicable FMVSS takes effect unless the vehicle complies with the standard and is so certified pursuant to 49 U.S.C. § 30115. One of the exceptions to this prohibition is found in 49 U.S.C. § 30141. That section permits an importer who is registered with NHTSA (a ''registered importer'') to import a motor vehicle that was not originally manufactured to conform to all applicable FMVSS, provided that NHTSA has decided that the vehicle is eligible for importation. Under the criteria that are specified in 49 U.S.C. § 30141 for these decisions, a motor vehicle is not eligible for importation unless, among other things, it is capable of being altered to comply with all applicable FMVSS. See 49 U.S.C. § 30141(a)(1) (A)(iv) and (B).

B. Requirements for Bonding and Review of Conformity Packages

Once a motor vehicle has been declared eligible for importation, it is imported under bond by a registered importer or by an individual who has executed a contract or other agreement with a registered importer to bring the vehicle into compliance with applicable FMVSS. The registered importer has the obligation to bring the bonded vehicle into conformity with the FMVSS within 120 days of the vehicle's entry. When the registered importer has done so, it must certify to NHTSA that the vehicle meets the FMVSS. See 49 U.S.C. § 30146(b) and 49 CFR 592.6(e). An agency regulation at 49 CFR 592.6(f) requires registered importers to submit to NHTSA ''[i]n substantiation of the initial certification provided for a specific model and model year * * * photographic and documentary evidence of conformance with each applicable Federal motor vehicle safety and bumper standard, and with respect to subsequent certifications of such model and model year, such information, if any, as the Administrator may request.''

NHTSA's Office of Vehicle Safety Compliance (OVSC) administers the agency's programs concerning the importation of noncomplying vehicles. OVSC has issued guidance to registered importers, in the form of newsletters and other communications, that specify the contents and form of the packages that must be submitted to the agency to certify that each noncomplying vehicle for which a performance bond has been given has been brought into compliance with all applicable FMVSSs. Upon receipt, the OVSC staff reviews each package to verify the accuracy of the information it contains. If NHTSA questions the registered importer's certification of compliance, the registered importer is notified pursuant to 49 CFR 592.8(c) to hold the vehicle for inspection. Acceptance of the certification ends the agency's involvement with the vehicle.

Thus, NHTSA staff expends much time reviewing and evaluating routine compliance packages, and even more time if a package does not indicate conformance with the FMVSS, necessitating follow-up action. NHTSA reviewed some 16,000 compliance packages in calendar year 1996.

C. Fees Authorized by 49 U.S.C. § 30141

NHTSA is authorized under 49 U.S.C. § 30141(a)(3) to establish an annual fee requiring registered importers to pay for the costs of carrying out the registered importer program. The agency is also authorized under this section to establish fees to pay for the costs of processing the conformance bonds that registered importers provide, and fees to pay for the costs of making agency decisions relating to the importation of noncomplying motor vehicles and equipment.

The agency has, to date, established four separate fees under the authority of 49 U.S.C. § 30141. These are set forth in 49 CFR Part 594. The first is the annual fee that is collected from registered importers to cover the agency's costs for administering the registered importer program. This fee, which is covered by section 594.6, is currently set at $501.00 for persons applying for registered importer status and at $332 for those seeking the renewal of that status. As described in section 594.6, the fee is based on the direct and indirect costs incurred by the agency in processing and acting upon initial applications for registered importer status and annual statements seeking the renewal of that status, as well as other actions performed by the agency in administering the registered importer program.

The second fee is collected from each motor vehicle manufacturer or registered importer who petitions NHTSA to decide that a nonconforming vehicle is eligible for importation. This fee, which is covered by 49 CFR 594.7, is currently set at $199 for a petition seeking an eligibility decision on the basis that a nonconforming vehicle is substantially similar to a U.S. certified counterpart, and at $721 for a petition seeking such a decision on the basis that a nonconforming vehicle is capable of being altered to conform to all applicable standards. As detailed in section 594.7, this fee is based on the direct and indirect costs incurred by NHTSA in processing and acting upon import eligibility petitions.

The third fee is for importing a vehicle pursuant to an eligibility decision made by the Administrator. This fee, which is covered by 49 CFR 594.8, is currently set at $134 per vehicle. As described in section 594.8, this fee is calculated to cover NHTSA's direct and indirect costs in making import eligibility decisions.

The fourth fee has been established pursuant to 49 U.S.C. § 30141(a)(3)(A) to ''pay for the costs of processing bonds provided to the Secretary of the Treasury.'' Registered importers furnish these bonds for each vehicle covered by a certificate of conformity that is submitted to NHTSA. This fee, which is covered by 49 CFR 594.9, is currently set at $5.15 and only reimburses the U.S. Customs Service for services performed at the time of entry. It is based on direct and indirect cost information provided to NHTSA by the Customs Service.

D. Additional Fees That NHTSA Believes Are Justified

Although the above-described fees have permitted NHTSA to recover the costs it incurs in administering certain aspects of the registered importer program and making import eligibility decisions, other NHTSA activities that are a service to the importers of noncomplying vehicles have gone unreimbursed. One such activity for which the agency believes it is entitled to reimbursement under 49 U.S.C. § 30141 is the review of conformity packages to decide whether vehicles, as altered by the registered importers, comply with all applicable FMVSS and thus, whether the conformance bonds that cover those vehicles may be released.

Because NHTSA's approval of the conformity package is a necessary predicate to the release of these bonds, NHTSA has tentatively concluded that the expense incurred by the agency in reviewing and processing each package may be treated as part of the bond processing cost, for which NHTSA is authorized to set a fee under 49 U.S.C. § 30141(a)(3)(A). Additionally, NHTSA's decision to approve the release of a bond based on its review of a conformity package would qualify as a ''decision'' under Subchapter III of Title 49, U.S. Code, for which the agency is authorized to set a fee under 49 U.S.C. § 30141(a)(3)(B).

When it first proposed the fee schedule found in Part 594, NHTSA excluded ''activities connected with the processing of certificates and compliance documentation'' from the fee for the agency's administration of the importer registration program. See 54 FR 17792, 17793 (April 25, 1989). Although NHTSA acknowledged that verification of the certification submitted by a registered importer could be relevant to the maintenance of the registered importer's status, the agency concluded that Congress did not intend for those activities to be included in the registration program. NHTSA based this conclusion on the language of section 108(c)(3)(B)(i) of the former National Traffic and Motor Vehicle Safety Act, then codified at 15 U.S.C. § 1397(c)(3)(B)(i), which allowed fees collected from registered importers to be used for administrative purposes other than the periodic inspection of a representative number of vehicles for which compliance certifications had been provided. The agency now recognizes that its prior interpretation of this provision was overly restrictive, and that the provision in fact places no impediment on NHTSA's ability to collect fees for the processing and review of conformity packages.

The Safety Act was repealed and its provisions were codified as part of Title 49, U.S. Code under Public Law 103–272 (July 5, 1994). The relevant provision, now found at 49 U.S.C. § 30141(e), states that the amounts collected as fees from registered importers under section 30141(a)(3) ''are only for use by the Secretary of Transportation—(1) in carrying out this section and sections 30146 (a)–(c)(1), (d), and (e) and 30147(b) of this title. * * *'' NHTSA's authority to review conformity packages is principally derived from section 30146(c). As previously noted, that provision authorizes the Secretary of Transportation to require the compliance certification submitted by a registered importer to ''be accompanied by evidence of compliance the Secretary considers appropriate. * * *''

When it originally issued the regulations in 49 CFR Part 594, NHTSA narrowly construed the language of section 108(c)(3)(A)(iii) of the Safety Act, which authorized the Secretary to establish fees for ''making the determinations under this section,'' as pertaining only to import eligibility determinations. The agency overlooked the fact that its decisions to release conformance bonds, based on the review of conformity packages, were also ''determinations'' under section 108 of the Safety Act, and that the use of fees for this purpose was clearly permitted under section 108(c)(3)(B)(i). Likewise, 49 U.S.C. § 30141(e) clearly authorizes the use of fees collected from registered importers under section 30141(a)(3) to pay for the costs of making decisions following agency review of conformity packages. Accordingly, NHTSA has reconsidered the scope of its authority to establish fees for making decisions regarding the importation of noncomplying vehicles, and has tentatively concluded that it was authorized under section 108(c)(3)(A)(iii) of the Safety Act, and is authorized under 49 U.S.C. § 30141(a)(3)(B) to charge fees to reimburse the agency's costs for making decisions to release conformance bonds.

Even if such authority did not exist in Chapter 301 of Title 49, U.S. Code, the Independent Offices Appropriation Act of 1952, 31 U.S.C. § 9701, provides ample authority for NHTSA to impose fees that are sufficient to recover the agency's full costs for the review and processing of conformity packages. By reviewing the package and authorizing the release of the conformance bond that is posted upon entry of a nonconforming vehicle, NHTSA is performing a specific service for an identifiable beneficiary that can form the basis for the imposition of a fee under 31 U.S.C. § 9701. Courts have long recognized that Federal agencies may impose fees under section 9701 for providing comparable services to regulated entities. *See*, e.g., *Seafarers International Union of North America* v. *U.S. Coast Guard*, 81 F.3d 179, 183 (D.C. Cir. 1996) (finding the Coast Guard authorized to charge reasonable fees for processing applications for merchant mariner licenses, certificates, and work documents); *Engine Manufacturers Association* v. *E.P.A.*, 20 F.3d 1177, 1180 (D.C. Cir. 1994) (finding the E.P.A. authorized to impose a fee to recover its costs for testing vehicles and engines for compliance with the emission standards of the Clean Air Act); and *National Cable Television Association, Inc.* v. *F.C.C.*, 554 F.2d 1094, 1101 (D.C. Cir. 1976) (finding the *F.C.C.* authorized to impose fees for issuing certificates of compliance to cable television operators).

In view of the language and judicial construction of 31 U.S.C. § 9701, NHTSA is relying on this provision as an independent source of authority for the proposed fee. The agency believes that this provision and 49 U.S.C. § 30141 each provide sufficient separate authority for the proposed fee and the other fees that the agency has established under 49 CFR Part 594.

When the prior fees were established, NHTSA did not recognize a need to impose a fee for the review and processing of conformity packages because those actions accounted for a relatively small share of the work performed by OVSC. In the ensuing years, OVSC has devoted a substantially greater share of its staff time to those efforts, so that a fee now appears necessary to offset the agency's costs for performing this work.

E. Fee Computation

As previously noted, NHTSA has computed all other fees that it collects under the authority of 49 U.S.C. § 30141

on the basis of all direct and indirect costs incurred by the agency in performing the function for which the fee is charged. In the **Federal Register** notice proposing the original schedule of fees that was adopted in Part 594, the agency observed that this approach was consistent with the manner in which other agencies have computed user fees under the Independent Offices Appropriation Act, 31 U.S.C. § 9701, and the Consolidated Omnibus Budget Reconciliation Act, Pub. L. 99–272. See 54 FR 17792, 17793 (April 25, 1989). NHTSA specified in the 1989 proposed rules that ''the fees imposed by Part 594 would include the agency's best direct and indirect cost estimates of the man-hours involved in each activity, on both the staff and supervisory levels, the costs of computer and word processor usage, costs attributable to travel, salary, and benefits, and maintenance of work space,'' as appropriate for each fee. See 54 FR 17795. Subsequently, the Office of Management and Budget (OMB), in Circular A–25 establishing Federal policy for the assessment of user fees under 31 U.S.C. § 9701, stated that such fees must be ''sufficient to recover the full cost to the Federal Government * * * of providing the service, resource, or good when the Government is acting in its capacity as a sovereign.'' See 58 FR 38142, 38144 (July 15, 1993).

Applying an approach consistent with the OMB Circular and the one followed in its 1989 rulemaking, the agency has considered its direct and indirect costs in calculating the proposed fee for the review and processing of conformity packages as follows:

The direct costs that would be used to calculate the proposed fee include the estimated cost of contract and professional staff time, computer costs, and costs for record assembly, marking, shipment and storage.

The estimated cost of contract and professional staff time is calculated on the basis of the full cost for time spent at the following currently prevailing rates: Data entry—$44,410 per year; computer programmer—$86,650 per year; compliance analyst—$60,092 per year. Three quarters of the total hours worked by a single data entry specialist on contract to OVSC are devoted to the processing of compliance packages. A second data entry specialist on contract to OVSC is engaged full time in the processing of compliance packages. Multiplying the annual contract cost for the hours worked by these contract support staff members ($44,410 each) by 1.75 (representing the one data entry position devoted fully to compliance package processing and the other in which three quarters of the total hours worked are devoted to that function) yields $77,715.50 in data entry labor costs that are incurred by NHTSA on an annual basis in the processing of compliance packages. Eighteen and three quarters percent of the total hours worked by a single computer programmer on contract to OVSC is devoted to the processing of compliance packages. Multiplying the annual contract cost for the hours worked by this contract support staff member ($86,650) by 18.75 percent yields $16,246.88 in computer programming labor costs that are incurred by NHTSA on an annual basis in the processing of compliance packages. Ninety percent of the total hours worked by a single compliance analyst employed by OVSC is devoted to the review of compliance packages. Multiplying the annual rate of pay for this staff member ($60,092) by 90 percent yields $54,082.80 in compliance analyst labor costs that are incurred by NHTSA on an annual basis in the review of compliance packages.

Adding these amounts yields a total of $148,045.18 in contract and professional staff costs that NHTSA incurs each year for the processing and review of compliance packages. Dividing that amount by 16,000, the number of compliance packages reviewed by OVSC in calendar year 1996, yields a direct cost of $9.25 for each compliance package reviewed.

Computer costs are calculated on the following basis: NHTSA pays $13,800 per year to maintain a link with the Customs Service computer. Ninety-five percent of the agency's usage of this computer is associated with the review of compliance packages, resulting in a cost of $13,110 that can be allocated to that use. Additionally, the agency pays $30,000 per year for the purpose of running OVSC's computers and performing necessary backups of data entries. Ninety percent of this usage is associated with the review of compliance packages, yielding a cost of $27,000 that can be allocated to that use. The agency also pays $4,000 per year for a maintenance contract on OVSC's computers, ninety percent of which can also be allocated to that office's review of compliance packages, yielding an annual cost of $3,600. Additionally, NHTSA pays a $9,360 annual licensing fee for the data base management system that is used in the processing of compliance packages. Because that system is not used for any other purpose, the full annual fee can be allocated to that use. Adding these costs produces the sum of $53,070 that is spent annually on computer usage associated with the review of compliance packages. Dividing this sum by 16,000, which, as previously indicated, is the number of compliance packages reviewed by OVSC in calendar year 1996, yields a direct cost of $3.32 for each compliance package reviewed.

The average cost for record assembly, marking, and shipment is calculated at the rate of $16.56 per box. The average cost for record storage is calculated to be $7.92 per box for a storage period of three years. Based on an average of 110 records per box, these costs amount to 22 cents for each compliance package received by the agency. Adding the direct costs for contract and professional staff hours ($9.25), computer usage ($3.32), and record assembly, marking, shipment, and storage ($0.22) produces a total of $12.79 for each compliance package reviewed and processed by NHTSA.

The indirect costs include a pro rata allocation of the average benefits of persons employed in processing and reviewing conformity packages. Benefits provided by NHTSA amount to eighteen percent of the salary earned by its employees. Multiplying the $54,082.80 in professional staff costs that NHTSA incurs each year for the processing and review of compliance packages by eighteen percent yields a figure of $9,734.90.

The indirect costs also include a pro rata allocation of the costs attributable to the rental and maintenance of office space and equipment, the use of office supplies, and other overhead items. For fiscal year 1998, these costs are projected to average $21,131 for each employee and contract support staff member working at NHTSA headquarters. This figure was derived by dividing $13,566,000 in projected headquarters costs (reached by subtracting $482,000 in field operating costs from total agency costs of $14,048,000) by 642 (representing 510 full time equivalent positions that are authorized for NHTSA headquarters plus 132 on-site contract personnel). Multiplying that figure by 2.8375, which represents the number of combined contract and professional staff-years devoted annually to the review and processing of compliance packages, yields a figure of $59,959.21. Adding this figure to $9,734.90 produces the sum of $69,694.11, representing the total indirect costs incurred by NHTSA in the review and processing of compliance packages. Dividing this amount by 16,000, which, as previously indicated, is the number of compliance packages reviewed by NHTSA in calendar year 1996, yields $4.36 in indirect costs for each compliance package reviewed. Adding these indirect costs to the $12.79 in direct

costs that NHTSA incurs in the review and processing of each compliance package yields a total of $17.15 in direct and indirect costs for each compliance package reviewed by the agency.

Based on the above factors, NHTSA proposes to charge $17.00 as the fee to recover its costs for the review and processing of compliance packages. This fee would have to be tendered with each compliance package submitted to the agency for processing.

E. Applicability of Fee to Canadian Vehicles

If the proposed fee is adopted, registered importers would have to pay the fee for each conformity package they submit to NHTSA. This would include conformity packages submitted for vehicles imported from Canada. In recent years, Canadian imports have accounted for a growing share of NHTSA's oversight program that is directed at the importation of nonconforming vehicles. In NHTSA's Calendar Year 1995 Report to Congress concerning this program, the agency stated that 15,096 of the 15,332 nonconforming vehicles that were permanently imported into the country during that year (or over 98%) were from Canada. The report noted a continuing upward trend in the importation of noncomplying vehicles from Canada since 1993, and attributed that development to the exchange rate favoring the U.S. over the Canadian dollar.

In past years, NHTSA has not collected the per vehicle import eligibility determination fee established under 49 CFR 594.8 from the importers of vehicles that were certified by their original manufacturer as complying with all applicable Canadian motor vehicle safety standards and that were eligible for importation under vehicle eligibility number VSA–1. As NHTSA explained in a final import eligibility decision covering Canadian-certified motor vehicles, published on May 13, 1997 at 62 FR 26348, the per vehicle import eligibility fee was not imposed on the importers of these vehicles because the first importer of a Canadian-certified motor vehicle paid the full $1,560 fee that was established in 1989 to cover the agency's costs for an eligibility decision made on the Administrator's initiative.

In the May 13, 1997 final decision, NHTSA rescinded VSA–1 as the eligibility number assigned to all eligible Canadian-certified vehicles, and replaced it with four separate eligibility numbers (VSA–80 through 83), based on vehicle classification and weight. If the proposed fee for the review and processing of conformity certificates is adopted, NHTSA intends to collect that fee from all importers submitting conformity packages to the agency, including the importers of Canadian-certified vehicles eligible for importation under VSA–80 through 83. The agency deems this action to be necessary because the review and processing of conformity packages submitted for Canadian imports have assumed an increasing share of the staff time within OVSC's Equipment and Imports Division and now comprise a major portion of the work performed by that division. The imposition of such a fee would also be consistent with OMB's policy for Federal agencies to obtain full cost reimbursement from the recipients of agency services.

Effective Date

Section 30141(e) of Title 49, U.S. Code requires the amount of fees imposed under section 30141(a) to be reviewed, and, if appropriate, adjusted by NHTSA at least every two years. It also requires that the fee for each fiscal year be established before the beginning of that year. Any final rule on this proposal must therefore be issued not later than Tuesday, September 30, 1997 so that the fee it establishes will be applicable in Fiscal Year 1998, which begins on October 1, 1997. Because of these time constraints, NHTSA has good cause to limit the comment period for this proposed rule to thirty days.

Rulemaking Analyses and Notices

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

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

2. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the proposed amendment would not have a significant economic impact on a substantial number of small entities. Although most registered importers would qualify as small businesses within the meaning of the Regulatory Flexibility Act, the agency has no reason to believe that these companies could not pay the fee that would be imposed under this proposed regulation. This fee would in all likelihood be passed along to the purchaser of the vehicle for which a conformity package is submitted to NHTSA for review. Most nonconforming vehicles that are imported into the United States are of very recent vintage, and many would be considered luxury models. Given the nominal amount of the proposed fee, especially when viewed in relation to the purchase price of the vehicles to which it would pertain, it would not appreciably increase the purchase price of those vehicles and would be unlikely to have any significant impact on their importation and sale. For that reason, registered importers and small businesses, small organizations, and small governmental units that purchase motor vehicles would not be significantly affected by the proposed fee. Accordingly, no regulatory flexibility analysis has been prepared.

3. Executive Order 12612 (Federalism)

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

4. National Environmental Policy Act

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

5. Civil Justice Reform

This proposed rule would not have any retroactive effect. It would not repeal or modify any existing Federal regulations. A petition for reconsideration or other administrative proceeding will not be a prerequisite to an action seeking judicial review of this proposed rule. This proposed rule does not preempt the states from adopting laws or regulations on the same subject, except that if adopted, the resulting Federal regulation would preempt a state regulation that is in actual conflict with the Federal regulation or makes compliance with the Federal regulation impossible or interferes with the implementation of the Federal statute.

Public Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21.) Necessary attachments may be

appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

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

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

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

List of Subjects in 49 CFR Part 594

Administrative practice and procedure, Imports, Motor vehicle safety.

In consideration of the foregoing, the agency proposes to amend part 594, *Schedule of Fees Authorized by 49 U.S.C. 30141*, in Title 49 of the Code of Federal Regulations as follows:

PART 594—[AMENDED]

1. The authority citation for part 594 would be amended to read as follows:

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

2. Section 594.5 would be amended by redesignating paragraphs (g) and (h) as paragraphs (h) and (i), respectively, and by adding a new paragraph (g), to read as follows:

§ 594.5 Establishment and payment of fees.

* * * * *

(g) A fee for the review and processing of a conformity certificate shall be submitted with each certificate of conformity furnished to the Administrator.

* * * * *

3. A new section 594.10 would be added to part 594, to read as follows:

§ 594.10 Fee for review and processing of conformity certificate.

(a) Each registered importer shall pay a fee based on the agency's direct and indirect costs for the review and processing of each certificate of conformity furnished to the Administrator pursuant to § 591.7(e) of this chapter.

(b) The direct costs attributable to the review and processing of a certificate of conformity include the estimated cost of contract and professional staff time, computer usage, and record assembly, marking, shipment and storage costs.

(c) The indirect costs attributable to the review and processing of a certificate of conformity include a pro rata allocation of the average benefits of persons employed in reviewing and processing the certificates, and a pro rata allocation of the costs attributable to the rental and maintenance of office space and equipment, the use of office supplies, and other overhead items.

(d) For certificates of conformity submitted on and after October 1, 1997, the fee is $17.00.

Issued on: July 10, 1997.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 97–18529 Filed 7–14–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC10

Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposed Rule To List the Flat-Tailed Horned Lizard as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: The U.S. Fish and Wildlife Service (Service) withdraws the proposed rule to list the flat-tailed horned lizard (*Phrynosoma mcallii*) as threatened, pursuant to the Endangered Species Act of 1973, as amended (Act). The Service is taking this action because some of the threats are less serious than at the time the proposed rule was published, a conservation agreement will ensure further reductions in threats, and data indicating a population decline are inconclusive. The Service will continue to monitor the status of this species and work with involved interests for conservation of the species.

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

FOR FURTHER INFORMATION CONTACT: Sandy Vissman, at the above address or by telephone at (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Background

The flat-tailed horned lizard (*Phrynosoma mcallii*) is a small, cryptically colored, phrynosomatid lizard that reaches a maximum adult body length (excluding the tail) of approximately 81 millimeters (3.2 inches). The lizard has a flattened body, short tail, and dagger-like head spines like other horned lizards. It is distinguished from other horned lizards in its range by a dark vertebral stripe, two slender elongated occipital spines, and the absence of external ear openings. The dorsal surface of the flat-tailed horned lizard is pale gray to light rusty brown. The ventral surface is white and unmarked, with the exception of a prominent umbilical scar.

The lizard was first collected by Colonel G.A. M'Call, between Camp Yuma and Vallecito in the 1850s. Through the mid-1900s, most locality information came from California, where it became apparent that the flat-tailed horned lizard occupied the lower elevations of the Salton Trough in Riverside, Imperial, and San Diego Counties. Because of distinctive morphological characteristics, Hallowell (1852) first described the species as *Anota M'callii*, placing the flat-tailed horned lizard in a monotypic genus. The flat-tailed horned lizard remained a subject of taxonomic controversy for many years, occupying subsequently the genus *Doliosaurus* (Girard 1858), *Phrynosoma* (Cope 1866), and *Anota* (Cope 1900). Taxonomic questions were finally resolved by Norris and Lowe (1951), who determined that the similarities of this species to other horned lizards were more significant than its differences and placed the

species again in *Phrynosoma*. No subsequent change in the taxonomic status has been proposed for *P. mcallii*, other than clarification by Funk (1981) of the spelling of the specific epithet. The flat-tailed horned lizard is one of the more distinctive of the 13 species currently recognized in the genus.

The flat-tailed horned lizard is endemic to the Sonoran Desert in the Coachella Valley in Riverside County, California; the Imperial and Borrego valleys in and near Anza Borrego and Ocotillo Wells in Imperial and eastern San Diego counties, California; south of the Gila River and west of the Gila and Tinajas Altas mountains in Yuma County, Arizona; east of the Sierra de Juarez in the Laguna Salada and Yreka Basins in northeastern Baja California Norte, Mexico; and north and west of Bahia de San Jorge to the delta of the Rio Colorado in northwestern Sonora, Mexico (Turner and Medica, 1982). The species occurs at elevations up to 800 meters (2600 feet) above sea level, but most populations are below 300 meters (980 feet) elevation. Within this range, the flat-tailed horned lizard typically occupies sparsely vegetated, sandy desert flatlands with low species diversity, but it is also found in areas covered with small pebbles or desert pavement, mud hills, dunes, alkali flats, and low, rocky mountains. According to Hodges (1997), approximately 51.2 percent of the historic range of the flat-tailed horned lizard habitat within the United States is extant. An estimated maximum of 503,500 hectares (ha) (1,244,000 acres (ac)) of habitat remains in the United States, with approximately 56,800 ha (140,300 ac) found in Arizona and 446,670 ha (1,103,800 ac) found in California.

Johnson and Spicer (1985) estimated that approximately 29 percent of the species' range occurs in Mexico; however, the distribution of the species in Mexico is poorly understood because of the lack of distribution inventories for the species. The acreage of suitable habitat found within the estimated range in Mexico is unknown. The species' distribution in Baja California Norte is limited by extensive agriculture that extends from Mexicali to the Colorado River and by the wetland and riparian communities of the Colorado River Delta, the Rio Hardy, and Laguna Salada. In Sonora, records indicate flat-tailed horned lizards exist primarily from an extensive sandy plain east of the Colorado River to the dunes of the Gran Desierto and also near Puerto Penasco. Between these areas is a relatively undisturbed region dominated by the large dune system of the Gran Desierto and volcanic or montane terrain in the Sierra Pinacate region, an area where few locality records exist and potential flat-tailed horned lizard habitat appears scattered (Gonzales-Romero and Alvarez-Cardenas 1989).

Vegetation throughout the range of the flat-tailed horned lizard is predominantly Sonoran Desertscrub (Turner and Brown 1982). Flat-tailed horned lizards are found in habitat types including desert pavement, pebbled areas, mudhills, and dune edges. Characteristics of ''high quality'' flat-tailed horned lizard habitat include sparse vegetation, little slope, and surface soils of fine, packed sand or desert pavement overlaid intermittently with loose, fine sand (Turner *et al.* 1980). In Ocotillo Wells, however, recent work has found higher abundances of lizards in mudhills than in sandy areas (Wone 1997). The relationship between vegetation density and lizard abundance is unclear because of differences between study results. Wone (1996) found a negative correlation between lizard abundance and vegetation density, while Turner and Medica (1982) found a positive correlation between lizard abundance and perennial density. Altman et al. (1980) stated that when aggregate perennial densities are less than 250 per ha, ''the habitat is not likely to be favorable for *P. mcallii*. Almost all areas examined with high abundance of *mcallii* had aggregate perennial densities of greater than 1000/ha.''

Because of difficulties in locating flat-tailed horned lizards, Turner et al. (1980) used scat counts to estimate the relative abundance of the species throughout its range. Broadly defined areas with high relative abundance of flat-tailed horned lizards have been found in California and Arizona using these methods and historical locality records. Turner and Medica (1982) identified four such areas in California, including southern East Mesa, southeastern Yuha Desert, the Superstition Mountain area in Imperial County, and the Benson Dry Lake area near Ocotillo Wells in San Diego County. Rorabaugh et al. (1987) identified one area of high relative abundance southeast of Yuma in Yuma County, Arizona. Although Muth and Fisher (1992) caution ''habitat quality should not be inferred from scat counts,'' historical locality records support the assessment of habitat quality in the aforementioned areas.

Rough estimates of flat-tailed horned lizard density have been made in different parts of the species' range. Estimated densities include 0.3–1.5 lizards/ha (Rorabaugh 1994), 0.6 lizards/ha (Hodges 1995), 4.8–8.4 lizards/ha (Turner and Medica 1982), and 1.3–1.39 lizard/ha (Muth and Fisher 1992). Rorabaugh (1994) recalculated the data presented by Turner and Medica (1982) using different analytical techniques, and arrived at a maximum density of 3.8/ha. Differences between studies in estimated density may represent differences in the lizard abundance in areas studied, differences in lizard abundance attributable to general declines in the species' abundance over the years between studies, or differences due to different methods of data collection and analysis. Approximately 503,500 ha (1,244,000 ac) of flat-tailed horned lizard habitat remain in the United States (derived from Hodges 1997), with approximately 176,800 ha (437,000 ac) of that habitat located within areas designated by Federal agencies as Flat-tailed Horned Lizard Management Areas (MAs) (Foreman 1997). Based on the density range (0.3–3.8 lizards/ha) and habitat acreage estimates presented above, the population of lizards protected within MAs could range from 53,056 to 672,045. These are rough estimates because habitat quality varies throughout MAs, some surface disturbance currently exists within the management areas, flat-tailed horned lizards are not evenly distributed across their range, and the large difference between the two density estimates is not accounted for in the literature. Even a population of a size at the low end of this range is large enough that it is not likely to be threatened by demographic and genetic factors.

A Flat-tailed Horned Lizard Population Viability Analysis (PVA) was conducted by a Conservation Team convened to share research involving this species and to evaluate a proposed management strategy. The final PVA provided no estimate of the minimum viable population size and did not determine whether populations contained within the proposed management areas were viable. The Conservation Team concluded that further information was necessary to extrapolate from a PVA, but identified variables that apparently have a large effect on population viability. When introduced into modeled populations, variations in mortality, fecundity, number of egg clutches produced by a female in a year, and environmental conditions strongly affect population viability.

In June, 1997, Federal and State agencies signed a Flat-tailed Horned Lizard Conservation Agreement (CA) and agreed to implement a Flat-tailed Horned Lizard Rangewide Management Strategy (Management Strategy). The

Management Strategy was developed by an interagency working group over a two-year period. As part of the CA, agencies delineated specified acreages under their jurisdiction as MAs. Approximately 176,800 ha (437,000 ac) of the remaining flat-tailed horned lizard habitat is found within MAs. This acreage represents approximately 35 percent of habitat remaining in the United States. Signatories of the CA, which include the Service, Bureau of Land Management (BLM), Bureau of Reclamation (BoR), U.S. Marine Corps, U.S. Navy, Arizona Game and Fish Department, and California Department of Parks and Recreation, committed to implementation of conservation measures for the species. These measures include: continuation of monitoring of lizard populations and new surface disturbance within MAs; limitation of surface-disturbing projects within MAs to one percent of the area of MAs over the course of the next five years; collection of compensation fees from project proponents conducting activities within MAs; reduction in off-highway vehicle (OHV) routes within MAs; prohibition of off-highway competitive events within MAs; support of continued flat-tailed horned lizard monitoring and research; mitigation for surface disturbing activities in lizard habitat; and attempting to acquire all private inholdings within MAs. Participation in the CA/Management Strategy is voluntary, and agencies may withdraw from participation with 60 days notice.

Prior to signing the agreement, agencies had already begun to implement planning actions identified as part of this agreement, including designation of MAs on BLM lands in California, application of mitigation measures on surface-disturbing projects on BLM lands in California, requiring compensation from project proponents conducting surface-disturbing activities in flat-tailed horned lizard habitat, designation of OHV routes on BLM lands in California (Foreman 1997), and acquisition of inholdings within the Yuma MA. Many of the measures identified in the CA are part of the agencies' ongoing management strategies and have been in place for years. Furthermore, the U.S. Marine Corps, at the Barry Goldwater Range in Arizona, has agreed to implement the terms and conditions of a conference opinion on ongoing activities, regardless of the species' status under the Act. Terms and conditions of the conference opinion include: limiting surface disturbance, enforcement of ''no trespass'' rules on the range, and initiation of a speed limit of 25 miles per hour on roads found within the range (U.S. Fish and Wildlife Service 1996). A Management Oversight Group, composed of managers from CA signatory agencies, was established to oversee implementation of the Management Strategy. This group first met on June 26, 1997.

Previous Federal Action

The Service included the flat-tailed horned lizard as a category 2 candidate for listing in its original Review of Vertebrate Wildlife, published in the **Federal Register** on December 30, 1982 (47 FR 58454). Category 2 candidates were those species for which data in the Service's possession indicated listing may be appropriate, but for which additional biological information was needed to support a proposed rule. This species was again included as a category 2 candidate in the Service's revised Vertebrate Notice of Review of September 18, 1985 (50 CFR 37958). Subsequently, the status of the flat-tailed horned lizard was elevated to category 1 on January 6, 1989 (54 FR 554), as new data on this species became available (Carlson and Mayhew 1988; Olech, undated; Rorabaugh et al. 1987). Category 1 candidates were those species for which the Service had on file sufficient information to support issuance of proposed listing rules. On November 29, 1993, the Service published a proposal (58 FR 62624) to list the flat-tailed horned lizard as a threatened species.

The Service held a public hearing on March 22, 1994, in Imperial, California, in response to formal requests from the public (59 FR 8450). The public comment period on the proposed rule was reopened from February 22, 1994, until April 22, 1994. At that time, the Service was unable to make a final listing determination on this species because of higher listing priorities.

On April 10, 1995, Congress enacted a moratorium on listing actions (Public Law 104–6) and eliminated funding for the Service to conduct final listing actions. The moratorium was lifted on April 26, 1996, by means of a Presidential waiver, at which time limited funding for listing actions was made available through the Omnibus Budget Reconciliation Act of 1996 (Pub. L. No. 104–134, 100 Stat. 1321, 1996). The Service published listing priority guidance for restarting the listing program on May 16, 1996 (61 FR 24722). When funding was restored, the Service commenced work on final actions, including the flat-tailed horned lizard proposed listing, in accordance with the listing priority guidance. The Service also coordinated with involved agencies on additional alternatives for conservation of the species.

The BLM opened a public comment period on the draft Management Strategy from January 21, 1997, to March 19, 1997 (62 FR 3052). The Management Strategy was the product of numerous meetings between agencies and individuals with an interest in the flat-tailed horned lizard. Public meetings regarding the draft Management Strategy were held in El Centro, California, on February 19, 1997, and in Yuma, Arizona, on February 20, 1997. Comments were addressed by the BLM, and, on June 9, 1997, Federal and State agencies signed a CA to implement the Management Strategy.

On March 5, 1997, the proposed rule comment period was reopened due to the time that had elapsed since the close of the initial comment period, changing procedural and biological circumstances, and the need to review the best scientific information available (62 FR 10016). The comment period was again extended for 30 days on May 6, 1997 (62 FR 24632).

On May 8, 1997, in response to a lawsuit filed by the Defenders of Wildlife, a U.S. District Court for the District of Arizona ruled that the Service must make a final determination on whether to list the flat-tailed horned lizard within 60 days of the filing date of the court order (May 16, 1997).

The processing of this proposed rule conforms with the Service's final 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 rulemakings during fiscal year 1997. The guidance calls for giving highest priority (Tier 1) to handling emergency situations, second priority (Tier 2) to resolving the listing status of the outstanding proposed listings, and third priority (Tier 3) to new proposals to add species to the lists of threatened and endangered plants and animals. Processing of this proposed rule constitutes a Tier 2 action.

Public Comments on the Proposed Rule

In the November 29, 1993, proposed rule (58 FR 62624) and associated notifications, all interested parties were asked to submit factual reports or information that might contribute to development of a final rule. Appropriate State agencies and representatives, scientific organizations, and other interested parties were contacted and requested to comment. A public hearing was held on March 22, 1994, at Imperial Valley College at which 11 individuals

testified. To allow for adequate public comment, the Service had four comment periods: November 29, 1993, to January 28, 1994 (58 FR 62624); February 22 to April 22, 1994 (59 FR 8450); March 5 to May 9, 1997 (62 FR 10016); and May 9 to June 9, 1997 (62 FR 24632).

During the comment periods, the Service received a total of 59 comments (oral and written testimony) including 39 comments in support of Federal listing, 17 in opposition to Federal listing, and 2 neutral comments. Opposition to the listing proposal was expressed by two State agencies, two Federal agencies, five municipalities or municipal agencies, and eight other interested parties. Support for the listing was expressed by 1 Federal agency and 38 other interested parties.

The proposed rule to list this species pre-dated the Service's policy to seek independent peer review (59 FR 34270). However, during the open comment periods, the Service solicited the expert opinions of appropriate independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy and biological and ecological information for the flat-tailed horned lizard. The comments received were considered in making the Service's determination on the proposed rule.

Written comments and oral statements obtained during the public hearing are incorporated into this withdrawal notice where appropriate. The Service carefully considered all comments submitted relevant to the decision to finalize or withdraw the proposed listing. Comments submitted are available for review at the Service's Carlsbad Ecological Services Office (see **ADDRESSES** section). Because it now withdraws the proposal to list the flat-tailed horned lizard, the Service will respond to issues raised in comments that supported listing. Seven relevant issues were raised in these comments, and the Service's response to each is as follows:

Issue 1: Data on flat-tailed horned lizard population trends are unclear.

Service Response: Quantification of flat-tailed horned lizard abundance is difficult due to the sedentary nature, cryptic coloration, and patchy distribution of this species. Turner et al. (1980) developed a survey technique to estimate the relative abundance of flat-tailed horned lizards based on counts of the number of scats observed per observer per hour. The technique, modified by Olech (undated), assumes the number of flat-tailed horned lizards is directly proportional to the number of scats and uses both the number of scats and number of lizards observed to estimate the relative lizard abundance. Surveys were conducted in 1979, 1981, 1984–1991, and 1993–1996 using this technique. The survey results have been used to estimate large-scale population trends (Wright 1993). Recently, the validity of this methodology has been reexamined (Wone 1997; Muth, *in litt.* 1997; Wright 1993). The methodology does not account for variations in lizard activity, scat production due to fluctuating food resources, weather conditions that affect scat production or longevity in the field, observer capability, or small sample sizes (Rorabaugh 1994). Changes in scat abundance over time could be caused by changes in lizard activity or scat production rather than changes in population size. The Department of Defense (DoD) has recently funded work to assess the validity of using scat counts to determine relative abundance and to develop an improved survey technique. In the interim, a modified scat count method, still considered the best available technique, continues to be used to estimate population trends on BLM lands in California, and, in conjunction with habitat parameters and locality records, to determine presence or absence of the species.

The relationship between scat counts and lizard abundance is unclear. Scat counts may provide a rough index for assessing relative abundance (Rorabaugh 1994), but Wone (1997) found that scat counts were not correlated to relative abundance at Ocotillo Wells in California. However, Wright (1993) found that scat counts were correlated with numbers of lizards encountered during scat surveys. Muth and Fisher (1992) concluded that scat counts should be used only to determine relative abundance, but not to estimate population size or habitat quality. Some researchers feel that scat counts consistently overestimate the number of flat-tailed horned lizards because other lizard species can produce scat similar in size (Muth, *in litt.* 1997).

The information on population trends presented in the proposed rule was derived from scat count data collected between 1979 and 1991. Although the best information currently available on relative abundance and population trends of flat-tailed horned lizards is derived from scat counts, the confounding effects of scat persistence, heterogeneous scat distribution, variable rates of scat production, variations in survey methodology over time, and drought, including localized effects of low rainfall in different parts of the desert, make the population trend information derived from scat counts inconclusive. The population trends presented in the proposed rule showed that, between 1979 and 1991, two areas, West Mesa and East Mesa, did not experience a significant downward population trend and one area, the Yuha Desert, experienced an overall downward population trend. However, later analyses performed subsequent to publication of the proposed rule show that the Yuha Desert experienced an upward trend between 1991 and 1993 (Wright 1993) and no trend between 1993 and 1995 (Nicolai, unpublished data). The apparent downward population trend in the Yuha Desert noted in the proposed rule occurred in, and subsequent to, years characterized by drought. The observed downward trend may have been due to a temporary population decline or reduced scat production due to drought and reduction of food resources, rather than long-term habitat deterioration. In the short term, if flat-tailed horned lizards have less food resources available during drought years, a stable population may produce less scat as lizards become less active; this could cause erroneous population trend results (Rorabaugh 1994). Longer term declines in scat production during drought periods may be indicative of population reductions due to decreased reproduction or increased mortality.

Other information on population trends is largely anecdotal. Turner et al. (1980) reported few flat-tailed horned lizards and low scat counts on and near Highway 78 in East Mesa, California, an area where the species was one of the most abundant lizard species in the 1960s (Carlson and Mayhew 1988). Norris (1949) believed the species was fairly common in the Coachella Valley where flat-tailed horned lizards are now difficult to find (Turner *et al.* 1980). Neither these observations nor trend data derived from scat counts are sufficient to conclude that the species' population is significantly declining in areas of extant habitat.

Issue 2: Numerous comments supporting the proposal to list the flat-tailed horned lizard reiterate threats identified in the proposed rule, or identify new threats facing this species in portions of its range. Threats identified in comments include: current and projected habitat loss due to authorized and unauthorized off-highway vehicle activity; geothermal development; sand and gravel extraction; road construction; oil and gas leasing; powerline construction; canal or pipeline construction; Border Patrol off-road activity; lack of regulatory mechanisms (including unsuccessful BLM efforts to protect

species); residential, recreational, and industrial development; agriculture and resulting chemical pollution; land conversion on BLM inholdings authorized through the Imperial County General Plan; activities on lands adjacent to habitat; expansion of exotic plants into lizard habitat; increased fire frequency due to exotic plant expansion; and predation.

Service Response: The threats to the flat-tailed horned lizard are addressed in detail in the ''Summary of Factors Affecting the Species'' section of this notice. Based on analyses conducted prior to the proposal to list the flat-tailed horned lizard, as well as from more recent analyses, an estimated 30–51 percent of historical flat-tailed horned lizard habitat in the United States was modified or destroyed in the past century. However, the extent of current rangewide threats facing remaining flat-tailed horned lizard populations is less clear. Although individual populations are threatened by residential, recreational, industrial, and agricultural development, large tracts of suitable habitat remain relatively undisturbed in Mexico and on public lands in the United States. Habitat found on public lands is protected to varying degrees by existing land-use designation. Significant potential threats to this species on public lands have been reduced or eliminated since publication of the proposed rule to list the species as threatened.

Issue 3: Several commenters stated that the BLM in California has failed to implement planned actions in previous conservation plans and questioned the ability of the BLM in California to manage habitat for this species or to accomplish the goals established in the CA and Management Strategy.

Service Response: The BLM has renewed and strengthened its commitment to the conservation of the flat-tailed horned lizard through participation in the development of the Management Strategy and subsequent signing of the CA. The Service anticipates that the BLM will implement the Management Strategy; however, the decision to withdraw the proposal to list the flat-tailed horned lizard is not based solely on BLM participation in the CA and Management Strategy. The flat-tailed horned lizard occurs not only on the BLM lands in California, but also on lands owned by the DoD, BoR, U.S. Marine Corps, U.S. Navy, BLM in Arizona, and California Department of Parks and Recreation. All of these agencies are signatories to the CA. The Service will continue to monitor the implementation of proposed actions through participation in the Interagency Coordinating Committee (ICC), and the Management Oversight Group designated in the CA. The BLM has demonstrated its commitment to implementation of the CA by already taking actions identified in the Management Strategy. Planning actions that are being implemented by BLM in California include: designation of MAs; application of mitigation measures to surface disturbing activities; collection of compensation fees for unavoidable habitat alteration due to surface disturbing activities; seeking acquisition of private inholdings within MAs; limitation of habitat disturbance within MAs to one percent; coordinating with the Border Patrol; initiation of OHV route designation and signing; and prohibiting insecticide treatments within MAs as outlined in the BLM Record of Decision for the Curlytop Virus Control Program.

Issue 4: Proposed and anticipated development on public and private lands facilitated by the North American Free Trade Agreement (NAFTA) threatens flat-tailed horned lizard populations and potential habitat in the United States and Mexico.

Service Response: Development due to NAFTA is likely to impact some flat-tailed horned lizard populations and some habitat in the United States and Mexico. However, the area likely to experience such disturbance is not adequately documented and the significance of this threat to the species as a whole can not be determined based on the limited available information.

Issue 5: Off-highway vehicle activities pose continued threats to habitat throughout much of flat-tailed horned lizard range.

Service Response: While OHV activity poses a potential local threat to the flat-tailed horned lizard, there is no documentation that OHV use poses a significant threat throughout the range of the species. Off-highway vehicles are known to cause lizard mortality and habitat disturbance (Muth and Fisher 1992, Rado 1981). The level of OHV activity, however, varies from a high level within OHV open areas to a low level in areas where existing routes are located miles apart. The zone impacted by established routes and the resulting impact on local lizard populations have not been determined.

Although some studies found reduced scat abundance where vehicular tracks were abundant (Olech undated), studies that have attempted to assess impacts of OHV activity on flat-tailed horned lizards have been inconclusive. For example, Klinger et al. (1990) were not able to assess the effects of varying levels of OHV activity because the different levels of OHV activity which they examined occurred in different habitat types. In a small number of study plots (n=6) at the Imperial Sand Dunes (ISD) in southeastern California, Bury and Luckenbach (1983) found that areas impacted by OHV activity exhibited lower abundances of rodents, lizards, and plants than areas where there was no OHV activity. However, in plots of different levels of OHV activity, Wone et al. (1990) and Wright (1993) found no difference in the abundance of flat-tailed horned lizard scat. Some OHV activity causing habitat disturbance is unauthorized, but information concerning the amount and impact of unauthorized OHV activity is unavailable.

Although OHV activity results in lizard mortality and habitat disturbance, there is no evidence, based on current data, that this activity is a significant threat to the species or is resulting in rangewide declines of flat-tailed horned lizard populations.

Issue 6: Several commenters noted that there are research gaps involving the flat-tailed horned lizard that need to be better understood to develop conservation measures. Needs include researching lizard movements, ecology, recolonization potential, and nesting sites and studying the effects of OHVs on the species.

Service Response: The Service agrees that a better understanding of a variety of aspects of flat-tailed horned lizard ecology, such as movement, habitat use, recolonization potential, age-specific survivorship, reproductive ecology, demographics, population viability, and effects of OHVs on the species, is necessary to develop proper conservation measures, and to better assess the status of the species.

Issue 7: Several commenters who support listing the flat-tailed horned lizard as threatened question the ability of the CA and Management Strategy to sufficiently protect the flat-tailed horned lizard. Issues raised surrounding the CA include: enforceability of the CA, funding of the CA, the ability of the CA to remove threats, unprotected status of private inholdings found within the MAs and the Management Strategy's allowance of continued fragmentation.

Service Response: The Service anticipates that continued implementation of the CA and Management Strategy will provide continued protection for this species on substantial acreages contained within MAs. The signatory agencies have begun implementation of actions identified within the Management Strategy and

have agreed to monitor surface disturbance and population trends, given the best available methodology, and report each on an annual basis to the Management Oversight Group. Furthermore, agencies have agreed to seek acquisition of all private inholdings within the boundaries of MAs. To date, private inholdings within the boundaries of MAs total approximately 19,280 ha (48,200 ac) (Foreman 1996). The BLM has informed the Service that it has issued a Notice of Proposed Exchange and is developing a Draft Environmental Assessment for a land exchange process whereby BLM acreage located outside of priority areas will be exchanged for private inholdings within BLM MAs. Priorities for inholding acquisition via this exchange include private inholdings found within Wilderness Areas, critical habitat designated for federally listed species, and Areas of Critical Environmental Concern (ACECs). The Marine Corps is in the process of acquiring all state lands found within the boundaries of the MA which lie within the Barry M. Goldwater Range. Funding is currently being sought by the Management Oversight Group for further implementation of the strategy. The Management Strategy focuses on five MAs that are disjunct, and it is the objective of the Management Strategy to provide enough protected area within each MA to sustain a viable population within each MA.

It should be noted that, while the CA and Management Strategy are important tools in the conservation of the flat-tailed horned lizard, withdrawal of the proposal to list this species as threatened is not based solely on the CA and Management Strategy. Threats identified in the proposed rule have been reduced or eliminated since the publication of the proposed rule, and the information regarding population trends is inconclusive. The Management Strategy will, however, provide for conservation of the flat-tailed horned lizard on the extensive public lands on which it occurs and facilitate continued evaluation of the status of this species. The Service believes that the Management Strategy has and will continue to benefit flat-tailed horned lizard populations by significantly reducing the threats on public lands.

Summary of Factors Affecting the Species

The Service must consider five factors described in section 4(a)(1) of the Act when determining whether to list a species. These factors, and their application to the Service's decision to withdraw the proposal to list the flat-tailed horned lizard, are as follows:

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

Habitat loss has occurred throughout the range of the flat-tailed horned lizard. The proposed rule stated that approximately 34 percent of the historical habitat had been lost (23–27 percent in Arizona, and 40 percent in California). According to Hodges (1997), using different methodologies from those used in the proposed rule, approximately 48.6 percent of the historical range in the United States (31.1 percent in Arizona, and 50.2 percent in California) has been lost due to four primary activities; agriculture, filling the Salton Sea, urbanization, and military activities. Hodges (1997) analyzed the boundaries for the historical range, as well as the approximate total acreage of habitat remaining for this species. She estimates a maximum of 56,800 ha (140,300 ac) of habitat remain in Arizona, and, based on estimates of historical habitat and habitat loss, approximately 446,900 ha (1,103,800 ac) of habitat remain in California.

The proposal to list the flat-tailed horned lizard as threatened, and comments received during the public comment period, identified human activities that have modified or were anticipated to modify the habitat. Activities that have disturbed habitat within the range of the flat-tailed horned lizard include: geothermal development; residential, recreational, and industrial development; agricultural conversion and resulting chemical pollution; sand and gravel extraction, oil and gas leasing; canal, pipeline, and transmission line construction; and authorized and unauthorized OHV activity.

Loss of flat-tailed horned lizard habitat due to geothermal development historically has occurred on both private lands and BLM lands east of El Centro, California. Geothermal resources are known to occur in this area as part of the Known Geothermal Resource Area (KGRA). Historically, approximately 28,240 ha (69,760 ac) of potential flat-tailed horned lizard habitat were subject to geothermal development due to construction, maintenance and operation of geothermal powerplants within the KGRA. Because energy extraction technology within East Mesa has proven technologically unfeasible, and government subsidies have begun to expire, no new geothermal powerplants are proposed at this time (Larry Caffee, pers. comm. 1997). Consequently, future geothermal power plant construction and resulting habitat loss are not anticipated at this time.

In the early 1980s, acreage throughout California was leased to oil and gas companies. Approximately 7,800 ha (19,200 ac) were estimated to be subject to oil and gas exploration and development based on pending oil and gas leases in 1980 (Rado 1981). This information was utilized in the proposed rule to list the flat-tailed horned lizard. Since the publication of the proposed rule, all oil and gas leases within the range of the flat-tailed horned lizard have expired (BLM 1996), and are not anticipated for renewal because of low likelihood of resource abundance (Foreman, pers. comm. 1996). Thus, habitat loss due to oil and gas exploration and development no longer threatens the species.

Off-highway vehicle activities, including Border Patrol OHV activities and authorized and unauthorized recreational OHV activities, occur in many portions of the range of the flat-tailed horned lizard. The level of OHV activity, however, ranges from a high level in areas within OHV open areas to a low level in areas where existing routes are located miles apart. The zone impacted by established routes, and the resulting impact on local lizard populations is not known. The habitat disturbance caused by route proliferation in the desert is visually evident, but has not been adequately quantified at this time.

Off-highway vehicle activity can crush burrows necessary to flat-tailed horned lizards for temperature regulation (Wone 1997), can cause direct mortality (Muth and Fisher 1992), and modifies habitat through shrub loss, exotic plant introduction, and soil movement (Rado 1981). The overall impact of OHV activity on habitat and individual lizards likely depends on the frequency and intensity of use. In OHV Open Areas and the Ocotillo Wells State Vehicular Recreation Area (SVRA), which include an estimated 65,200 ha (161,000 ac) of potential flat-tailed horned lizard habitat, intensity of use is often high, and vehicular activity is not restricted to routes. However, the population trend data are inadequate to conclude that the flat-tailed horned lizard population in the Ocotillo Wells SVRA is declining. Flat-tailed horned lizard mortality on established trails has not been quantified, but is likely to occur because of the adaptations of this species for prey avoidance. This species relies on cryptic coloration for defense, and rarely flees when approached. Animals that do move, usually move short distances.

This behavior, combined with shallow depths of hibernation during the winter months make mortality due to vehicular activity likely. The BLM is conducting a route designation process that administratively closes some existing routes, and will be continuing to work with off-highway vehicular recreationists and wildlife biologists to identify routes unnecessary to the recreation community.

No studies to date have documented the distance from a road over which any population declines or impacts may occur. Although some studies have found reduced scat abundance in areas with vehicular tracks (Olech undated), overall, studies that have attempted to assess the impacts of OHV use on flat-tailed horned lizards have been inconclusive. In a small number of plots (n=6) at the Imperial Sand Dunes in southeastern California, Bury and Luckenbach (1983) found that areas impacted by OHV use appeared to have lower abundance of rodents, lizards, and plants than in an equal number of control plots where there was no OHV use. However, in plots of different OHV use classification, Wone *et al.* (1990) and Wright (1993) found no difference in the abundance of flat-tailed horned lizard scat. Klinger *et al.* (1990) were not able to assess the effects of varying levels of OHV activity because the different levels of OHV activity which they examined occurred in different habitat types. Some disturbance due to OHV use is unauthorized, but information concerning the amount and impact of unauthorized use is unavailable. While OHV activity poses a potential local threat to individual flat-tailed horned lizard populations, there is no documentation that OHV use poses a significant threat throughout the range of the species.

Residential, recreational and industrial development on private lands threaten some populations of flat-tailed horned lizards within the range of the species. However, because at least 50 percent of the habitat available to the species is located on public lands, because conservation measures are in place on these lands, and because the likelihood of large scale recreational and industrial development on these lands is low, urban, recreational, and industrial development does not significantly threaten the species.

Agricultural conversion is one of the primary causes of habitat loss for the flat-tailed horned lizard. Conversion continues on many private parcels throughout the range of the species, most notably in Coachella Valley in Riverside County, and near San Luis and Yuma, Arizona. Like urban and industrial development, this impact is anticipated to occur largely on private lands. Agricultural conversion on public lands managed by signatories of the CA is not anticipated, but if it occurred, it would be subject to mitigation and compensation measures outlined in the Management Strategy. In addition, the signatories have committed to not authorize agricultural development in MAs. Because of the large acreage of habitat that exists on public lands where agricultural conversion is less likely to occur, the mitigation and compensation measures associated with surface disturbance on public lands managed by CA signatories, and the acreage further protected by the surface disturbance cap placed on MAs, agricultural conversion threatens local populations of the flat-tailed horned lizard, but does not threaten the species as a whole at this time.

Sand and gravel extraction, and canal, pipeline, and transmission line construction are impacts on flat-tailed horned lizard habitat that have occurred on private and public lands, and may continue to do so in the future. Canals, such as the All-American and Coachella Canals, likely constitute complete or near complete barriers to movement of flat-tailed horned lizards, resulting in habitat fragmentation. The current extent of sand and gravel extraction pits on public lands is not documented, but Rado (1981) estimated 2,070 ha (5,120 ac) of active and intermittent sand and gravel quarries. This acreage represents a small percentage of the habitat present on public lands. Signatories to the CA have committed to locating such projects to areas outside of MAs to the maximum extent possible, and will apply appropriate mitigation and compensation measures, as identified in the Management Strategy, to all such projects. The BLM has required appropriate mitigation and compensation measures on BLM land since 1990.

The Area Service Highway, a proposed highway that would connect Interstate 8 at Araby Road to the United States-Mexico Border, would fragment an area of high quality habitat. According to Hodges (1997), it would also result in approximately 830–1,040 ha (2,040–2,560 ac) of lost habitat and mortality of lizards. The highway is proposed for alignment along a portion of the western boundary of the Yuma MA. The habitat loss and potential future mortality and indirect impacts associated with construction of this road represent a local threat to the lizard population. This impact will be mitigated by on-site minimization measures and compensation fees which will be used for habitat acquisition within MAs.

Because of the large amount of flat-tailed horned lizard habitat located on public lands within the United States and the reduction of threats on these lands due to changing land-use patterns and conservation efforts of public agencies, threats due to habitat modification and loss do not warrant listing of the species at this time.

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

Although horned lizards have been popular in the pet industry, flat-tailed horned lizards are difficult to locate due to their cryptic coloration. No threat from overutilization of this species is known at this time.

C. Disease or Predation

The Service is aware of parasitism by nematodes and red mites in some flat-tailed horned lizards (Norris 1949), but this is not considered to be a threat to the species (Bolster and Nocol 1989). Flat-tailed horned lizards are preyed upon by loggerhead shrikes, round-tailed ground squirrels, snakes, and canids (Muth and Fisher 1992) as well as American kestrels, common ravens, and burrowing owls (Duncan *et al.* 1994). Because lizards remain on the surface and sleep at night, they may also be subject to predation by scorpions (Rorabaugh, *pers. comm.* 1997). Recent studies on telemetered animals in Arizona have revealed a high level of predation, with 30 percent of the marked lizards suffering mortality due to predation. Round-tailed ground squirrels and loggerhead shrikes were the primary predators identified. Further research is necessary on the effects of predation, and abundance and distribution of predators before the importance of this factor can be fully understood. There is no evidence of population declines in extant habitat where these predator species occur. Thus, based on the available data, disease and predation do not significantly threaten the species.

D. The Inadequacy of Existing Regulatory Mechanisms

The conservation of this species is linked to the protection of the desert habitat. As outlined in the proposed rule, numerous regulatory mechanisms are currently in place to protect the flat-tailed horned lizard. In addition to the regulatory mechanisms in existence at the time of publication of the proposed rule, the CA and Management Strategy outlined in the ''Background'' section of this notice have been signed by the

Service, the BLM in California, the BLM in Arizona, the California Department of Parks and Recreation, the Arizona Department of Game and Fish, the BoR, the Commanding Officer of the Barry M. Goldwater Range, and the Commanding Officer of Naval Air Field El Centro. This agreement and associated strategy provide a framework for continued management of the flat-tailed horned lizard within the MAs designated by each of the landholding signatories.

The States of California and Arizona prohibit the collection of flat-tailed horned lizards except by permit. The Arizona Game and Fish Department has further included the species on the List of Wildlife of Special Concern in Arizona. This list includes species that may be imperilled in Arizona. No state regulations protect the habitat of this species. Both the Arizona Game and Fish Department and the California Department of Parks and Recreation, however, have signed the CA and Management Strategy, which will provide for their continued participation in conservation efforts for this species. The Arizona Game and Fish Department does not own or manage flat-tailed horned lizard habitat but will continue to provide input on management decisions, as well as input regarding status and biology of the flat-tailed horned lizard. The state of California has designated part of the Anza Borrego Desert State Park as an MA, which will limit surface disturbance that could be experienced in the park. Management in Anza Borrego is compatible with lizard conservation, due to the emphasis placed on resource protection, regulations limiting vehicles to designated trails, and enforcement of these policies. These policies have been in effect for a number of years. The Ocotillo Wells State Vehicular Recreation Area (SVRA) has supported research on the flat-tailed horned lizard for several years, and will continue to do so as a signatory to the CA. The SVRA has been designated a ''Research Area'' in acknowledgment of continued support of research planned.

In 1990 the California Department of Fish and Game and the BLM developed a joint Flat-tailed Horned Lizard Management Plan to address the species' conservation on BLM lands in California. The overall management goal of this plan is to maintain stable populations in all crucial habitat areas and to promote species recovery on BLM lands in California. The BLM has been in the process of implementing this plan since 1990.

Within California, the lizard occurs in special management areas including three BLM Areas of Critical Environmental Concern (ACECs). These include the East Mesa, West Mesa and Yuha Desert ACECs. The ACECs overlap, in part, with the East Mesa, West Mesa, and Yuha Desert MAs. The East Mesa and Yuha Desert ACECs also fall within the boundaries of wildlife habitat areas that require preparation of habitat management plans to address the protection of special status species such as the flat-tailed horned lizard. This species also occurs within the boundaries of the San Sebastian Marsh ACEC and one Wilderness Study Area, the North Algodones Dunes Wilderness.

The ACEC and wildlife habitat area designations have had limited success in protecting flat-tailed horned lizard habitat. Management prescriptions within ACECs include measures such as restricting OHV activity, but ACEC management goals include a provision to ''provide for other uses in the designated areas compatible with the protection of significant natural and cultural resources'' (BLM 1980). Participation of the BLM in the development of the Management Strategy, and subsequent signing of the CA increase the protection of flat-tailed horned lizards that will occur within ACECs where they overlap with MAs. The increase in protection will occur as a result of the process identified to facilitate OHV route minimization within MAs, the prohibition of OHV competitive events within MAs, and the limitation of surface disturbance activities to one percent of the total area of MAs over the course of the next five years.

The North Algodones Dunes Wilderness is managed by the BLM for wilderness values. Motorized vehicular use is prohibited and the area shows little evidence of human intrusion. Limited habitat for the flat-tailed horned lizard exists in the wilderness area, but these populations are protected by this designation.

The flat-tailed horned lizard occurs in the Coachella Valley Preserve in Riverside County. It is reportedly not abundant within the Preserve, but these populations are not threatened.

In Arizona, the species occurs within the boundaries of the Gran Desierto Dunes ACEC and the extreme western portion of the Tinajas Altas Mountains ACEC. In addition, an MA on BLM, DoD, and BoR lands has been designated. This MA occurs in the area of high relative abundance identified by Rorabaugh *et al.* (1987). Protection on the MA will include a cap on future surface disturbance of no more than one percent over the course of the next five years, as well as other conservation measures identified as part of the Management Strategy. The U.S. Marine Corps has agreed to comply with the terms and conditions of a conference opinion issued by the Service whether or not the species is listed. Terms and conditions, which are currently being implemented, include among others, limitations on surface disturbance, establishment of a speed limit, and enforcement of ''no trespass'' requirements. In addition, the Marine Corps is acquiring State of Arizona inholdings within the MA on the Barry M. Goldwater Range.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Natural and manmade factors identified in the proposed rule as threats to the species included insecticide spraying associated with the Curlytop Virus Control Program and drought. Since publication of the proposed rule, the BLM has issued a Record of Decision prohibiting insecticide spraying in MAs. This spraying program was thought to have contributed to population declines in East Mesa (Bolster and Nicol 1989). Since impacts due to pesticide application have been reduced, this activity no longer threatens flat-tailed horned lizard populations within MAs.

Precipitation has been correlated with insect abundance and lizard densities (Turner *et al.* 1982). Within the range of the flat-tailed horned lizard, rainfall is highly unpredictable, both temporally and spatially (Turner and Brown 1982). Localized areas may experience long-term drought, which may result in local decreases in lizard populations. Because of the fragmented distribution of the flat-tailed horned lizard, this unpredictability in precipitation increases the chance of localized extirpations. Data are inadequate to properly assess the degree to which drought or other naturally occurring events may increase the probability of extirpation.

Finding and Withdrawal

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to this species. Flat-tailed horned lizard population trend data are inadequate to conclude that significant population declines have occurred in extant flat-tailed horned lizard habitat since publication of the proposed rule. Population trend information remains ambiguous due to uncertainties raised since publication of the proposed rule regarding survey methodology and analysis. Past and projected flat-tailed

horned lizard habitat loss due to agricultural, urban, industrial, and recreational development has and continues to occur on private lands. Large blocks of habitat with few anticipated impacts exist on public lands throughout the range of this species in East Mesa, West Mesa, Yuha Desert, Yuma, and Anza Borrego Desert. Since the publication of the proposed rule to list the flat-tailed horned lizard as threatened, several of the threats identified on public lands have been reduced or eliminated. Threats that have been reduced include those due to geothermal development, oil and gas development, and pesticide spraying. In addition, the conservation commitment of the agencies has increased with the signing of a CA and Management Strategy designed to protect the flat-tailed horned lizard on public lands. MAs have been designated in the Yuha Desert, West Mesa, East Mesa, Yuma Desert, and Anza Borrego State Park. Development of the CA has further reduced threats, as agencies begin to implement actions identified in the Management Strategy.

Because of re-evaluation of information presented in the proposed rule, significant reduction of threats on public land, and uncertainties regarding population trend data, the Service determines that the flat-tailed horned lizard does not meet the required criteria to afford this species threatened status under the Act.

The Service will work actively to gather additional information on its status as part of the Flat-tailed Horned Lizard Interagency Coordinating Committee. Further, the Service will continue to participate with parties of the CA to conserve this species as part of the Flat-tailed Horned Lizard Management Oversight Group.

References Cited

A complete list of all references cited is available at the Carlsbad Field Office (see **ADDRESSES** above).

Author

The primary author of this document is Sandy Vissman, Carlsbad Ecological Services Field Office (see **ADDRESSES** section).

Authority

The authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 10, 1997.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 97–18688 Filed 7–14–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 070797C]

RIN 0648–AJ45

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Bering Sea and Aleutian Islands Area; Prohibited Species Catch Limit for Chionoecetes opilio Crab

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

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 40 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) for Secretarial review. Amendment 40 would establish a prohibited species catch (PSC) limit for *Chionoecetes opilio* crab in a newly established *C. opilio* Bycatch Limitation Zone (COBLZ) of the Bering Sea. Upon attainment of the *C. opilio* PSC limit, directed fishing for groundfish by vessels using trawl gear, except for pollock by vessels using nonpelagic trawl gear, would be prohibited within the COBLZ. This measure is necessary to protect the *C. opilio* stock in the Bering Sea, which has declined to a level that presents a conservation problem. The intended effect of the proposed action is to further limit crab bycatch in the Bering Sea groundfish fisheries.

DATES: Comments on Amendment 40 must be submitted on or before September 15, 1997.

ADDRESSES: Comments on the proposed FMP amendment must be submitted to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of proposed Amendment 40 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis are available from the North Pacific Fishery Management Council, 605 West Fourth Ave., Anchorage, AK 99501-2252; telephone 907-271-2809.

FOR FURTHER INFORMATION CONTACT: Kim S. Rivera, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Steven Act) requires that each Regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, immediately publish a document announcing that the plan or amendment is available for public review and comment.

Amendment 40 would authorize the annual specification of a PSC limit for *C. opilio* crab for the new COBLZ of the Bering Sea based on the total annual abundance estimate of *C. opilio* crab as indicated by the NMFS bottom trawl survey. The PSC limits would be determined as part of the annual BSAI groundfish specification process, after consultation with the Council.

A proposed rule that would implement Amendment 40 may be published in the **Federal Register** for public comment, following NMFS' evaluation of the proposed rule under the Magnuson-Stevens Act procedures. Public comments on the proposed rule must be received by the end of the comment period on the FMP amendment to be considered in the approval/disapproval decision on Amendment 40. All comments received on or before September 15, 1997, whether specifically directed to Amendment 40 or the proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on Amendment 40.

Dated: July 9, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–18472 Filed 7–14–97; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 62, No. 135
Tuesday, July 15, 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

Food and Consumer Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Food Distribution Regulations and Forms

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Consumer Services's (FCS) intention to request an extension and revision of a currently approved information collection, the Food Distribution Regulations and Forms.

DATES: Written comments on this notice must be received by September 15, 1997.

ADDRESS: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information now collected; and (d) ways to minimize the burden of the collection of information on those who respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Lillie F. Ragan, Assistant Branch Chief, Household Programs Section, Food Distribution Division, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection forms should be directed to Lillie F. Ragan, (703) 305–2673.

SUPPLEMENTARY INFORMATION:

Title: Food Distribution Regulations and Forms.

Number: 0584–0293.

Expiration Date: 9–30–97.

Type of Request: Revision of a Currently Approved Information Collection.

Abstract: Under several legislative authorities, the Food and Consumer Service, Food Distribution Division, assists American farmers, needy people, and all children participating in child nutrition programs by distributing commodities acquired by other agencies within the Department. The commodities help meet the nutritional needs of: (a) Children from preschool age through high school in child nutrition programs and in nonprofit summer camps; (b) needy persons in households on Indian reservations that are participating in the Food Distribution Program on Indian Reservations, and Indian households residing in Oklahoma; (c) needy households in the Pacific Islands; (d) needy persons served by charitable institutions; (e) elderly participants in nutrition programs for the elderly; (f) pregnant and breastfeeding women, infants, and children and elderly persons participating in the Commodity Supplemental Food Program; (g) low-income, unemployed, and homeless persons receiving donated foods or congregate meals through organizations participating in the Emergency Food Assistance Program; (h) preschool and school age children, elderly and functionally impaired adults enrolled in centers participating in the Child and Adult Day Care Food Program; and (i) persons receiving food assistance as a result of presidentially-declared disasters or situations of distress.

The above described programs are administered under the following parts of Title 7 of the Federal Code of Regulations: Part 240, Cash in lieu of Donated Foods; 247, Commodity Supplemental Food Program; 250, Donation of Foods for use in the United States, its Territories and Possessions and Areas under its Jurisdiction; 251, the Emergency Food Assistance Program; 252, National Commodity Processing Program; 253, Administration of the Food Distribution Program for Households on Indian Reservations; and 254, Administration of the Food Distribution Program for Indian Households in Oklahoma.

For programs administered under these regulations, Distributing agencies and local organizations collect, prepare and submit to FCS and to distributing agencies a wide range of financial and commodity accountability reports and plans of operation. These reports and plans of operation are necessary to FCS for the ordering and distribution of commodities and the provision of Federal administrative funds to agencies administering these programs. Additionally, these organizations are required to maintain accurate and complete records of all their activities under these parts with regard to the receipt, distribution/disposal and inventory of donated foods, and with respect to any funds which arise from the operation of the distribution program. Such records must be maintained for three years from the close of the fiscal year to which they pertain; however, in instances where there is claims action or audit findings which have not been resolved they must be maintained as long as needed.

Comments are requested on the extension of the approval for the following forms contained under OMB No. 0584–0293: FCS–7, Destination Data for Delivery of Donated Foods; FCS–52, Food Requisition—Donated Food and State Distribution; FCS–53, Multi-Commodity Food Requisition; FCS–57, Report of Shipment Received, Over, Short and/or Damaged; FCS–152, Monthly Distribution of Donated Foods to Family Units; FCS–153, Monthly Report of the Commodity Supplemental Food Program and Quarterly Administrative Financial Status Report; FCS–155, Inventory Management Register; FCS–513, National Commodity Processing Agreement; FCS–153A, National Commodity Processing Agreement End Product Data Schedule; FCS–516, National Commodity Processing System Post Card; FCS–519A and B, National Commodity Processing Monthly Performance Report; FCS–586A and B, Report of Meals Served—State and Indian Agencies on Aging;

and FCS–663, Commodity Acceptability Report. Additionally, comments are requested with regard to other program reporting requirements that do not require specific forms. Examples include, but are not limited to the submission of State plans, applications by local agencies, and audit responses.

Comments are also requested regarding the following changes in the reporting and recordkeeping burden requirements:

An adjustment in the reporting and recordkeeping requirements as a result of the publication of the proposed rule ''Food Distribution Programs—Reduction of the Paperwork Burden'', on March 14, 1997 (62 FR 12108), and a final rule entitled ''Food Assistance in Disaster and Distress Situations'' (62 FR 8361) which was published on February 25, 1997.

A reduction in the frequency in which State plans must be submitted in the Emergency Food Assistance Program (TEFAP). This change resulted from the Federal Agriculture Improvement and Reform Act of 1966 (P.L. 104–193) which now requires that plans be submitted every four years rather than annually.

A reduction in burden hours resulting from the discontinuance of processing bonus commodities under the National Commodity Processing (NCP) system. Although NCP was reauthorized through Fiscal Year 2002 by Section 405 of the Federal Agriculture Improvement and Reform Act of 1996, P.L. 104–127, the availability of bonus commodities is greatly reduced and not expected to be available for processing under NCP in the near future.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 minutes or less to 150 hours per response, including the time to review instructions, search existing data sources, gather the data needed, and complete and review the information collection.

Respondents: Distributing agencies, subdistributing agencies, and recipient agencies; warehouses, food storage facilities, and transportation companies; commodity food processors and food service management companies.

Estimated Number of Respondents: 396,893 respondents.

Estimated Number of Responses per Respondent: 2.3.

Estimated Number of Annual Responses: 918,862.

Estimated Total Annual Burden on Respondents: 1,157,508 hours.

Dated: July 3, 1997.

William E. Ludwig,

Administrator, Food and Consumer Service.

[FR Doc. 97–18467 Filed 7–14–97; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Consumer Service

Food Distribution Program: Value of Donated Foods From July 1, 1997 to June 30, 1998

AGENCY: Food and Consumer Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the value of donated foods or, where applicable, cash in lieu thereof to be provided in the 1998 school year for each lunch served by schools participating in the National School Lunch Program (NSLP) or by commodity only schools and for each lunch and supper served by institutions participating in the Child and Adult Care Food Program.

EFFECTIVE DATE: July 1, 1997.

FOR FURTHER INFORMATION CONTACT: Ellen Henigan, Chief, Schools and Institutions Branch, Food Distribution Division, Food and Consumer Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302 or telephone (703) 305–2644.

SUPPLEMENTARY INFORMATION: These programs are listed in the Catalog of Federal Domestic Assistance under Nos. 10.550, 10.555, and 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. This notice has been determined to be exempt under Executive Order 12866.

National Average Minimum Value of Donated Foods for the Period July 1, 1997 Through June 30, 1998

This notice implements mandatory provisions of sections 6(e), 14(f) and 17(h)(1) (B) of the National School Lunch Act (the Act) (42 U.S.C. 1755(e), 1762a(f), and 1766(h)(1)(B)). Section 6(e)(1)(A) of the Act establishes the national average value of donated food assistance to be given to States for each lunch served in NSLP at 11.00 cents per meal. Pursuant to section 6(e)(1)(B), this amount is subject to annual adjustments as of July 1 of each year to reflect changes in a three-month average value of the Price Index for Food Used in Schools and Institutions for March, April, and May each year. Section 17(h)(1) of the Act provides that the same value of donated foods (or cash in lieu of donated foods) for school lunches shall also be established for lunches and suppers served in the Child and Adult Care Food Program. Notice is hereby given that the national average minimum value of donated foods, or cash in lieu thereof, per lunch under NSLP (7 CFR Part 210) and per lunch and supper under the Child and Adult Care Food Program (7 CFR Part 226) shall be 15.00 cents for the period July 1, 1997 through June 30, 1998.

The Price Index for Food Used in Schools and Institutions (Price Index) is computed using five major food components in the Bureau of Labor Statistics' Producer Price Index (cereal and bakery products; meats, poultry and fish; dairy products; processed fruits and vegetables; and fats and oils). Each component is weighed using the same relative weight as determined by the Bureau of Labor Statistics. The value of food assistance is adjusted each July 1 by the annual percentage change in a three-month average value of the Price Index for March, April and May each year. The three-month average of the Price Index increased by 2.25 percent from 127.40 for March, April and May of 1996 to 130.18 for the same three months in 1997. When computed on the basis of unrounded data and rounded to the nearest one-quarter cent, the resulting national average for the period July 1, 1997 through June 30, 1998 will be 15.00 cents per meal. This is an increase of 0.50 cents from the school year 1997 rate.

Section 14(f) of the Act provides that commodity only schools shall be eligible to receive donated foods equal in value to the sum of the national average value of donated foods established under section 6(e) of the Act and the national average payment established under section 4 of the Act (42 U.S.C. 1753). Such schools are eligible to receive up to 5 cents per meal of this value in cash for processing and handling expenses related to the use of such commodities.

Commodity only schools are defined in section 12(d)(2) of the Act (42 U.S.C. 1760(d)(2)) as ''schools that do not

participate in the school lunch program under this Act, but which receive commodities made available by the Secretary for use by such schools in nonprofit lunch programs.''

For the 1998 school year, commodity only schools shall be eligible to receive donated food assistance valued at 33.00 cents for each paid lunch served, and 33.25 cents for each free and reduced price lunch served. This amount is based on the sum of the section 6(e) level of assistance announced in this notice and the adjusted section 4 minimum national average payment factor for school year 1998. The section 4 factor for commodity only schools does not include the two cents per lunch increase for schools where 60 percent of the lunches served in the school lunch program in the second preceding school year were served free or at reduced prices, because that increase is applicable only to schools participating in the NSLP.

Section 103 of the Healthy Meals for Healthy Americans Act of 1994, (Public Law 103–448) amended section 6 of the NSL Act by adding a new paragraph (g), which mandates that not less than 12 percent of the assistance provided under sections 4, 6, and 11 of the Act be in the form of commodity assistance, including cash in lieu of commodities and administrative costs for commodity procurement of commodities under section 6. In school year 1997, the announced rate generated commodity assistance at a level that exceeded the 12-percent mandate. In the event that the rate of $.1500 announced in this Notice fails to meet the 12-percent requirement, the rate will be retroactively adjusted upward, and the additional commodities will be delivered to States during the first quarter of the next school year.

Authority: Sections 6(e)(1)(A) and (B), 14(f) and 17(h)(1) (B) of the National School Lunch Act, as amended (42 U.S.C. 1755(e)(1)(A) and (B), 1762a(f), and 1766(h)(1)(B)).

Dated: July 9, 1997.

Willliam E. Ludwig,

Administrator.

[FR Doc. 97–18547 Filed 7–14–97; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Antarctic Marine Living Resource Conservation and Management Measures.

Agency Form Number: None.

OMB Approval Number: 0648–0194.

Type of Request: Extension of a currently approved collection.

Burden: 35 hours.

Number of Respondents: 5 (multiple responses).

Avg. Hours Per Response: Ranges between 2 minutes and 28 hours depending on the requirement.

Needs and Uses: Pursuant to the Antarctic Marine Living Resources Act, participants in certain Antarctic fisheries must obtain harvesting permits. Persons importing Antarctic marine living resources must obtain an import permit and submit import tickets. These requirements are necessary to meet U.S. treaty obligations.

Affected Public: Businesses or other for-profit organizations.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Departmental Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 9, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–18491 Filed 7–14–97; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northeast Multispecies Gillnet and Cod Requirements.

Agency Form Number: None.

OMB Approval Number: 0648–0326.

Type of Request: Extension of a currently approved collection.

Burden: 1,999 hours.

Number of Respondents: 2,500 (multiple responses).

Avg. Hours Per Response: Varies between 1 and 5 minutes depending on the requirement.

Needs and Uses: In February, 1997, the New England Fishery Management Council requested that the National Marine Fisheries Service implement as a final rule management measures associated with Framework 20 to the Northeast Multispecies Fishery Management Plan. The purpose of the Plan is to rebuild seriously depleted stocks. A number of specific information requirements are contained in Framework 20. These measures require that multispecies gillnet vessels select to fish under a ''Day gillnet'' and ''Trip gillnet'' category designation; adds effort reduction requirements for Day gillnet vessels—a requirement to take 120 days out of the gillnet fishery, and the requirement to request tags for, and tag, gillnets; and includes a call in requirement for vessels.

Affected Public: Businesses or other for-profit organizations and individuals.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Departmental Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 9, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–18492 Filed 7–14–97; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

The Department of Commerce (DOC) has submitted to the Office of

Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Logbook Reporting for the Mackerel Fisheries, Southeast Region.

Agency Form Number: NOAA 88–186.

OMB Approval Number: None but this collection will be merged under 0648–0016 in the future.

Type of Request: New collection.

Burden: 6,410 hours.

Number of Respondents: 2,870 (multiple responses).

Avg. Hours Per Response: Ranges between 2 and 10 minutes depending on the requirement.

Needs and Uses: The National Marine Fisheries Service will be requesting logbook information from commercial mackerel fishermen in the Southeast Region. The purpose of the vessel logbooks is to collect detailed data on catch, effort, and area of catch. These data are needed to improve the scientific quality of stock assessments and develop better management options.

Affected Public: Businesses or other for-profit organizations and individuals.

Frequency: Every trip.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Departmental Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 9, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–18494 Filed 7–14–97; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 904]

Grant of Authority; Establishment of a Foreign-Trade Zone, Memphis, Tennessee

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Memphis International Trade Development Corporation (the Grantee) (a Tennessee private not-for-profit corporation), has made application to the Board (FTZ Docket 75–96, 61 FR 54766, 10/22/96), requesting the establishment of a foreign-trade zone at a site in Memphis, Tennessee, adjacent to the Memphis Customs port of entry; and,

Whereas, notice inviting public comment has been given in the **Federal Register**, and the Board adopts the findings and recommendations of the examiner's report and finds that the requirements of the Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 223, at the site described in the application, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 2nd day of July 1997.

Foreign-Trade Zones Board.

William M. Daley,

Secretary of Commerce, Chairman and Executive Officer.

[FR Doc. 97–18581 Filed 7–14–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

International Buyer Program: Application and Exhibitor Data

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 15, 1997.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th & Constitution Avenue, NW., Washington, DC 20230. Phone number: (202) 482–3272.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Jim Boney, Product Manager, International Buyer Program, Room 2116, Export Promotion Services, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230. Telephone: (202) 482–0481 or fax: (202) 482–0115.

SUPPLEMENTARY INFORMATION:

I. Abstract

The International Trade Administration, International Buyer Program (IBP), encourages international buyers to attend selected domestic trade shows in industries with high export potential, and facilitates contact between U.S. exhibitors and foreign visitors. The program's success has been demonstrated by the substantial increase in the number of foreign visitors attending these selected shows as compared to the attendance when not supported by the program. The application is the vehicle used by a potential show organizer to provide his/her (1) experience, (2) ability to meet the special conditions of the IBP, and (3) strategy for promoting the domestic trade show. The exhibitor data form is completed by U.S. exhibitors participating in an IBP domestic trade show and used to list the firm and its product in an Export Interest Directory

which is distributed worldwide for use by Foreign Commercial Officers in recruiting delegations of international buyers to attend the show. Among the criteria used to select these shows are: export potential, international interest, scope of the show, stature of the show, exhibitor interest, overseas marketing, logistics, and cooperation of show organizers.

II. Method of Collection

The written application is sent to the Department of Commerce, International Trade Administration, International Buyer Program, for review and selection.

III. Data

OMB Number: 0625–0151.

Form Number: ITA–4014P and ITA–4102P.

Type of Review: Renewal-Regular submission.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 4,080.

Estimated Time Per Response: ITA–4014P: 10 minutes; and ITA–4102P: 190 minutes.

Estimated Total Annual Burden Hours: 919 hours.

Estimated Total Annual Cost: $32,165.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on 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 OMB approval of this information collection; they also will become a matter of public record.

Dated: July 9, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–18493 Filed 7–14–97; 8:45 am]

BILLING CODE: 3510–DA–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–809]

Circular Welded Non-Alloy Steel Pipe From the Republic of Korea: Extension of Time Limit for Preliminary Results, Partial Termination of Antidumping Duty Administrative Review and Initiation of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results in the fourth administrative review of the antidumping duty order on circular welded non-alloy steel pipe from the Republic of Korea, covering the period November 1, 1995 through October 31, 1996, since it is not practicable to complete the review within the time limits mandated by the Tariff Act of 1930 (the Act), as amended, 19 U.S.C. 1675(a)(3)(A). In addition, the Department is terminating this administrative review with respect to one company, i.e., Dongbu Steel Company, Ltd. (Dongbu), based upon a withdrawal of the request for review by Sawhill Tubular Division-Armco Inc., Allied Tube and Conduit Corporation and Wheatland Tube Company, the petitioners in this proceeding and the party who requested the review of Dongbu. At this time, the Department is also initiating a changed circumstances review at the request of SeAH Steel Corporation (SeAH).

EFFECTIVE DATE: July 15, 1997.

FOR FURTHER INFORMATION CONTACT: Rosa Jeong, Marian Wells or Cynthia Thirumalai, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1278, 482–6309 or (202) 482–4087, respectively.

APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). All citations to the Department's regulations are references to the regulatory provisions in effect on the date that the request for review was made, to the extent that those regulations were not invalidated by the URAA or replaced by the interim final regulations published on May 11, 1995 (60 FR 25130).

SUPPLEMENTARY INFORMATION:

Background

On December 16, 1996, the Department initiated an administrative review of the antidumping duty order on circular welded non-alloy steel pipe from the Republic of Korea, covering the period November 1, 1995 through October 31, 1996 (61 FR 66017) based upon a request by certain exporters/producers of the subject merchandise and the petitioners in this proceeding. Petitioners' request covered six companies, including Dongbu. In our notice of initiation, we stated that we intended to issue the preliminary results of this review no later than 245 days from the last day of the anniversary month of the order. On March 27, 1997, we received a request from SeAH to conduct a changed circumstances review of the order in this proceeding (*see* 57 FR 42942 (September 29, 1992)).

Postponement of Preliminary Results of Review

Section 751(a)(3)(A) of the Act requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to issue the preliminary results in 245 days, section 751(a)(3)(A) allows the Department to extend this time period to 365 days. We determine that it is not practicable to issue the preliminary results within 245 days because this review involves collecting and analyzing information from a large number of companies, examining allegations of sales below the cost of production for some companies and novel issues regarding company affiliations. Accordingly, the deadline for issuing the preliminary results of this review is now no later than December 1, 1997. The deadline for issuing the final results of this review will be 120 days from the publication of the preliminary results.

Partial Termination of Administrative Review

Ordinarily, parties have 90 days from the publication of the notice of initiation of review in which to withdraw a request for review. *See* 19 CFR 353.22(a)(5). We received a request for rescission of the review from Dongbu on January 8, 1997. However, the petitioner did not withdraw its request for review with respect to Dongbu until June 11, 1997 (after the conclusion of the 90-day time period).

Given that the review has not progressed substantially and there would be no undue burden on the

parties or the Department, the Department has determined that it would be reasonable to grant the withdrawal at this time. Therefore, in accordance with section 353.22(a)(5) of the Department's regulations, the Department has terminated this administrative review with respect to Dongbu.

Initiation of Changed Circumstances Review

On March 27, 1997, SeAH requested that the Department conduct a changed circumstances review to determine that SeAH is the successor firm of Pusan Steel Pipe (PSP), a company examined during the less-than-fair-value (LTFV) investigation (*see Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea,* 57 FR 42942 (September 29, 1992)). SeAH amended its request on May 13, 1997 by including certain documents examined by Department officials during verification for the first administrative review.

The information submitted by SeAH shows changed circumstances sufficient to warrant a review. Therefore, we are initiating a changed circumstances administrative review pursuant to section 751(b)(1) of the Act to determine whether or not SeAH is the successor firm to PSP and is, as a result, subject to PSP's cash deposit rate.

This notice is in accordance with section 751 of the Act and 19 CFR 353.22.

Dated: July 7, 1977.

Richard W. Moreland,

Acting Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 97–18447 Filed 7–14–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–405–802]

Certain Cut-to-Length Carbon Steel Plate From Finland: 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 requests from the respondent, Rautaruukki Oy (Rautaruukki), and from petitioners (Bethlehem Steel Corporation, U.S. Steel Company, a Unit of USX Corporation, Inland Steel Industries, Inc., Geneva Steel, Gulf States Steel Inc. of Alabama, Sharon Steel Corporation, and Lukens Steel Company), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Finland. This review covers the above manufacturer/exporter of the subject merchandise to the United States. The period of review (POR) is August 1, 1995, through July 31, 1996.

We preliminarily determine the dumping margin for Rautaruukki to be 1.39 percent during the POR. Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding should also submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument.

EFFECTIVE DATE: July 15, 1997.

FOR FURTHER INFORMATION CONTACT: Jacqueline Wimbush or Linda Ludwig, Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1374 or (202) 482–3833, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all references to the Department's regulations are to 19 CFR part 353, as amended by the regulations published in the **Federal Register** on May 19, 1997 (62 FR 27296).

Background

On July 9, 1993, the Department published in the **Federal Register** (58 FR 37136) the final affirmative antidumping duty determination on certain cut-to-length carbon steel plate from Finland. We published an antidumping duty order on August 19, 1993 (58 FR 44165). On August 12, 1996, the Department published the Opportunity to Request an Administrative Review of this order for the period August 1, 1995–July 31, 1996 (61 FR 41768). The Department received requests for an administrative review of Rautaruukki's exports from Rautaruukki itself, a producer/exporter of the subject merchandise, and from the petitioners. We initiated the review on September 17, 1996 (61 FR 48882).

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. On April 11, 1997, the Department extended the time limits for the preliminary results in this case. *See Extension of Time Limit for Antidumping Duty Administrative Reviews,* 61 FR 14291 (April 11, 1997).

The Department is conducting this review in accordance with section 751(a) of the Act.

Scope of the Review

The products covered by this administrative review constitute one ''class or kind'' of merchandise: certain cut-to-length carbon steel plate. These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been ''worked after rolling'') for example, products which have been beveled or rounded at the edges. Excluded is grade X–70 plate. These HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Verification

As provided in section 782(i) of the Act, we verified information provided by the respondent by using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the verification reports, the public versions of which are available at the Department of Commerce, in Central Records Unit (CRU), Room B099.

Transactions Reviewed

In accordance with section 751(a)(2) of the Act, the Department is required to determine the normal value (NV) and export price (EP) or constructed export price (CEP) of each entry of subject merchandise during the relevant review period.

Based on a review of Rautaruukki's submissions and verification findings, the Department determined that Rautaruukki need not report its home market downstream sales because they would most likely not be needed in the calculation of normal value. *See Decision Memorandum on Reporting Downstream Sales*, July 2, 1997.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent, covered by the description in the Scope of the Review section, above, and sold in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics listed in Appendix III of the Department's antidumping questionnaire. We considered all shipbuilding Grade ''A'' steel other than ABA, the specification sold in the U.S. market, to be most similar to the U.S. specification.

Fair Value Comparisons

To determine whether sales of certain cut-to-length carbon steel plate by Rautaruukki to the United States were made at less than fair value, we compared the EP to the NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A (d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Export Price

We used EP as defined in section 772(a) of the Act. We calculated EP based on packed prices to unaffiliated customers in the United States. Where appropriate, we made deductions from the starting price for brokerage and handling, international freight, marine insurance, other transportation expenses, certification charges and credit. We have made adjustments to international freight to include fees paid to affiliated parties. *See Sales Verification Report*, June 11, 1997. We have deducted estimated expenses to account for harbor maintenance and depreciation. *See Analysis Memorandum*, July 7, 1997.

Normal Value

Based on a comparison of the aggregate quantity of home market and U.S. sales, we determined that the quantity of the foreign like product sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in the home market, in the usual commercial quantities and in the ordinary course of trade, at the same level of trade as the export price. See ''Level of Trade'' section below.

Where appropriate, we deducted rebates, discounts, credit expenses, inland freight, certification charges, warranty and packing.

For comparison to EP, we increased NV by U.S. packing costs in accordance with section 773(a)(6)(A) of the Act. Where sales are made in the home market on a different weight basis than in the U.S. market (theoretical versus actual weight or where different theoretical weight factors are used), it is the Department's practice to convert all quantities to the same weight basis, using the conversion factors supplied by the respondents. However, we were unable to verify respondent's actual-to-theoretical weight conversion factors. *See Sales Verification Report*, June 10, 1997. For these preliminary results, we have adjusted for differences between the theoretical weight factors used in the two markets. We have also converted all figures based on actual weight to a theoretical weight basis using a facts available conversion factor (the lowest factor submitted by respondent). We made adjustments to NV for differences in cost attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act. For the difference in merchandise adjustment, we relied on cost of production (COP) and constructed value (CV) data. In accordance with the Department's practice, where the difference in merchandise adjustment for any product comparison exceeded 20 percent for the most similar product match, we based NV on CV.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act and in the Statement of Administrative Action (SAA) accompanying the URRA, to the extent practicable, the Department will calculate normal values based on sales at the same level of trade as the U.S. sales (either EP or CEP). When the Department is unable to find sales in the comparison market at the same level of trade as the U.S. sale(s), the Department may compare sales in the U.S. and foreign markets at different levels of trade, and adjust NV if appropriate. The NV level of trade is that of the starting-price sales in the home market. As the Department explained in *Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review*, 62 F.R. 17148, 17156 (April 9, 1997), for both EP and CEP, the relevant transaction for the level of trade analysis is the sale from the exporter to the importer.

To determine whether home market sales are at a different level of trade than U.S. sales, we examine whether the home market sales are at different stages in the marketing process than the U.S. sales. The marketing process in both markets begins with the good being sold by the producer and extends to the sale to the final user. The chain of distribution between the producer and the final user may have many or few links, and each respondent's sales are generally to an importer, whether independent or affiliated. We review and compare the distribution systems in the home market and the United States, including selling functions, class of customer, and the extent and level of selling expenses for each claimed level of trade. Customer categories such as distributor, retailer or end-user are commonly used by respondents to describe level of trade, but without substantiation, they are insufficient to establish that a claimed level of trade is valid. An analysis of the chain of distribution and of the selling functions substantiates or invalidates the claimed customer categorization levels. If the claimed levels are different, the selling functions performed in selling to each level should also be different. Conversely, if customer level are

nominally the same, the selling functions performed should also be the same. Different levels of trade necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the level of trade. Differences in levels of trade are characterized by purchasers at different stages in the chain of distribution and sellers performing qualitatively different functions in selling to them.

When we compare U.S. sales to home market sales at a different level of trade, we make a level-of-trade adjustment if the difference in level of trade affects price comparability. We determine any effect on price comparability by examining sales at different levels of trade in a single market, the home market (or the third-country market used to calculate NV when the aggregate volume of sales in the home market is less than five percent of the aggregate volume of U.S. sales). Any price effect must be manifested in a pattern of consistent price differences between home market (or third-country) sales used for comparison and sales at the equivalent level of trade of the export transaction. *See Granular Polytetrafluorethylene Resin From Italy; Preliminary Results of Antidumping Duty Administrative Review,* 62 FR 26283, 26285 (May 13, 1997); *Cement from Mexico.* To quantify the price differences, we calculate the difference in the average of the net prices of the same models sold at different levels of trade. We use the average percentage difference between these net prices to adjust NV when the level of trade of NV is different from that of the export sale. If there is no pattern of price differences, then the difference in level of trade does not have a price effect and therefore, no adjustment is necessary.

Rautaruukki sold to a single customer in the U.S. market (a trading company). In the home market, Rautaruukki sold to two categories of customers (wholesalers/distributors and end-users) and performed the same selling functions between sales to all its U.S. and home market customers. Thus, our analysis of the questionnaire response leads us to conclude that sales within each market and between markets are not made at different levels of trade. Accordingly, we preliminarily find that all sales in the home market and the U.S. market are made at the same level of trade. Therefore, all price comparisons are at the same level of trade and no adjustment pursuant to section 773(a)(7)(A) is warranted.

Cost of Production Analysis

Based on the fact that the Department had disregarded below cost sales in the first administrative review (61 FR 2792) (the most recently completed investigation/review of Rautaruukki at the time of initiation of this review), in accordance with section 773(b)(2)(A)(ii) of the Act, the Department found reasonable grounds to believe or suspect that Rautaruukki made home market sales at prices below the cost of production. As a result, the Department initiated an investigation to determine whether the respondent made home market sales during this POR at prices below their COP within the meaning of section 773(b) of the Act. Before making any fair value comparisons, we conducted the COP analysis described below.

A. Calculation of COP

We calculated the COP based on the sum of respondent's cost of materials and fabrication for the foreign like product, plus amounts for home market general expenses and packing costs in accordance with section 773(b)(3) of the Act. Based on findings made at verification, we have recalculated Rautaruukki's general and administrative expenses and interest. *See Memorandum to Chris Marsh From Elizabeth Lofgren, June 3, 1997.*

B. Test of Home Market Prices

We used the respondent's weighted-average COP, as adjusted (see above), for the period August 1, 1995 to July 31, 1996. We compared the weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home-market sales made at prices below the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges, rebates, discounts, and direct and indirect selling expenses.

C. Results of COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we determined such sales to have been made in ''substantial quantities,'' and within an extended period of time in accordance with section 773(b)(2)(B) of the Act. Where we determined that such sales were also not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product, and calculated NV based on CV.

D. Calculation of CV

In accordance with section 773(e) of the Act, we calculated CV based on the sum of respondent's cost of materials, fabrication, SG&A, U.S. packing costs, interest expenses and profit as reported in the U.S. sales database. As noted above, we recalculated Rautaruukki's general and administrative expenses and interest expenses based on our verification results. In accordance with § 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the weighted-average home market selling expenses. Where we compared CV to EP, we deducted from CV the weighted-average home market direct selling expenses and added the weighted-average U.S. product-specific direct selling expenses, in accordance with § 353.56(a)(2) of the Department's regulations.

Currency Conversion

For purposes of the preliminary results, we made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a ''fluctuation.'' In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine a fluctuation exists, we substitute the benchmark for the daily rate.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the

following weighted-average dumping margin exists:

Manufacturer/exporter	Period	Margin (percent)
Rautaruukki Oy	8/1/95–7/31/96	1.39

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Case briefs from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs, limited to issues raised in those briefs, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of this administrative review, including its analysis of issues raised in the case and rebuttal briefs, not later than 120 days after the date of publication of this notice.

The following deposit requirements will be effective upon publication of the final results of this antidumping duty review for all shipments of certain cut-to-length carbon steel plate from Finland, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of review; (2) for exporters not covered in this review, but covered in the LTFV investigation or previous review, the cash deposit rate will continue to be the company-specific rate from the LTFV investigation; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be 32.80 percent, the ''All Others'' rate made effective by the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with section 751(a)(1) of the Act and 19 CFR 353.22.

Dated: July 7, 1997.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–18583 Filed 7–14–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

[A–351–824]

Silicomanganese From Brazil; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On January 9, 1997, the Department of Commerce (''the Department'') published the preliminary results of its administrative review of the antidumping duty order on silicomanganese from Brazil. The review covers exports of this merchandise to the United States by one manufacturer/exporter, Companhia Paulista de Ferro-Ligas (''CPFL'') and Sibra Eletro-Siderurgica Brasileira S.A. (''Sibra'') (collectively ''Ferro-Ligas Group''), for the period June 17, 1994 through November 30, 1995.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have revised our calculations for these final results.

EFFECTIVE DATE: July 15, 1997.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Thomas Barlow, Office of Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, all references to the Department's regulations are to 19 CFR 353 (1997).

Background

On January 9, 1997, the Department published in the **Federal Register** (62 FR 1320) the preliminary results of its administrative review of the antidumping duty order on silicomanganese from Brazil. The antidumping duty order on silicomanganese from Brazil was published on December 22, 1994 (59 FR 66003). This review covers the period June 17, 1994 through November 30, 1995. On May 8, 1997, we extended the final results of review (62 FR 25172).

Scope of the Review

The merchandise covered by this review is silicomanganese from Brazil. Silicomanganese, which is sometimes called ferrosilicon manganese, is a ferroalloy composed principally of manganese, silicon and iron, and normally contains much smaller proportions of minor elements, such as carbon, phosphorous and sulfur. Silicomanganese generally contains by weight not less than 4 percent iron, more than 30 percent manganese, more than 8 percent silicon and not more than 3 percent phosphorous. All compositions, forms and sizes of silicomanganese are included within the scope of this review, including silicomanganese slag, fines and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. This review covers all silicomanganese currently classifiable under subheading 7202.30.000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Some silicomanganese may also currently be classifiable under HTSUS subheading 7202.99.5040. Although the HTSUS subheadings are

provided for convenience and customs purposes, our written description of the scope is dispositive.

Analysis of Comments Received

We received case and rebuttal briefs from Petitioner, the Elkem Metals Company, and from Respondent, the Ferro-Ligas Group. At the request of Petitioner, we held a hearing on March 24, 1997. In their briefs both Petitioner and the Ferro-Ligas Group alleged clerical errors. We agree that certain of these items constitute clerical errors and therefore made the appropriate changes for the final results. *See* Analysis Memorandum from Analyst to File dated July 7, 1997.

Comment 1: Petitioner contends that the Department failed to include home market indirect selling expenses in constructed value (''CV''). Petitioner recommends that the Department calculate a selling expense factor by taking the total selling expenses reported in the Ferro-Ligas Group's financial statements and dividing that amount by the reported net sales revenue to yield a total selling expense factor. According to Petitioner, that total selling expense factor should then be applied to the gross unit price less home market ICMS (a Brazilian value-added tax) to derive the amount of home market indirect selling expenses that should be included in CV.

The Ferro-Ligas Group argues that Petitioner's suggestion that the Department use total selling expenses to calculate an indirect selling expense adjustment purposefully overstates indirect selling expenses. The Ferro-Ligas Group asserts that the amount of selling expenses derived using the process suggested by petitioner includes both direct and indirect selling expenses. Therefore, the Ferro-Ligas Group contends, the suggested adjustment would not accurately reflect the amount of home market indirect selling expenses. The Ferro-Ligas Group argues that, if the Department decides to include a home market selling expense adjustment in its calculation of normal value, the adjustment should be based on the indirect selling expense adjustment in the Department's Sales Verification Report. The Ferro-Ligas Group suggests that this ratio be applied to gross unit price less the appropriate home market taxes (*i.e.*, ICMS, PIS and COFINS) for the identical home market sale that would have been matched to the Ferro-Ligas Group's U.S. sale.

Department's Position: We agree with Petitioner that we did not include home market indirect selling expenses in CV and that we should have done so. However, we have also determined that Petitioner's recommended methodology does not provide the most accurate home market indirect selling expense factor because the Ferro-Ligas Group's financial statements do not segregate direct selling expenses from indirect selling expenses. We disagree with the Ferro-Ligas Group's suggestion that we use the indirect selling expense adjustment from the Sales Verification Report because that adjustment factor is a U.S. indirect selling expense ratio and, therefore, would provide inaccurate results for a home market indirect selling expense factor. Therefore, based on the information on the record, we have derived a home market indirect selling expense factor from the Ferro-Ligas Group's selling expenses reported in the financial statements. Because this amount includes both direct and indirect selling expenses, we subtracted the reported direct selling expense amount (*i.e.*, home market commissions) from the total selling expense amount to derive a home market indirect selling expense value, which we divided by the Ferro-Ligas Group's reported net sales revenue to obtain a home market indirect selling expense ratio. We then applied the indirect selling expense ratio to gross unit price less ICMS, PIS and COFINS and included it in CV. Since this adjustment was based on net prices, we deducted these taxes from gross unit price because we found that these taxes were included in the unit price of the subject merchandise. *See* Analysis Memorandum from Analyst to File dated July 7, 1997. We have determined that this methodology provides the most accurate results for a home market indirect selling expense figure.

Comment 2: Petitioner asserts that the Department failed to include in its calculation of general and administrative (G&A) expenses all of the ''extraordinary'' costs excluded by the Ferro-Ligas Group. Petitioner contends that the Department only accounted for excluded fixed costs at one plant (Barbacena) for six months of 1995 rather than for all of the plants for the entire year. Petitioner requests that the Department add to the Ferro-Ligas Group's reported G&A expenses all costs that were improperly deducted for the six-month period by the Ferro-Ligas Group and double all such costs in order to arrive at a reasonable estimate of the annualized amount that should be included in the Ferro-Ligas Group's G&A expenses for the entire year.

Petitioner argues that the Department should continue to include all ''extraordinary'' costs in the period rather than amortize them over future periods as the Ferro-Ligas Group now suggests. Petitioner asserts that, in the past, where respondent's financial statements have reported restructuring costs incurred in the fiscal year, the Department has consistently included these costs, in their entirety, in the cost of production (COP) and CV for the subject merchandise.

The Ferro-Ligas Group argues that, since these costs are extraordinary, non-recurring, and dedicated to re-starting and restructuring the company, it is inappropriate to include these expenses in an effort to calculate the normal COP of the Ferro-Ligas Group. The Ferro-Ligas Group asserts that the addition of the extraordinary costs of the factories other than Barbacena would further distort the Ferro-Ligas Group's CV in the wrong direction.

The Ferro-Ligas Group adds, however, that, if the Department continues to include the extraordinary costs as part of G&A expense, it should amortize these amounts over an appropriate period rather than fully apply them in this period.

Department's Position: We agree with Petitioner that the amounts reported by the Ferro-Ligas Group as extraordinary expenses should be included in the COP and CV calculations, and we have done so in our final calculations. In this review, the Ferro-Ligas Group classified certain manufacturing costs as non-operating expenses and excluded them from its reported COP and CV figures. These costs fall into three major categories: depreciation and other costs associated with plants that were closed in prior years; costs associated with reducing the plants' work forces; and costs associated with lower production levels resulting from bankruptcy and reorganization proceedings during 1995.

The Ferro-Ligas Group treated amounts recorded in the first of these categories, the costs associated with plants that were closed in prior years, as ''other operating expenses'' in its audited financial statements. These amounts represent depreciation and other costs actually incurred by the Ferro-Ligas Group during the period of review (POR) for holding idle production assets. Thus, these costs are properly included as part of G&A expenses in accordance with the Department's past practice. See, e.g., Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread From Malaysia, 61 FR 54773, 54772 (October 22, 1996).

The second category of costs, amounts associated with work-force reduction, were treated as manufacturing costs on the Ferro-Ligas Group's audited financial statements. These costs include severance, pension payments,

and a settlement with the worker's union. As such, they represent amounts actually incurred by the company and are properly included as part of the cost of the subject merchandise. However, like costs associated with idle assets, we consider these costs to be period costs (*i.e.*, costs that are more closely related to the accounting period rather than the current manufacturing costs) and have therefore included them in our calculation of G&A expenses.

The third category represents actual labor and overhead costs incurred by the Ferro-Ligas Group to produce the subject merchandise during the POR. Although these costs would normally be considered to be part of the company's actual manufacturing costs, for financial statement purposes, the Ferro-Ligas Group reclassified the amounts to non-operating expenses. According to company officials, this reclassification was done in order to exclude from operating costs those costs associated with the lower production levels resulting from the company's bankruptcy proceedings. In its response, the Ferro-Ligas Group excluded all of the reclassified costs from its reported COP and CV figures. Although treated as non-operating expenses for financial statement purposes, the labor and overhead costs excluded by the Ferro-Ligas Group were incurred specifically to produce the subject merchandise. As such they should be included in COP and CV and we have done so for these final results.

We disagree with the Ferro-Ligas Group's contention that the amounts incurred in each of the three categories described above are ''extraordinary'' expenses and, as a result, must be excluded from the company's reported costs. Contrary to the company's claims, these expenses do not meet the criteria for extraordinary expenses and, thus, are properly treated as part of COP and CV. See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products and Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands, 58 FR 37199, 37204 (July 9, 1993), and Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From France, 58 FR 37125, 37135 (July 9, 1993). In fact, the Ferro-Ligas Group did not treat these expenses as ''extraordinary'' items in its own financial statements. Moreover, with respect to the Ferro-Ligas Group's claim that all three categories of excluded expenses be amortized over some future period, there is no information on the record that would indicate that these expenses would benefit current or future production and, therefore, amortization of the amounts would be inappropriate.

Finally, with respect to Petitioner's argument that the costs should be doubled because they only represent six months of the actual costs incurred by the Ferro-Ligas Group, we disagree because such treatment would overstate COP and CV. In its response to the Department, the Ferro-Ligas Group has appropriately included twelve month G&A expenses.

Comment 3: The Ferro-Ligas Group argues that the Department violated section 773(f)(3) of the Act in this case by conducting an investigation of the major inputs received by the company from its affiliated suppliers. According to the Ferro-Ligas Group, the Department did not have reasonable grounds to believe or suspect that the COP of these inputs exceeded the transfer price the company paid for them. The Ferro-Ligas Group notes that no interested party provided the Department with grounds to conduct a major-input inquiry in this review. Nor does the Group believe that a finding of below-cost sales was established in the previous segment of this proceeding. The Ferro-Ligas Group argues that there is evidence on the record that supports its conclusion that Companhia Vale do Rio Doce (CVRD) and the Usinas Siderurgicas de Minas Gerais S/A (USIMINAS) generate enormous profits through their sale of manganese ores and coke and, thus, could not have been selling these inputs at below-cost prices during the POR. For these reasons, according to the Ferro-Ligas Group, the Department should accept the company's submitted transfer prices for major inputs purchased from affiliated suppliers since there was no basis for questioning these amounts.

Petitioner argues that section 773(f)(3) of the Act provides the Department with the authority to conduct an investigation of an affiliated supplier's production costs where there are reasonable grounds to believe or suspect that major inputs were supplied at prices below cost. Moreover, Petitioner contends, section 773(f)(3) of the Act does not address the circumstances under which the Department may request COP data for major inputs purchased from affiliated suppliers. Thus, according to Petitioner, a separate sales-below-cost allegation need not be filed and accepted before the Department may conduct an inquiry with respect to the cost of major inputs.

Petitioner asserts that the Department's practice is based on a sound rationale. Petitioner contends that, where a respondent is selling subject merchandise in the home market at prices below COP, one reason the respondent could sustain this practice is its ability to obtain inputs from affiliated suppliers at prices below the market value or even the COP of such inputs. Moreover, Petitioner contends, the affiliated supplier may have an interest in subsidizing a respondent's below-cost home market sales of subject merchandise by providing inputs at below COP for the purpose of reducing or eliminating antidumping duties on U.S. sales.

Department's Position: We agree with Petitioner that a separate sales-below-cost allegation need not be filed and accepted before we can investigate COP data for major inputs purchased from affiliated suppliers. In those instances in which we conduct an investigation of sales below cost under section 773(b) of the Act, it is our practice to analyze production-cost data for major inputs purchased by a respondent from its affiliated suppliers (see, e.g., Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From France, 60 FR 10538 (February 27, 1995), and Final Results of Antidumping Administrative Review: Tapered Roller Bearings from Japan, 61 FR 57629, 57644 (November 7, 1996)). In this regard, we believe that the great potential for below-cost sales of the foreign like product provides us the reasonable grounds to believe that major components of the foreign like product may also have been sold at prices below the COP within the meaning of section 773(f)(3) of the Act. Thus, separate allegations concerning each of the major inputs obtained from affiliates are not required in order for us to request production-cost information with respect to such inputs. Rather, our position is that, if there is reason to suspect that a respondent has sold the foreign like product at prices below COP, then there is likewise reason to suspect that the respondent's affiliated suppliers have also transferred major production inputs at below-cost prices. The affiliation, that is, the common control, management, or ownership, creates the potential for companies to act in a manner other than at arm's length.

In addition, as a practical matter, our practice with respect to analyzing affiliated-party purchases of major inputs recognizes the extreme burden that would be imposed on all parties where petitioners would be required to provide specific below-cost allegations

with respect to individual major inputs and the various suppliers of those inputs, and respondents would be required to provide specific information with respect to individual major inputs. In most instances, the information necessary for a petitioner to recognize the need for and to file an allegation with respect to below-cost sales of major inputs is under the control of the respondent. At best, this information would only be made available to the petitioner once the respondent had answered the Department's cost questionnaire. Thus, a separate allegation and initiation procedure for each major input and affiliated supplier, like that envisioned by the Ferro-Ligas Group in this case, would serve only to prevent the Department from performing its analysis of critical production-cost data where there already exist reasonable grounds to proceed with such an analysis. *See* Statement of Administrative Action (SAA) at pages 833 and 834.

We disagree with the Ferro-Ligas Group's argument that, because we conduct an investigation of affiliated-party major inputs in all cases in which we initiate a sales-below-cost inquiry under section 773(b) of the Act, there is no purpose to the ''reasonable grounds to believe or suspect'' threshold under section 773(f)(3) of the Act. As discussed previously, a showing of reasonable basis to suspect below-cost sales of the subject merchandise in the home market, coupled with the fact that a producer and its supplier(s) of major inputs are affiliated provides us with a basis for analyzing the cost of major inputs purchased by the respondent from its affiliates. In situations in which sufficient allegation of home market sales of the subject merchandise below cost has not been made, for example when CV is used as normal value due to the lack of viable home or third-country markets, petitioner or other interested parties would be required to present the Department with other ''reasonable grounds'' in order for the Department to initiate a below-cost investigation of major inputs.

We also disagree with the Ferro-Ligas Group's claim that the financial statement profits reported by CVRD and USIMINAS prove that these entities are not transferring major inputs to affiliated parties at prices below the cost for such inputs. These financial statements merely show that the company earned an overall profit on its sales of all goods and services; they do not establish that specific products transferred to affiliated parties were sold above the respective costs. Moreover, because the Ferro-Ligas Group refused to provide some of the requested cost information, we were unable to determine whether their purchases of major inputs were made at arm's length prices. Accordingly, we have continued to value the affiliated-party inputs using the same adverse facts available values we relied upon in the preliminary results.

Comment 4: The Ferro-Ligas Group argues that the Department's use of an adverse inference in applying facts available for major inputs supplied by affiliated parties is contrary to law. The Ferro-Ligas Group contends that the Court's decision in *NSK, Ltd.* v. *United States (''NSK''),* 910 F. Supp. at 670 (CIT 1995), does not support a conclusion that if cost information is not available the Department may penalize the respondent. The Ferro-Ligas Group states that in this review it was physically and legally unable to extract cost information from its affiliated parties, CVRD and USIMINAS. The Ferro-Ligas Group contends that the Department should have determined that neither the Ferro-Ligas Group nor the Department was in a position to obtain the information desired in the context of its 773(f)(2) inquiry. Therefore, the Ferro-Ligas Group argues, its inability to obtain this back-up information does not provide grounds for the Department to apply adverse facts available. The Ferro-Ligas Group also believes that the Department should not have waited until its preliminary results to indicate for the first time that Respondent had not met the Department's standard for acting to the best of its ability.

The Ferro-Ligas Group further argues that the Department incorrectly determined that the Ferro-Ligas Group's shareholders are ''interested parties'' in this proceeding. Respondent contends that the Department's rationale in determining that the shareholders are interested parties in the proceeding due to common commercial interests is a false presumption. Therefore, the Ferro-Ligas Group contends that the Department is incorrect in assuming that the interest of the respondent is identical to that of its affiliated parties. Moreover, the Ferro-Ligas Group asserts, the Department should have either accepted the transfer price information submitted by the Ferro-Ligas Group or requested some other information since the affiliated parties' cost information was unavailable.

The Ferro-Ligas Group asserts that the Department's decision to use adverse facts available for inputs purchased from CVRD and USIMINAS is not supported by facts on the record. With respect to USIMINAS, the Ferro-Ligas Group contends that USIMINAS demonstrated through the submission of price data that its prices to the Ferro-Ligas Group were at or above market prices. Therefore, respondent states, there was no need for additional ''back-up'' cost information and, thus, the application of facts available for USIMINAS inputs was inappropriate.

The Ferro-Ligas Group also asserts that during verification the Department could have requested additional information if it was not persuaded by the information Respondent had submitted. Since the Department did not make such a request, the Ferro-Ligas Group argues that the Department cannot silently accept submissions from a respondent and statements at verification and then state in the preliminary results that the information is not sufficient, as it did in this case.

Finally, the Ferro-Ligas Group claims that the only evidence on the record supports the conclusion that CVRD was subject to severe restrictions due to the privatization process and could not legally furnish proprietary information outside the confines of the privatization procedures.

Petitioner contends that the Ferro-Ligas Group's assertion that its shareholders are not ''interested parties'' is unfounded. Petitioner asserts that the record demonstrates that there are well-established customer-supplier relationships between the Ferro-Ligas Group and USIMINAS and CVRD. Moreover, Petitioner points out that, if the Department were to establish a large antidumping margin for merchandise produced by the Ferro-Ligas Group, its shareholders ultimately would suffer the effects, both as the sole owners of the Ferro-Ligas Group and through lower sales due to a decline in the volume of inputs required by the Ferro-Ligas Group. Therefore, Petitioner contends, USIMINAS and CVRD are considered interested parties because of their close affiliations with the Ferro-Ligas Group.

Petitioner contends that, in this case, in light of the close relationships that exist between the companies, the refusal by USIMINAS and CVRD to produce requested information is properly treated as a refusal by the Ferro-Ligas Group itself. Furthermore, Petitioner alleges that the Ferro-Ligas Group failed to illustrate that it acted to the best of its ability because there is no evidence of any additional communications with USIMINAS or CVRD showing efforts to obtain the information that would rise to the level of acting to the best of its ability. Moreover, Petitioner asserts that the Department made repeated attempts to obtain the necessary information, but

the Ferro-Ligas Group's co-owners refused to provide the requested information. Therefore, Petitioner contends, the Ferro-Ligas Group failed to act to the best of its ability to obtain the requested information.

Petitioner argues that the Ferro-Ligas Group's assertion that CVRD may not have the resources to obtain the requested information is unsubstantiated. Petitioner contends that the Ferro-Ligas Group would have the Department believe that it is harder for a large entity, such as CVRD, with a ''sizable administrative structure'' (citing Respondent's March 3rd brief at 21) to provide this information than it would be for a small entity without such resources. In addition, Petitioner argues the Ferro-Ligas Group's claim that CVRD was barred from providing information due to Brazilian law fails to provide a reason not to apply adverse facts available. Petitioner contends that the Ferro-Ligas Group made no showing that the court order upon which it relies prohibited CVRD from providing information to the Department for use in an antidumping proceeding nor that the information protected by the court order cited by respondents is the same information that would be provided in this case. Thus, Petitioner asserts, the Ferro-Ligas Group failed to demonstrate that CVRD was prevented from providing the requested information.

Department's Position: We determined that the Ferro-Ligas Group is affiliated with CVRD and USIMINAS pursuant to sections 771(33) (E) and (G) of the Act. Based on this affiliation, and on the fact that we had initiated an investigation to determine whether the Ferro-Ligas Group made below-cost sales in the home market, we requested cost data for the major inputs the Ferro-Ligas Group obtained from its affiliated parties.

Neither the Ferro-Ligas Group nor its parents, CVRD and USIMINAS, has met its burden of adequately showing that the affiliated firms acted to the best of their ability to provide the cost data we requested. In fact, we note that the affiliates specifically stated their ''unwillingness'' to provide the requested information (October 16, 1996, Section D questionnaire response at 10–11). Therefore, pursuant to section 776(b) of the Act, the Department used an adverse inference with respect to the facts available to value all inputs Ferro-Ligas purchased from its parents, CVRD and USIMINAS. The Ferro-Ligas Group's claim that the statute requires that the Department produce evidence that these firms *could* provide such information is unfounded and, given the fact that the firms in question control their own data, unreasonable. Further, we note that, to the extent that there may have been any aspect of the data which CVRD may not wish to reveal to Ferro-Ligas, such data could have been provided directly to the Department and protected under administrative protective order. Though made aware of this option at verification (*see* Verification Report dated December 18, 1996), the Ferro-Ligas Group did not pursue this as an alternative.

With respect to the Ferro-Ligas Group's argument that CVRD and USIMINAS, not Ferro-Ligas, refused to furnish the requested data, it is important to note that the Ferro-Ligas Group is wholly owned by CVRD and USIMINAS. Hence, through this subsidiary (the Ferro-Ligas Group), CVRD and USIMINAS may be termed an ''interested party'' within the meaning of section 771(9)(A) of the Act. An ''interested party'' and an immediate ''respondent'' are not necessarily the same thing. Although most information necessary to conduct an antidumping review is maintained by, and thus best obtained from, the corporate unit immediately responsible for producing the subject merchandise, it is sometimes necessary to obtain information, such as G&A data, financial data and cost-input data, from the parent or other affiliated entities of such units. Because the Department requires such data and because the business of the parent entity is clearly affected by its ability to ensure that its subsidiary avoids or lessens the effect of antidumping duties on U.S. sales, the consolidated or parent entity must be considered an ''interested party'' for purposes of responding to requests for information. Pursuant to this policy, we consider CVRD and Ferro-Ligas to have shared interests in responding to our request for cost data and, as in the preliminary results, have used an adverse inference in determining the facts available because of their lack of cooperation with respect to the cost data which Ferro-Ligas did not provide.

We also find that the existence of a separate statutory definition of the term ''affiliate'' does not preclude us from imputing the actions of an affiliated party to the respondent or from treating both as a single entity. As the Department stated in Roller Chain Other Than Bicycle From Japan; Final Results of Antidumping Duty Administrative Reviews, 61 FR 64328, 64329 (December 4, 1996), we consider the related party's non-compliance as an omission imputable to the respondent. If we were to accept without adverse consequences a simple refusal by affiliated parties to provide data required in antidumping proceedings, this would allow such parties to provide data only when it would be in their best interest to do so.

As to the claim that we failed to notify the Ferro-Ligas Group that it was not demonstrating its best efforts, we note that we repeatedly informed the Ferro-Ligas Group of the need to provide the requested information. Each of our requests also informed the Ferro-Ligas Group that, if the information requested was not supplied or could not be verified, we would have to resort to the use of facts available for the final results. Therefore, any requirement to notify a respondent of what was expected of it was met. *See Creswell Trading Co.* v. *United States*, 15 F.3d 1054, 1060 (Fed. Cir. 1994) and Section 782 of the Act. We also note that at verification we further discussed the production information requirements under the law with personnel from CVRD, USIMINAS and the Ferro-Ligas Group. At verification, we again requested that the Ferro-Ligas Group provide us with cost information regarding affiliated purchases, but they did not take advantage of this opportunity. Finally, our verification report also discusses the extent of affiliated-party data which was not provided.

The Ferro-Ligas Group is also incorrect in arguing that *cost* data was not necessary for the inputs purchased from USIMINAS because benchmark *price* data was provided for these inputs. This assertion assumes that we were legally permitted only to pursue information for comparison to transfer prices under section 773(f)(2). However, as discussed in our response to Comment 3 above, we disagree with this assertion. We consider all ''manganese ores'' to be a major input and disagree with the Ferro-Ligas Group's attempt to subdivide manganese ores into separate ''inputs'' based upon the geographical location from which the ore was mined (*see* our response to Comment 6, below, for further discussion). Thus, the ''market price'' data provided by USIMINAS does not obviate the need for the actual production-cost information.

Additionally, we find no evidence to support the assertion that the Ferro-Ligas Group had inadequate resources to gather this information. The Section D questionnaire response, dated October 16, 1996, specifically stated that the affiliated parties are ''*unwilling*, for commercial and competitive reasons, to provide any per-unit cost information to the Ferro-Ligas Group (*emphasis added*).'' At no time prior to submitting its briefs did the Ferro-Ligas Group state that it lacked the resources to prepare

the data. We note that even if Respondent raised such a claim we would have had to pursue whatever data was available. Had Respondent raised a credible issue with respect to its resources earlier in this review we could have considered providing the respondent additional time in which to prepare the data.

Finally, we are not persuaded by the Ferro-Ligas Group's argument that a court decree prohibited CVRD from providing information to us for use in the antidumping proceeding. The Ferro-Ligas Group made no showing that the particular court order upon which it relied prohibited CVRD from providing information to us nor that the information protected by the court decree is the same information that would be provided in this case. Specifically, the court decree provided at verification held that a particular Brazilian entity could not have access to certain information of CVRD. The Ferro-Ligas Group did not show that this decree had any effect on the Department's request for CVRD's cost information. *See NSK* at 671, (stating that a unilateral decision by a respondent that Japanese law obviated the need for a complete and accurate response to the Department's questionnaires was not sufficient to avoid the application of BIA).

Comment 5: Petitioner argues that, consistent with its practice in adverse facts-available situations, the Department should have used the highest cost, transfer price or fair value on record for each such major input as adverse facts available. Rather than use the publicly available price of manganese ore on which the Department relied in the preliminary results, Petitioner states that the highest manganese ore price on the record should be used to value all manganese ore inputs. According to Petitioner, the Department's use of any lesser amount for some manganese ore rewards the Ferro-Ligas Group for its failure to cooperate in the review.

Respondent claims that it is inappropriate to use the highest manganese ore price on the record as facts available for three reasons. First, the highest manganese ore price on record corresponds to a manganese ore purchased from CVRD, an affiliated party. Respondent argues that because Petitioner has claimed that this is an unsubstantiated transfer price it cannot now argue that it should be used as facts available for other manganese ore inputs. The Ferro-Ligas Group notes the inconsistency of ignoring transfer prices from CVRD and then selecting the highest transfer price from CVRD to value all manganese ores. Second, Respondent states that the specific ore in question, ''Carajas Granulado,'' is unlike all other inputs used in the production of subject merchandise because it has a significantly higher manganese content than other inputs and, as a result, is significantly more costly. Third, Respondent contends, this ore was consumed only in very small quantities and there were months during the POR when it was not used at all; when it was used, respondent states, consumption quantities were minimal. The Ferro-Ligas Group states that the Department already has overstated its manganese ore costs by using a market price for manganese ores with a purity (*i.e.,* manganese content) of 48–50 percent, although most of the ores used in the production of subject merchandise contain only approximately 30-percent manganese ore. Respondent claims that the use of Carajas Granulado as a surrogate for all inputs would further distort the Department's calculations.

Department's Position: We disagree with Petitioner that, as facts available, we should rely on the price of the ore with the highest manganese content to value all manganese ores, regardless of manganese content. As in the preliminary results, we applied appropriate adverse facts available to value each of the individual manganese ores as listed by geographical location. In each case, we used the highest of the cost (where provided), transfer price, and benchmark market value (where provided) to value the individual ores. Where appropriate, as adverse facts available we applied a publicly available (non-source-specific) market price for ores having a manganese content of 48–50 percent. We agree with Respondent that Carajas Granulado is not representative of all manganese ores and note that its low consumption quantities and high manganese content differentiate it from the other manganese ores.

Further, we disagree with Petitioner that the use of anything less than the highest price for any manganese ore rewards the Ferro-Ligas Group for failing to cooperate. As noted above, we applied the price of higher-quality ores to ore of lesser manganese content. Therefore, our choice of facts available for these ores was adverse. We find that Petitioner's argument for use of more adverse facts available is not persuasive. We have discretion to choose the appropriate facts available. *Cf. Allied-Signal Aerospace Co.* v. *United States*, 996 F.2d 1185, 1191 (Fed. Cir. 1993) (Congress has ''explicitly left a gap for the agency to fill'' in determining what constitutes the best information available). We are not required to use the most adverse value on the record as adverse facts available. *Cf., e.g., Saha Thai Steel Pipe Co., Ltd.* v. *United States*, 828 F. Supp. 57, 62 (CIT 1993) (''Commerce need not unduly apply the highest rate * * * as BIA for non-cooperating parties when Commerce has credible evidence of a more accurate rate'').

Comment 6: The Ferro-Ligas Group argues that, if the Department continues to apply facts available to manganese ores obtained from affiliated parties, it should limit its application to those specific ores which were identified as major inputs. The Ferro-Ligas Group asserts that, in accordance with the definition provided in the questionnaire response, it identified eight major inputs purchased from affiliated parties. It claims that the Department did not request cost or market-price information for affiliated-party inputs other than the major inputs nor did the Department question the Ferro-Ligas Group's definition of major input. Therefore, the Ferro-Ligas Group concludes, if the Department intends to use adverse facts available, it should limit its application to major inputs, citing *Olympic Adhesives* v. *United States*, 899 F.2d 1565, 1574 (Fed. Cir. 1990).

Petitioner argues that the Department should continue to value manganese ores classified by the Ferro-Ligas Group as ''minor inputs'' at the same price as those classified by the Ferro-Ligas Group as ''major inputs,'' as it did in the preliminary results. It states that the Ferro-Ligas Group should not be permitted to treat manganese ore obtained from different suppliers as different inputs. Petitioner asserts that all manganese ores are major inputs, regardless of their origin, and should be valued in the same manner. Citing Final Determination of Sales at Less Than Fair Value: Newspaper Printing Presses From Japan, 61 FR 38139, 38162 (July 23, 1996), Petitioner argues that the Department has specifically rejected an attempt by a respondent to portray the same basic input as several different components based on the different suppliers from which it was obtained. Therefore, Petitioner requests that the Department reject the Ferro-Ligas Group's argument for these reasons.

Department's Position: We agree with Petitioner that, in this review, the manganese ores represent a single major input. The Ferro-Ligas Group identified, in this review, charcoal, coke, and manganese ores as major inputs obtained from affiliated suppliers (October 16, 1996, Section D response at 9) as did the International Trade

Commission in its original investigation (Preliminary Determination of Sales at Less Than Fair Value: Silicomanganese from Brazil, the People's Republic of China, Ukraine and Venezuela, Nos. 731–TA–671 through 674, USITC Pub. 2714 at II–3 (December 1993)). Additionally, Respondent indicates that it relies almost exclusively on manganese ore as the source of manganese in its production process. Based on the Ferro-Ligas Group's representations and the ITC's determination, we also find that manganese ores represent a major input into the production of silicomanganese.

We have rejected the Ferro-Ligas Group's argument that, based on the supplier or geographical origin, the same component (manganese ores) should be considered to reflect many different inputs. Factors such as the supplier or the geographical location from which the inputs were obtained are not sufficient to warrant different classification of an input. We further note that we have specifically rejected the argument that a foreign like product can be composed of numerous minor inputs, none of which is subject to the major input rule. *See, e.g.*, Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses From Japan, 61 FR 38139, 38162 (July 23, 1996).

Comment 7: Petitioner argues that the Department should value the manganese ores obtained from one of the Ferro-Ligas Group's subsidiaries, Sociedade Mineira de Mineracao Ltd. (''SMM''), at the higher facts-available amount instead of at the cost reported by that subsidiary. Petitioner asserts that the Department stated in its preliminary results that, as adverse facts available, it applied the highest price to the reported consumption quantities for all manganese ores purchased from affiliated parties. However, Petitioner notes, with respect to two manganese ores purchased from SMM, the Department did not apply the highest price as adverse facts available, but instead applied an average COP that was reported by SMM. Petitioner argues that the cost worksheet for SMM submitted by the Ferro-Ligas Group establishes that this average is based on the cost of producing several products, including quartz, and therefore does not reflect SMM's cost of producing manganese ore. In addition, Petitioner claims, the record indicates that the cost of producing quartz is significantly lower than the cost of producing manganese ore. Petitioner requests that the Department apply, as adverse facts available, the highest manganese ore cost, transfer price or fair value on record to value the manganese ore produced by SMM.

The Ferro-Ligas Group argues that the Department's calculations significantly overstate SMM's production cost because the Department used the cost from a month in which that firm experienced unusually high production costs. The Ferro-Ligas Group states that, rather than inflate the value of inputs purchased from SMM, the Department should decrease its valuation to reflect the normal production costs of SMM during the POR. Further, the Ferro-Ligas Group argues that the Department should benchmark its transfer prices against a six-month cost average rather than rely solely on costs during September 1995. Finally, the Ferro-Ligas Group contends that Petitioner never supported its claim that manganese ore production costs at SMM are higher than quartz production costs.

Department's Position: We have determined that it is inappropriate to apply the adverse facts-available price (*i.e.*, the publicly available world market price for manganese ores) to ore supplied by SMM. Petitioner is correct in noting that, in our preliminary results, we did not apply this price to ores from SMM. However, our statement with respect to SMM was overly broad. Instead, for SMM, we used the company's reported September COP in our preliminary results because that amount exceeded transfer price SMM charged to the respondent. The Ferro-Ligas Group provided aggregate cost data for major inputs obtained from SMM. At verification, we tested this information and found that the cost data respondent provided reasonably reflected the actual cost of inputs sourced from SMM. Because we found that the transfer price reported by the Ferro-Ligas Group was below SMM's average cost for these inputs, we valued the ore at its higher cost pursuant to section 773(f)(3) of the Act.

The Department agrees with the Ferro-Ligas Group regarding the prices at which inputs obtained from SMM were valued. Rather than using September cost data which we used in the preliminary results, the SMM ore value in the Ferro-Ligas Group submission is based on the six-month average production cost. As noted by the Ferro-Ligas Group, September costs were unusually high and production was the lowest during that month. Therefore, it is reasonable to value ores obtained from SMM at the six-month average cost, which is higher than the transfer price.

Comment 8: The Ferro-Ligas Group argues that the Department's upward adjustment to CV for ICMS and IPI (value-added taxes) is contrary to law and inconsistent with the Department's prior decisions. Citing Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware from Taiwan (''Dinnerware from Taiwan''), 62 FR 1726, 1732 (January 13, 1997), the Ferro-Ligas Group contends that the Department noted correctly in that notice that the ability to use value-added-tax (''VAT'') credits against VAT liabilities generated in connection with home market sales is effectively a refund or remission. The Ferro-Ligas Group suggests that the Department adopt the position it took in Dinnerware from Taiwan and apply it to this proceeding.

The Ferro-Ligas Group asserts that the Department should not include VAT paid on inputs in CV for this segment of the proceeding. The Ferro-Ligas Group argues that, since it had sufficient home market sales to absorb the company's VAT credits generated in connection with export production, the Department should not include a VAT surcharge in the Ferro-Ligas Group's CV calculation.

The Ferro-Ligas Group alleges that the Department's departure from the Ferro-Ligas Group's accounting treatment of VAT on inputs was unlawful. The Ferro-Ligas Group asserts that, like other Brazilian companies and in accordance with Brazilian GAAP, it does not include the VAT paid on input purchases in cost of manufacturing in its normal accounting system. In addition, the Ferro-Ligas Group argues that, by including VAT paid on inputs in its CV calculation, the Department departed from the Ferro-Ligas Group's conventional accounting treatment of these taxes in identifying costs with production for export. The Ferro-Ligas Group contends that the record contains no finding that conventional Brazilian GAAP treatment of VAT is unreasonable. Moreover, the Ferro-Ligas Group asserts, since the Department only departs from a respondent's normal treatment of costs when they are unreasonable, the Department's deviation in this instance is unsupported.

With respect to ICMS and IPI, the Ferro-Ligas Group claims that the Department has conceded that the value of taxes paid on input materials is fully credited when the product is sold in the home market. The Ferro-Ligas Group argues that it would be incorrect to include the VAT paid on inputs in the calculation of CV. Moreover, the Ferro-Ligas Group asserts that the inclusion of VAT on inputs is contrary to the objective of a CV calculation because, according to the Department's analysis,

this expense is effectively never incurred in connection with home market sales. Thus, the Ferro-Ligas Group concludes, while other cost components in a CV calculation are designed to simulate a home market sale, the Department has selectively incorporated one cost element (*i.e.*, VAT on inputs) without acknowledging the full offset when the product is sold in the home market. The Ferro-Ligas Group requests that the Department make a downward adjustment for the VAT-liability benefit that accrues on home market sales for the company's export sales.

The Ferro-Ligas Group contends that the Department must recognize that the VAT credit is in fact a disparity in selling circumstances between export sales and home market sales that must be recognized as a circumstance-of-sale adjustment. The Ferro-Ligas Group argues that, with regard to export sales, the VAT paid on inputs to produce the exported product is freely transferable as a credit to benefit VAT liability associated with home market sales. With respect to home market sales, the Ferro-Ligas Group argues that the VAT paid on inputs to produce the product sold in the home market is not transferred to benefit sales in other markets. The Ferro-Ligas Group contends that the VAT paid on inputs to produce the home market sale is fully absorbed by the VAT liability generated when the home market sale is made.

The Ferro-Ligas Group concludes by stating that, if the Department insists upon including input VAT costs in CV, it must recognize the ''VAT credit generated upon export'' (*i.e.*, credits against payment of the sort of VAT paid by its domestic customer) as a circumstance-of-sale adjustment. Respondent maintains that to do otherwise would overlook this disparity in selling circumstances between U.S. and home market sales and eliminate the possibility of an apples-to-apples comparison.

Petitioner argues that, contrary to the Ferro-Ligas Group's claims, the Department has an established practice regarding the treatment of the Brazilian ICMS and IPI taxes in calculating CV. Petitioner contends that the Department's practice is based on section 773(e)(1)(A) of the Act, which requires that taxes paid on inputs be included in CV where the taxes are not remitted or refunded upon exportation of the final product. Petitioner states further that the Department has already considered and rejected the Ferro-Ligas Group's argument that, because the amount of ICMS and IPI taxes paid on inputs used in producing exported merchandise is credited against the liability for taxes collected on home market sales, the taxes paid on inputs should not be included in CV. Petitioner states that, more recently, the Department followed its practice in the final results of the 1993–94 and 1994–95 administrative reviews on silicon metal from Brazil. Therefore, Petitioner concludes, the Department must include the ICMS and IPI taxes the Ferro-Ligas Group paid on inputs in the CV for the final results.

Department's Position: We have an established practice regarding the treatment of Brazilian ICMS and IPI taxes in calculating CV. *See, e.g.*, Ferrosilicon from Brazil, Final Redetermination on Remand of Sales at Less Than Fair Value, at 10 (January 16, 1996); Ferrosilicon from Brazil, Final Results of Antidumping Duty Administrative Review, 61 FR 59407, 59414 (November 22, 1996); Silicon Metal From Brazil; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part, 63 FR 1954, 1965 (January 14, 1997); Silicon Metal From Brazil; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part, 62 FR 1970, 1976 (January 14, 1997). Our practice is governed by section 773(e)(1)(A) of the Act, which requires that taxes paid on inputs be included in CV when such taxes are not remitted or refunded upon exportation of the final product. We have considered and rejected in other cases arguments similar to those the Ferro-Ligas Group has made that, because the amount of ICMS and IPI taxes paid on inputs used in producing exported merchandise is credited against the liability for taxes collected on home market sales, the taxes paid on inputs should not be included in CV.

When calculating the CV for the subject merchandise, the Ferro-Ligas Group did not include the ICMS and IPI taxes paid on the material and energy costs. Section 773(e) of the Act directs us to exclude from CV only those internal taxes remitted or refunded upon export. Therefore, if the taxes paid on production inputs are neither remitted nor refunded upon exportation of the subject merchandise, as in the present case, the ability of the manufacturer to recoup this tax expense through domestic market sales is not automatic and also not relevant. Thus, we calculated the ICMS and IPI taxes as a percentage of the total purchases of materials and energy, and we added this amount to the reported CV.

Comment 9: The Ferro-Ligas Group claims that the Department determined that the Brazilian economy was hyperinflationary during the POR. Therefore, the Ferro-Ligas Group argues, rather than using period average costs, the Department should follow its practice and use monthly costs during the POR. The Ferro-Ligas Group states that the Department should have calculated costs specifically for October, the month of the U.S. sale. The Ferro-Ligas Group further contends that there was no decision prior to or at the time of the preliminary results to rescind the Department's earlier determination that Brazil was hyperinflationary during the POR. The Ferro-Ligas Group therefore argues that the Department's determination of hyperinflation dictates the use of monthly costs when calculating CV to be compared to the U.S. sale. In conclusion, the Ferro-Ligas Group asserts that, if the Department maintains its method of calculating cost of manufacturing (COM) based on adverse facts available, the Department should use the hyperinflationary method to calculate costs for October.

Petitioner contends that, because the Brazilian economy was not hyperinflationary during this period, the use of a current-cost methodology in this review would be contrary to the Department's well-established practice.

Department's Position: We agree with Petitioner. Contrary to the Ferro-Ligas Group's assertion, we did not determine that the Brazilian economy was ''hyperinflationary'' during the POR. Early in the case, we issued a Section D questionnaire which follows a current-cost method in the event that the Brazilian economy was determined to have experienced significant levels of inflation during the relevant period. However, because the Brazilian economy experienced only a 6.48-percent compounded inflation rate for the six-month cost reporting period, we instructed the Ferro-Ligas Group to answer the original standard questionnaire. *See* Letter from Office Director, AD/CVD Enforcement, to Willkie Farr & Gallagher dated September 16, 1996. Thus, at no time did we identify this review period as one in which Brazil experienced high inflation.

Moreover, the Ferro-Ligas Group's argument that it would be more appropriate to use October costs rather than September costs is also unsupported by the evidence on record. The inflation rates for the months of September and October were negative (*i.e.*, deflation of 1.08 percent and 2.3 percent, respectively). Because restatement of each of the Ferro-Ligas Group's monthly costs was not possible within the time constraints of the case,

we recalculated the company's costs based on its production results for a selected month, September. We selected this month because it was the only month for which we could obtain surrogate manganese ore price data. There is no evidence on the record that would indicate that the month of September, which falls in the middle of the cost-reporting period, was not representative of the costs or price level the Ferro-Ligas Group experienced during the period.

Comment 10: Petitioner argues that the Department failed to include profit in its calculation of CV. Petitioner states that the SAA provides three alternative methods for calculating profit when all relevant sales are at below-cost prices. Petitioner asserts that one of the alternative methods must be used to determine the amount of profit to include in CV for the final results. Petitioner contends that there is no information on the record regarding the amount of profit realized on the same general category of product as silicomanganese because all of the Ferro-Ligas Group's home market sales were found to be below cost and there are no other respondents in this administrative review. Therefore, Petitioner contends that the Department must use the statute's third alternative method to determine the amount of profit that must be included in CV for the final results.

Petitioner asserts that if the Department decides to rely on information not currently on the record for its determination of the amount of profit, the information must be made available for comment by the parties in accordance with section 782(g) of the Act.

The Ferro-Ligas Group argues that there is no presumption that the Department must include a positive value for profit in its calculations. The Ferro-Ligas Group argues that, if the company and industry are not profitable during the review period, then the Department should not include a positive profit component. The Ferro-Ligas Group argues further that the Department should not both increase costs with adverse facts available and also add a profit component.

Department's Position: Contrary to the Ferro-Ligas Group's assertion, the SAA requires that an element of profit be included in CV. Although the URAA and the subsequent revisions to U.S. law eliminated the use of a minimum profit, we do not believe that it eliminated the presumption of a profit element in the calculation of CV.

The SAA (at page 839) states: ''because constructed value serves as a proxy for a sale price, and because a fair sales price would recover SG&A expenses and would include an element of profit, constructed value must include an amount for SG&A and for profit'' (emphasis added). The SAA further specifies that ''under section 773(e)(2)(A), in most cases Commerce would use profitable sales as the basis for calculating profit for purposes of constructed value'' (SAA at page 840). The SAA indicates that section 773(e)(2)(B) ''establishes alternative methods for calculating amounts for SG&A expenses and profit in instances where * * * section 773(e)(2)(A) cannot be used either because there are no home market sales * * * or because all such sales are at below-cost prices.'' Therefore, if a company has no home market profit or has incurred losses in the home market, the Department is not instructed to ignore the profit element, include a zero profit, or even consider the inclusion of a loss; rather, the Department is directed to find an alternative home market profit.

In addressing whether profit can be less than or equal to zero, we first looked to the definition of the word profit. Barron's Financial Guides: Dictionary of Finance and Investment Terms (New York: Barron's Educational Series, 1987) defines profit as the ''positive difference that results from selling products and services for more than the cost of producing these goods'' and also the ''difference between the selling price and the purchase price of commodities or securities when the selling price is higher'' (emphasis added). Thus, the general usage of the term ''profit'' explicitly refers to a positive figure.

Regardless of the general definition of the word profit, a clear reading of the statute indicates that a positive amount for profit must be included in CV. First, we note that, unlike sections 773(e)(2)(A) and 773(e)(2)(B) (i) or (ii), section 773(e)(2)(B)(iii) specifically excludes the use of the term ''actual profit'' and instead directs us to use any other reasonable method that does not exceed the amount normally realized by the industry on the same general category of products. The SAA states that there is no hierarchy between the alternatives in 773(e)(2)(B), indicating that in some instances it may be more appropriate for the Department to ignore ''actual profit'' available under the other two alternatives and opt instead for some other reasonable method to obtain a normal profit.

Second, we note that, when we use home market or third-country prices as the basis for normal value, the statute and SAA specifically direct us to exclude from the dumping analysis any below-cost sales when the volume sold below cost in the home market or third country is greater than 20 percent (sections 773(b) (1) and (2)(C)). The presumption that normal value includes an element of profit is so strong that the post-URAA statute directs us to use one above-cost home market sale as the basis for normal value, even if hundreds of other sales have below-cost prices. *See* section 773(b)(1)(B). Moreover, the exclusion of the phrase ''in the ordinary course of trade'' (*i.e.,* referring to above-cost sales) from section 773(e)(2)(B)(iii) cannot be interpreted to mean an analysis using below-cost sales could result in use of a negative or zero profit rate in CV calculations. As the SAA explains, the ordinary-course-of-trade phrase is excluded in order to allow the Department to use a broader category of available information (SAA at page 841). Even though the broader category may exclude some below-cost sales, it enables the Department to find an overall positive profit in a category in which, were all below-cost sales excluded, it could not do so. Furthermore, it would be incorrect to interpret the statute (and redefine the word ''profit'') in such a way that would allow for a loss or zero profit under section 773(e)(2)(B)(i) when the Department has bypassed a more precise calculation of the home market loss on the foreign like product under section 773(e)(2)(A). Therefore, by providing three equal alternatives in section 773(e)(2)(B) when all relevant sales are at below-cost prices under section 773(e)(2)(A), the statute directs that CV must include a positive profit figure. See Notice of Final Determination of Sales at LTFV: Engineered Process Gas Turbo-Compressor Systems, Whether Assembled or Unassembled, and Whether Complete or Incomplete, from Japan, 62 FR 24394 (May 5, 1997).

Finally, we disagree with the Ferro-Ligas Group that we should not both increase costs with adverse facts available and also add a profit component. Neither the law nor the SAA supports such an assertion. The only statutory reference to adverse facts available for purposes of identifying profit is the statement that the profit added to CV under the third alternative method may not be an adverse figure. The adverse facts-available provision is included in the statute to ensure that a respondent does not benefit by withholding information which only it can provide and we resort to adverse facts available only when a respondent has failed to act to the best of its ability.

Therefore, because the sales and cost data on the record do not provide a

basis on which to calculate a home market profit figure, we sought to find a reasonable method under section 773(e)(2)(B)(iii) to derive a normal profit rate. For these final results we have relied on the profit rate of 10.22 percent, realized by one of the Ferro-Ligas Group's parents, CVRD. This profit rate represents the only information on the record that we believe reasonably reflects the market for ferro-alloy inputs. As a leader in the mining and ore-processing industries, CVRD has a profit rate which reasonably reflects an amount normally realized in the home market in the same general category of products as the subject merchandise. The income of CVRD is based on a wide range of products in the same general category of products as the foreign like product (*i.e.,* processed ores and minerals) and as such reflects a broader measure of profit than would be realized in only more specific market sectors. As a supplier to the Ferro-Ligas Group, CVRD is subjected to the same market pressures as the Ferro-Ligas Group. Finally, we note that, although CVRD's sales results include export activities, the majority of CVRD's sales are realized in Brazil and, therefore, its profit rate reasonably reflects that of the Brazilian market.

Comment 11: The Ferro-Ligas Group argues that under no circumstances should the Department impose an antidumping duty rate based on adverse inferences that is higher than the highest BIA rate from prior decisions. It claims that it requested this review because it had made sales to the United States which generated margins significantly less than the existing BIA rate of 64.93 percent. It cites to the opinion in *Rhone Poulenc* v. *United States,* 899 F.2d 1185,1190 (1990), that the presumption that a company is currently dumping at the highest prior margin unless the company can prove otherwise, ''reflects a common-sense inference that the highest prior margin is the most probative evidence of current margins because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.''

Petitioner argues that the Department can select for the uncooperative Ferro-Ligas Group the higher of (1) The highest rate calculated for any firm for the same class or kind of merchandise in the less-than-fair-value (LTFV) investigation or any prior administrative review or (2) the highest rate calculated in the current review for any firm. Thus, Petitioner claims, there is no upper limit on the rate which the Department may apply.

Department's Position: Although the Ferro-Ligas Group did not cooperate to the best of its ability in providing all of the data we requested, it did provide much of the data we requested. By using a combination of information submitted in response to our questionnaire and partial facts available from other sources, we have been able, in this review, to calculate a margin for the Ferro-Ligas Group by comparing the Ferro-Ligas Group's normal value and export price pursuant to section 751(2)(A) of the Act. When we determine that we can calculate a margin, we follow the established statutory methodology for calculating a dumping margin. The statute contains no provision limiting the current calculation of a margin at the amount of the previous margin. Because the statute is explicit as to what adjustments and limits are permitted within its methodology, the application of the proposed limit is simply not within our discretion. Further, the *Rhone Poulenc* case cited by Respondent simply allows the Department to assign a margin more adverse than the most recent one when a foreign exporter does not cooperate in a review. It by no means supports the principle that the inverse is also true and the Department is required to find a lower dumping margin than currently in effect whenever a firm does respond to its questionnaire.

Furthermore, the Ferro-Ligas Group cannot argue that the Department is unable to exceed the previous margin because that was based upon BIA and that its cooperation in this review demonstrates that it is entitled to a lesser number. Our BIA/facts-available practice has always been founded on the principle that, if data in a current review reflect a higher dumping rate than data from an earlier review, we will use the higher current data. Moreover, the fact that the Ferro-Ligas Group still failed to act to the best of its ability in providing some of the data requested in this review may indicate that the risk of receiving the previous margin was not sufficient to induce the firm to provide complete data in the form we requested. Although the Ferro-Ligas Group argues that it determined to seek this review because it was not dumping at the margin previously assigned to it, the evidence on the record of this case shows that such a conclusion was not well-founded. We are not limited in our margin calculations by the expectations of parties requesting reviews. Therefore, we have assigned to the Ferro-Ligas Group, for this review, the margin calculated based upon the data on the record of the current review.

Final Results of Review

As a result of our analysis of the comments received, we have determined that a margin of 88.87 percent is applicable to the Ferro-Ligas Group for the period June 17, 1994 through November 30, 1995.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price and normal value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirement will be effective for all shipments of subject merchandise from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company, the Ferro-Ligas Group, will be 88.87 percent; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews or the original LTFV investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, an earlier review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results, earlier reviews or the LTFV investigation, whichever is the most recent; and (4) the cash deposit rate for all other manufacturers or exporters will be 17.60 percent, the ''all others'' rate established in the antidumping duty order (59 FR 55432, November 7, 1994).

These cash deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of the APO is a sanctionable violation.

This administrative review and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 8, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–18582 Filed 7–14–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–802]

Amendment to the Agreement Suspending the Antidumping Investigation on Uranium From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 7, 1997.

ACTION: Notice of Amendment to the Agreement Suspending the Antidumping Investigation on Uranium From the Russian Federation.

FOR FURTHER INFORMATION CONTACT: James Doyle or Karla Whalen, Office of Antidumping Countervailing Duty Enforcement, Group III, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0159 or (202) 482–0408, respectively.

SUMMARY: On May 7, 1997, the Department of Commerce (the Department) and the Ministry of Atomic Energy of the Russian Federation (MINATOM) signed an amendment to the Agreement Suspending the Antidumping Investigation on Uranium From the Russian Federation, as amended (the Suspension Agreement). This amendment doubles the amount of Russian-origin uranium which may be imported into the United States for further processing prior to re-exportation. In addition, it lengthens the period of time uranium may remain in the United States for such processing to up to three years.

SUPPLEMENTARY INFORMATION:

Background

On October 16, 1992, the Department and MINATOM signed the Suspension Agreement on uranium and, on October 30, 1992, the Suspension Agreement was published in the **Federal Register** (57 FR 49220, 49235). On March 11, 1994, the Department and MINATOM signed an amendment to the Suspension Agreement on uranium and, on April 1, 1994, this amendment was published in the **Federal Register** (59 FR 15373). This amendment provided for entry of Russian uranium into the United States based on a concept of matched sales between the United States and Russian producers.

On October 3, 1996, the Department and MINATOM signed two amendments to the Suspension Agreement. One amendment provided for the sale in the United States of feed associated with imports of low-enriched uranium (LEU) derived from high-enriched uranium (HEU) which made the Suspension Agreement consistent with the USEC Privatization Act. The second amendment restored previously unused quota for separative work units (SWU), and covered Russian uranium which had been enriched in a third country within the terms of the Suspension Agreement, for a period of two years from the effective date of the amendment. On November 6, 1996, both amendments were published in the **Federal Register** (61 FR 56665).

On August 16, 1996, the Department and MINATOM initialed a proposed amendment regarding the re-export provision of the Suspension Agreement. The amendment extended the 12 month limitation up to 36 months and increased the amount of Russian Federation uranium which could enter the United States for further processing from 3 million pounds U3O8 to 6 million pounds U3O8. The Department subsequently released the proposed amendment to interested parties for comment. After careful consideration by the Department of the comments submitted and further consultations between the two parties, the Department and MINATOM signed the final amendment in its initialed form in Moscow on May 7, 1997. The text of this amendment follows in the Annex to this notice.

Dated: June 12, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

Amendment to the Agreement Suspending the Antidumping Investigation on Uranium From the Russian Federation

Consistent with the requirement of Section 734(l) of the U.S. Tariff Act of 1930, as amended, to prevent the suppression or undercutting of price levels of domestic products in the United States, Section IV of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, as amended on March 11, 1994, (the Agreement) is amended as set forth below. All other provisions of the Agreement, particularly Section VII, remain in force and apply to this Amendment.

1. The following paragraphs replace Section IV.H:

For purposes of permitting processing in the United States of uranium products from the Russian Federation, the Government of the Russian Federation may issue re-export certificates for import into the United States of Russian uranium products only where such imports to the United States are not for sale or ultimate consumption in the United States and where re-exports will take place within 12 months or within 36 months of entry into the United States as indicated by the importer or record at the time of entry.

In no event shall an export certificate be endorsed by the Russian Federation for uranium products previously imported into the United States under such re-export certificate. Such re-export certificates will in no event be issued in amounts greater than one million pounds U3O8 equivalent per re-export certificate.

The importer of record must specify at the time of entry whether it will re-export the entered material under the 12 month limitation or under the 36 month limitation (which requires additional certifications as noted below).

Re-export certificates issued under the 12 month limitation shall not exceed three million pounds U3O8 equivalent at any one time.

Additional re-export certificates may be issued under the 36 month limitation as long as the total amount of uranium products entered pursuant to re-export certificates issued (under both the 12 month and 36 month limitations) does not exceed six million pounds U3O8 equivalent at any one time.

For re-exports entered under the 36 month limitation, the importer of record must provide the Department with the following at the time of entry: 1) certification that it will ensure re-exportation within 36 months of entry into the United States; 2) certification from the end-user that the uranium products will not be sold, loaned, swapped, used as loan repayments, or utilized other than for re-export in accordance with Section IV.H of the suspension agreement; and 3) certification from the U.S. convertor and/or enricher and/or fabricator, as applicable, that the uranium products will not be sold, loaned, swapped, used as loan repayments, or utilized other than for re-export in accordance with Section IV.H of the suspension agreement while held at the respective entity's facility. Liquidation will be suspended for all such entries of uranium products which are covered by the 36 month re-export certificates. Suspension of liquidation will be continued for each such entry until all uranium products covered by the respective entries are re-exported and the Department of Commerce has notified Customs that the relevant entries may be liquidated.

If uranium products from the Russian Federation are: (A) If subject to the 12 month limitation, not re-exported within 12 months; (B) if subject to the 36 month limitation, not re-exported within 36 months, or (C) if subject to the 36 month limitation, sold, loaned, swapped, used as loan repayments, or utilized other than for re-export in accordance with Section IV.H of the Agreement, the Department will refer the matter to Customs or the Department of Justice for further action and the United States will promptly notify the Government of the Russian Federation and the two governments shall enter into consultations. If the uranium products are not re-exported within 3 months of the referral to Customs or the Department of Justice and the problem has not been resolved to the mutual satisfaction of both the United States and the Russian Federation, the volume of the uranium products entered pursuant to the re-export certificate may be counted against the export limit in effect at such time, or, if there is insufficient quota, the first available quota. This volume may be restored to the export limit if the product is subsequently re-exported.

The Parties agree that this Amendment constitutes an integral part of the Agreement.

The English language version of this Amendment shall be controlling.

Signed on this 7th day of May, 1997.

For the Ministry of Atomic Energy of the Russian Federation:

N.N. Yegorov,

Deputy Minister, Ministry of Atomic Energy of the Russian Federation.

For the United States Department of Commerce:

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–18449 Filed 7–14–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–423–806]

Amended Final Affirmative Countervailing Duty Determinations; Certain Carbon Steel Products From Belgium

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The appeal of the court decision in *Geneva Steel et al.* v. *United States,* 937 F. Supp. 946 (CIT 1996) (*Geneva II*) has been dismissed. *Geneva Steel et al.* v. *United States,* Appeal No. 97–1123 (Fed. Cir., Feb. 27, 1997). On April 18, 1997, the U.S. Court of International Trade (CIT) vacated that part of its decision in *Geneva II* which pertained to Sidmar, N.V. (Sidmar). Therefore, Commerce is amending its final affirmative determinations in the countervailing duty investigations of certain steel products from Belgium in accordance with *Geneva II,* subject to the order of vacatur.

FOR FURTHER INFORMATION CONTACT: Vincent Kane at (202) 482–2815, Office of Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C., 20230, or Duane Layton at (202) 482–5285, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce.

EFFECTIVE DATE: July 15, 1997.

SUPPLEMENTARY INFORMATION:

Background

In *Geneva II,* the CIT affirmed Commerce's redetermination on remand of the final affirmative determinations in the countervailing duty investigations of certain steel products from Belgium (58 FR 37273, July 9, 1993, as amended by 58 FR 43749, August 17, 1993). In that redetermination, Commerce addressed six issues, which had been remanded to it by the court in *Geneva Steel et al.* v. *United States,* 914 F. Supp. 563 (CIT 1996) (*Geneva I*).

The first issue concerned an interest rate reduction on a loan received by Forge de Clabecq (Clabecq). In the final determinations, Commerce calculated a benefit for the favorable interest rate on the loan but failed to take into account an interest rate reduction. In the redetermination, Commerce recalculated the subsidy rate for Clabecq to take into account the interest rate reduction on the loan.

The second issue concerned Commerce's calculation of the benefit realized by Clabecq in converting debt to equity. Commerce's normal practice in calculating the benefit from debt-to-equity conversions is to select a benchmark price for the equity on the date on which the equity is issued. In the final determinations, contrary to its normal practice, Commerce calculated the benefit based on the date of the agreement to convert debt to equity. In the redetermination on remand, Commerce recalculated the benefit based on the date of issuance of the equity.

The third issue concerned Commerce's decision in the final determinations to use the price of Cockerill Sambre's (Cockerill's) and Clabecq's publicly traded common shares as a benchmark in determining whether, and to what extent, the companies benefited from selling *parts beneficiaries* (PBs) to the Government of Belgium (GOB). In the final determinations, Commerce gave no explanation for its selection of the common shares of these companies as the next most similar publicly traded shares to the PBs. In the remand determination, Commerce demonstrated from evidence on the record that the publicly traded shares were the next most similar publicly traded shares.

The fourth issue concerned whether Sidmar's conversion of convertible debentures (OCPCs) to PBs was on terms consistent with commercial considerations. In the final determinations, Commerce did not view Sidmar to be unequityworthy and, therefore, did not consider whether the company's conversion of OCPCs to PBs was on terms inconsistent with commercial considerations. In *Aimcor, Alabama Silicon, Inc.* v. *United States,* 871 F. Supp. 447, 454 (CIT 1994) and in *Geneva I,* 914 F. Supp. at 582, the CIT held that investment in a company may be on terms inconsistent with commercial considerations, despite the fact that the company is not unequityworthy. Therefore, the court instructed Commerce to determine

whether Sidmar's conversion of OCPCs to PBs was on terms inconsistent with commercial considerations.

In its redetermination on remand, Commerce determined that the conversion was on terms inconsistent with commercial considerations. In making this redetermination, Commerce compared the price paid by the GOB for the PBs to the value of a non-publicly traded common share of Sidmar's stock, as reported by an independent accounting firm. Before comparing the value of a common share with the price paid by the GOB for PBs, Commerce compared the principal characteristics of Sidmar's common shares and PBs. In comparing the price of Sidmar's PBs to the value of its common stock, Commerce made adjustments for differences in voting rights, dividend rights, and transferability. On this basis Commerce found Sidmar's conversion to be inconsistent with commercial considerations.

We note that in the final determinations, Commerce found the conversion of Clabecq's and Cockerill's OCPCs to PBs to be countervailable, based on a comparison of the prices of the PBs to the market prices of these companies' publicly traded shares. However, Commerce made no adjustment in the final determinations for the inferior characteristics of these companies' PBs (*i.e.*, inferior voting rights, dividend rights, and transferability). In the redetermination on remand, Commerce adjusted for these characteristics, as it did for the conversion of Sidmar's OCPCs to PBs.

The fifth issue concerned the early redemption of Sidmar's preferred shares. In the final determinations, Commerce found that Sidmar, to redeem its preferred shares early, paid in 1991 an amount equal to the net present value of the amount it would have paid had it redeemed the shares in 2004, the original redemption date. For this reason, Commerce concluded that the redemption was not inconsistent with commercial considerations. In its remand order, the CIT directed Commerce to explicate the record evidence, which the agency reviewed, in determining that the redemption of the preferred shares was not on terms inconsistent with commercial considerations. In its redetermination on remand, Commerce detailed in full the particulars of this redemption and demonstrated from evidence on the record that early redemption was requested by the GOB for budgetary reasons and that the GOB agreed to accept payment of the net present value of the shares rather than face an uncertain outcome in 2004.

The sixth issue concerned Commerce's determination that the GOB's funding of additional allowance benefits under the Steel Collective Labor Convention bestowed a recurring benefit based on the criteria outlined in the allocation section of the General Issues Appendix (58 FR 37225, July 9, 1993). The CIT found that Commerce failed to provide an explanation and evidence to support the agency's finding that the additional allowance benefits were recurring. In its redetermination on remand, Commerce demonstrated from evidence on the record that steel firms automatically qualified for benefits from prepensioning, including reimbursements from the GOB for additional allowance payments, and that these benefits were received over a long period of time. Therefore, Commerce concluded that the benefits were recurring.

On October 3, 1996, Commerce published notice of the court decision in *Geneva II* (61 FR 51682). In that notice the agency stated that it must continue to suspend liquidation until a ''conclusive'' decision in this action is reached. Because the appeal filed by Sidmar challenging the court decision in *Geneva II* has been dismissed and the opportunity for further appeals has expired, the Department is amending the rates calculated in the final determination and order, subject to the order of vacatur entered by the CIT on April 18, 1997. The new rates are as follows:

Certain Hot-Rolled Carbon Steel Flat Products

Country-Wide Rate—0.68 percent
Cockerill—23.15 percent

Certain Cold-Rolled Carbon Steel Flat Products

Country-Wide Rate—0.58 percent
Cockerill—23.15 percent

Certain Cut-To-Length Carbon Steel Plate

Country-Wide Rate—5.92 percent
Cockerill—23.15 percent

Subsequent to our final determinations on July 9, 1993, the International Trade Commission (ITC) issued negative determinations with regard to injury resulting from the importation of hot-rolled and cold-rolled flat-rolled carbon steel products from Belgium in *Certain Steel Products from Belgium,* 58 FR 43905 (ITC August 18, 1993). These determinations were affirmed by the CIT in decisions issued on December 30, 1994, for hot-rolled carbon steel products, and January 27, 1995, for cold-rolled carbon steel products. *See United States Steel Group—A Unit of USX Corp.* v. *United States,* 873 F. Supp. 673 (CIT 1994); *Kern-Liebers USA, Inc.* v. *United States,* Slip Op. 95–9 (1995 Ct. Int'l Trade LEXIS 10). The decisions of the CIT were subsequently affirmed by the Court of Appeals for the Federal Circuit on August 29, 1996. *United States Steel Group et al.* v. *United States,* 96 F.3d 1352 (Fed. Cir. 1996), *reh'g denied,* 1996 U.S. App. LEXIS 31227 (Nov. 21, 1996).

Therefore, we will instruct Customs to continue to suspend liquidation on entries of cut-to-length carbon steel plate from Belgium, the only merchandise covered by the countervailing duty order issued on August 17, 1993 (58 FR 43749), entered, or withdrawn from warehouse, for consumption and to collect cash deposits, at the new rates on all such entries made on or after publication of this notice in the **Federal Register**.

Dated: July 1, 1997.

Robert S. LaRussa,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–18450 Filed 7–14–97; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070197A]

Small Takes of Marine Mammals Incidental to Specified Activities; Oil and Gas Exploration Drilling Activities in the Beaufort Sea

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

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from ARCO Alaska, Inc., (ARCO) for an authorization to take small numbers of marine mammals by harassment incidental to exploration drilling activities in Camden Bay, Beaufort Sea in waters off Alaska. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize ARCO to incidentally take, by harassment, small numbers of ringed, bearded, and spotted seals and possibly, bowhead and beluga whales, in the above mentioned area between August 1997 and August 1998.

DATES: Comments and information must be received no later than August 14, 1997.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. A copy of the application, an environmental assessment (EA) and a list of references used in this document may be obtained by writing to this address or by telephoning one of the contacts listed below.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, Brad Smith, Western Alaska Field Office, NMFS, (907) 271–5006.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth.

On April 10, 1996 (61 FR 15884), NMFS published an interim rule establishing, among other things, procedures for issuing incidental harassment authorizations under section 101(a)(5)(D) of the MMPA for activities in Arctic waters, including requirements for peer-review of a monitoring program and a plan of cooperation between the applicant and affected subsistence users. For additional information on the procedures to be followed for this authorization, please refer to that document.

Summary of Request

On May 30, 1997, NMFS received an application from ARCO requesting a 1-year authorization for the possible harassment of small numbers of several species of marine mammals incidental to moving a Concrete Island Drilling System (CIDS) from Prudhoe Bay to Camden Bay, Alaska and drilling an oil exploration well at that location during the winter, 1997/98. Essentially, the project has several stages as summarized below:

(a) Deballast the bottom-founded Global Marine Drilling Co. ''Glomar Beaufort Sea #1'' CIDS and move it to the well site in Camden Bay on or about August 15, 1997;

(b) Transport drilling supplies, materials and other equipment to the CIDS. Transport fuel from Canada to the site;

(c) Warm shutdown mode until such time as ice in Camden Bay is fully formed (estimated to be around November 1, 1997). Crew change via helicopter during this and succeeding times;

(d) Drilling operations after ice formation on or around November 1, 1997. Drilling and well testing operations may occur from that date through mid-May 1998;

(e) Cold shutdown mode from completion of drilling and well testing operations until around July 1, 1998; and

(f) Towing CIDS from Camden Bay by tug boats to Prudhoe Bay or another location.

A more detailed description of the work planned is contained in the application (ARCO 1997) and is available upon request (see **ADDRESSES**).

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Beaufort Sea ecosystem and its associated marine mammals can be found in several documents (NMFS 1996, Minerals Management Service (MMS) 1992, 1996; NMFS 1989) and need not be repeated here.

Marine Mammals

The Beaufort/Chukchi Seas support a diverse assemblage of marine mammals including bowhead whales (*Balaena mysticetus*), gray whales (*Eschrichtius robustus*), beluga (*Delphinapterus leucas*), ringed seals (*Phoca hispida*), spotted seals (*Phoca largha*) and bearded seals (*Erignathus barbatus*). Descriptions of the biology and distribution of these species, and others, can be found in several other documents (LGL and Greeneridge 1996, 1997, Lentfer 1988, MMS 1992, NMFS 1989, 1990 and 1996, Small and DeMaster 1995). Please refer to those documents for information on the biology, distribution and abundance of these species.

Potential Impacts on Marine Mammals

Disturbance by noise is the principal means for potential takings by harassment by this activity. Vessels, aircraft, and drilling activities all provide potential sources for the harassment of marine mammals by noise at the activity site. These are summarized below.

Potential Harassment by Vessel Noise

No specific acoustic characterization of the CIDS under tow has been undertaken. However, the tow is performed by three ocean-going tugs of a type that are commonly used for transport activities in the Beaufort (e.g., the various sealifts to the oil fields, re-supply of offshore drilling operations, annual barge lifts to coastal communities).

Detailed information about noise levels produced by marine traffic employing comparable vessels in the Beaufort Sea is available elsewhere (Malme *et al.* 1989, Richardson and Malme 1993, Richardson *et al.* (1995)) and is incorporated here by reference. In summary, bowheads show avoidance reactions, at times being displaced by as much as a few kilometers (km) (Richardson *et al.* 1993), to ships and boats that proceed directly toward them but then frequently return to whatever was their behavior aspect (swimming, feeding, resting, etc), once the source of the disturbance has passed (Richardson and Malme 1993). Bowheads that are actively engaged in social interactions or mating may be less responsive to boats (Wartzok *et al.* 1989, Richardson and Malme 1993). Wartzok *et al.* (1989) also found that bowheads >1,640 ft (>500 m) to the side of or behind a small ship seemed unaffected and that bowheads often approached within 329–1640 ft (100–500 m) when the ship was not maneuvering toward the whales. Approximately 1 percent of bowheads (based on subsistence harvested animals) show scars from collisions with vessel propellers (George *et al.* 1994).

In addition to tugs moving the CIDS, additional vessel traffic will consist of barges transporting drilling supplies from Prudhoe Bay and fuel from a port in the Canadian Arctic. An estimated ten barge loads (two barges at five loads per barge) of material will travel after the CIDS to the well location from Prudhoe Bay, AK. These barges will contain the drilling supplies and other materials needed to support the operation through the 1997/98 winter drilling season. After offloading at the CIDS on or about September 1, 1997, they will return to Prudhoe Bay area. This activity is expected to occur from about August 27, 1997 to about September 9, 1997, weather permitting.

In addition to the above barges, there will be two barge loads (one barge/two loads) traveling from the Canadian Beaufort Sea area westward to the CIDS to provide fuel for the upcoming drilling operations. The barge will offload the fuel at the CIDS and return to Canada area as soon as fuel transfer operations are completed. This activity is expected to occur from about August 27 through September 9, 1997, weather permitting.

There is no evidence from past monitoring programs in the Beaufort Sea that marine traffic of the type discussed above causes avoidance reactions in those seal species which may be present in the area. Beluga whales, which migrate through the Beaufort Sea, but far to the north of the activity, have shown strong avoidance at great distances from tugboats, especially in spring (Richardson *et al.* 1995).

Potential Harassment by Aircraft Noise

Crew changes and supplies of fresh food will be handled by helicopter(s) based in Deadhorse, AK. Helicopters have the potential to harass marine mammals. However, because these flights will fly mostly over land, any potential harassment is expected to be limited to seals inhabiting shore-fast ice. Ringed and bearded seals hauled out on ice often dive when approached by low flying aircraft or helicopters (Harbo 1972, Burns and Frost 1979, and Allison 1981 as reported in Richardson *et al.* 1995) but do not always do so (e.g., Burns *et al.* 1982).

As detailed in Richardson *et al.* (1995), reactions of ringed seals concealed in subnivean lairs (below snow on ice) varied with aircraft altitude and lateral distance (Kelly *et al.* 1986). Radiotelemetry showed that some seals left the ice when a helicopter was at an altitude 1,000 ft (<305 m) within 1.25 mi (2 km) lateral distance. The noise in a subnivean lair is reduced by snow (Cummings and Holliday 1983). However, counts of ringed seal calls in water suggests that seal abundance in one area subjected to low-flying aircraft and other disturbances was similar to that in less disturbed areas (Calvert and Stirling 1985).

To minimize potential harassment, NMFS proposes to require helicopters supplying the CIDS to maintain an altitude of 1,000 ft (305 m) until within .5 mi (.80 km) of the CIDS, except in emergency situations.

Potential Harassment by Drilling Operations

The CIDS is an offshore drilling platform specifically designed to operate in relatively shallow 30–50 ft (10–16 m) Arctic waters. Although close to shore (3.5 mi (5.6 km)), the platform may be visible to those few bowheads that approach the shoreline. However, the platform should not be visible to the great majority of bowheads which will be within the main westward migratory path in waters 65–165 ft (20–50 m) deep. During 1979–94, only about 3.0 percent of the bowheads traveled west within 12.5 mi (20 km) of from the barrier islands (LGL and Greeneridge 1996). While the platform is in warm shutdown, underwater wideband sound pressure levels (SPLs) are expected to be approximately 109 db (re 1 μPa @ 1 m) at a range of 912 ft (278 m) with running generators as the only significant source of man-made sounds from the operations during this period (Hall and Francine 1991). Hall and Francine (1989) report that 13 bowhead whales approached to within 656 ft (200 m) of a stationary drilling platform in 1989 while it was in a quiet mode.

Once freeze-up is completed, drilling operations can begin. Hall and Francine (1991) measured the SPL from a CIDS in the Beaufort Sea at 134–137 dB (re 1 μPa @ 1 m) after freeze-up at 656 ft (200 m) and 89 dB at 0.87 mi (1.4 km) (Richardson *et al.* 1995). While SPLs at this level of intensity are considered by NMFS to be too low to be injurious to pinnipeds, there may be some effects in the immediate vicinity of the CIDS due either to associated sounds, human activity, or the structure itself. Frost and Lowry (1988), for example, found in springtime that densities of ringed seals were reduced within 2.3 mi (3.7 km) of artificial islands, on some of which drilling was underway. Alternatively, the creation of polynas (areas of open water) in the wake of artificial islands, bottom founded structures, or occurring naturally, could attract seals. This attraction could lead to increased mortality by predating polar bears, which, by spring, could lead to a local decrease in the seal population.

Potential Effects on Subsistence Needs

Provided the mitigation measures described below are followed, NMFS has not identified any unmitigable adverse impacts on the availability of the species or stock(s) for subsistence needs. The CIDS will be placed on location by September 1, 1997, prior to the beginning of the annual bowhead whaling season. Also, since no drilling operations will be conducted until after freeze-up, there will be only minimal noise generated from the rig that could influence, or otherwise impact, subsistence whaling operations. It should be noted that the CIDS location is approximately 35 mi (56.3 km) west of the Kaktovik and 100 mi (161 km) east of the Nuiqsut communities.

Potential Effect on Habitat

The CIDS is a mobile offshore drilling unit that has a ''footprint'' of 295 ft (90 m) X 312.5 ft (95.25 m). The temporary loss of this area is negligible when compared to the size of the nearshore Beaufort Sea. When drilling and well-testing operations are completed, the well will be plugged and abandoned in accordance with MMS and Alaska Oil and Gas Conservation Commission regulations. This abandonment will leave the project area in essentially an unmodified condition, since there will be no wellhead or other structures remaining above the ocean floor. In the unlikely event that there is a significant oil spill, ARCO has prepared an oil discharge prevention and contingency plan (ODPCP) specifically for the Warthog #1 exploration well. The ODPCP is an extensive document that addresses spill response, several spill scenarios, cleanup activities, and numerous other aspects of oil spill prevention and response.

Potential Impacts on Polar Bears and Walrus

ARCO believes that small numbers of polar bears (*Ursus maritimus*) and Pacific walrus (*Odobenus rosmarus*) may be present at various times in the drilling area. As a result, ARCO applied for a Letter of Authorization from the U.S. Fish and Wildlife Service (USFWS) for the taking of these two species incidental to the Warthog #1 drilling project. This authorization was granted by the USFWS on May 21, 1997, under 50 CFR Part 18, subpart J.

Mitigation

Several mitigation measures to reduce the potential for marine mammal harassment will be implemented by ARCO as part of their proposed activity. These include:

(a) Moving the CIDS from Prudhoe Bay to Camden Bay prior to the westward migration period for bowhead whales;

(b) Completion of supply and construction of the CIDS prior to the start of the Kaktovik subsistence bowhead hunt;

(c) Maintaining the CIDS in a warm shutdown mode until such time as ice in Camden Bay is fully formed (e.g., during the time period for bowhead whale migration);

(d) Using the CIDS platform instead of a floating platform, or semisubmersible platform eliminating the need for icebreaker vessels;

(e) Conducting drilling operations during winter months instead of during the open water season as done in previous years;

(f) Maintaining the CIDS in a cold shutdown mode after completion of drilling in May 1998; and

(g) Not moving the CIDS to Prudhoe Bay during the spring bowhead migration period.

In addition to mitigation proposed by ARCO as part of their application, NMFS will caution ARCO from conducting any activities relating to the operation of the CIDS, to the extent practicable, in the vicinity of ice pressure ridges or other areas where ringed seal lairs may be present.

Monitoring

The monitoring program will consist of two phases:

Phase I-Open Water Season. Arco will utilize trained personnel onboard the various transport vessels to conduct visual observations to locate and assess the behavior of those six species of marine mammals that are known to use the open-water area between Prudhoe Bay and Camden Bay. The monitoring program will commence with the movement of the CIDS to Camden Bay in mid- to late-August 1997 and will end at the time that freeze-up of Camden Bay is complete. Observers will be trained by a marine biologist (approved in advance by NMFS) and an experienced Native marine mammal subsistence hunter. Both of these individuals will accompany the vessels transporting the CIDS and will remain with the CIDS until freeze-up. All marine mammal observations will be provided daily to NMFS.

NMFS proposes, as part of this Authorization, if granted, to also require the above-mentioned monitoring program during deballasting and movement of the CIDS back to Prudhoe Bay, or another location. NMFS, however, will require notification if the CIDS is to be moved to a location other than between Camden Bay and Prudhoe Bay.

Phase II-Ice Season. Although not mentioned in the application, monitoring during the ice-drilling season will also be necessary. However, because of the low expectation of interactions with marine mammals that are under the jurisdiction of NMFS, dedicated observers are not considered necessary. As a result, NMFS proposes to require as part of the Authorization that ARCO instruct the polar bear watchperson to maintain a sightings-and-behavior log for seals that is separate from the Polar Bear Sightings Log. This latter reporting requirement is mandated by 50 CFR 18.27 and the Letter of Authorization issued to ARCO by the USFWS on May 21, 1997.

NMFS does not propose to require any seal or whale monitoring program during the cold shutdown phase.

Reporting

In addition to daily reporting via radio during the open water season, NMFS proposes to require ARCO to submit two reports, the first to be submitted 60 days after starting oil drilling for the open-water monitoring period. The second report will be required 90 days after completion of activities authorized for marine mammal takings.

Consultation

Under section 7 of the Endangered Species Act, NMFS has begun consultation on the proposed issuance of an incidental harassment authorization. Consultation will be concluded upon completion of the comment period and consideration of those comments in the final determination on issuance of an authorization.

National Environmental Policy Act (NEPA)

In conjunction with this notice, NMFS has released an EA that addresses the impacts on the human environment from issuance of the authorization and the alternatives to the proposed action. A copy of the EA is available upon request (see **ADDRESSES**).

Conclusions

NMFS has preliminarily determined that the short-term impact of exploration drilling and related activities in the Beaufort Sea will result, at worst, in a temporary modification in behavior by certain species of pinnipeds, and possibly some individual bowhead or beluga whales. While behavioral modifications may be made by these species of marine mammals to avoid the resultant noise from tugs either towing the CIDS or transporting supplies, or due to drilling activities, this behavioral change is expected to have a negligible impact on the animals.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals (which vary annually due to variable ice conditions and other factors) in the activity area, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated and takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned above. No rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near the planned area of operations during the season of operations.

Because bowhead whales are east of the area in the Canadian Beaufort Sea until late August/early September, moving the CIDS during August is not expected to impact subsistence hunting of bowhead whales.

Appropriate mitigation measures to avoid an unmitigable adverse impact on the availability of bowhead whales for subsistence needs is expected to be the subject of consultation between ARCO and subsistence users.

Proposed Authorization

NMFS proposes to issue an incidental harassment authorization to ARCO for the possible harassment of small numbers of several species of marine mammals incidental to moving a CIDS from Prudhoe Bay to Camden Bay, Alaska and drilling an oil exploration well at that location during the winter 1997/98, provided the above mentioned mitigation, monitoring and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activities would result in the harassment of only small numbers of ringed seals, bearded seals, spotted seals and, possibly bowhead and beluga whales; will have a negligible impact on these marine mammal stocks; and will not have an unmitigable adverse impact on the availability of these stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see **ADDRESSES**).

Dated: July 9, 1997.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–18463 Filed 7–14–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070797D]

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 (Council) will hold a meeting of its Ecosystem and Habitat Advisory Panel (E&H-AP).

DATES: The meeting will be held July 29, 1997, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at The Executive Centre Hotel, Room 4003, 1088 Bishop Street, Honolulu, HI; telephone: (808) 539–3000.

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 E&H-AP meeting will discuss and may make recommendations to the Council on the following agenda items:

1. Draft Fishery Management Plan (FMP) amendments for Essential Fish Habitat (EFH);
2. Final region-wide coral reef assessment;
3. Summary of recent activities (humpback whale sanctuary, Guam land use, Commonwealth of Northern Mariana Islands Farallon de Medinilla Environmental Impact Statement survey); and
4. 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: July 8, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–18465 Filed 7–14–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062797E]

Marine Mammals; Permit No. 837

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

ACTION: Receipt of application for amendment and issuance of amendment.

SUMMARY: Notice is hereby given that the National Marine Mammal Laboratory, Alaska Fisheries Science Center, NMFS, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98119–0070, has requested an amendment to Permit No. 837, and an amendment has been issued authorizing the conduct of a portion of the proposed research.

DATES: Written comments must be received on or before August 14, 1997.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject amendment to permit no. 837, issued on June 4, 1993 (58 FR 33085) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Permit no. 837 authorizes the permit holder to capture, restrain, shear-mark, sample and handle up to 30,000 Northern fur seals (*Callorhinus ursinus*) over a 5-year period, and to collect parts from dead animals. The Permit Holder now requests the following: 1) biopsy sampling of up to 120 female seals (60 seals on St. Paul, 60 on St. George). A total of 1,200 fur seal pups and 1,200 non-pups may be harassed incidentally during the course of this activity; 2) tissue sampling (i.e., hair, skin, blubber, muscle and liver) of up to 120 already deceased juvenile male seals (60 on St. Paul, 60 on St. George); and 3) capture and recapture of up to 20 adult female seals on Bogoslof Island to study foraging behavior. Each seal will be instrumented with a satellite tag and/or time-depth recorder and VHF transmitter via 5–minute epoxy glue; flipper tagged, weighed, measured, and released. At recapture, the instruments will be removed and the animals will be weighed, measured, administered an enema and released. Some of these seals may be sedated with Valium. At each capture, the seal will be given an intramuscular injection of oxytocin and milk sampled. Up to 2,000 pups and 2,000 non-pups may be incidentally harassed during the course of this activity.

The biopsy portion of the research described in item 1, above, must be conducted during the current summer season, and activities are scheduled to begin on July 5, 1997. This work can only be done during the next two months before the animals are preparing to leave on migration, and a delay in this work will compromise the existing data series on co-dependent parameters also being collected this year. In light of the time constraints and the unique research opportunity that would otherwise be lost, pursuant to Section 104(c)(3)(A) of the Marine Mammal Protection Act and 50 CFR 216.33(e)(6) of the MMPA regulations, we issued an amendment to Permit No. 837 authorizing the conduct of the biopsy sampling.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: July 3, 1997.

Art Jeffers,

Acting Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–18464 Filed 7–14–97; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bahrain

July 9, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: July 15, 1997.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

The current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 61 FR 68241, published on December 27, 1996.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 9, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 20, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in Bahrain and exported during the twelve-month period which began on January 1, 1997 and extended through December 31, 1997.

Effective on July 15, 1997, you are directed to increase the limits for the following categories, as provided for in the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Group I	
237, 239, 330–336, 338, 339, 340–342, 345, 347, 348–354, 359, 431–436, 438–440, 442–448, 459, 630–636, 638, 639, 640–647, 648, 649, 650–654, 659, 831–836, 838, 839, 840, 842–847, 850–852, 858 and 859, as a group.	43,850,596 square meters equivalent.
Sublevel in Group I	
340/640	270,971 dozen of which not more than 205,129 dozen shall be in Categories 340–Y/640–Y [2].

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

[2] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–18509 Filed 7–14–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Visa Requirements for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Peru

July 9, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending visa requirements.

EFFECTIVE DATE: July 15, 1997.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Uruguay Round Agreements Act.

Effective on July 15, 1997, for goods produced or manufactured in Peru, a part-category visa will no longer be required for textile products in part-Categories 338–S, 339–S, 607–K and 607–O, regardless of the date of export. Appropriate whole category visas will still be required.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 51 FR 4409, published on February 4, 1986.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 9, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 30, 1986, as

amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directs you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in Peru which were not properly visaed by the Government of Peru.

Effective on July 15, 1997, you are directed to no longer require a part-category visa for shipments of goods in part-Categories 338–S [1], 339–S [2], 607–K [3] and 607–O [4] which are produced or manufactured in Peru, regardless of the date of export. Appropriate whole category visas will still be required.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–18510 Filed 7–14–97; 8:45 am]

BILLING CODE 3510–DR–F

[1] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005.

[2] Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

[3] Category 607–K: all HTS numbers except 5509.52.0000, 5509.61.0000, 5509.91.0000 and 5510.20.0000.

[4] Category 607–O: only HTS numbers 5509.52.0000, 5509.61.0000, 5509.91.0000 and 5510.20.0000.

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 97–C0009]

CSA, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with CSA, Inc., a corporation.

DATES: Any interested persons may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by July 30, 1997.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 97–C0009, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Melvin I. Kramer, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: July 9, 1997.

Sadye E. Dunn,

Secretary.

Settlement Agreement and Order

1. This Settlement Agreement and Order, entered into between CSA, Inc., a corporation (hereinafter, ''CSA''), and the staff of the Consumer Product Safety Commission (hereinafter, ''staff''), pursuant to the procedures set forth in 16 CFR 1118.20, is a compromise resolution of the matter described herein, without a hearing or determination of issues of law and fact.

The Parties

2. The ''Staff'' is the staff of the Consumer Product Safety Commission (hereinafter, ''Commission''), an independent federal regulatory agency of the United States government, established by Congress pursuant to section 4 of the Consumer Product Safety Act (hereinafter, ''CPSA''), as amended, 15 U.S.C. 2053.

3. Respondent CSA is a corporation organized and existing under the laws of the State of Massachusetts with its principal corporate offices located at 14 Norfolk Ave., South Easton, MA 02375.

Staff Allegations

4. Section 15(b) of the CPSA, 15 U.S.C. 2064(b), requires a manufacturer of a consumer product who, *inter alia*, obtains information that reasonably supports the conclusion that the product either, (1) contains a defect which could create a substantial product hazard or (2) creates an unreasonable risk of serious injury or death, to immediately inform the Commission of the defect or risk.

5. From approximately February 1995–April 1996 CSA imported and sold in the U.S. under its private label, ''E-Force'', approximately 340,000 rider-type exercise products, style T1200 Cross Trainer.

6. Beginning in April of 1995, CSA began receiving consumer complaints about welds on the apparatus breaking or failing, suddenly and without warning, causing the user to fall and be injured. CSA failed to report this to the Commission.

7. Not until April 18, 1996, after learning of at least 52 such incidents of weld failure, many of which reported suffering personal injuries, did CSA finally file a report with the Commission.

8. Although CSA obtained sufficient information to reasonably support the conclusion that the exercise apparatus contained a defect which could create a substantial product hazard, or created an unreasonable risk of serious injury or death, it failed to report such information to the Commission as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b). This is a violation of section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

9. CSA's failure to report to the Commission, as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b), was committed ''knowingly'', as that term is defined in Section 20(d) of the CPSA, 15 U.S.C. 2069(d), and CSA is subject to civil penalties under section 20 of the CPSA.

Response of CSA

10. CSA denies that its exercise apparatus identified in paragraph 5 above contains a defect which creates or could create a substantial product hazard within the meaning of section 15(a) of the CPSA, 15 U.S.C. 2064(a), or creates an unreasonable risk of serious injury or death, and further denies an obligation to report information to the Commission under section 15(b) of the CPSA, 15 U.S.C. 2064(b). Since CSA believes that it had no obligation to report the incidents of injury regarding the E-Force to the Commission, it did not knowingly fail to report these incidents to the Commission as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b), and thus denies it is subject to civil penalties under section 20 of the CPSA, 15 U.S.C. 2069.

11. Despite believing that its product was not defective or unsafe, CSA voluntarily reported to the CPSC and voluntarily conducted a corrective repair of the E-Force.

12. By entering into the Settlement Agreement and Order, CSA does not admit any liability or wrongdoing. This Settlement Agreement and Order is agreed to by CSA to avoid incurring legal costs and adverse publicity and does not constitute, and is not evidence of, or admission of any liability or wrongdoing by CSA.

Agreement of the Parties

13. The Commission has jurisdiction in this matter for purposes of entry and enforcement of this Settlement Agreement and Order.

14. CSA knowingly, voluntarily and completely waives any rights it may have (1) to an administrative or judicial hearing with respect to the Commission's claim for a civil penalty, (2) to judicial review or other challenge or contest of the validity of the Commission's action with regard to its claim for a civil penalty, (3) to a determination by the Commission as to whether a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), has occurred, (4) to a statement of findings of fact and conclusions of law with regard to the Commission's claim for a civil penalty, and (5) to any claims under the Equal Access to Justice Act.

15. This Settlement Agreement and Order settles any allegations of violation of section 15(b) of the CPSA regarding the exercise apparatus described above. It becomes effective only upon its final acceptance by the Commission and service of the incorporated Order upon Respondent.

16. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, the Commission shall place this Agreement and Order on the public record and shall publish it in the **Federal Register** in accordance with the procedure set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Agreement and Order shall be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 118.20(f).

17. Upon final acceptance of this Settlement Agreement and Order, the Commission shall issue the attached Order, incorporated herein by reference.

18. The provisions of this Settlement Agreement and Order shall apply to CSA and its successors and assigns.

19. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had issued, and the Commission may publicize the terms of the Settlement Agreement and Order.

20. This Agreement may be issued in interpreting the Order. Agreements, understandings, representations, or interpretations made outside of this Settlement Agreement and Order may not be used to vary or to contradict its terms.

Dated: May 8, 1997.

CSA, Inc.

Frederic Snyderman,

President and Treasurer.

The Consumer Product Safety Commission

David Schmeltzer,

Associate Executive Director, Office of Compliance.

Eric L. Stone,

Director, Division of Administrative Litigation, Office of Compliance.

Dated: May 22, 1997.

Melvin I. Kramer,

Trial Attorney, Division of Administrative Litigation, Office of Compliance.

Order

Upon consideration of the Settlement Agreement between Respondent CSA, Inc. (''CSA''), a corporation, and the staff of the Consumer Product Safety Commission, and the Commission having jurisdiction over the subject matter and over CSA, and it appearing the Settlement Agreement is in the public interest, it is

Ordered, that the Settlement Agreement be and hereby is accepted, and it is

Further Ordered, that upon final acceptance of the Settlement Agreement, CSA shall pay to the Order of the Consumer Product Safety Commission a civil penalty in the amount of One Hundred Thousand and 00/100 Dollars ($100,000.00) to be paid in three installments of $25,000, $25,000 and $50,000. The first $25,000 payment will be due within twenty (20) days after service upon Respondent of the Final Order of the Commission accepting this Settlement Agreement. Thereafter, CSA agrees to pay $25,000 within one year of the date of the first payment, and $50,000 within two years of the date of the first payment. Payment of the total $100,000 civil penalty shall settle fully the staff's allegations set forth in paragraphs 4 through 9 of the Settlement Agreement and Order. Upon the failure by CSA to make a payment or upon the making of a late payment (as determined by the postmark on the envelope) by CSA (a) the entire amount of the civil penalty shall be due and payable, and (b) interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. 1961 (a) and (b).

Provisionally accepted and Provisional Order issued on the 9th day of July, 1997.

By Order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 97–18575 Filed 7–14–97; 8:45 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 97–C0008]

Dots, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional Acceptance of a Settlement Agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1605.13(d). Published below is a provisionally-accepted Settlement Agreement with Dots, Inc., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by July 30, 1997.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 97–C0008, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: July 8, 1997.

Sadye E. Dunn,

Secretary.

Settlement Agreement and Order

1. Dots. Inc. (hereinafter, ''Respondent''), a corporation enters into this Settlement Agreement (hereinafter, ''Agreement'') with the staff of the Consumer Product Safety Commission, and agrees to the entry of the Order incorporated herein. The purpose of this Agreement and Order is to settle the staff's allegations that Respondent sold and offered for sale, in commerce, certain 100% rayon sheer skirts and 100% reverse fleece cotton sweatshirts that failed to comply with the Clothing Standard for the Flammability of Clothing Textiles (hereinafter, ''Clothing Standard''), 16 CFR part 1610, in violation of section 3 of the Flammable Fabrics Act (FFA), 15

U.S.C. 1192. The Respondent enters into this Agreement and Order for settlement purposes only and denies each and every allegation asserted by the staff of the Consumer Product Safety Commission.

I. The Parties

2. The ''staff'' is the staff of the Consumer Product Safety Commission (Thereinafter, ''Commission''), an independent regulatory commission of the United States Government established pursuant to section 4 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2053.

3. Respondent Dots, Inc. is a corporation organized and existing under the laws of the State of Ohio with principal corporate offices at 30801 Carter Street, Solon, OH 44139.

II. Allegations of the Staff

A. Rayon Sheer Skirts

4. Between April 1994 and August 1994, Respondent sold, or offered for sale, in commerce, 4,788 100% sheer rayon skirts.

5. The skirts identified in paragraph 4 above are subject to the Clothing Standard, 16 CFR Part 1610, issued under section 4 of the FFA, 15 U.S.C. 1193.

6. The staff tested one of the skirts identified in paragraph 4 above for compliance with the requirements of the Clothing Standard. See 16 CFR 1610.3 and .4. The tested skirt violated the requirements of the Clothing Standard.

7. Respondent knowingly sold or offered for sale in commerce, the skirts identified in paragraph 4 above, as the term is defined in section 5(e)(4) of the FFA, 15 U.S.C. 1194(e)(4), in violation of section 3 of the FFA, 15 U.S.C. 1192, for which a civil penalty may be imposed pursuant to section 5(e)(1) of the FFA, 15 U.S.C. 1194(e)(1).

8. On August 5, 1994, the staff informed Respondent that the skirts identified in paragraph 4 above failed to comply with the Clothing Standard and requested it to review its entire product line for other potential violations.

B. Reverse Fleece Cotton Sweatshirts

9. Between July 1995 and February 1996, Respondent sold, or offered for sale, in commerce, 29,107 reverse fleece 100% cotton sweatshirts.

10. The sweatshirts identified in paragraph 9 above are subject to the Clothing Standard, 16 CFR Part 1610, issued under section 4 of the FFA, 15 U.S.C. 1193.

11. The staff tested one of the sweatshirts identified in paragraph 9 above for compliance with the requirements of the Clothing Standard. See 16 CFR 1610.3 and .4. The tested sweatshirt violated the requirements of the Clothing Standard.

12. Respondent knowingly sold, or offered for sale, in commerce, the sweatshirts identified in paragraph 9 above, as the term is defined in section 5(e)(4) of the FFA, 15 U.S.C. 1194(e)(4), in violation of section 3 of the FFA, 15 U.S.C. 1192, for which a civil penalty may be imposed pursuant to section 5(e)(1) of the FFA, 15 U.S.C. 1194(e)(1).

13. On January 29, 1996, the staff informed Respondent that the sweatshirts identified in paragraph 9 above failed to comply with the Clothing Standard and requested it to review its entire product line for other potential violations.

III. Response of Respondent

14. Respondent specifically denies the allegations of the staff set forth in paragraphs 4 through 13 above that it knowingly sold, or offered for sale, in commerce, 100% rayon skirts and reverse fleece 100% cotton sweatshirts that did not meet the requirements of the FFA and the Clothing Standard.

15. Respondent states that it ordered the 100% rayon skirts and reverse fleece 100% cotton sweatshirts identified in paragraphs 4 and 9 above from reliable vendors who purported to sell to Respondent rayon skirts and reverse fleece cotton sweatshirts that complied with all laws, including the Flammable Fabrics Act and the Clothing Standard.

16. Further, Respondent makes no admission of any fault, liability, or statutory violation, nor does this Agreement constitute an admission that a civil penalty is appropriate or that the money referenced in the accompanying Order constitutes a civil penalty. Any payment referenced in the attached Order is solely to settle the staff's contention that a civil penalty is appropriate.

IV. Agreement of the Parties

17. The Commission has jurisdiction over Respondent and the subject matter of this Settlement Agreement and Order under the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*; the Flammable Fabrics Act (FFA), 15 U.S. C. 1191 *et seq.*; and the Federal Trade Commission Act (FTCA), 15 U.S.C. 41 *et seq.*

18. This Agreement is entered into for settlement purposes only and does not constitute an admission by Respondent or a determination by the Commission that Respondent knowingly violated the FFA and the Clothing Standard. This Agreement becomes effective only upon its final acceptance by the Commission and service of the incorporated Order upon Respondent.

19. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1605.13(d). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed to be finally accepted on the 16th day after the date it is published in the **Federal Register**.

20. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, Respondent knowingly, voluntarily, and completely waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Respondent failed to comply with the FFA and the Clothing Standard as aforesaid, (4) to a statement of findings of facts and conclusions of law, and (5) to any claims under the Equal Access to Justice Act.

21. The parties agree that this Settlement Agreement and Order resolve the allegations herein and upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, the Commission specifically waives its right to initiate any civil, administrative, or criminal action against the Respondent, its shareholders, officers, directors, employees, agents, successors, and assigns with respect to those alleged violations.

22. Upon final acceptance by the Commission of this Settlement Agreement and Order, the Commission shall issue the attached Order incorporated herein by reference.

23. A violation of the attached Order shall subject Respondent to appropriate legal action.

24. The Commission may disclose the terms of this Consent Agreement to the public consistent with section 6(b) of the CPSA, 15 U.S.C. 2055(b).

25. Agreements, understandings, representations, or interpretations made outside this Settlement Agreement and Order may not be used to vary or contradict its terms.

26. The provisions of the Settlement Agreement and Order shall apply to Respondent and each of its successors, assigns, agents, representatives, and employees, directly or through any

corporation, subsidiary, division, or other business entity, or through any agency, device, or instrumentality.

Dated: May 16, 1997.

Respondent DOTS, Inc.

Robert Glick,

President, Dots, Inc., 30801 Carter Street, Solon, OH 44139.

Commission Staff

Eric L. Stone,

Director, Division of Administrative Litigation, Office of Compliance.

David Schmeltzer,

Assistant Executive Director, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207–0001.

Dated: May 19, 1997.

Dennis C. Kacoyanis,

Trial Attorney,

Donald G. Yelenik,

Trial Attorney, Division of Administrative Litigation, Office of Compliance.

Order

Upon consideration of the Settlement Agreement entered into between Respondent Dots, Inc. (hereinafter, ''Respondent''), a corporation, and the staff of the Consumer Product Safety Commission (''Commission''); and the Commission having jurisdiction over the subject matter and Respondent; and it appearing that the Settlement Agreement and Order is in the public interest, it is

Ordered, that the Settlement Agreement and Order be and hereby is accepted, as indicated below; and it is

Further Ordered, that Respondent pay to the United States Treasury a civil penalty of Fifty Thousand Dollars ($50,000.00) within twenty (20) days after service upon Respondent of the Final Order.

Provisionally accepted and Provisional Order issued on the 8th day of July, 1997.

By Order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 97–18574 Filed 7–14–97; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

List of Institutions of Higher Education Ineligible for Federal Funds

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: This document is published to identify institutions of higher education that are ineligible for contracts and grants by reason of a determination by the Secretary of Defense. It also implements the requirements set forth in the Omnibus Consolidated Appropriations Act of 1997 and 32 CFR part 216. The institutions of higher education so identified are:

City College of San Francisco, San Francisco, California
Mills College, Oakland, California
Kenyon College, Gambier, Ohio
Washington College of Law of American University, Washington, DC
Hamline University School of Law, St. Paul, Minnesota
Ohio Northern University College of Law, Ada, Ohio
University of Oregon School of Law, Eugene, Oregon
Willamette University College of Law, Salem, Oregon
St. Mary's University School of Law, San Antonio, Texas
William Mitchell College of Law, St. Paul, Minnesota

The Omnibus Consolidated Appropriations Act of 1997 provides that schools prohibited by state laws or court rulings from providing the requisite degree of access would not be denied funding prior to one year following the effective date of that law (i.e., not until March 29, 1998). However, that provision applies only to funds from agencies other than the Department of Defense, which is bound by provisions of the National Defense Authorization Act for Fiscal Year 1995. Therefore, the Secretary of Defense has determined that the following institutions of higher education prevent recruiter access to campuses, students, or student information and are ineligible for DoD contracts and grants.

Asnuntuck Community-Technical College, Enfield, Connecticut
Capital Community-Technical College, Hartford, Connecticut
Central Connecticut State University, New Britain, Connecticut
Charter Oak State College, Newington, Connecticut
Connecticut Community-Technical College, Winsted, Connecticut
Eastern Connecticut State University, Willimantic, Connecticut
Gateway Community-Technical College, North Haven, Connecticut
Housatonic Community-Technical College, Bridgeport, Connecticut
Manchester Community-Technical College, Manchester, Connecticut
Middlesex Community-Technical College, Middletown, Connecticut
Naugatuck Community-Technical College, Waterbury, Connecticut
Norwalk Community-Technical College, Norwalk, Connecticut
Quinebaug Valley Community-Technical College, Danielson, Connecticut
Southern Connecticut State University, New Haven, Connecticut
Three Rivers Community-Technical College, Norwich, Connecticut
Tunxis Community-Technical College, Farmington, Connecticut
Western Connecticut State University, Danbury, Connecticut

ADDRESSES: Director for Accession Policy, Office of the Assistant Secretary of Defense for Force Management Policy, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: William J. Carr, (703) 697–8444.

SUPPLEMENTARY INFORMATION: On April 8, 1997 (62 FR 16694), the Department of Defense published 32 CFR part 216 as an interim rule. This rule and the Omnibus Consolidated Appropriations Act of 1997, requires the Department of Defense semi-annually to publish a list of the institutions of higher education ineligible for Federal funds. 32 CFR part 216 and the Secretary of Defense under 108 Stat. 2663, 10 U.S.C. 983, and 110 Stat. 3009 and/or this part identifies institutions of higher education that have a policy or practice that either prohibits, or in effect prevents, the Secretary of Defense from obtaining, for military recruiting purposes, entry to campuses, access to students on campuses, access to directory information on students or that has an anti-ROTC policy.

Dated: July 10, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–18556 Filed 7–14–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee on Gender-Integrated Training and Related Issues

ACTION: Notice.

Pursuant to Public Law 92–463, notice is hereby given that the initial meeting of the Federal Advisory Committee on Gender-Integrated Training and Related Issues is scheduled to be held from 9:00 a.m. to 12:00 p.m. on July 17, 1997. Fewer than the customary 15 days notice is being given because it is critical that the Committee begin its work expeditiously to meet timelines established by the Secretary of Defense. The meeting will be held at 801 Pennsylvania Avenue N.W., Suite 300, Washington, DC 20004. The purpose of the meeting is for the

Committee to gather information on Service policies and practices regarding basic military training and occupational skill training. Persons desiring to make oral presentations or submit written statements for consideration of the Committee must contact LtCol Bradford Loo, Office of the Assistant Secretary of Defense (Force Management Policy), telephone (703) 695–6312, no later than July 15, 1997.

Dated: July 10, 1997.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–18555 Filed 7–14–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; Systems of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice to amend a systems of records.

SUMMARY: The Department of the Army is amending systems of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed actions will be effective without further notice on August 14, 1997, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Division, U.S. Army Publishing and Records Management Center, ATTN: SAIS-PRP-DR, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Turner at (703) 806–3389 or DSN 656–3389.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 27, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

In the Army's address directory, under Major Commands, replace the third address with 'Commander, U.S. Army Criminal Investigation Command, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060-5506.' In the 14th address, replace the zip code with '09014–0100'.

A0027 DAJA

SYSTEM NAME:

Civil Process Case Files *(February 1, 1996, 61 FR 3681).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete zip code and replace with '09128–0007'.

* * * * *

NOTIFICATION PROCEDURE:

Delete zip code and replace with '09128–0007'.

RECORD ACCESS PROCEDURES:

Delete zip code and replace with '09128–0007'.

* * * * *

A0027 DAJA

SYSTEM NAME:

Civil Process Case Files.

SYSTEM LOCATION:

Office of the Judge Advocate, Headquarters, U.S. Army Europe and Seventh Army, Unit 29351, APO AE 09128–0007.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military members of the Armed Forces, civilian employees of the U.S. Government, and their dependents upon whom service is made of documents issued by German civil courts, customs and taxing agencies, and other administrative agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents from German authorities regarding payment orders, execution orders, demands for payment of indebtedness, notifications to establish civil liability, customs and tax demands, assessing fines and penalties, demands for court costs or for costs for administrative proceedings summonses and subpoenas, paternity notices, complaints, judgments, briefs, final and interlocutory orders, orders of confiscation, notices, and other judicial or administrative writs; correspondence between U.S. Government authorities and the Federal Republic of Germany; identifying data on individuals concerned; and similar relevant documents and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013; Agreement to Supplement the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces with respect to Foreign Forces stationed in the Federal Republic of Germany (NATO Status of Forces Supplementary Agreement).

PURPOSE(S):

To ensure that U.S. Forces obligations under the North Atlantic Treaty Organization Status of Forces Agreement are honored and the rights of U.S. Government employees are protected by making legal assistance available.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to foreign law enforcement or investigatory or administrative authorities, to comply with requirements imposed by, or to claim rights conferred in international agreements and arrangements regulating the stationing and status in Federal Republic of Germany of Defense military and civilian personnel.

Information disclosed to authorities of the Federal Republic of Germany may be further disclosed by them to claimants, creditors or their attorneys.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records and cards in steel filing cabinets; computer disk-packs and computerized database.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

All information is maintained in areas accessible only to designated individuals having official need therefor in the performance of their duties.

Records are housed in buildings protected by military police or security guards.

RETENTION AND DISPOSAL:

Paper records are destroyed 2 years after completion of case; card files are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Judge Advocate General, Department of the Army, 2200 Army Pentagon, Washington, DC 20310–2200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address inquiries to the Office of the Judge Advocate General, Headquarters, U.S. Army Europe and Seventh Army, Unit 29351, APO AE 09128–0007.

Individual should provide the full name, rank/grade, service number, sufficient details to permit locating the records, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to record about themselves contained in this record system should address inquiries to the Office of the Judge Advocate General, Headquarters, U.S. Army Europe and Seventh Army, Unit 29351, APO AE 09128–0007.

Individual should provide the full name, rank/grade, service number, sufficient details to permit locating the records, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; German authorities; Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0027–1 DAJA

SYSTEM NAME:

General Legal Files *(August 3, 1993, 58 FR 41253).*

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry before 'matters' and replace with 'Individuals who have been the subject of administrative, civil or criminal'.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Chief, Legislative Branch, Office of the Judge Advocate General, Department of the Army, 2200 Army Pentagon, Washington, DC 20310–2200.'

* * * * *

A0027–1 DAJA

SYSTEM NAME:

General Legal Files.

SYSTEM LOCATION:

Office of the Judge Advocate General, Headquarters, Department of the Army; Offices of Staff Judge Advocates; Judge Advocates; and Legal Counsels of Washington, DC 20310–2200; subordinate commands, installations, and organizations. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been the subject of administrative, civil or criminal matters referred to the Office of the Judge Advocate General or to legal offices of subordinate commands, installations, and organizations for legal opinion, legal review, or other action.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inquiries with substantiating documents, personnel actions, investigations, petitions, complaints, correspondence and responses thereto.

Examples of records include: Elimination and separation proceedings; questions pertaining to entitlement to pay; allowances, or other benefits; flying evaluation boards, line of duty investigations; reports of survey; other boards of investigating officers; DA Suitability Evaluation Board cases; DA Special Review Board efficiency report appeals; petitions to the Army Board for the Correction of Military Records; matters pertaining to on-post solicitation, revocation of privileges, and bars to entry on military installations; matters pertaining to appointments, promotions, enlistments, and discharges; matters pertaining to prohibited activities and conflicts of interest for Army personnel and employees; Article 138, UCMJ complaints; private relief legislation; military justice matters including requests for delivery of service members for trial by civilian authorities; appeals from nonjudicial punishment imposed under Article 15, UCMJ; appeals under Article 69, UCMJ; Secretarial review of officer dismissal cases; petitions for clemency, requests for pardons and requests for grants of immunity for civilian witnesses; matters pertaining to civilian employees and employees of non-appropriated fund instrumentalities including employment, pay, allowances, benefits, separations, discipline and adverse actions, grievances, equal opportunity complaints, awards, and claims processed by other agencies; and matters pertaining to attorney professional responsibility inquiries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3037 and 3072.

PURPOSE(S):

To ensure legal sufficiency of Army operations, policies, procedures, and personnel actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information from this system of records may be disclosed to the Department of Justice for grants of immunity and requests for pardons.

Information from this system of records may also be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

The 'Blanket Routine Uses' published at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; magnetic tapes/discs.

RETRIEVABILITY:

Retrieved by individual's surname.

SAFEGUARDS:

Records are maintained in locked file cabinets and/or in locked offices in buildings employing security guards or on military installations protected by military police patrols.

RETENTION AND DISPOSAL:

Records at the Office of the Judge Advocate General and Office of the Chief Counsel, Office, Chief of Engineers are permanent; at all other locations, records are destroyed upon obsolescence.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Legislative Branch, Office of the Judge Advocate General, Department

of the Army, 2200 Army Pentagon, Washington, DC 20310–2200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in the record system should address written inquiries to the Department of the Army, Office of the Judge Advocate General, 2200 Army Pentagon, Washington, DC 20310–2200.

Individual should provide his/her full name, the address and telephone number, and any other personal data which would assist in identifying records pertaining to him/her such as current or former military status, date of birth, and, if applicable, specifics concerning the incident or event believed to be the basis for legal review.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Department of the Army, Office of the Judge Advocate General, 2200 Army Pentagon, Washington, DC 20310–2200.

Individual should provide his/her full name, the address and telephone number, and any other personal data which would assist in identifying records pertaining to him/her such as current or former military status, date of birth, and, if applicable, specifics concerning the incident or event believed to be the basis for legal review.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army records, and other public and private records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1-R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identify of a confidential source.

An exemption rule for this exemption has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

A0145–1 TRADOC

SYSTEM NAME:

Army Reserve Officers' Training Corps Gold QUEST Referral System *(February 2, 1996, 61 FR 3914).*

CHANGES:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete attention line and replace with 'ATTN: ATCC-MM Marketing Directorate'.

* * * * *

A0145–1 TRADOC

SYSTEM NAME:

Army Reserve Officers' Training Corps Gold QUEST Referral System.

SYSTEM LOCATION:

MCS, Incorporated, 10041 Polinski Road, Ivyland, PA 18974–9872;

U.S. Army ROTC Cadet Command, Fort Monroe, VA 23651–5000;

Army ROTC Region Headquarters; and

ROTC Cadet Battalions and ROTC Goldminer Teams. Official mailing address are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Potential enrollees in the Senior ROTC program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records of current and former prospect referrals showing: Name, address, telephone number, Social Security Number (optional), sex, citizenship, prior military service, name of high school, high school graduation date, grade point average, SAT/ACT test score, college expected to attend, admissions status to college, academic major, and date of birth.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., Chapter 103, sections 2101–2111 and E.O. 9397 (SSN).

PURPOSE(S):

To provide a central database of potential prospects for enrollment in the Senior ROTC program; assist prospects by providing information concerning educational institutions having ROTC programs; scholarship information and applications; information regarding other Army enlistment, Reserve or National Guard Programs; to render recruitment management information reports; to refer qualified prospects to a Professor of Military Science at or nearest to their college of choice.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and cards in file cabinets; on magnetic tape, disks, and computer printouts.

RETRIEVABILITY:

By prospects surname or peculiar identification number assigned by the system.

SAFEGUARDS:

Records are maintained in secured areas within protected buildings, and accessible by only designated, authorized individuals having official need.

RETENTION AND DISPOSAL:

Records are retained for 3 years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Fort Monroe, ATTN: ATCC-MM Marketing Directorate, Fort Monroe, VA 23651–6000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army ROTC Cadet Command, ATTN: ATCC-MM Marketing Directorate, Fort Monroe, VA 23651–5000.

Individuals should provide their full name, current address, telephone number and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army ROTC Cadet Command, ATTN: ATCC-MM Marketing Directorate, Fort Monroe, VA 23651–5000.

Individuals should provide their full name, current address, telephone number and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the Commander, U.S. Army ROTC Cadet Command, ATTN: Marketing Directorate, Fort Monroe, VA 23651–5000.

RECORD SOURCE CATEGORIES:

Source categories for prospects include the Army ROTC toll-free telephone number, magazines, newspapers, poster advertising coupons, mail-back reply cards, letters, walk-ins, referrals from parents, relatives, counselors, teachers, coaches, friends, associates, college registrars, dormitory directors, national testing organizations, honor societies, boys' clubs, boy scout organizations, Future Farmers of America, minority and civil rights organizations, fraternity and church organizations; neighborhood youth centers, YMCA, YWCA, social clubs, athletic clubs, boys state/girls state/scholarship organizations, U.S. Army Recruiting Command, Military Academy Liaison officers, West Point non-select listing, previous employers, trade organizations, military service, and other organizations and commands comprising the Department of Defense.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0145–1a TRADOC-ROTC

SYSTEM NAME:

ROTC Applicant/Member Records *(February 1, 1996, 61 FR 3689).*

CHANGES:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Replace attention line with 'ATTN: ATIM-AS (Privacy Act Officer)'.

* * * * *

A0145–1a TRADOC-ROTC

SYSTEM NAME:

ROTC Applicant/Member Records.

SYSTEM LOCATION:

Headquarters, U.S. Army Reserve Officers Training Corps (ROTC) Cadet Command, Fort Monroe, VA 23651–5000. Segments of the system exist at the U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400 and in offices of the Professor of Military Science at civilian educational institutions in ROTC regional offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who apply and are accepted into the Army ROTC program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application for appointment, which includes such personal data as name, Social Security Number, date and place of birth, citizenship, home address and telephone number, marital status; dependents; transcripts and certificates of education, training, and qualifications; medical examinations; financial assistance documents; awards; ROTC contract; photograph; correspondence between the member and the Army or other Federal agencies; letter of appointment in Active Army on completion of ROTC status; security clearance documents; official documents such as Cadet Command Form 139, DA Form 597, DA Form 61, DA Form 873, SF 88 and SF 93, DD Forms 4/1–4/2, and DOJ Form I–151 if applicable.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2101–2111 and E.O. 9397 (SSN).

PURPOSE(S):

These records are used in the selection, training, and commissioning of eligible ROTC cadets in the Active Army and Reserve Forces and for personnel management, strength accounting, and manpower management purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to the Federal Aviation Administration to obtain flight certification and/or licensing; to the Department of Veterans Affairs for member Group Life Insurance and/or other benefits.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in folders; punched cards; microfilm/fiche; magnetic tape, drum, or disc.

RETRIEVABILITY:

By name or Social Security Number.

SAFEGUARDS:

All records are maintained in areas accessible only to authorized personnel who have official need in the performance of their assigned duties. Automated records are further protected by assignment of users identification and password edits to protect the system from unauthorized access and to restrict each user to specific files and data elements. User identification and passwords are changed at random times; control data are maintained by the system manager in a sealed envelope in an authorized safe.

RETENTION AND DISPOSAL:

Cadet Command Form 139 is retained in the ROTC unit for 5 years after cadet leaves the institution or is disenrolled from the ROTC program. Following successful completion of ROTC and academic programs and appointment as a commissioned officer with initial assignment to active duty for training, copy of pages 1 and 2 are reproduced and sent to the commandant of individual's basic branch course school. Records of rejected ROTC applicants are destroyed. Other records mentioned in preceding paragraphs are destroyed if not required to become part of individual's Military Personnel Records Jacket.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Fort Monroe, ATTN: ATIM-AS (Privacy Act Officer), Fort Monroe, VA 23651–6000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Reserve Officers Training Corps (ROTC), Fort Monroe, VA 23651–5000 or the Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, current address and telephone number and definitive description of the information sought.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Reserve Officers Training Corps (ROTC), Fort Monroe, VA 23651–5000 or the Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, current address and telephone number and definitive description of the information sought.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, civilian educational institutions, official Army records addressing entitlement status, medical examination and treatment, security determination, and attendance and training information while an ROTC cadet.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0145–1b TRADOC-ROTC

SYSTEM NAME:

ROTC Financial Assistance (Scholarship) Application File *(February 2, 1996, 61 FR 3913).*

CHANGES:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Replace attention line with 'ATTN: ATZG-BO-PF (Privacy Act Officer)'.

* * * * *

A0145–1b TRADOC-ROTC

SYSTEM NAME:

ROTC Financial Assistance (Scholarship) Application File.

SYSTEM LOCATION:

Primary location: U.S. Army Reserve Officers Training Corps Cadet Command, Fort Monroe, VA 23651–5000.

Segments exist at U.S. Army Reserve Officers' Training Corps (ROTC) Regions, ROTC elements of civilian educational institutions.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Students and service members who desire to participate in the Army ROTC Financial Assistance (Scholarship Program).

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's application for membership, academic transcripts, college board scores and test results, references, photograph, interview board results, acceptance/declination, selection board action including applicant's scores in areas evaluated, notice of applicant's medical status including reports of medical examination, evaluation of applicant by Professor of Military Science commanding officer, letters of recommendation, inquiries regarding applicant's selection/non-selection, reports of ROTC Advanced, Ranger, or Basic Camp performance of applicant, information of applicant's choice of institution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2101–2111 and E.O. 9397 (SSN).

PURPOSE(S):

To administer the financial assistance program; to select recipient for 2, 3, and 4–year scholarships; to monitor selectee's academic and ROTC performance; to develop policies and procedures, compile statistics and render reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

Disclosure of records is limited to the individual's name, address, Social Security Number, and other information necessary to establish the individual's identity; the amount, status, and history of the claim; and the agency program under which the claim arose. This disclosure will be made only after the procedural requirement of 31 U.S.C. 3711(f) has been followed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folder; selected data automated for management purposes on tapes, discs, cards, microfilm/fiche.

RETRIEVABILITY:

By individual's name, Social Security Number, other characteristics of qualification or identity.

SAFEGUARDS:

Records maintained in areas accessible only to authorized personnel having official need in the performance of duties.

RETENTION AND DISPOSAL:

Destroyed 1 year after individual graduates or is disenrolled. Records for nonselected applicants are destroyed 1 year after graduation of the nonselectee(s) class.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Fort Monroe, ATTN: ATZG-BO-PF (Privacy Act Officer), Fort Monroe, VA 23651–6000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Reserve Officers Training Corps Cadet Command, ATTN: ATCC–PS, Fort Monroe, VA 23651–5000.

Individual should provide the full name, current address and telephone number and definitive description of the information sought.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written

inquiries to the Commander, U.S. Army Reserve Officers Training Corps Cadet Command, ATTN: ATCC-PS, Fort Monroe, VA 23651–5000.

Individual should provide the full name, current address and telephone number and definitive description of the information sought.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, medical records, academic institutions, Army agencies and commands.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–17459 Filed 7–14–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the San Antonio Flood Control Study, Los Angeles and San Bernardino Counties, California

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: This feasibility study investigates the flooding problems on San Antonio Creek south from San Antonio Dam to the Creek's confluence with Chino Creek. The two creeks are tributaries to the Santa Ana River. During the 40 years since its construction, the ability of the system to provide a very high-level of protection has diminished as a result of urban runoff. The result could be creek overflows from very large storms.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by Ronald F. Lockmann, CESPL–PD–RN, Box 532711, Los Angeles, California 90053–2325, phone (213) 452–3851.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The tentatively selected plan for flood control in San Antonio Creek consists of reoperation of the San Antonio Dam for flood protection. The releases at higher events would be reduced and the increased pool would be held for 24 hours. This action would reduce the downstream flow and provide additional infiltration.

2. Alternatives

Altrnatives considered during the planning process include: Parapet walls; maintaining the present operational plan (no action); and a seasonally expanded pool for various durations to reduce discharges into the downstream channel.

3. Scoping Process

A scoping (public) meeting will be held at 7:00 pm July 15, 1997 at Lehigh Elementary School, Montclair to obtain community input to assure that all concerns are identified and addressed in the DEIS.

4. Future Public Meetings

Additional public meeting(s) will be held, if warranted at times and places to be specified at the above meeting and/or in future mailings.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 97–18658 Filed 7–11–97; 10:33 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records Notice

AGENCY: Department of the Navy

ACTION: Amend Record Systems

SUMMARY:

The Department of the Navy proposes to amend two paragraphs in the preamble to the Navy's compilation of Privacy Act systems of records notices. The amendment consists of updating the *For Further Assistance:* and the *Point of Contact:* information.

EFFECTIVE DATE: July 15, 1997.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to amend two paragraphs in the preamble to the Navy's compilation of Privacy Act systems of records notices. The amendment consists of updating the *For Further Assistance:* and the *Point of Contact:* information.

Dated: XXXXXXX XX, 1997.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

* * * * *

For Further Assistance:

The Chief of Naval Operations is designated the Privacy Act Coordinator for the Department of the Navy. Any questions or assistance you may require should be addressed to the PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

Point of Contact:

Mrs. Doris Lama, Commercial (202) 685–6545/6546 or DSN 325–6545/6546.

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[FR Doc. 97–18557 Filed 7–14–97; 8:45 am]

BILLING CODE 5000–04–F

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given of a meeting of the Defense Nuclear Facilities Safety Board to receive views from all interested parties about its draft strategic plan to be submitted to Congress by September 30, 1997, pursuant to the Government Performance and Results Act of 1993. The draft strategic plan is available to the Internet home page for the Defense Nuclear Facilities Safety Board (www.dnfsb.gov) and is available upon request. Participation by members of the public is invited. Written comments and oral presentations concerning the draft strategic plan will become part of the public record.

TIME AND DATE OF MEETING: 3:00 p.m., July 29, 1997.

PLACE: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 300, Washington, DC 20004.

STATUS: Open. The Board has determined that an open meeting furthers the public interests underlying both the Government in the Sunshine Act and the Government Performance and Results Act.

MATTERS TO BE CONSIDERED: This open meeting will be conducted pursuant to 42 U.S.C. 2286b and is intended to obtain views and suggestions for consideration by the Board regarding

the development of a strategic plan as outlined in the Government Performance and Result Act.

FOR FURTHER INFORMATION CONTACT: Richard A. Azzaro, Acting General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll free number.

SUPPLEMENTARY INFORMATION: An independent agency within the Executive Branch, the Defense Nuclear Facilities Safety Board provides advice and recommendations to the President and the Secretary of Energy regarding public health and safety issues at Department of Energy (DOE) defense nuclear facilities.

Broadly, the Board reviews operations, practices, and occurrences at DOE's defense nuclear facilities and makes recommendations to the Secretary of Energy that are necessary to protect public health and safety. If, as a result of its reviews, the Board determines that an imminent or severe threat to public health or safety exists, the Board is required to transmit its recommendation directly to the President, as well as to the Secretaries of Energy and Defense.

The Board's enabling statute, 42 U.S.C. 2286, requires the Board to review and evaluate the content and implementation of health and safety standards, including DOE's Orders, rules, and other safety requirements, relating to the design, construction, operation, and decommissioning of DOE's defense nuclear facilities. The Board must then recommend to the Secretary of Energy any specific measures, such as changes in the content and implementation of those standards, that the Board believes should be adopted to ensure that the public health and safety are adequately protected. The Board is also required to review the design and construction of new defense nuclear facilities and to recommend changes necessary to protect health and safety.

The Board may conduct investigations, issue subpoenas, hold public hearings, gather information, conduct studies, establish reporting requirements for DOE, and take other actions in furtherance of its review of health and safety issues at defense nuclear facilities. The ancillary functions of the Board and its staff all relate to the accomplishment of the Board's primary function, which is to assist DOE in identifying and correcting health and safety problems at defense nuclear facilities.

The Board is soliciting comments from interested parties regarding its strategic plan to comply with (part d) of the Government Performance and Results Act of 1993 which states, ''When developing a strategic plan, the agency shall consult with the Congress, and shall solicit and consider the views and suggestions of those entities potentially affected by or interested in such a plan.''

The necessary contents of a strategic plan are outlined in (Part a) of the Government Performance and Results Act of 1993, which states that such a strategic plan shall contain:

''1. A comprehensive mission statement covering the major functions and operations of the agency;

2. General goals and objectives, including outcome-related goals and objectives, for the major functions and operations of the agency;

3. A description of how the goals and objectives are to be achieved, including a description of the operational processes, skills and technology, and the human, capital, information, and other resources required to meet those goals and objectives;

4. A description of how the performance goals included in the plan required by section 1115(a) of title 31 shall be related to the general goals and objectives in the strategic plan;

5. An identification of those key factors external to the agency and beyond its control that could significantly affect the achievement of the general goals and objectives; and

6. A description of the program evaluations used in establishing or revising general goals and objectives, with a schedule for future program evaluations.''

The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting, to recess, reconvene, postpone or adjourn the meeting, conduct further reviews, and otherwise exercise its authority under the Atomic Energy Act of 1954, as amended.

Dated: July 10, 1997.

John T. Conway,

Chairman.

[FR Doc. 97–18612 Filed 7–10–97; 4:10 pm]

BILLING CODE 3670–01–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Docket No. EE–WKS–97–800]

Alternative Fuel Transportation Program

AGENCY: Department of Energy (DOE).

ACTION: Notice of public workshop and opportunity for public comment.

SUMMARY: DOE announces a public workshop on its programs to promote petroleum replacement motor fuels. The workshop will focus on issues related to: (1) The development of programs to promote replacement and alternative fuels under Title V of EPACT and (2) a pending petition for rulemaking that asks DOE to modify the existing alternative fuel vehicle acquisition program (10 CFR part 490) by making a biodiesel blend known as B–20 an eligible alternative fuel. DOE also provides an opportunity for written comments on issues to be discussed at the workshop.

DATES: Written comments, ten (10) copies, must be received by DOE by September 15, 1997.

Oral views, data, and suggestions may be presented at the public workshop which is scheduled to take place 8:30 a.m. on July 31-August 1, 1997, at St. Louis, MO.

ADDRESSES: The public workshop will take place at the Holiday Inn Convention Center, 811 N. 9th Street (at Convention Plaza Drive), Salon A, St. Louis, Missouri. A block of hotel rooms has been reserved at the rate of $64.50. Please mention the Department of Energy Workshop when making your reservations. To assist DOE in planning for this workshop, please call Andi Kasarsky, (202) 586–3012, to confirm your attendance.

Written comments should be sent to Paul McArdle, U.S. Department of Energy, EE–34, Docket No. EE–WKS–97–800, 1000 Independence Ave., SW, Washington, DC 20585.

A copy of the petition for rulemaking is on file for public inspection in DOE's Freedom of Information Reading Room, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Paul McArdle, Program Manager, Office of Energy Efficiency and Renewable Energy, EE–34, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9171.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

DOE has received a petition for rulemaking to amend the definition of ''alternative fuel'' in 10 CFR part 490 by adding a biodiesel blend (B–20) which is, by volume, 80 percent petroleum and 20 percent biological non-petroleum material. Part 490 sets forth the regulations that implement Title V of

the Energy Policy Act of 1992 (EPACT) (Pub.L. 102–486) which mandates alternative fuel vehicle acquisition requirements for certain alternative fuel providers and State government fleets. Title V of EPACT provides for one of a variety of EPACT programs to promote fuels that displace petroleum motor fuels, and the petition for rulemaking has prompted DOE to focus on a variety of policy issues about the development and interrelationships of these programs. The public workshop and the opportunity for public comment announced in this notice are intended to elicit public input that would be useful generally in elaborating the EPACT replacement fuel programs and specifically in determining whether to propose the rule the petitioner requests.

Titles III, IV, V, and VI of EPACT authorize a variety of general and specific program authorities to promote any ''replacement fuel'' that displaces a substantial portion of petroleum as a component of motor fuel. Section 301(14) of EPACT defines the term ''replacement fuel'' as ''the portion of any motor fuel'' that is any one of a list of specific fuels including ''fuels (other than alcohol) derived from biological materials.'' 42 U.S.C. 13211(14). As discussed above, B–20, the fuel that is the subject of the petition for rulemaking, is a motor fuel 20 percent of which is derived from biological materials. That 20 percent thus appears to be a ''replacement fuel'' within the meaning of section 301(14).

Section 502 of the Act provides general authority to establish a program to promote the development and use of replacement fuels in light duty motor vehicles. 42 U.S.C. 13252. However, section 502 leaves to DOE, in consultation with other agencies, the task of determining the appropriate programmatic means and methods to achieve the program objectives which may require further legislation or appropriations. Although the petition for rulemaking does not deal with possible programs under section 502, one of DOE's purposes in holding a workshop is to explore how replacement fuels should be promoted under section 502.

In addition to the general authority in section 502, EPACT contains specific authorities with respect to ''alternative fuels.'' Title III of EPACT requires Federal fleet acquisitions of alternative fueled vehicles; Title IV includes specific authority for a financial incentive program for States, a public information program, and a program for certifying alternative fuel technician training programs; Title V provides for separate regulatory mandates for the purchase of alternative fueled vehicles which apply to certain alternative fuel providers and State government fleets and for a possible similar mandate for private and municipal fleets; and Title VI provides for a program to promote electric motor vehicles.

The types of vehicles that satisfy the mandates in Title III and Title V are determined in part by the definition of ''alternative fuel'' in section 301(2). That definition provides:

> ''alternative fuel means methanol, denatured ethanol, and other alcohols; mixtures containing 85 percent or more (or such other percentage, but not less than 70 percent, as determined by the Secretary, by rule, to provide for requirements relating to cold start, safety, or vehicle functions) by volume of methanol, denatured alcohol, and other alcohols with gasoline or other fuels; natural gas; fuels (other than alcohol) derived from biological materials; electricity (including electricity from solar energy); and any other fuel the Secretary determines, by rule, is substantially not petroleum, and would yield substantial energy security benefits and substantial environmental benefits.'' 42 U.S.C. 13211(2).

In contrast to the definition of ''replacement fuel,'' which is the non-petroleum component of a motor fuel, this definition focuses on the entire content of the fuel. It is possible, therefore, that a given fuel could contain a component that is a ''replacement fuel'' but the whole fuel is not an ''alternative fuel.''

In the rulemaking to establish the policies applicable to the Title V regulatory mandates, DOE considered and then declined to propose a rule to add reformulated gasoline to the list of alternative fuels in section 301(2). The rationale for this conclusion was that the percentage of reformulated gasoline constituting petroleum was too large to warrant a determination that the entire fuel is ''substantially not petroleum.'' According to one commenter, reformulated gasoline could be as much as 17 percent non-petroleum and 83 percent petroleum. 61 FR 10622, 10630 (March 14, 1996).

In arguing for inclusion of B–20 in the definition of ''alternative fuel,'' the petition for rulemaking addresses the general criteria for adding to the list of ''alternative fuels.'' The petition argues that B–20 is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits. DOE has placed a copy of the petition in its Freedom of Information Reading Room for public inspection. Issues raised by the petitioners account for some of the issues listed in the draft issue agenda for the workshop that is set forth below. DOE intends to proceed rapidly after the workshop toward issuing a written decision granting or denying the petition after considering relevant information and views that are provided in the workshop or in written comments. The agenda also will include issues that go beyond the scope of the pending petition for rulemaking, such as appropriate replacement fuel programs.

II. Conduct of the Workshop

The workshop will be conducted by an experienced facilitator in an informal, conference style. The draft agenda described below is subject to modification to ensure that those who attend will have an adequate opportunity to raise issues, offer information, state their views, and interact with other attendees. With respect to some of the issues, the facilitator may ask DOE program staff to make short introductory presentations to provide a useful context for discussion. A transcript of the workshop proceedings will be prepared. There will be no discussion of proprietary information, costs or prices, or other commercial matters regulated by antitrust law.

III. Preliminary Draft Issue Agenda

A. Replacement Fuel Programs

- What are the most suitable means and methods of developing and encouraging the production, distribution, and use of replacement fuels?

B. Criteria for Designating ''Alternative Fuels'

1. Substantially Not Petroleum

- Is it appropriate to set a threshold level of non-petroleum content that would warrant a proposed rule to include the fuel in the list of ''alternative fuels?'
- How should DOE define a threshold level of non-petroleum content that would warrant a proposed rule to include the fuel on the list of ''alternative fuels?''
- What are the permissible interpretations of the statutory term ''substantially not petroleum?'

2. Substantial Energy Security Benefits

- Should DOE request a detailed analysis showing how the final energy balance reflecting the amounts and types of energy consumed in production, distribution, and use of a candidate fuel compares to the equivalent path for petroleum production, distribution and use?
- What other factors, such as diversification of resources, location of production outside of the United States,

use of renewable energy sources, and ability to increase production quickly, should be considered?

3. Substantial Environmental Benefits

- Should DOE request that petitioners identify the physical and chemical properties of the candidate fuel such as specific gravity, initial boiling point, flash point, and vapor pressure at 100 degrees Fahrenheit?
- Should petitioners be required to identify environmental detriments and to show that they are either insignificant or outweighed substantially by environmental benefits?
- Should the environmental analysis focus on the total fuel cycle, including production, distribution, and use of the candidate fuel?
- Should petitioners be required to show that alternative fueled vehicles operating on the fuel meet Federal Tier I emissions standards and to submit emissions data including exhaust emissions and evaporative emissions for all fuels with Reid vapor pressures of 7.0 psi or greater to be used in spark-ignited engines?
- How should information on greenhouse gas emissions be presented?

4. Other Considerations

- Would it be permissible and appropriate to condition designation as an ''alternative fuel'' on a requirement that DOE would only give credit to a newly acquired vehicle that actually uses the new ''alternative fuel?'

Issued in Washington, DC, on July 10, 1997.

Joseph J. Romm,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 97–18531 Filed 7–14–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–121–000]

Cinergy Services, Inc.; Notice of Filing

July 9, 1997.

Take notice that on July 1, 1997, Cinergy Services, Inc. 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, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18479 Filed 7–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–2243–000]

Consumers Power Company; Notice of Filing

July 9, 1997.

Take notice that Consumers Power Company tendered for filing an amendment to its Notice of Succession filed on March 26, 1997, 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 July 21, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18478 Filed 7–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–362–001]

Florida Gas Transmission Company; Notice of Amendment

July 9, 1997.

Take notice that on April 30, 1997, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP97–362–001, an amendment to its application filed in Docket No. CP97–362–000. The amended application is to reflect revised Exhibits Y and Z. The initial application in Docket No. CP97–362–000 was filed pursuant to Section 7(b) of the Natural Gas Act, seeking permission and approval to abandon, by sale to Copano Field Services Copano Bay, L.P., a Texas Limited Partnership (Copano), certain natural gas supply laterals and related appurtenant facilities located in the counties of Nueces and San Patricio, Texas, all as more fully set forth in FGT's amendment which is on file with the Commission and open to public inspection.

FGT indicates that it will construct electronic flow measurement equipment and related appurtenant facilities (new receipt point), once Copano takes possession of the above stated facilities. Exhibit Y was amended to reflect FGT's estimated cost to construct the electronic flow measurement equipment and related appurtenant facilities. FGT indicated in its original application, that it proposes to sell Copano the 17.5 mile 12-inch Encinal Channel Lateral; the 0.3 mile 4-inch Shell East White Point Lateral; the 2.7 mile 4-inch Nueces Bay Lateral; the 0.2 mile 4-inch Phillips East White Point Lateral; the 2.1 mile 3-inch Angelita Lateral; and all related appurtenant facilities. In addition, FGT states that it seeks Commission permission to transfer by sale to Copano the 0.3 mile 4-inch Phillips Spradley Lateral which FGT states was abandoned in place pursuant to an order issued by the Commission on May 5, 1983, in Docket No. CP83–80–000.

It is further stated that the abandonment and sale proposed herein will not impair any current services nor will it disadvantage any existing customer of FGT. FGT indicates that the proposed abandonment and sale of the subject facilities will save FGT approximately $10,500 per year in operating and maintenance costs.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before July 30,

1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the 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. All persons who have heretofore filed need not file again.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18483 Filed 7–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–415–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

July 9, 1997.

Take notice that on July 2, 1997, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective August 1, 1997:

Fourth Revised Sheet No. 92
Fifth Revised Sheet No. 93
Third Revised Sheet No. 95
Second Revised Sheet No. 103
Third Revised Sheet No. 104
First Revised Sheet No. 156
First Revised Sheet No. 157
First Revised Sheet No. 158A
Original Sheet No. 158B
Original Sheet No. 158C
Second Revised Sheet No. 159
Second Revised Sheet No. 160
First Revised Sheet No. 160A
Second Revised Sheet No. 161
Second Revised Sheet No. 162
Second Revised Sheet No. 163
Second Revised Sheet No. 167
Second Revised Sheet No. 168
Second Revised Sheet No. 169

Iroquois states that the purpose of this filing is to revise the Capacity Release section of the Tariff and Releasing Shipper's contract to make it a blanket contract. In addition, the attachments to both the blanket Replacement Shipper and Releasing Shipper contracts have been revised to correspond to one another.

Iroquois states that copies of this filing were served upon all customers and interested state regulatory agencies.

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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18490 Filed 7–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–176–004]

MIGC, Inc.; Notice of Compliance Filing

July 9, 1997.

Take notice that on July 2, 1997, MIGC, Inc. (MIGC), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Second Revised Sheet No. 90 with a proposed effective date of August 1, 1997.

MIGC states that the purpose of the filing is to comply with the Commission's June 10 Letter Order (as modified by a June 20 Errata to the Letter Order) directing MIGC to file to reflect changes in its tariff to conform to the standards adopted by the Gas Industry Standards Board and incorporated into the Federal Energy Regulatory Commission's (Commission) Regulations by Order Nos. 587–C.

MIGC states that copies of its filing are being mailed to its jurisdictional customers, all parties on the official service list in Docket No. RP97–176–000, and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18488 Filed 7–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–618–000]

National Fuel Gas Supply Corporation; Notice of Application

July 9, 1997.

Take notice that on July 2, 1997, National Fuel Gas Supply Corporation (National Fuel) 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP97–618–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by sale to Puma Resources Holdings, Inc. (Puma), Line D–69 along with appurtenances, in Erie, Pennsylvania, and for the Commission to determine that Line D–69 will be exempt from the jurisdiction following the sale to Puma, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, National Fuel proposes to abandon Line D–69 which is 12,805 feet in length and 4 inches in diameter, its appurtenances, to Puma for $1,000. National Fuel states that the line and facilities will be used for gathering purposes and requests that the Commission determine that such facilities will not be subject to the Commission's jurisdiction after the sale.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 30, 1997, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the

protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

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

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

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18485 Filed 7–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–614–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

July 9, 1997.

Take notice that on July 1, 1997, Northwest Pipeline Corporation (Northwest), P.O. Box 58900, Salt Lake City, Utah 84158–0900, filed in Docket No. CP97–614–000 a request pursuant to Sections 157.205, 157.211 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, 157.216) for authorization to upgrade a meter station and partially abandon certain existing facilities located in Twin Falls County, Idaho, under Northwest's blanket certificate issued in Docket No. CP82–433–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest proposes to upgrade the Buhl Meter Station located in Twin Falls County, Idaho, by removing two of the existing 2-inch monitor regulators and appurtenances and replacing them with 2-inch pipe spools and by uprating the station MAOP from 325 psig to 720 psig. Northwest states this is to accommodate a request by Intermountain Gas Company (Intermountain) for increased delivery capabilities at this point for services under authorized firm transportation agreements. Northwest asserts the MAOP uprating will be accomplished by isolating and retesting the existing header and station piping downstream of the regulators. Northwest declares as a result of this proposed upgrade, the maximum design delivery capacity of the meter station will increase from approximately 4,857 Dth per day at 380 psig to approximately 6,939 Dth per day at 380 psig, as limited by the regulators.

Northwest states the total cost of the proposed facility upgrade at the Buhl Meter Station is estimated to be approximately $10,400, comprised of $10,300 for installation of the new facilities and uprating of existing MAOP, plus $100 for removal of the old facilities. Northwest asserts Intermountain will reimburse them for all actual costs associated with the upgrade of the Buhl Meter Station, including all applicable federal and state income tax liabilities.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18484 Filed 7–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–621–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

July 9, 1997.

Take notice that on July 7, 1997, Northwest Pipeline Corporation (Northwest) 295 Chipeta Way, Salt Lake City, Utah 84108, filed a request with the Commission in Docket No. CP97–621–000, pursuant to Sections 157.205, 157.211, and 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to upgrade its Monroe Meter Station in Snohomish County, Washington by abandoning existing meter facilities and appurtenances and constructing and operating upgraded replacement facilities to accommodate a request by Puget Sound Energy, Inc. Formerly Washington Natural Gas Company, for additional delivery capacity authorized in blanket certificate issued in Docket No. CP82–433–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest proposes to remove the two existing 1-inch regulators, the existing 3-inch turbine meter and appurtenances and install two 2-inch regulators, two 4-inch turbine meters, a 750,000 Btu per hour line heater and appurtenances at the Monroe Meter Station.

Northwest states the proposed upgrade will increase the maximum design capacity of the meter station from 1,696 Dth per day at 150 psig to approximately 6,880 Dth per day at 150 psig, as limited by the meters or to approximately 10,800 Dth per day at 250 psig, as limited by the regulators.

The total cost of the proposed facility upgrade at the Monroe Meter Station is estimated to be approximately $194,100, which would be reimbursed by Puget Sound Energy, Inc. Pursuant to a Facilities Agreement dated June 16, 1997.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized

effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18487 Filed 7–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–404–001]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

July 9, 1997.

Take notice that on July 2, 1997 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheets are enumerated in Appendix A attached to the filing. The proposed effective date of such tariff sheets is August 1, 1997.

Transco states that the purpose of the instant filing is to supplement Transco's Annual Great Plains Adjustment filing of June 30, 1997 in Docket No. RP97–404–000 (June 30 Filing), which filing inadvertently omitted certain tariff sheets containing the Great Plains Volumetric Surcharge (GPS). The revised tariff sheets included therein reflect the same GPS rate of 0.10¢ per dt as contained in Transco's June 30 Filing.

Transco states that copies of the instant filing are being mailed to affected customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18489 Filed 7–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–619–000]

Viking Gas Transmission Company; Notice of Request Under Blanket Authorization

July 9, 1997.

Take notice that on July 3, 1997, Viking Gas Transmission Company (Viking), 825 Rice Street, St. Paul, Minnesota 55117, filed in Docket No. CP97–619–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to increase the metering capacity of an existing delivery point for transportation services for Northern States Power Company—Wisconsin (NSPW), for delivery at the Wheaton delivery point in Chippewa County, Wisconsin, under the blanket certificate issued in Docket No. CP82–414–000,[1] pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Viking proposes to install an additional 6″ turbine meter run, associated piping, and fittings at the Wheaton delivery point. Viking states that the proposed change is needed to provide additional metering capacity for the transportation services currently provided to NSPW under Viking's Rate Schedule FT–A, Rate Schedule AOT and Rate Schedule IT. Viking currently provides a maximum daily summertime quantity of 12,185 Dth and wintertime quantity of 37,000 Dth of firm transportation service to NSPW under Viking's Rate Schedule FT–A, pursuant to Gas Transportation Agreements dated June 1, 1994 and November 1, 1994. NSPW has requested an increase in metering capacity up to 120,000 Mcf/d at the existing Wheaton delivery point.

Viking estimates that the proposed cost to upgrade the delivery point is $45,000 and NSPW will reimburse Viking for the cost of upgrading the delivery point.

Viking states that the delivery of NSPW's volumes will not exceed the presently authorized quantities, and the changes proposed are not prohibited by Viking's tariff. Viking claims that it has sufficient capacity in its system to accomplish delivery of gas to the proposed delivery point without detriment or disadvantage to any of its other customers. Viking states that there will be no impact on its peak day or average day deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18486 Filed 7–14–97; 8:45 am]

BILLING CODE 6717–01–M

[1] On April 6, 1989, in Docket No. CP88–679–000 the Commission authorized Viking to acquire and operate Midwestern Gas Transmission Company's (Midwestern) Northern System as Midwestern's successor. The Commission issued Midwestern blanket certificate authority for construction of facilities on September 1, 1982, in Docket No. CP82–414–000.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP96–655–001, et al. and CP97–291–000]

Destin Pipeline Company, L.L.C.; Southern Natural Gas Company; Notice of Availability of the Draft Environmental Impact Statement for the Proposed Destin Pipeline Project

July 9, 1997.

The staff of the Federal Energy Regulatory Commission (FREC or Commission) has prepared a draft environmental impact statement (EIS) on the natural gas pipeline facilities proposed by Destin Pipeline Company, L.L.C. and Southern Natural Gas Company in the above-referenced dockets and referred to as the Destin Pipeline Project.

The staff prepared the draft EIS to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would have limited adverse environmental impact.

The draft EIS assesses the potential environmental effects of the construction and operation of the

following facilities in the central Gulf of Mexico and Mississippi:

- A total of 213.2 miles of 36–, 30–, and 16-inch-diameter interstate pipeline, consisting of 75.6 miles offshore pipeline and 137.6 miles of onshore pipeline;
- 27,078 horsepower of new compression at two new compressor stations;
- Seven new meter stations; and
- Associated aboveground facilities, including a liquids slug catcher, an offshore gathering platform, and a related nonjurisdictional gas processing plant.

The purpose of the proposed facilities is to transport up to 1 billion cubic feet per day of natural gas from the development of new offshore deepwater production areas in the central Gulf of Mexico to interconnections with six major interstate pipelines in Mississippi. The proposed facilities would provided a new natural gas transportation infrastructure that would avoid the overburdened pipeline systems in southeastern Louisiana.

The draft EIS has been placed in the public files of the FERC. A limited number of copies of the draft EIS are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, N.E., Room 2A, Washington, D.C. 20426, (202) 208–1371.

Copies of the draft EIS have been mailed to Federal, state, and local agencies, public interest groups, interested individuals, and parties to this proceeding who requested a copy.

Comment Procedure

Written Comments

Any person wishing to submit written comments on the draft EIS may do so. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 888 first Street, N.E., Room 1A, Washington, D.C. 20426.
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1;
- Reference Docket Nos. CP96–655–001 *et al.* and CP97–291–000; and
- Mail your comments so that they will be received in Washington, DC on or before September 1, 1997.

Public Meetings

Interested groups and individuals are encouraged to attend the scheduled public meetings and present comments on the environmental impacts described in the draft EIS. Anyone who would like to speak at the public meetings may get on the speakers list by signing up at the public meetings. Priority will be given to persons representing groups. Transcripts will be made of the meetings.

Two public meetings to received comments on the draft EIS of the Destin Pipeline Project will be held at the following times and locations:

Date	Time	Location
August 6, 1997	7:00 p.m	Moss Point Public Library, 4401 McInnis Street, Moss Point, Mississippi.
August 7, 1997	7:00 p.m	Mississippi National Guard Armory, 38th, Highway 63, Waynesboro, Mississippi.

After the written and oral comments are reviewed, any significant new issues are investigated, and modifications are made to the draft EIS, a final EIS will be published and distributed. The final EIS will contain the staffs responses to timely comments received on the draft EIS.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18481 Filed 7–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–202–000]

USG Pipeline Company; Notice of Availability of the Environmental Assessment for the Proposed USG Pipeline Project

July 9, 1997.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an Environmental Assessment (EA) on the natural gas pipeline facilities proposed by USG Pipeline Company (USGPC) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA addresses the potential environmental effects of construction and operation of 14.5 miles of 10-inch-diameter pipeline and appurtenant facilities in Marion County, Tennessee and Jackson County, Alabama.

USGPC would transport up to 7,000 Dekatherms per day of natural gas to United States Gypsum Company (USGC) in Bridgeport, Alabama where USGC plans to construct and operate a gypsum wallboard manufacturing facility.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state, and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date listed below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Reference Docket No. CP97–202–000.

• Send two copies of your comments to: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

• Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11–1.

• Mail your comments so they will be received in Washington, DC on or before August 8, 1997.

Comments will be considered by the Commission but will not serve to make the commenter a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

The date for filing timely motions to intervene has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18482 Filed 7–14–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice; Sunshine Act Meeting

July 9, 1997.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: July 16, 1997, 10:00 a.m.

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda: Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; However, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro 679th Meeting—July 16, 1997; Regular Meeting (10:00 a.m.)

CAH–1.
DOCKET# P–2113, 042, WISCONSIN VALLEY IMPROVEMENT COMPANY
OTHER#S P–1999, 006, WISCONSIN PUBLIC SERVICE CORPORATION
P–2113, 041, WISCONSIN VALLEY IMPROVEMENT COMPANY
P–2113, 047, WISCONSIN VALLEY IMPROVEMENT COMPANY
P–2212, 003, WEYERHAEUSER COMPANY
P–2239, 009, TOMAHAWK POWER AND PULP COMPANY
P–2255, 005, NEKOOSA PAPERS, INC.
P–2256, 004, CONSOLIDATED WATER POWER COMPANY
P–2291, 003, NEKOOSA PAPERS, INC.
P–2292, 003, NEKOOSA PAPERS, INC.
P–2476, 003, WISCONSIN PUBLIC SERVICE CORPORATION
P–2590, 004, CONSOLIDATED WATER POWER COMPANY

CAH–2.
OMITTED

CAH–3.
DOCKET# P–2239, 009, TOMAHAWK POWER AND PULP COMPANY

CAH–4.
DOCKET# P–2476, 003, WISCONSIN PUBLIC SERVICE CORPORATION
OTHER#S P–2476, 004, WISCONSIN PUBLIC SERVICE CORPORATION

CAH–5.
DOCKET# P–1999, 006, WISCONSIN PUBLIC SERVICE CORPORATION
OTHER#S P–1999, 007, WISCONSIN PUBLIC SERVICE CORPORATION

CAH–6.
DOCKET# P–2212, 003, WEYERHAEUSER COMPANY
OTHER#S P–2212, 005, WEYERHAEUSER COMPANY

CAH–7.
DOCKET# P–2590, 004, CONSOLIDATED WATER POWER COMPANY
OTHER#S P–2590, 005, CONSOLIDATED WATER POWER COMPANY

CAH–8.
DOCKET# P–2256, 004, CONSOLIDATED WATER POWER COMPANY
OTHER#S P–2256, 005, CONSOLIDATED WATER POWER COMPANY

CAH–9.
DOCKET# P–2255, 005, NEKOOSA PAPERS, INC.
OTHER#S P–2255, 007, NEKOOSA PAPERS, INC.

CAH–10.
DOCKET# P–2291, 003, NEKOOSA PAPERS, INC.
OTHER#S P–2291, 006, NEKOOSA PAPERS, INC.

CAH–11.
DOCKET# P–2292, 003, NEKOOSA PAPERS, INC.
OTHER#S P–2292, 004, NEKOOSA PAPERS, INC.

CAH–12.
DOCKET# P–4715, 006, FELTS MILLS ENERGY PARTNERS, L.P.

CAH–13.
DOCKET# P–5276, 036, NIAGARA MOHAWK POWER CORPORATION AND NORTHERN ELECTRIC POWER COMPANY, L.P.

CONSENT AGENDA—ELECTRIC

CAE–1.
DOCKET# ER97–3055, 000, PENNSYLVANIA POWER & LIGHT COMPANY

CAE–2.
OMITTED

CAE–3.
DOCKET# ER97–2414, 000, LOWELL COGENERATION COMPANY LIMITED PARTNERSHIP

CAE–4.
DOCKET# ER97–3060, 000, SOUTHERN COMPANY SERVICES, INC.

CAE–5.
DOCKET# OA96–140, 000, TUCSON ELECTRIC POWER COMPANY

CAE–6.
DOCKET# ER97–2532, 000, ZOND DEVELOPMENT CORPORATION
OTHER#S ER97–2904, 000, ZOND MINNESOTA DEVELOPMENT CORPORATION II

CAE–7.
DOCKET# OA96–37, 000, GREEN MOUNTAIN POWER CORPORATION

CAE–8.
DOCKET# OA96–43, 000, CENTRAL MAINE POWER COMPANY

CAE–9.
DOCKET# TX93–2, 007, CITY OF BEDFORD, VIRGINIA, ET AL. AND TOWN OF RICHLANDS, VIRGINIA AND BLUE RIDGE POWER AGENCY
OTHER#S EL94–59, 003, CITY OF BEDFORD, VIRGINIA, ET AL. AND TOWN OF RICHLANDS, VIRGINIA, ET AL. V. APPALACHIAN POWER COMPANY

CAE–10.
DOCKET# EC96–7, 002, UNION ELECTRIC COMPANY AND CENTRAL ILLINOIS PUBLIC SERVICE COMPANY
OTHER#S ER96–677, 002, UNION ELECTRIC COMPANY AND CENTRAL ILLINOIS PUBLIC SERVICE COMPANY
ER96–679, 002, UNION ELECTRIC COMPANY AND CENTRAL ILLINOIS PUBLIC SERVICE COMPANY

CAE–11.
DOCKET# OA96–50, 000, UNION ELECTRIC COMPANY

CAE–12.
OMITTED

CAE–13.
DOCKET# EL93–50, 000, WESTERN RESOURCES, INC.

CAE–14.
DOCKET# EL97–20, 000, ALABAMA POWER COMPANY

CAE–15.
DOCKET# NJ97–3, 000, UNITED STATES DEPARTMENT OF ENERGY—BONNEVILLE POWER ADMINISTRATION

CONSENT AGENDA—GAS AND OIL

CAG–1.
DOCKET# RP96–320, 015, KOCH GATEWAY PIPELINE COMPANY

CAG–2.

DOCKET# IS97–9, 000, PLATTE PIPE LINE COMPANY
CAG–3.
DOCKET# RP97–365, 001, KOCH GATEWAY PIPELINE COMPANY
CAG–4.
DOCKET# PR97–5, 000, HUMBLE GAS PIPELINE COMPANY
CAG–5.
DOCKET# RP97–387, 000, OKTEX PIPELINE COMPANY
CAG–6.
DOCKET# PR96–13, 000, NORTHERN ILLINOIS GAS COMPANY
OTHER#S PR96–13, 001, NORTHERN ILLINOIS GAS COMPANY
PR96–13, 002, NORTHERN ILLINOIS GAS COMPANY
PR96–13, 003, NORTHERN ILLINOIS GAS COMPANY
CAG–7.
DOCKET# PR97–3, 000, OLYMPIC PIPELINE COMPANY
CAG–8.
DOCKET# RP96–61, 001, TENNESSEE GAS PIPELINE COMPANY
OTHER#S RP96–61, 003, TENNESSEE GAS PIPELINE COMPANY
RP97–98, 000, TENNESSEE GAS PIPELINE COMPANY
RP97–385, 000, TENNESSEE GAS PIPELINE COMPANY
CAG–9.
DOCKET# RP97–58, 003, EAST TENNESSEE NATURAL GAS COMPANY
CAG–10.
DOCKET# RP97–71, 004, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–11.
DOCKET# RP97–137, 006, SOUTHERN NATURAL GAS COMPANY
CAG–12.
DOCKET# RP97–166, 005, COLUMBIA GULF TRANSMISSION COMPANY
CAG–13.
DOCKET# RP97–167, 004, COLUMBIA GAS TRANSMISSION CORPORATION
CAG–14.
DOCKET# RP97–181, 004, CNG TRANSMISSION CORPORATION
OTHER#S RP97–181, 003, CNG TRANSMISSION CORPORATION
CAG–15.
DOCKET# RP97–341, 001, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–16.
DOCKET# RP97–344, 001, TEXAS GAS TRANSMISSION CORPORATION
CAG–17.
OMITTED
CAG–18.
DOCKET# RP96–45, 004, NORTHERN BORDER PIPELINE COMPANY
CAG–19.
DOCKET# RP97–158, 000, MISSISSIPPI RIVER TRANSMISSION CORPORATION
OTHER#S RP97–158, 001, MISSISSIPPI RIVER TRANSMISSION CORPORATION
CAG–20.
DOCKET# RP97–225, 000, WILLIAMS NATURAL GAS COMPANY
CAG–21.
DOCKET# RP97–258, 001, WILLIAMS NATURAL GAS COMPANY
CAG–22.
DOCKET# RP97–306, 001, WILLIAMS NATURAL GAS COMPANY
OTHER#S RP97–317, 001, WILLIAMS NATURAL GAS COMPANY
CAG–23.
OMITTED
CAG–24.
DOCKET# RP97–57, 003, NORAM GAS TRANSMISSION COMPANY
CAG–25.
DOCKET# RP97–116, 004, KOCH GATEWAY PIPELINE COMPANY
CAG–26.
DOCKET # RP97–140, 005, LOUISIANA-NEVADA TRANSIT COMPANY
CAG–27.
OMITTED
CAG–28.
OMITTED
CAG–29.
DOCKET # RP95–363, 007, EL PASO NATURAL GAS COMPANY
OTHER #S RP97–82, 001, GPM GAS CORPORATION V. EL PASO NATURAL GAS COMPANY
CAG–30.
DOCKET # RP91–203, 063, TENNESSEE GAS PIPELINE COMPANY
OTHER #S RP92–23, 029, TENNESSEE GAS PIPELINE COMPANY
RP92–132, 050, TENNESSEE GAS PIPELINE COMPANY
CAG–31.
OMITTED
CAG–32.
OMITTED
CAG–33.
DOCKET # RP92–132, 042, TENNESSEE GAS PIPELINE COMPANY
CAG–34.
DOCKET # OR92–8, 008, SFPP, L.P.
OTHER #S OR93–5, 005, CHEVRON USA PRODUCTS COMPANY V. SFPP, L.P.
OR94–3, 004, NAVAJO REFINING COMPANY V. SFPP, L.P.
OR94–4, 005, ARCO PRODUCTS COMPANY, ET AL., V. SFPP, L.P.
OR95–5, 003, MOBIL OIL CORPORATION V. SFPP, L.P.
OR95–34, 002, TOSCO CORPORATION V. SFPP, L.P.
CAG–35.
OMITTED
CAG–36.
DOCKET # MG97–6, 002, IROQUOIS GAS TRANSMISSION SYSTEM, L.P.
CAG–37.
DOCKET # MG97–12, 000, WILLISTON BASIN INTERSTATE PIPELINE COMPANY
CAG–38.
DOCKET # MG97–13, 000, NORTHWEST PIPELINE CORPORATION
CAG–39.
DOCKET # CP95–737, 001, TEXAS EASTERN TRANSMISSION CORPORATION AND TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–40.
DOCKET # CP97–106, 001, TEXAS GAS TRANSMISSION CORPORATION
CAG–41.
DOCKET # CP95–194, 002, NORTHERN BORDER PIPELINE COMPANY
OTHER #S CP95–194, 000, NORTHERN BORDER PIPELINE COMPANY
CP95–194, 001, NORTHERN BORDER PIPELINE COMPANY
CP95–194, 003, NORTHERN BORDER PIPELINE COMPANY
CAG–42.
DOCKET # CP97–105, 000, TRUNKLINE GAS COMPANY
CAG–43.
DOCKET # CP96–721, 000, TENNESSEE GAS PIPELINE COMPANY
CAG–44.
DOCKET # CP90–239, 005, GULF STATES TRANSMISSION CORPORATION
CAG–45.
DOCKET # CP96–27, 000, NATURAL GAS PIPELINE COMPANY OF AMERICA
OTHER #S CP96–27, 001, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–46.
DOCKET # CP96–297, 000, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
CAG–47.
DOCKET # CP96–492, 000, CNG TRANSMISSION CORPORATION
OTHER #S CP96–492, 002, CNG TRANSMISSION CORPORATION
CP96–492, 003, CNG TRANSMISSION CORPORATION
CP96–606, 000, TEXAS EASTERN TRANSMISSION CORPORATION
CAG–48.
DOCKET # CP97–27, 000, PUGET SOUND ENERGY
CAG–49.
DOCKET # CP97–294, 000, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–50.
DOCKET # CP96–671, 000, NATIONAL FUEL GAS SUPPLY CORPORATION
OTHER #S CP96–671, 001, NATIONAL FUEL GAS SUPPLY CORPORATION
CP96–671, 002, NATIONAL FUEL GAS SUPPLY CORPORATION
CAG–51.
DOCKET # RP97–159, 006, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–52.
DOCKET # RM97–6, 000, RECORDKEEPING FOR UNITS OF PROPERTY ACCOUNTING REGULATIONS FOR PUBLIC UTILITIES AND LICENSEES, ET AL.
CAG–53.
DOCKET # RP94–299, 002, TEXAS EASTERN TRANSMISSION CORPORATION
OTHER #S RP94–18, 004, TEXAS EASTERN TRANSMISSION CORPORATION
RP94–239, 002, TEXAS EASTERN TRANSMISSION CORPORATION
CAG–54.
DOCKET # RP97–327, 000, KOCH GATEWAY PIPELINE COMPANY

HYDRO AGENDA

H–1.
RESERVED

ELECTRIC AGENDA

E–1.
DOCKET # EC97–19, 000, LONG ISLAND LIGHTING COMPANY

Order on merger.

E–2.
DOCKET # EC97–22, 000, PG&E CORORATION AND VALERO ENERGY CORPORATAION
OTHER #S ER97–1847, 000, VALERO POWER SERVICES COMPANY

Order on disposition of jurisdictional facilities and proposed changes to market-based rate schedule.

E–3.
DOCKET # EC97–5, 000, OHIO EDISON COMPANY AND PENNSYLVANIA POWER COMPANY, ET AL.
OTHER #S ER97–412, 000, FIRST ENERGY SYSTEM/OHIO EDISON COMPANY
ER97–413, 000, OHIO EDISON COMPANY AND PENNSYLVANIA POWER COMPANY, ET AL.

Order on merger application, open access tariff and joint dispatch agreement.

OIL AND GAS AGENDA

I.
PIPELINE RATE MATTERS
PR–1.
RESERVED
II.
PIPELINE CERTIFICATE MATTERS
PC–1.
RESERVED

Lois D. Cashell,

Secretary.

[FR Doc. 97–18614 Filed 7–10–97; 4:23 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5858–4]

Request for Nominations of Candidates for the National Environmental Education Advisory Council

Due Date: September 2, 1997.

SUMMARY: Section 9 (a) and (b) of the National Environmental Education Act of 1990 (Pub. L. 101–619) mandates a National Environmental Education Advisory Council. The Advisory Council provides advice, consults with, and makes recommendations to the Administrator of the U.S. Environmental Protection Agency (EPA) on matters relating to the activities, functions, and policies of EPA under the Act. EPA is requesting nominations of candidates for membership on the Council. The Act requires that the Council be comprised of eleven (11) members appointed by the Administrator of EPA, after consultation with the Secretary of the U.S. Department of Education. Members represent a balance of perspectives, professional qualifications, and experience. The Act specifies that members must represent the following:

- Primary and secondary education (one of whom shall be a classroom teacher)—two members.
- Colleges and universities—two members.
- Not-for-profit organizations involved in environmental education—two members.
- State departments of education and natural resources—two members.
- Business and industry—two members.
- Senior Americans—one member.

Members are chosen to represent the various geographic regions of the country, and the Council shall have minority representation. The professional backgrounds of Council members include scientific, policy, and other appropriate disciplines. Each member of the Council shall hold office for a one (1) to three (3) year period, which runs from November to November of each calender year. Members are expected to participate in up to two (2) meetings per year and bi-monthly or more conference calls per year. Members of the Council shall receive compensation and allowances, including travel expenses, at a rate fixed by the Administrator. There are currently five (5) vacancies on the Advisory Council that must be filled. These include the following:

- Primary and Secondary Education (classroom teacher or non-formal educator)—one vacancy (Nov. 1996–Nov. 1999)
- Not-for-profit organization—one vacancy (Nov. 1996–Nov. 1999)
- State department of natural resources—one vacancy (Nov. 1996–Nov. 1999)
- Senior Americans—one vacancy (Nov. 1996–Nov. 1999)
- Colleges and Universities—one vacancy (Nov. 1996–Nov. 1999)

EPA particularly seeks candidates with demonstrated experience and/or knowledge in any of the following environmental education issue areas:

- Integrating environmental education into state and local education reform and improvement;
- State, national and tribal level environmental education;
- Cross-sector partnerships; leveraging resources for environmental education;
- Professional development for teachers and other education professionals;
- Targeting under-represented audiences, including low-income and multi-cultural audiences, senior citizens, and other adults.

Additional considerations:

The Council is also looking for individuals who demonstrate the following:

- strong leadership skills
- analytical ability
- ability to stand apart and evaluate programs in an unbiased fashion
- team players
- conviction to follow-through and to meet deadlines
- ability to review items on short notice

DATES: Nominations of candidates to fill the existing vacancies on the Council must be submitted no later than September 2, 1997. Any interested person or organization may submit nominations of qualified persons. The nominations must include the following:

- Name/address/phone of nominating individual
- 1–2 page resume of nominated candidate
- Two (2) letters of support for the nominee
- One (1) page statement of ''How the candidate is qualified.'' This must not exceed one (1) page and may be written by either the nominator or nominee.
- One (1) page statement by the nominee on his/her personal perspective on environmental education. This must not exceed one (1) page.

Note: If you submitted an application packet for the non-profit, college and university, or primary and secondary education positions in the previous solicitation notice (February 15, 1997), it is not necessary for you to submit a new application package. Your application will be reviewed again, unless you wish to withdraw your nomination. Please provide written notice by the deadline if you do not wish to be considered a nominee for the currently available positions.

ADDRESSES: Submit nominations to Ginger Keho, Advisory Council Coordinator, Environmental Education Division, Office of Communications, Education and Public Affairs (1707), U.S. EPA, 401 M Street, S.W., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Ginger Keho at the above address, or call (202) 260–4129. E-mail address: keho.ginger@epamail.epa.gov

SUPPLEMENTARY INFORMATION: The Council provides the Administrator with advice and recommendations on EPA implementation of the National Environmental Education Act. In general, the Act is designed to increase public understanding of environmental issues and problems, and to improve the

training of environmental education professionals. EPA will achieve these goals, in part, by awarding grants and/or establishing partnerships with other Federal agencies, state and local education and natural resource agencies, not-for-profit organizations, universities, and the private sector to encourage and support environmental education and training programs. The Council is also responsible for preparing a national biennial report to Congress that will describe and assess the extent and quality of environmental education, discuss major obstacles to improving environmental education, and identify the skill, education, and training needs for environmental professionals.

Dated: July 9, 1997.

Diane H. Esnau,

Acting Associate Administrator, Office of Communications, Education and Public Affairs.

[FR Doc. 97–18572 Filed 7–14–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5857–1]

Wyoming: Final Determination of Adequacy of the State's Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency (Region VIII).

ACTION: Notice of final determination of full program adequacy for Wyoming' s application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or conditionally exempt small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). Section 4005(c)(1)(C) of RCRA requires the Environmental Protection Agency (EPA) to determine whether States have adequate ''permit'' programs for MSWLFs, but does not mandate issuance of a rule for such determinations. On January 26, 1996, EPA proposed a State Implementation Rule (SIR) (40 CFR parts 239 and 258) that will provide procedures by which EPA will approve, or partially approve, state landfill permit programs. The Agency intends to approve adequate State MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the SIR. Prior to promulgation of the SIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States may use the draft SIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State permit programs provide interaction between the State and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States with approved permit programs can use the site-specific flexibility provided by Part 258 to the extent the State permit program allows such flexibility. EPA Notes that regardless of the approval status of a State and the permit status of any facility, the Federal Criteria will apply to all permitted and unpermitted MSWLFs.

The State of Wyoming applied for a determination of adequacy under section 4005 of RCRA. EPA reviewed Wyoming' s MSWLF application and made a tentative determination that Wyoming's MSWLF permit program is adequate to assure compliance with the revised MSWLF Criteria. After reviewing all comments received, EPA is today issuing a final determination that Wyoming's program is adequate.

EFFECTIVE DATE: The determination of adequacy for Wyoming shall be effective on July 15, 1997.

FOR FURTHER INFORMATION CONTACT: Gerald Allen (8P2–P2), U.S. EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, Phone 303–312–7008.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLF's comply with the Federal Criteria. Subtitle D also requires that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has proposed a State Implementation Rule (SIR), (40 CFR Parts 239 and 258, January 26, 1996). The rule will specify the requirements which State programs must satisfy to be determined adequate.

EPA intends to approve State MSWLF permit programs prior to the final promulgation of the SIR. EPA interprets the requirements for States to develop ''adequate'' programs for permits or other forms of prior approval to impose several minimum requirements. First, each State must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State has submitted an ''adequate'' program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation in the proposed State Implementation Rule, (SIR). EPA expects States to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. State of Wyoming

On November 6, 1992, Wyoming submitted an application for partial program adequacy determination for the State's MSWLF permit program. On October 8, 1993, EPA published a final determination of partial adequacy for Wyoming' s program. Further background on the final partial program determination of adequacy appears at 58 FR 52491 (October 8, 1993). In that action, EPA approved all portions of the State's MSWLF permit program except portions of Wyoming's regulations incorporating the federal ground water and corrective action requirements in 40 CFR 258, subpart E, and the Federal financial annual requirement in 40 CFR 258, subpart G.

On September 30, 1994, the State of Wyoming submitted a revised application for partial program adequacy determination. EPA reviewed Wyoming' s application and tentatively determined that the following portions of the State' s Subtitle D program ensured compliance with the Federal Revised Criteria.

1. Ground-water monitoring and corrective action requirements (40 CFR 258.50, 258.51, and 258.53 through 258.58).

2. Financial assurance requirements (40 CFR 258.70 through 258.74).

On April 17, 1995, EPA published an additional final determination of partial adequacy for Wyoming's program. Further background on this final partial program determination of adequacy appears at 60 FR 19251 (April 17, 1995).

The October 9, 1991, Final Rules for the MSWLF criteria included an exemption for owners and operators of certain small MSWLF units from the design (subpart D) and ground-water monitoring and corrective action (subpart E) requirements of the Criteria. See 40 CFR 258.1(f). To qualify for the exemption, the small landfill had to accept less than 20 tons per day, on an average annual basis, exhibit no evidence of ground-water contamination, and serve either:

(i) A community that experiences an annual interruption of at least three consecutive months of surface transportation that prevents access to a regional waste management facility, or

(ii) A community that has no practicable waste management alternative and the landfill unit is located in an area that annually received less than or equal to 25 inches of precitation. In January 1992, the Sierra Club and the Natural Resources Defense Council (NRDC) filed a petition with the U.S. Court of Appeals, District of Columbia Circuit, for review of the Subtitle D criteria. The Sierra club and NRDC suit alleged, among other things, that EPA acted illegally when it exempted these small landfills from the ground-water monitoring requirement. On May 7, 1993, the United States Court of Appeals for the District of Columbia circuit issued an opinion pertaining to the Sierra Club and NRDC challenge to the small landfill exemption. *Sierra Club* v. *United States Environmental Protection Agency*, 992 F.2d 337 (DC Cir. 1993).

In effect, the Court noted that while EPA could consider the practicable capabilities of facilities in determining the extent or kind of ground-water monitoring that a landfill owner/operator must conduct, EPA could not justify the complete exemption from ground-water monitoring requirements. Thus, the Court vacated the small landfill exemption as it pertains to ground-water monitoring, directing the Agency to ''* * * revise its rule to require ground-water monitoring at all landfills.''

On September 27, 1993, the EPA Administrator signed the final rule extending the effective date of the landfill criteria for certain classifications of landfills (proposed rule 58 FR 40568, July 28, 1993). Thus, for certain small landfills that fit the small landfill exemption as defined in 40 CFR 258.1 (I), the Federal Criteria were effective on October 9, 1995, rather than on October 9, 1993. The final ruling on the effective date extension was published in the **Federal Register** October 1, 1993.

EPA's final rule of October 1, 1993, as required by the Court, removed the October 9, 1991, small landfill exemption whereby owners and operators of MSWLF units that meet the qualifications outlined in 40 CFR 258.1 (f) are no longer exempt from ground-water monitoring requirements in 40 CFR 258.50 through 258.55. The final rule does, however, provide for an extension for *all* of the MSWLF criteria requirements for a period up to two years for all MSWLF units that meet the small landfill exemption in 258.1(f) for ground-water monitoring and corrective action as follows: October 9, 1995, for new units; and October 9, 1995, through October 9, 1996, for existing units and lateral expansions.

The U.S. Court of Appeals in its decision did not preclude the possibility that the Agency could establish separate ground-water monitoring standards for the small, dry-remote landfills that take such factors as size, location, and climate into account.

The Agency continued to maintain an open dialogue with all interested parties to discuss whether alternative ground-water monitoring requirements should be established and continued to accept information on alternatives. The Agency investigated this issue and could not be certain that practicable alternatives for detecting ground-water contamination will exist for MSWLF units that would qualify for the exemption under § 258.1(f). The October 9, 1993 final rule does not link the effective date of ground-water monitoring for landfills that qualify for the small/arid and remote exemption to promulgation of alternative ground-water monitoring requirements.

Under Wyoming rules, the State's 59 active MSWLFs, by definition, consist of Type I and Type II landfills. Type II landfills, which make up the vast majority of landfills in Wyoming, fit the same definition as those defined as small/arid and remote landfills under § 258.1(f). The State's Type I landfills are those that are *not* Type II landfills. Type II landfills currently comply with State ground-water monitoring and corrective action rules.

Since the State's Type II landfills were not required to comply with ground-water monitoring and corrective action criteria as defined in § 258.1(f) until October 9, 1996, the State did not seek approval for this portion of their program. It was the State of Wyoming's position that once EPA promulgated final rule revisions to the MSWLF criteria in § 258.1(f), Wyoming would revise its application for full program approval to bring Type II landfills into compliance with part 258 criteria for ground-water monitoring and corrective action.

On August 10, 1995, the EPA published a proposed rule to solicit comments on a two-year delay, until October 9, 1997, of the general compliance date of the MSWLF criteria for qualifying small MSWLFs. This will allow EPA time to finalize the proposed alternatives. The final ruling on the delay of the compliance date was published in the **Federal Register** on October 6, 1995.

On September 25, 1996, the EPA administrator signed a final rule revising the criteria for MSWLFs by re-establishing an exemption from ground-water monitoring for owners and operators of certain small landfills. This action codifies section 3 of the Land Disposal Program Flexibility Act of 1996 (LDPFA, P.C. 104–119, March 26, 1996), which provides explicit authority for this ground-water monitoring exemption. The LDPFA directed the Administrator of the EPA to provide additional flexibility to the Director of Approved States for the owners and operators of landfills that receive 20 tons or less of municipal solid waste per day. The additional flexibility pertains to alternative frequencies of daily cover, frequencies of methane monitoring, infiltration layers for final cover, and means for demonstrating financial assurance. The additional flexibility will allow the owners and operators of small municipal solid waste landfills (MSWLFs) the opportunity to reduce the cost of MSWLF operation and be protective of human health and the environment. This proposal recognizes, as did Congress in enacting LDPFA, that these decisions are best made at the State and local level and, therefore, offers this flexibility to approved States. It is anticipated that revisions to criteria for MSWLFs which would allow additional flexibility to owner and operators of small MSWLFs will be published in the FR as a direct final rule in May of 1997 unless EPA receives adverse comments.

On January 17, 1997, the State of Wyoming submitted a letter requesting full program adequacy determination based upon the passage of the LDPFA and subsequent publication of final rules on September 25, 1996 in the **Federal Register** (61 FR 50410, September 25, 1996). EPA has reviewed Wyoming's letter and their previous application and has tentatively

determined that all portions of the State's MSWLF permit program will ensure compliance with the revised Federal ground water and corrective action requirements in 40 CFR part 258, subpart E. In its application, Wyoming demonstrated that the State's permit program adequately meets the location restrictions, operating criteria, design criteria, ground-water monitoring and corrective action requirements, closure and post-closure care requirements, and financial assurance criteria in the revised Federal Criteria. In addition, the State of Wyoming also demonstrated that its MSWLF permit program contains specific provisions for public participation, compliance monitoring, and enforcement.

C. Public Comment

The EPA received no public comments on the tentative determination of adequacy for Wyoming's MSWLF permit program.

D. Decision

Since we received no public comments, I conclude that Wyoming's application for adequacy determination meets all the statutory and regulatory requirements established by RCRA. Accordingly, Wyoming is granted a determination of adequacy for all portions of its MSWLF permit program.

In its application for adequacy determination, Wyoming has not asserted jurisdiction over ''Indian Country'', as defined in 18 U.S.C. 1511. Accordingly, this approval does not extend to lands within the exterior boundaries of the Wind River Reservation. The requirements of 40 CFR part 258 apply to all owners/operators of MSWLFs located in Indian Country not covered by an approved MSWLF permitting program. MSWLF owner/operators seeking flexibility in the application of 40 CFR part 258 in Indian Country should contact Region VIII for further guidance.

In excluding Indian Country from the scope of this approval, EPA is not making a determination that the State either has adequate jurisdiction or lacks jurisdiction over sources in Indian Country. Should the State of Wyoming choose to seek program approval within Indian Country, it may do so without prejudice. Before EPA would approve the State's program for Indian Country, EPA would have to be satisfied that the State has authority, either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law, to enforce its laws against existing and potential pollution sources within the area for which it seeks program approval and that such approval would constitute sound administrative practice.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF Criteria in 40 CFR part 258 independent of any State enforcement program. As EPA explained in the preamble to the final MSWLF Criteria, EPA expects that any owner or operator complying with provisions in a State program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

This action takes effect on July 15, 1997. EPA believes it has good cause under section 553(d) of the Administrative Procedures Act, 5 U.S.C. 553(d), to put this action into effect less than thirty days after publication in the **Federal Register**. All of the requirements and obligations in the State's program are already in effect as a matter of State law. EPA's action today does not impose any new requirements become enforceable by EPA as Federal law. Consequently, EPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S. C. 605(b), I hereby certify that this tentative approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This proposed notice, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the General Accounting Office

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

Authority: This notice is issued under the authority of sections 2002, 4005, and 4010 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6912, 6945, and 6949(a).

Dated: June 10, 1997.

Kerrigan Clough,

Acting Regional Administrator.

[FR Doc. 97–18406 Filed 7–14–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Preparation for the 1997 World Radiocommunication Conference (WRC–97)

AGENCY: Federal Communications Commission and National Telecommunications and Information Administration.

ACTION: Notice; announcement of draft preliminary proposals to WRC–97.

SUMMARY: The FCC and NTIA have released a fourth set of Joint Draft Preliminary Proposals for WRC–97. The public is provided a 14-day period, from the date of the release of the notice, to provide comment on the draft proposals. Copies of the draft proposals are available for inspection and photocopying at the FCC's International Reference Center, 2000 M Street, N.W., Room 102, Washington, D.C., and on-line at http://www.fcc.gov/ib/wrc97/. Final U.S. proposals will be determined by the Department of State based on the recommendations of the FCC and NTIA.

DATES: Comments must be submitted on or before July 21, 1997.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554; Director, Office of Spectrum Plans and Policies, National Telecommunications and Information Administration, Department of Commerce, Room 4099, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Crystal Foster, FCC, 202–418–0749, and William T. Hatch, NTIA, at 202–482–1138.

SUPPLEMENTARY INFORMATION: The FCC's WRC–97 Advisory Committee and NTIA, through the Interdepartment Radio Advisory Committee, announced on June 7, 1997, their approval of a fourth set of draft preliminary proposals for WRC–97. In accordance with the streamlined procedures developed to improve the United States conference preparation process, the agencies are providing the public with this early opportunity to review and comment on draft proposals before further consideration. Final U.S. proposals will be determined by the Department of State based on the recommendations of the FCC and NTIA.

The joint preliminary draft proposals seek to:

JPDP 31 Defer consideration of Appendix S7 (determination of coordination area around an earth station) until further work is completed (WRC–97 Agenda Item 1.3);

JPDP 32 Bring forward the date of access to bands allocated by WARC–92 to high frequency broadcasting to 1 January 1998, on a secondary basis (WRC–97 Agenda Item 1.4);

JPDP 33 Propose that ITU–R monitor the status of assignment of maritime mobile service identities and, if exhaustion is anticipated, participate in urgent studies to identify alternative numbering resources (Agenda Item 1.6.1);

JPDP 34 Propose that WRC–99 consider giving priority to distress related communications originated from shore based rescue authorities (Agenda Item 1.6.3);

JPDP 35 Delete all secondary allocations from the 136–137 MHz band in order to make the existing allocation to the aeronautical mobile (R) service exclusive with a footnote to accommodate existing meteorological satellites (WRC–97 Agenda Item 1.8);

JPDP 36 Allocate spectrum within the 401–406 MHz band for MSS below 1 GHz while protecting meteorological services (WRC–97 Agenda Item 1.9.1);

JPDP 37 Propose use of the band 14.0–14.5 GHz for provision of land and maritime mobile-satellite services on a secondary basis in Regions 1, 2, and 3 (WRC–97 Agenda Item 1.9.1);

JPDP 38 Revise footnotes to FSS allocations at 15.4–15.7 GHz for use by NGSO MSS feeder links (WRC–97 Agenda Item 1.9.1);

JPDP 39 Designate the remaining 100 MHz set aside by WRC–95 for NGSO FSS in the bands 18.8–19.3 GHz and 28.6–29.1 GHz (Agenda Item 1.9.1);

JPDP 40 Defer to WRC–99 implementation of telecommand links in the space research and space operation services in 3 MHz of spectrum between 100 MHz and 1 GHz to allow time for completion of studies (Agenda Item 1.9.2);

JPDP 41 Obtain a primary worldwide allocation in the 1215–1300 MHz band for space-based active sensors (WRC–97 Agenda Item 1.9.2);

JPDP 42 Incorporate by reference new ITU–R Recommendation containing guidelines on sharing between mobile and space services in the bands 2025–2110 MHz and 2200–2290 MHz (WRC–97 Agenda Item 1.9.2);

JPDP 43 Establish a common worldwide primary allocation for active spaceborne sensors at 3100–3300 MHz (Agenda Item 1.9.2);

JPDP 44 Provide a common worldwide primary allocation for space research (Earth-to-space) in the band 7145–7235 MHz (WRC–97 Agenda Item 1.9.2.);

JPDP 45 Establish a primary worldwide allocation for passive spaceborne sensors at 18.6–18.8 GHz (WRC–97 Agenda Item 1.9.2);

JPDP 46 Defer consideration of allocations above 50 GHz for Earth exploration-satellite (passive) service (WRC–97 Agenda Item 1.9.4.1);

JPDP 47 Designate spectrum for stratospheric stations in the 47.2–47.5 GHz and 47.9–48.2 GHz bands on a non-exclusive basis (WRC–97 Agenda Item 1.9.6); and

JPDP 48 Modify Recommendation 66 to call for continuation of studies on unwanted emissions (Agenda Item 4)

Members of the public are invited to provide to the FCC and NTIA comments on the joint preliminary draft proposals. The deadline for comments on this fourth set of joint preliminary draft proposals is July 21, 1997. Timely comments will be considered by the FCC WRC–97 Advisory Committee.

Commenters should send an original plus one copy of their comment to the Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554. Comments should clearly note ''Reference No. ISP–96–005'' to ensure proper routing and should refer to specific proposals by their Joint Preliminary Draft Proposal number. Copies of the comments should also be submitted to the Director, Office of Spectrum Plans and Policies, National Telecommunications and Information Administration, Department of Commerce, Room 4099, Washington, D.C. 20230. Parties preferring to e-mail their comments should address their comments to WRC97@fcc.gov and WRC97@ntia.doc.gov and they should reference ''Fourth Draft Proposals'' in the subject line.

The draft proposals and comments received will be made available for public inspection at the FCC's International Reference Center, 2000 M Street, NW., Room 102, Washington, D.C., 202–418–1492. Copies of the documents can also be purchased through the FCC's duplication contractor, ITS, Inc., 202–857–3800.

Further information about the FCC WRC–97 Advisory Committee, including its schedule of meetings and the draft proposals, is available on the Internet at http://www.fcc.gov/ib/wrc97/. Meetings of the Advisory Committee and its Informal Working Groups are open to the public.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–18506 Filed 7–14–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 97–1425]

Petition for Permanent Waiver of the Mandatory Reassignment of 453.025 MHz in the Southern California Metropolitan Area to the Emergency Medical Radio Service

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Public Safety and Private Wireless Division of the Wireless Telecommunications Bureau invited the public to comment on a Petition for Permanent Waiver filed by Kaiser Foundation Hospitals and Health Plan to grandfather Kaiser's existing Special Emergency Radio Service wide-area, paging system that operates on 453.025 MHz in the Southern California metropolitan area. This action was taken to provide the public and those parties eligible in the Emergency Medical Radio Service with an opportunity to comment on Kaiser's waiver request. Release of the Public Notice will ensure that interested parties fully participate in the Commission decision on whether to grant Kaiser's waiver request.

DATES: Comments must be filed on or before August 8, 1997, and reply comments on or before August 25, 1997.

FOR FURTHER INFORMATION CONTACT: Freda Lippert Thyden, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the Public Safety and Private Wireless Division's Public Notice, DA 97–1425, adopted July 8, 1997, and released July 8, 1997. The full text of this Public Notice is available for inspection and copying during normal business hours in the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, 2025 M

Street, NW., Washington DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, Suite 140, Washington, DC 20037, telephone (202) 857–3800. This will impose no paperwork burden on the public.

Summary of Order

1. Kaiser Foundation Hospitals and Health Plan, Inc. (Kaiser), filed a Petition for Permanent Waiver asking the Commission to grandfather Kaiser's existing Special Emergency Radio Service (SERS) wide-area, paging system that operates on 453.025 MHz from eight stations in the Southern California metropolitan area.

2. On January 14, 1993, the Commission established the Emergency Medical Radio Service (EMRS) as a new Public Safety Radio Service under Part 90 of the Commission's Rules, 47 CFR Part 90. *See Report and Order,* 8 FCC Rcd 1454 (1993). Of the frequencies reallocated for EMRS use, four were previously assigned for one-way paging operations by entities eligible in the SERS. The four frequencies reallocated are as follows: 453.025 MHz, 453.075 MHz, 453.125 MHz, 453.175 MHz.

3. The *Report and Order* provided a waiver process for grandfathering existing one-way medical paging systems on the subject frequencies. Pursuant to this approach, if a licensee currently operating on a one-way paging channel demonstrates that there is adequate spectrum for EMRS transmissions in its area of operation, or that relocation of its medical paging system would not serve the public interest, or relocation would cause significant disruption of public safety communications, its system would be grandfathered by waiver. Otherwise, licensees operating on these 453 MHz frequencies are required to cease operations after January 14, 1998. In its Petition for Waiver, Kaiser seeks to demonstrate that it has met each of the three criterion justifying permanent waiver of the Commission's Rules.

Federal Communications Commission.

David E. Horowitz,

Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 97–18451 Filed 7–14–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2210]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

July 10, 1997.

Petitions for reconsideration have been filed in the Commission's rulemaking proceeding listed in the Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to this petition must be filed by July 30, 1997. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Llano and Marble Falls, Texas) (MM Docket No. 96–49, RM–8558).

Number of Petitions Filed: 1.

Subject: Implementation of Section 302 of the Telecommunications Act of 1996—Open Video Systems. (CS Docket No. 96–46).

Number of Petitions Filed: 1.

Subject: Mobilemedia Corporation—Applicant for Authorizations and Licenses of Certain Stations in Various Services. (WT Docket No. 97–115).

Number of Petitions Filed: 5.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–18452 Filed 7–14–97; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1177–DR]

Idaho; 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 Idaho (FEMA–1177–DR), dated June 13, 1997, and related determinations.

EFFECTIVE DATE: June 30, 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 the incident period for this disaster is closed effective June 30, 1997.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–18533 Filed 7–14–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1177–DR]

Idaho; 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 Idaho, (FEMA–1177–DR), dated June 13, 1997, and related determinations.

EFFECTIVE DATE: July 3, 1997.

FOR FURTHER INFORMATION CONTACT: Madge Dale, 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 Idaho, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 13, 1997:

Bingham, Bonneville, Custer, Fremont, Jefferson and Madison Counties for Public Assistance and Hazard Mitigation.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–18535 Filed 7–14–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1175–DR]

Minnesota; 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 Minnesota (FEMA–1175–DR), dated April 8, 1997, and related determinations.

EFFECTIVE DATE: June 13, 1997.

FOR FURTHER INFORMATION CONTACT: Madge Dale Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Lawrence L. Bailey of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Robert S. Teeri as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 97–18534 Filed 7–14–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1174–DR]

North Dakota; 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 North Dakota (FEMA–1174–DR), dated April 7, 1997, and related determinations.

EFFECTIVE DATE: June 18, 1997.

FOR FURTHER INFORMATION CONTACT: Madge Dale, 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 June 18, 1997, the President amended the cost-sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 51521 *et seq.*), in a letter to James L. Witt, Director of the Federal Emergency Management Agency, as follows:

I have determined that the damage in certain areas of the State of North Dakota, resulting from severe flooding, severe winter storms, heavy spring rain, rapid snowmelt, high winds, ice jams, ground saturation due to high water tables, and fires beginning on February 28, 1997, and continuing through May 24, 1997, is of sufficient severity and magnitude that special conditions are warranted regarding the cost sharing arrangements concerning Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (''the Stafford Act'').

Therefore, I amend my previous declaration to authorize Federal funds for Public Assistance at 90 percent of total eligible costs, except for direct Federal assistance costs and debris removal and emergency protective measures (Categories A and B) under the Public Assistance program which were authorized at 100 percent Federal funding. This 90 percent reimbursement applies to all eligible Public Assistance costs (Categories C through G).

This adjustment to State and local cost sharing applies only to Public Assistance (Categories C through G) costs eligible for such adjustment under the law. The law specifically prohibits a similar adjustment for funds provided to the State for the Individual and Family Grant program, mobile home group site development under Section 408, Temporary Housing, and Hazard Mitigation Assistance. These funds will continue to be reimbursed at 75 percent of total eligible costs.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 97–18536 Filed 7–14–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL TRADE COMMISSION

[File No. 972–3024]

Kave Elahie d/b/a M.E.K. International; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 15, 1997.

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld, Federal Trade Commission, San Francisco Regional Office, 901 Market Street, Suite 570, San Francisco, CA 94103, (415) 356–5270.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the accompanying complaint. An electronic copy of the full text of the consent agreement package can be obtained from the Commission Actions section of the FTC Home Page (for June 26 1997), on the World Wide Web, at ''http://www.ftc.gov/os/actions/htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has provisionally accepted an agreement to a proposed consent order from respondent Kave Elahie doing business as M.E.K. International, a California company that markets the NutraTrim Bio-Active Cellulite Reduction Cream and the NutraTrim Weight Loss tablets.

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

This matter concerns the advertising of the NutraTrim brand products. The advertising of the NutraTrim Bio-Active Cellulite Reduction Cream, which contains aminophylline, claims that the product will eliminate cellulite and fat, even in the absence of general weight loss. The advertising for the NutraTrim

Weight Loss tablets, which contain chromium picolinate, claims that the product will cause weight loss, reduce cholesterol levels, control appetite, and increase metabolism. The Commission's complaint charges that the respondent did not possess and rely upon a reasonable basis that substantiated the claims at the time they were made.

In addition, the complaint alleges as false respondent's claim that these claims were based on competent and reliable scientific studies.

Lastly, the Commission's complaint charges that respondent represented, without a reasonable basis, that the testimonials or endorsements from consumers appearing in advertisements for its Nutra Trim brand products reflect the typical or ordinary experience of members of the public who use its cellulite reduction cream and weight loss tablets.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent from engaging in similar acts and practices in the future.

Part I of the proposed order prohibits the respondent from making unsubstantiated claims that its aminophylline-based cream can cause or contribute to cellulite reduction and fat loss and that its chromium picolinate weight loss tablets can cause or contribute to achieving body fat loss, weight loss, reduction in cholesterol levels, increase in metabolism, or appetite control. Part II of the proposed order prohibits the respondent from making any claims regarding the performance, benefits, efficacy, or safety of its products unless it has competent and reliable scientific evidence to substantiate such claims. Part III of the proposed order prohibits the respondent from making any misrepresentation regarding any test or study.

Part IV of the proposed order addresses claims made through endorsements or testimonials. Under Part IV, the respondent may make such representations if the respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representations; or the respondent must disclose either what the generally expected results would be for users of the advertised products, or the limited applicability of the endorser's experience to what consumers may generally expect to achieve. The proposed order's treatment of testimonial claims is in accordance with the Commission's ''Guides Concerning Use of Endorsements and Testimonials in Advertising,'' 16 CFR 255.2(a).

Parts V and VI of the proposed order harmonize the requirements of the order with the requirements of the Nutrition Labeling and Education Act of 1990 and with Food and Drug Administration procedures.

The proposed order also requires the respondent to maintain advertising materials and materials relied upon to substantiate claims covered by the order; to provide a copy of the consent agreement to certain personnel in the company; to notify the Commission of any change in his employment; and to file one or more reports detailing compliance with the order.

Under Part XI, the order terminates 20 years from the date of issuance, except under certain specified conditions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Human Services Transportation Technical Assistance Project

AGENCY: The Assistant Secretary for Planning and Evaluation and the Director of the Office of Intergovernmental Affairs (IGA) of the Department of Health and Human Services (HHS).

ACTION: Requests for applications for technical assistance in the area of human services transportation from national organizations with a record of assisting rural and special transportation needs.

SUMMARY: This announcement solicits applications and describes the application process for the award of the cooperative agreement. It is the intent of HHS to fund one project which addresses the various task areas in this announcement. The project period will be for three years. However, an award will be funded only for the first year with funding for years two and three subject to the government's determination to continue the project.

DATES: The closing date for submittal of applications under this announcement is August 29, 1997.

ADDRESSES: Send application to Grants Officer, Department of Health and Human Services, ASPE/IO, 200 Independence Avenue, SW., Room 405–A, Washington, DC 20201. Attn: Adrienne D.B. Little.

FOR FURTHER INFORMATION CONTACT: Technical Questions, Dianne L. McSwain, HHS/IGA, 200 Independence Avenue, SW., Room 630–F, Washington, DC 20201, Telephone: (202) 401–5926. Questions may be faxed to (202) 690–5672 (applications may not be faxed for submission). Application Instructions and Forms, Copies of applications should be requested from and submitted to: Grants Officer, Department of Health and Human Services, ASPE/IO, 200 Independence Avenue, SW., Room 405–A, Washington, DC 20201, phone (202) 690–8794. No faxes will be accepted. Questions concerning the preceding information should be submitted to the Grants Officer at the same address.

Eligible Applicants

Eligible applicants are national organizations or large institutions with a record of assisting rural and special transportation needs. Congress has indicated that the funded organization should have experience in administering a national toll-free hotline and electronic informational bulletin boards. It should regularly publish a national technical assistance periodical, maintain a national network of local and State affiliates, and have demonstrated experience in providing information and technical assistance on human services transportation to local agencies and programs.

Part I. Supplementary Information

Legislative Authority

The Transportation Coordination Technical Assistance Project cooperative agreement(s) are authorized by section 1110 of the Social Security Act (42 U.S.C. 1310) and awards will be made from funds appropriated under Public Law 104–208.

Project History and Purpose

In FY 1990, Congress authorized $250,000 for the provision of technical assistance to human service transportation providers. This effort included the compilation of data on specific target populations, the development of mechanisms for dissemination of information, and the preparation of a report to the Secretary on the provision of transportation services to human service clients. For FYs 1991 through 1996, the Congress authorized $500,000 for this effort, adding funding for specific technical assistance in the implementation of the requirements of the Americans with

Disabilities Act (ADA). For FY 1997, the Congress has again authorized $500,000 for continued technical assistance in human services transportation.

The purpose of this announcement is to solicit applications for the provision of technical assistance to those organizations, agencies and individuals involved in the planning and provision of human services transportation to the clients of HHS-funded programs. This announcement represents a follow-on activity to the efforts funded in FYs 1991–1996.

It is the policy of HHS to coordinate related programs at the Federal level wherever possible and to promote maximum feasible coordination at the State and local level. Coordination and collaborative effort maximize the resources available to address specific needs. Reflecting this policy, HHS and the DOT have established the Joint DHHS/DOT Coordinating Council on Human Services Transportation (Coordinating Council) as a focal point for the effort to coordinate HHS and DOT resources for transportation of HHS program client populations. The goals of the Coordinating Council are as follows: (1) To achieve the most cost-effective use of Federal, State and local resources for specialized and human services transportation; (2) to encourage State and local governments to take a more active role in the management and coordination of programs supporting specialized and human services transportation; (3) to adopt administrative and management practices in the implementation of Federal programs which encourage coordination among service providers and increase access to specialized and human services transportation; (4) to share technical resources and information with recipients of Federal assistance and transportation providers; and (5) to encourage the most efficient system of providing services, including consideration of private sector providers and use of competitive bidding.

In support of these goals, HHS has identified the following objectives for the Human Services Transportation Technical Assistance Project: (1) To promote more efficient use of equipment, facilities, and staff resources at the State local level; (2) to provide information, technical data, and assistance to State and local agencies to improve management of transportation services and the acquisition of appropriate equipment and facilities and, more specifically, to assist states and localities in identifying needs, planning and implementing transportation alternatives for those individuals moving from welfare to work. Applicants should reflect an understanding of these goals and objectives in their applications.

Available Funds

HHS intends to award one cooperative agreement resulting from this announcement. HHS anticipates awarding approximately $400,000 through a cooperative agreement.

Period of Performance

The start-up date of the project will be September 15, 1997 for a project period of 36 months. However, an award will be funded only for the first year with funding for years two and three subject to the government's determination to continue the project.

Part II. Human Services Transportation Technical Assistance Project—Responsibilities of the Awardees and the Federal Government

Awardee Responsibilities

The Human Services Technical Assistance project requires the development and maintenance of mechanisms to provide information, technical assistance, and training to HHS human services transportation planners and providers on the efficient use of transit resources, equipment and facilities. Applicants should be aware of and be sensitive to the need to coordinate the activities herein with the activities of the Rural Transit Assistance Program (RTAP) funded through the Federal Transit Administration (FTA) of the Department of Transportation (DOT) and ongoing relevant transportation efforts by other federal departments. A listing of federal human services transportation funding sources can be found in the publication, ''Building Mobility Partnerships'' available through the National Transit Resource Center at 1–800–527–8279. Knowledge of the universe of federal efforts pertaining to the transportation of human services clients will be considered partially indicative of ability to perform the required tasks.

The following tasks are to be specifically addressed in the project narrative of the application. Applicants are encouraged to be innovative and to suggest additional or alternative approaches through subtasks that may improve the potential for successful completion of the task. However, applicants are cautioned to provide suggestions for additional subtasks judiciously with concern for the overall cost of the project. There will be no additional funds beyond those appropriated by Congress for this project.

Task I: Project Planning and Coordination

Task I entails the preparation of a detailed work plan of the activities proposed to meet the stated objectives of the project, including monthly meetings with the federal project staff, quarterly written progress reports and a final report due at the end of the project period. The work plan provides detailed descriptions of task activities, details on the intended staffing pattern and specific responsibilities within the project, specific time frames for the accomplishment of the activities in measurable terms and reflects consultation with the Federal Project Officer (FPO). In the second and third year, additional planning with the FPO should be reflected to allow for the annual minor project adjustments needed to keep the tasks relevant to consumer need.

In addition, it is anticipated that an evaluation of the effectiveness of the technical assistance efforts of the Community Transportation Assistance Project (CTAP) may be undertaken through the Human Service Transportation Research and Analysis project. The awardee might include possible activities to support and assist in this evaluation.

Task II: Development and Maintenance of Human Services Transportation Resource Center

Task II addresses the development and maintenance of a central repository of information and technical assistance materials for developing or improving coordinated transportation systems (hereafter known as the Resource Center). Access to the Resource Center should be available to State and local human service agencies, planning entities, government decision-makers and transportation service providers. The Resource Center will be the focal point for the ongoing collection and dissemination of information on issues of specific concern to human services transportation planners and providers as the issues evolve. A priority of the Resource Center will be the support of regional, State or local groups seeking to improve coordination of human services transportation as well as those groups emphasizing employment and child care transportation for low-income and welfare recipients.

The Resource Center collection of materials will represent the universe of reports, studies, and additional written and video materials that represent the current knowledge base in human services transportation. The Resource Center will include, at a minimum,

federal- and State-produced reports, technical assistance and training materials, federal human service transit-related legislation and regulations, training and technical assistance materials that will be developed through this effort, relevant research reports, and other relevant materials as identified by HHS, the Coordinating Council, or the awardee. All materials distributed through this project should carry the appropriate attribution in commonly accepted format. A thorough listing of proposed initial holdings for the Resource Center will be considered partially indicative of the ability to undertake this task. Although the awardee is encouraged to minimize costs by referral to other resources for acquisition of documents, a minimum of one copy of each identified referral piece will be maintained in the Resource Center for research purposes. In order to encourage students and practitioners to further the knowledge base, the Resource Center will be made available, within reasonable constraints, to individuals or organizations wishing to do research in the area of human services transportation.

Activities that might be undertaken to accomplish this task include: (1) Providing ready access to the technical assistance and information of the Center such as through the use of physical access, ''hotlines'' and the Internet; (2) developing a mechanism for periodic systematic searches of appropriate online information services to identify new materials; (3) maintaining ongoing relationships with the recognized individuals undertaking research in relevant fields in order to identify new work and to provide feedback on new issues to be explored; (4) identifying and maintaining contact with relevant transportation-related programs in colleges and universities; (5) developing and maintaining a calendar of the meetings, conferences and events of major organizations that would be of interest to the human services transportation field; and (6) developing procedures to ensure that organizations or individuals obtain requested materials or information in a timely manner. (Applicants are encouraged to disseminate information through links with other agencies rather than attempting to store and disseminate documents large quantities of documents);

Task III: Development and Coordination of a Resource Network of Knowledgeable Practitioners of Human Services Transportation

Task II represents the establishment and coordination of a network of identified, certified practitioners in the field of human services transportation whose expertise can be made available to transportation planners or providers. Such expertise might be called upon for presentations at conferences or meetings, through telephone or written exchange, or on-site visits.

The following activities at a minimum, might be undertaken to complete this task; (1) Develop a set of criteria against which practitioners may be certified, (2) develop and implement a plan to identify practitioners for certification, (3) develop an automated database to manage the certified practitioner data, including name, contact information, specific expertise, title and description of current transportation position, and record of activity within the peer network; (4) develop a mechanism for screening requests for technical assistance which will identify the need for practitioner assistance and that assistance can be provided by telephone, in writing, or if an on-site visit is warranted, and (5) develop a process for documenting the practitioner contacts for inclusion in the Resource Center and to be summarized in the quarterly reports. Emphasis might be placed on the use of certified peers in ways to meet the most need.

Task IV: Disseminate Information on the Provision of Human Services Transportation

Task IV addresses the dissemination of the information compiled through the Resource Center activities, information accumulated under Task III, and information that the federal government deems necessary for distribution to the human services transportation network. The dissemination of information and materials relating to the implementing of the ADA transportation requirements, the effective coordination of transportation resources and successful approaches to employment and child care transportation for low-income individuals and welfare recipients are of priority under this task.

Project dissemination activities under Task IV will be coordinated with those of regional, State and other federal human services transportation coordination efforts to avoid duplication of efforts and to construct complementary and mutually beneficial activities. Under no circumstances should the awardee undertake the development of technical assistance or training information or materials that knowingly duplicate existing information or materials without prior written permission of the FPO. Whenever possible, partnering in the development of technical assistance materials is desirable with the understanding that the use of project funds for such an effort must be clearly identifiable.

At a minimum the awardee would be expected to undertake the following activities in support of Task IV: (1) Identifying opportunities to disseminate information through the existing publications of relevant human services organizations on human services transportation issues (a minimum of 6 articles during the project period); (2) identifying and coordinating through the practitioner network requests for conveners and facilitator for regional, State and local-level human services organizations and forums (a minimum of 6 opportunities); (3) identifying, tracking and coordinating activities of other major national or regional human services organizations interested in human services transportation with activities planned under this project including identifying opportunities to participate in national or regional conferences (present at minimum of 5 human services meetings); (4) assist with the planning and facilitation of such regional conferences as may be held by HHS and FTA; (5) ensuring the availability of current information on the project resources and the Resource Center including the dissemination of a basic information package on the Resource Center through the major human services networks, at a minimum of once a year; (6) continue to disseminate the information on the transportation requirements of the ADA, as well as additional transportation requirements such as drug and alcohol testing and blood born pathogens handling, prepared summaries on these requirements as prepared during previous Human Services Transportation Training and Technical Assistance projects; (7) compile information on the transportation needs and experiences related to moving individuals from welfare to work, as well as the necessary link to child care, (8) compiling information on the usage of the Resource Center and dissemination activities, including but not limited to the data on the rate of use, kinds of inquiries, and types of requesting organizations, to be included in the monthly project meetings; and (9) indicate a process for screening requests for information and technical assistance which will identify the appropriate level and type of technical assistance, such as immediate telephone response, research and compilation of a written response, practitioner network assistance by telephone, in writing, or through an on-site visit.

Federal Government Cooperative Agreement Responsibilities

HHS or its representatives will provide: (1) Consultation and technical assistance in planning, operating, and evaluating the technical assistance activities of the project; (2) up-to-date information on federal government regulations identified as affecting the provision of transportation services to human service clients; (3) assistance in the evaluation of project effectiveness; (4) assistance in collaborating with appropriate State and local governmental entities in the performance of the project activities; (5) assistance in the identification of HHS information and technical assistance resources pertinent to the success of this project; and (6) assistance in the transfer of ''successful practices'' in the human services transportation to other Federal, State and local entities.

Part III. Application Preparation and Evaluation Criteria

This part contains information on the preparation of an application for submission under this announcement, the forms necessary for submission and the evaluation criteria under which the applications will be reviewed. Potential applicants should read this part carefully in conjunction with the information provided in Part II.

To ensure that organizations with the greatest capacity for providing quality services participate in this effort, applicants for funding under the announcement should reflect, in the program narrative section of the application, how they will be able to fulfill the responsibilities and requirements described in this section of the announcement. Applicants must address all the identified tasks. It is the intent of HHS to make an award sufficient to accomplish the entire scope of effort described in this announcement, if submissions of sufficient scope and quality are received to permit it.

The applicant should include: (1) A management plan, which sets forth how the project will be managed and who will be the key personnel involved, including a Gantt chart and other graphics which specifically display the management information provided in text; and (2) a budget plan, which specifically delineates the costs associated with the project. When the applicant chooses to suggest additional efforts to support a task, the cost of those additional efforts (not required by this announcement) should be separately identified. However, at no time will a proposed budget in excess of $400,000 for all the Tasks listed in the Announcement be considered for funding, unless the amount in excess of $400,000 represents grantee cost-sharing.

Review Process and Funding Information

Applications that are submitted by the deadline date and which meet the screening criteria will be reviewed and scored competitively. The applications will be reviewed using the evaluation criteria listed below to score the applications. These review results will be a primary factor in funding decisions.

HHS reserves the option to discuss applications with other Federal agencies, Central or Regional Office staff, specialists, experts, States and the general public. Comments from these sources, along with those of the reviewers, will be considered in making funding decisions.

State Single Point of Contact (E.O. No. 12372)

The Department of Health and Human Services has determined that this program is not subject to Executive Order No. 12372, Intergovernmental Review of Federal Programs, because it is a program that is national in scope and the only impact on State and local governments would be through subgrants. Applicants are not required to seek intergovernmental review of their applications within the constraints of E.O. No. 12372.

Deadline for Submittal of Applications

The closing date for submittal of applications under this announcement is August 29, 1997. Applications must be postmarked or hand-delivered to the application receipt point no later than 5 p.m. on August 29, 1997.

Hand-delivered applications will be accepted Monday through Friday prior to and on August 29, 1997, during the working hours of 9 a.m. to 5 p.m. in the lobby of the Hubert H. Humphrey building located at 200 Independence Avenue, SW, in Washington, DC. When hand-delivering an application, call 690–8794 from the lobby for pick up. A staff person will be available to receive applications.

An application will be considered as meeting the deadline if it is either: (1) Received at, or hand-delivered to, the mailing address on or before August 29, 1997, or (2) Postmarked before midnight of the deadline date, August 29, 1997, and received in time to be considered during the competitive review process (within two weeks of the deadline date).

When mailing application packages, applicants are strongly advised to obtain a legibly dated receipt from a commercial carrier (such as UPS, Federal Express, etc.) or from the U.S. Postal Service as proof of mailing by the deadline date. If there is a question as to when an application was mailed, applicants will be asked to provide proof of mailing by the deadline date. When proof is not provided, an application will not be considered for funding. Private metered postmarks are not acceptable as proof of timely mailing.

Applications which do not meet the August 29, 1997, deadline are considered late applications and will not be considered or reviewed in the current competition. HHS will send a letter to this effect to each late applicant.

HHS reserves the right to extend the deadline for all applications due to acts of God, such as floods, hurricanes or earthquakes; due to acts of war; if there is widespread disruption of the mail; or if HHS determines a deadline extension to be in the best interest of the Government. However, HHS will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

Application Requirements

Applicants are advised to read and follow this section very carefully. Applications which do not meet these initial requirements may not be considered or reviewed in the competition, and the applicant will be so informed. A complete and conforming application must meet the following requirements:

Eligible applicants are national organizations or large institutions with a record of assisting rural and special transportation needs. Congress has indicated that the funded organization should have experience in administering a national toll-free hotline and electronic informational bulletin boards. It should regularly publish a national technical assistance periodical, maintain a national network of local and State affiliates, and have demonstrated experience in providing information and technical assistance on human service transportation to local agencies and programs.

Application Forms

See section entitled ''Components of a Complete Application.'' All of these documents must accompany the application package.

Maximum Length

No specific limit will be set for the length of the application. However, applications that are overly long and/or

contain superfluous material will be viewed as indicating an inefficient approach.

Evaluation Criteria

The evaluation criteria correspond to the outline for the development of the Program Narrative Statement of the application. Although not mandatory, it is strongly recommended that applications be prepared with the format indicated by this outline.

Applications which meet the initial requirements will be reviewed by a panel of at least three reviewers. Reviewers will determine the strengths and weaknesses of each application in terms of the evaluation criteria listed below, provide comments and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight that each section will be given in the review process.

1. *Understanding of the Effort.* The application discusses in detail the applicant's understanding of the need for the project, the background and evolution of the effort to coordinate human services transportation, the significant participants in the coordination effort, the universe of current federal activities, and the specific relevance of the proposed tasks to the identified need. The application relates the project to the goals and objectives described in the first section of this announcement. 20 points

2. *Project Approach.* The application outlines a sound and workable approach to the effort and details how the proposed tasks will be accomplished; cites factors which might accelerate or decelerate the work, giving acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary collaborative involvements; and provides for projections of the accomplishments to be achieved. It lists the activities to be carried out in chronological order, showing a reasonable schedule of accomplishments and target dates.

To the extent applicable, the application identifies the kinds of data to be collected and/or maintained, and discusses the criteria to be used to evaluate the results and successes of the project. It describes the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. The application also lists each organization, agency, consultant, or other key individuals or groups who will work on the project, along with a description of the activities and nature of their effort or contribution. 35 points

3. *Staffing Utilization, Staff Background and Experience.* The application identifies the background of the principal project staff members. The name, address, training, educational background, and other qualifying experience are provided for the project director and the key project staff. Any staff to be added as a result of the award of this Cooperative agreement should be clearly delineated. The applicant provides assurance that the proposed staff will be available to work on the project effort upon award of the cooperative agreement. The principal author of the application is identified and that person's role in the project is identified. An assurance of timely notification of staff changes and/or revised staff responsibilities is requested. 20 points

4. *Organizational Experience.* The application identifies the qualifying experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer this project. Congress has directed HHS to identify the applicant as a national organization or large institution with a record of assisting rural and special transportation needs. The organization should have experience in administering a national toll free assistance hotline and electronic informational bulletin boards. It should regularly publish a national technical assistance periodical, maintain a national network of local and state affiliates, and have demonstrated experience in providing information and technical assistance on human services transportation to local agencies and programs. Previous specific experience with work similar to the tasks proposed in clearly and specifically described.

The relationship between this project and other work planned, anticipated, or underway by the applicant is described, including a chart which lists all related Federal assistance received within the last five years. In the event a consortium of applicants is proposed, the project history of prior joint work should be provided. The previous Federal assistance is identified by project number, Federal agency, and grants or contracting officer. 25 points

Components of a Complete Application

A complete application consists of the following items in this order:

1. Application for Federal Assistance (Standard Form 424, REV 4–88);
2. Budget Information—Non-construction Programs (Standard Form 424A, REV 4–88);
3. Assurances—Non-construction Programs (Standard Form 424B, REV 4–88);
4. Table of Contents;
5. Budget justification for Section B–Budget Categories;
6. Proof of non-profit status, if appropriate;
7. Copy of the applicant's approved indirect cost rate agreement, if necessary;
8. Project Narrative Statement, organized in four sections addressing the following areas:
   (a) Understanding of the Effort,
   (b) Project Approach,
   (c) Staffing Utilization, Staff Background, and Experience,
   (d) Organizational Experience;
9. Any appendices/attachments;
10. Certification Regarding Drug-Free Workplace;
11. Certification Regarding Debarment, Suspension and Other Responsibility Matters;
12. Certification and, if necessary, Disclosure Regarding Lobbying;
13. Supplement to Section II—Key Personnel;
14. Application for Federal Assistance Checklist.

Dated: July 9, 1997.

David Garrison,

Principal Deputy Assistant Secretary for Planning and Evaluation.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Human Services Transportation Research and Analysis Project

AGENCY: The Assistant Secretary for Planning and Evaluation and the Director of the Office of Intergovernmental Affairs (IGA) of the Department of Health and Human Services (HHS).

ACTION: Request for applications for research and analysis in the area of human services transportation from national organizations with a record of successfully completing recognized research and analysis informing the field of human services transportation.

SUMMARY: This announcement solicits applications and describes the application process for the award of the cooperative agreement. It is the intent of HHS to fund one project which

addresses the various task areas in this announcement. The project period will be for three years. However, an award will be funded only for the first year with funding for years two and three subject to the government's determination to continue the project.

DATES: The closing date for submittal of applications under this announcement is August 29, 1997.

ADDRESSES: Send application to Grants Officer, Department of Health and Human Services, ASPE/IO, 200 Independence Avenue, SW., Room 405–F, Washington, DC 20201. Attn: Adrienne D.B. Little.

FOR FURTHER INFORMATION CONTACT: Technical Questions, Dianne L. McSwain, HHS/IGA, at (202) 401–5926. Questions may be faxed to (202) 690–5672 (applications may not be faxed for submission).

ELIGIBLE APPLICANTS: Eligible applicants are nationally-recognized organizations, institutions, or for profit entities with a record of study and analysis in rural and special transportation needs. However, for-profit organizations are advised that no grant funds may be paid as profit to any recipient of a grant or subgrant. Profit is any amount in excess of allowable direct or indirect costs of the grantee. Such applicants should indicate a significant publication history indicating a range of analysis and study projects in human services or specialized transportation brought to successful completion. Experience in working with special populations which represent HHS target populations will be of particular interest.

Part I. Supplementary Information

Legislative Authority

The Transportation Coordination Research and Analysis Project cooperative agreement is authorized by section 1110 of the Social Security Act (42 U.S.C. 1310) and awards will be made from funds appropriated under Public Law 104–208 (DHHS Appropriation Act for FY 1997).

Project History and Purpose

In FY 1990, Congress authorized $250,000 for the provision of technical assistance to human service transportation providers. This effort included the compilation of data on specific target populations, the development of mechanisms for dissemination of information, and the preparation of a report to the Secretary on the provision of transportation services to human service clients. For FYs 1991 through 1996 the Congress authorized $500,000 for this effort, adding funding for specific technical assistance in the implementation of the requirements of the Americans with Disabilities Act (ADA). In FY 1994, the Department made the decision to fund a separate research and analysis project for this effort and funded the effort for three years. For FY 1997, Congress has again authorized $500,000 for continued technical assistance in human services transportation.

The purpose of this announcement is to solicit applications for the performance of research and data analysis in various issue areas informing the provision of human services transportation to the clients of HHS-funded programs.

It is the policy of HHS to coordinate related programs at the Federal level wherever possible and to promote maximum feasible coordination at the State and local level. Coordination and collaborative effort maximize the resources available to address specific needs. Reflecting this policy, HHS and the DOT have established the Joint DHHS/DOT Coordinating Council on Human Services Transportation (Coordinating Council) as a focal point for the effort to coordinate HHS and DOT resources for transportation of HHS program client populations. The goals of the Coordinating Council are as follows: (1) To achieve the most cost-effective use of Federal, State and local resources for specialized and human services transportation; (2) to encourage State and local governments to take a more active role in the management and coordination of programs supporting specialized and human services transportation; (3) to adopt administrative and management practices in the implementation of Federal programs which encourage coordination among service providers and increase access to specialized and human services transportation; (4) to share technical resources and information with recipients of Federal assistance and transportation providers; and (5) to encourage the most efficient system of providing services, including consideration of private sector providers and use of competitive bidding.

The research and analysis tasks of this effort represent data acquisition and synthesis support activities to the Coordinating Council and the Human Services Transportation Technical Assistance Project. In support of these goals, HHS has identified the following objectives for the Human Services Transportation Research and Analysis Project: (1) To develop information on the most efficient use of equipment, facilities, and staff resources at the State and local level; (2) to examine and analyze issues and concerns identified by the Coordinating Council; and (3) to provide information, technical data, and assistance for use by State and local agencies to improve the planning and management of transportation services and the acquisition of appropriate equipment and facilities. Applicants should reflect an understanding of these goals and objectives in their applications.

Available Funds

HHS intends to award one cooperative agreement resulting from this announcement of approximately $100,000.

Period of Performance

The start-up date of the project will be on or before September 15, 1997 for a project period of 36 months. However, an award will be funded only for the first year with funding for years two and three subject to the government's determination to continue the project.

Part II. Human Services Transportation Research and Analysis Project—Responsibilities of the Awardee and the Federal Government

Awardee Responsibilities

The Human Services Transportation Research and Analysis project requires data acquisition, synthesis, examination, evaluation and analysis support for the Human Services Transportation Technical Assistance project and the Coordinating Council on the issues affecting efficient use of transit resources, equipment and facilities to serve the clients of HHS-funded programs. Applicants should be aware of and be sensitive to the need for flexibility to accommodate the shifting information needs and to coordinate the activities herein with the activities of the Community Transportation Assistance Project (CTAP) funded by HHS and the Rural Transit Assistance Program (RTAP) funded through the Federal Transit Administration (FTA) of the Department of Transportation (DOT) and as well as work undertaken through the Transportation Research Board and ongoing relevant transportation efforts by other federal departments. Knowledge of the universe of federal efforts pertaining to the transportation of human services clients will be considered partially indicative of ability to perform the required tasks.

The following tasks are to be specifically addressed in the project narrative of the application. Applicants are encouraged to be innovative and to suggest additional or alternative approaches through subtasks that may improve the potential for successful

completion of the task. However, applicants are cautioned to provide suggestions for additional subtasks judiciously with concern for the overall cost of the project. There will be no additional funds beyond those appropriated by Congress for this project.

Task I: Project Planning and Coordination

Task I entails the preparation of a detailed work plan of the activities proposed to meet the stated objectives of the project, including monthly meetings with the federal project staff, periodic written progress reports, and a final report due at the end of each identified activity. In addition, an overall final report of the project activities and recommendations for future activities due at the end of the project year should be included. The work plan provides detailed descriptions of task activities and specific time frames for the accomplishment of the activities in measurable terms and reflects periodic consultation with the Federal Project Officer (FPO). In the second and third year, additional planning with the FPO should be reflected to allow for the minor project adjustments needed to keep the tasks relevant to consumer need.

Task II: Identification of Research and/or Analysis Topics

Task II consists of the identification of the research and analysis topics to be examined during the initial and subsequent project years. In the first project year, such topics might include an examination of current approaches to employment transportation: an evaluation of the Community Transportation Assistant Project (CTAP), identification of the information needs of Head Start grantees regarding the pending transportation regulations; identify, describe and recommend solutions to inconsistencies in existing HHS regulations posing barriers to the effective coordination of transportation resources; and assisting the Coordinating Council with an ongoing strategic planning process. Some consideration should be made for the appearance of unanticipated topics during each project year.

The nature of the work of the Coordinating Council is such that issues/topics evolve quickly and the need for information within the human services transportation network can become critical quite quickly. Therefore, the awardee should anticipate sufficient resources to explore two to three additional topics beyond those proposed and agreed upon by the FPO at the initial project meeting. The suggestion of additional topics not listed herein will be considered indicative of knowledge of the field and current practices.

The activities which might be undertaken to accomplish this task could include: (1) Review of existing reports from meetings, conferences and roundtables which have identified current issues and concerns as identified by the providers and consumers of human services transportation; (2) discussions with the membership of the Coordinating Council and the workgroup supporting the Council on information needs within the various member programs; (3) consultation with the grantee supporting the CTAP project with regard to the most requested topics through the Internet web site and the hotline; (4) compilation of a suggested prioritized list of topics with rationale for inclusion and the resources necessary for completion of each activity; and (5) presentation of the topics list to the FPO for consultation and approval.

Task III: Performance of Topic Activities

Task IV represents the research and analysis activities to be undertaken as identified in Tasks II and III. No more than six separate topics will be explored during each project year from the list created in Task III as well as the unanticipated topics discussed in Task I. The number of completed activities will be driven by the complexity of the topics undertaken and the need for information within the human services transportation network.

The activities that might be undertaken with each topic to be explored under this task could include: (1) A comprehensive description/definition of the issue(s) with relevant existing data; (2) a detailed description of the proposed activity (analysis, synthesis, etc.) with resource requirements; (3) a rationale for the proposed approach; (4) a request for any required technical support from the FPO, other federal staff or the CTAP project; (5) completion of the proposed activities; (6) monthly oral reports and quarterly written reports (if the activity will entail more than three months work) as well as a well documented written final report for each topic.

Part III. Application Preparation and Evaluation Criteria

This part contains information on the preparation of an application for submission under this announcement and the evaluation criteria under which the applications will be reviewed. Potential applicants should read this part carefully in conjunction with the information provided in Part II.

To ensure that organizations with the greatest capacity for providing quality services participate in this effort, applicants for funding under the announcement should reflect, in the program narrative section of the application, how they will be able to fulfill the responsibilities and requirements described in this section of the announcement. Applicants must address all the identified tasks. It is the intent of HHS to make an award sufficient to accomplish the entire scope of effort described in this announcement, if submissions of sufficient scope and quality are received to permit it.

The applicant should include: (1) A management plan, which sets forth how the project will be managed and who will be the key personnel involved, including a Gantt chart and other graphics which specifically display the management information provided in text; and (2) a budget plan, which specifically delineates the costs associated with the project. When the applicant chooses to suggest additional efforts to support a task, the cost of those additional efforts (not required by this announcement) should be separately identified. However, at no time will a proposed budget in excess of $100,000 for all the Tasks listed in the Announcement be considered for funding, unless the amount in excess of $100,000 represents grantee cost-sharing.

Review Process and Funding Information

Applications that are submitted by the deadline date and which meet the screening criteria will be reviewed and scored competitively. The applications will be reviewed using the evaluation criteria listed below to score the applications. These review results will be a primary factor in funding decisions.

HHS reserves the option to discuss applications with other Federal agencies, Central or Regional Office staff, specialists, experts, States and the general public. Comments from these sources, along with those of the reviewers, will be considered in making funding decisions.

State Single Point of Contact (E.O. No. 12372)

The Department of Health and Human Services has determined that this program is not subject to Executive Order No. 12372, Intergovernmental Review of Federal Programs, because it

is a program that is national in scope and the only impact on State and local governments would be through subgrants. Applicants are not required to seek intergovernmental review of their applications within the constraints of E.O. No. 12372.

Deadline for Submittal of Applications

The closing date for submittal of applications under this announcement is August 29, 1997. Applications must be postmarked or hand-delivered to the application receipt point no later than 5 p.m. on August 29, 1997.

Hand-delivered applications will be accepted Monday through Friday prior to and on August 29, 1997, during the working hours of 9 a.m. to 5 p.m. in the lobby of the Hubert H. Humphrey building located at 200 Independence Avenue, SW., in Washington, DC. When hand-delivering an application, call 690–8794 from the lobby for pick up. A staff person will be available to receive applications.

An application will be considered as meeting the deadline if it is either: (1) Received at, or hand-delivered to, the mailing address on or before August 29, 1997, or (2) Postmarked before midnight of the deadline date, August 29, 1997, and received in time to be considered during the competitive review process (within one week of the deadline date).

When mailing application packages, applicants are strongly advised to obtain a legibly dated receipt from a commercial carrier (such as UPS, Federal Express, etc.) or from the U.S. Postal Service as proof of mailing by the deadline date. If there is a question as to when an application was mailed, applicants will be asked to provide proof of mailing by the deadline date. When proof is not provided, an application will not be considered for funding. Private metered postmarks are not acceptable as proof of timely mailing.

Applications which do not meet the August 29, 1997, deadline are considered late applications and will not be considered or reviewed in the current competition. HHS will send a letter to this effect to each late applicant.

HHS reserves the right to extend the deadline for all applications due to acts of God, such as floods, hurricanes or earthquakes; due to acts of war; if there is widespread disruption of the mail; or if HHS determines a deadline extension to be in the best interest of the Government. However, HHS will not waive or extend the deadline for any applicant unless the deadline is waived or extended for all applicants.

Application Requirements

Applicants are advised to read and follow this section very carefully. Applications which do not meet these initial requirements may not be considered or reviewed in the competition, and the applicant will be so informed. A complete and conforming application must meet the following requirements:

Eligible applicants are nationally-recognized organizations, institutions, or for profit entities with a record of study and analysis in rural and special transportation needs. However, for-profit organizations are advised that no grant funds may be paid as profit to any recipient of a grant or subgrant. Profit is any amount in excess of allowable direct or indirect costs of the grantee. Such applicants should indicate a significant publication history indicating a range of analysis and study projects in human services or specialized transportation brought to successful completion. Experience in working with special populations which represent HHS target populations will be of particular interest.

Application Instructions and Forms

See section entitled ''Components of a Complete Application''. All of these documents must accompany the application package. Copies of applications would be requested from and submitted to: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, Room 405–A, 200 Independence Avenue, SW., Washington, DC 20201, Phone (202) 401–3951. No faxes will be accepted. Questions concerning the preceding information would be submitted to the Grants Officer at the same address.

Maximum Length

No specific limit will be set for the length of the application. However, applications that are overly long and/or contain superfluous material will be viewed as indicating an inefficient approach.

Evaluation Criteria

The evaluation criteria correspond to the outline for the development of the Program Narrative Statement of the application. Although not mandatory, it is strongly recommended that applications be prepared with the format indicated by this outline.

Applications which meet the initial requirements will be reviewed by a panel of at least three reviewers. Reviewers will determine that strengths and weaknesses of each application in terms of the evaluation criteria listed below, provide comments and assign numerical scores. The point value following each criterion heading indicates the maximum numerical weight that each section will be given in the review process.

1. *Understanding of the Effort.* The application discusses in detail the applicant's understanding of the need for the project, the background and evolution of the effort to coordinate human services transportation, the significant participants in the coordination effort, the universe of current federal activities, and the specific relevance of the proposed tasks to the identified need. The application relates the project to the goals and objectives described in the first section of this announcement. 20 points

2. *Project Approach.* The application outlines a sound and workable approach to the effort and details how the proposed tasks will be accomplished; cites factors which might accelerate or decelerate the work, giving acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary collaborative involvements; and provides for projections of the accomplishments to be achieved. It lists the activities to be carried out in chronological order, showing a reasonable schedule of accomplishments and target dates.

To the extent applicable, the application identifies the kinds of data to be collected and/or maintained, and discusses the criteria to be used to evaluate the results and successes of the project. It describes the evaluation methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. The application also lists each organization, agency, consultant, or other key individuals or groups who will work on the project, along with a description of the activities and nature of their effort or contribution. 35 points

3. *Staffing Utilization, Staff Background and Experience.* The application identifies the background of the principal project staff members. The name, address, training, educational background, and other qualifying experience are provided for the project director and the key project staff. Any staff to be added as a result of the award of this Cooperative agreement should be clearly delineated. The applicant provides assurance that the proposed staff will be available to work on the project effort upon award of the cooperative agreement. The principal

author of the application is identified and that person's role in the project is identified. 20 points

4. *Organizational Experience.* The application identifies the qualifying experience of the organization to demonstrate the applicant's ability to effectively and efficiently administer this project. The application specifically identifies the applicant as a nationally-recognized organization, institution, or company with a record of study and analysis of rural and special transportation needs. Previous specific experience with work similar to the Tasks proposed is clearly and specifically described. The relationship between this project and other work planned, anticipated, or underway by the applicant is described, including a chart which lists all related Federal assistance received within the last five years. In the event a consortium of applicants is proposed, the project history of prior joint work should be provided. The previous Federal assistance is identified by project number, Federal agency, and grants or contracting officer. 25 points

Components of a Complete Application

A complete application consists of the following items in this order:

1. Application for Federal Assistance (Standard Form 424, REV 4–88);
2. Budget Information—Non-construction Programs (Standard Form 424A, REV 4–88);
3. Assurances—Non-construction Programs (Standard Form 424B, REV 4–88);
4. Table of Contents;
5. Budget justification for Section B—Budget Categories;
6. Proof of non-profit status, if appropriate;
7. Copy of the applicant's approved indirect cost rate agreement, if necessary;
8. Project Narrative Statement, organized in four sections addressing the following areas:
   (a) Understanding of the Effort,
   (b) Project Approach,
   (c) Staffing Utilization, Staff Background, and Experience
   (d) Organizational Experience;
9. Any appendices/attachments;
10. Certification Regarding Drug-Free Workplace;
11. Certification Regarding Debarment, Suspension and Other Responsibility Matters; and
12. Certification and, if necessary, Disclosure Regarding Lobbying.
13. Supplement to Section II—Key Personnel.
14. Application for Federal Assistance Checklist.

Dated: July 9, 1997.

David F. Garrison,

Principal Deputy Assistant Secretary for Planning and Evaluation.

[FR Doc. 97–18528 Filed 7–14–97; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

Amitav Hajra, University of Michigan: Based upon a report from the University of Michigan, information obtained by the Office of Research Integrity (ORI) during its oversight review, and Mr. Hajra's own admission, ORI found that Mr. Hajra, former graduate student, University of Michigan, engaged in scientific misconduct by falsifying and fabricating research data in five published research papers, two published review articles, one submitted but unpublished paper, in his doctoral dissertation, and in a submission to the GenBank computer data base. Mr. Hajra's doctoral training and research was supported by two Public Health Service (PHS) grants, and his experiments were conducted at and submitted for publication from the National Center for Human Genome Research, National Institutes of Health (NIH).

Specifically, Mr. Hajra fabricated and falsified original research in the following publications:

- Hajra, A., Collins, F.S. ''Structure of the leukemia-associated human CBFB gene.'' *Genomics* 26(3):571–579, 1995 (Retracted in *Genomics* 38(1):107, 1996);
- Hajra, A., Liu, P.P., Speck, N.A., Collins, F.S. ''Overexpression of core-binding factor α (CBFα) reverses cellular transformation by the CBFβ-smooth muscle myosin heavy chain chimeric oncoprotein.'' *Molecular and Cellular Biology* 15(9):4980–4989, 1995;
- Hajra, A., Liu, P.P., Wang, Q., Kelley, C.A., Stacy, T., Adelstein, R.S., Speck, N.A., and Collins, F.S. ''The leukemic core binding factor β-smooth muscle myosin heavy chain (CBFβ–SMMHC) chimeric protein requires both CBFβ and myosin heavy chain domains for transformation of NIH 3T3 cells.'' *Proc. Natl. Acad. Sci.* USA 92(6):1926–1930, 1995;
- Wijmenga, C., Gregory, P.E., Hajra, A., Schröck, E., Ried, T., Eils, R., Liu, P.P., and Collins, F.S. ''Core binding factor β-smooth muscle myosin heavy chain chimeric protein involved in acute myeloid leukemia forms unusual nuclear rod-like structures in transformed NIH 3T3 cells.'' *Proc. Natl. Acad. Sci.* USA 93(4):1630–1635, 1996; and
- Liu, P.P., Wijmenga, C., Hajra, A., Blake, T.B., Kelley, C.A., Adelstein, R.S., Bagg, A., Rector, J., Cotelingham, J., Willman, C.L., and Collins, F.S. ''Identification of the chimeric protein product of the CBFB-MYH11 fusion gene in inv(16) leukemia cells.'' *Genes, Chromosomes, and Cancer* 16:77–87, 1996 (Erratum in *Genes, Chromosomes, and Cancer* 18(1):71, 1997).

Mr. Hajra included fabricated and falsified data in the following review articles:

- Hajra, A., Liu, P.P., and Collins, F.S. ''Transforming properties of the leukemic Inv(16) fusion gene CBFB–MYH11.'' In Molecular Aspects of Myeloid Stem Cell Development in Current Topics in Microbiology and Immunology (L. Wolff and A.S. Perkins, Eds.) 211:289–298, 1996 (Review). Berlin and New York: Springer-Verlag; and
- Liu, P.P., Hajra, A., Wijmenga, C., and Collins, F.S. ''Molecular pathogenesis of the chromosome 16 inversion in the M4Eo subtype of acute myeloid leukemia.'' *Blood* 85:2289–2302, 1995 (Review).

Mr. Hajra submitted a fabricated nucleotide sequence in computer data base entry U22149, ''Human leukemia-associated core binding factor subunit CBFbeta (CBFB) gene, promoter region and partial CDs.'' GenBank (NCBI, NLM, NIH), March 3, 1995 (withdrawn). He also fabricated the majority of data reported in his dissertation (Hajra, A. ''Transformation properties of the leukemic CBFβ–SMMHC chimeric protein.'' Dissertation, University of Michigan, Ann Arbor, MI, 1995), and he fabricated and falsified original research data in a submitted but unpublished manuscript (Hajra, A., Liu, P.P., Itoh, K., Kelley, C.A., Speck, N.A., Adelstein, R.S., and Collins, F.S. ''Myosin heavy chain properties necessary for cellular transformation by the leukemic CBFβ–SMMHC oncoprotein,'' submitted for publication to *Oncogene* on November 29, 1995, and on May 15, 1996).

Mr. Hajra has accepted the ORI finding and has entered into a Voluntary Exclusion Agreement with ORI in which he has voluntarily agreed, for the four (4) year period beginning July 7, 1997, to exclude himself from:

(1) Contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement transactions (e.g., grants and cooperative agreements) of the United States Government as defined in 45 CFR Part 76 (Debarment Regulations);

(2) Serving in any advisory capacity to the Public Health Service (PHS), including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

Mr. Hajra agreed to request or cooperate in requesting the retraction or correction of those research publications that have not already been corrected or retracted. He also agreed to notify the relevant editors of the affected review articles that the articles cannot be relied upon.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Acting Director, Office of Research Integrity.

[FR Doc. 97–18453 Filed 7–14–97; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–97–16]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. *Follow-Up Study of Children With Developmental Disabilities*—New—In the mid-1980s, 10-year-old children were identified as having one or more of five developmental disabilities: mental retardation, cerebral palsy, epilepsy, hearing impairment, or vision impairment. These children were identified (mainly from special education records in the public schools) in the metro-Atlanta area as part of a study to develop surveillance methods for these conditions in school-age children. A follow-up study is proposed to trace, locate, and interview these children, who are now in their early twenties, to assess their status with regard to educational attainment, employment, living arrangements, services received, functional limitations, adaptive behavior, social participation, health, and quality of life. Previous studies (published mostly in the mid-1980s) on the post-secondary school experiences of former recipients of special education services were either limited to one type of impairment (e.g., mild mental retardation) or were restricted to a narrow range of outcomes (e.g., employment and education) or did not incorporate a comparison group of persons who were not in special education. The proposed study is a one-time, in-person interview and includes a contemporaneous comparison group of persons who, at age 10 years, were in regular education classes in the same schools as were the persons with developmental disabilities. A base of 1,608 identified children and 650 comparison persons will be used to find a total of 1,600 who will be interviewed. The data generated from this study will be used to estimate the burden of secondary health conditions, limited social participation, and economic disadvantage among young adults with long-standing developmental impairments. This information will be helpful to efforts aimed at the prevention of various secondary problems in this population. The total cost to respondents is $0.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/responses (in hrs.)	Total burden (in hrs.)
Initial Location Call	2,258	1	.08	180
Contact Call	1,900	1	.17	323
Scheduling Call	1,600	1	.08	128
Telephone Interview	1,600	1	1	1600
Total				2231

Dated: July 9, 1997.

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–18498 Filed 7–14–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Task Group Session of the Safety and Occupational Health Study Section, National Institute for Occupational Safety and Health (NIOSH).

Time and Date: 12:30 p.m.–5:30 p.m., July 30, 1997.

Place: Teleconference originating at the NIOSH Grants Office, 1095 Willowdale Road, Morgantown, West Virginia 26505–2888.

Status: The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463. Application(s) and/or proposal(s) and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the application(s) and/or proposal(s), the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Purpose: The Task Group Session of the Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) in response to the Institute's Request for Application Number 722, entitled ''Intervention Studies for Construction Safety and Health.''

It is the intent of NIOSH to support broad-based research endeavors which will lead to the prevention of work-related diseases and injuries in the construction industry by designing, implementing, and evaluating measures to reduce occupational hazards. If prevention measures are not currently available, new technologies should be developed for controlling hazardous exposures. Such new technologies must be evaluated to determine that the prevention measures are feasible, even for smaller businesses. Intervention research, of which control technology is a part, examines the utility and impact of new and existing preventive measures in the workplace. It is anticipated that research funded will promote these goals.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Pervis C. Major, Ph.D., Scientific Review Administrator, Office of Extramural Coordination and Special Projects, Office of the Director, NIOSH, 1095 Willowdale Road, Morgantown, West Virginia 26505–2888, telephone 304/285–5979.

Dated: July 9, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–18501 Filed 7–14–97; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Task Group Session of the Safety and Occupational Health Study Section, National Institute for Occupational Safety and Health (NIOSH).

Times and Dates: 8 a.m.–5:30 p.m., August 13, 1997. 8 a.m.–5:30 p.m., August 14, 1997.

Place: Hyatt Regency Washington on Capitol Hill, 400 New Jersey Avenue, Washington, DC, 20001.

Status: The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463. Application(s) and/or proposal(s) and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the application(s) and/or proposal(s), the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Purpose: The Task Group Session of the Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) in response to the Institute's Request for Application Number 725, entitled ''Childhood Agricultural Safety and Health Research.''

It is the intent of NIOSH to support broad-based research endeavors which will maximize the safety and health of children and adolescents exposed to agricultural production hazards by expanding the knowledge base regarding etiology; outcomes; intervention strategies; and the effectiveness of commonly utilized educational materials and methods.

Research may address children directly involved in work tasks and/or other children exposed to agricultural production hazards. The funded research projects should cover a variety of types of agricultural production in different geographical regions (e.g. tomato harvesting in California, dairy farms in Wisconsin, and blueberry picking in Maine). It is anticipated that research funded will promote these goals.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Pervis C. Major, Ph.D., Scientific Review Administrator, Office of Extramural Coordination and Special Projects, Office of the Director, NIOSH, 1095 Willowdale Road, Morgantown, West Virginia 26505–2888, telephone 304/285–5979.

Dated: July 9, 1997.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–18500 Filed 7–14–97; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0260]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on voluntary customer/partner service surveys to implement Executive Order 12862.

DATES: Submit written comments on the collection of information by (*insert date 60 days after date of publication in the* **Federal Register**.)

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Mark L. Pincus, Office of Information Resources Management (HFA–80), Food and Drug Administration, 5600 Fishers

Lane, rm. 16B–31, Rockville, MD 20857, 301–827–1471.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Customer/Partner Service Surveys

Under section 903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393), FDA is authorized to conduct research relating to regulated articles and to conduct educational and public information programs relating to responsibilities of the agency. Executive Order 12862, entitled ''Setting Customer Service Standards,'' directs Federal agencies that ''provide significant services directly to the public'' to ''survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.'' FDA is seeking OMB clearance to conduct a series of surveys and focus groups to implement Executive Order 12862. Participation in the surveys and focus groups will be voluntary. This request covers customer service surveys of regulated entities, such as food processors; cosmetic, drug, biologic and medical device manufacturers; consumers; and health professionals. The request also covers partner surveys of State and local governments.

FDA will use the information gathered through surveys and focus groups to identify strengths and weaknesses in service to customers and partners and to make improvements. The surveys and focus groups will assess timeliness, appropriateness, accuracy of information, courtesy, and problem resolution in the context of individual programs.

FDA projects 12 customer service and 12 partner service surveys per year, with a sample of between 500 and 2,000 customers each. After the first year, some of these surveys will be repeats of earlier surveys, for purposes of monitoring customer/partner service and developing long-term data. Also, FDA plans to conduct 12 focus groups per year (6 for customers and 6 for partners), primarily for the purpose of gaining input into the design of service surveys.

FDA estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

Type of Survey	No. of Respondents	Annual Frequency per Response	Hours per Response	Total Hours
Mail/telephone surveys	36,000	1	.25	9,000
Focus Groups	120	1	1.5	180
Total	36,120	1	.255	9,180

There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on experience with other surveys FDA has conducted.

Dated: July 7, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–18525 Filed 7–14–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0226]

Elanco Animal Health; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Elanco Animal Health. The NADA provides for the use of tylosin soluble powder in animal drinking water. The sponsor requested the withdrawal of approval of the NADA because the animal drug product is no longer being marketed.

EFFECTIVE DATE: July 25, 1997.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1623.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285, is the sponsor of NADA 13–029 Tylan® Plus Vitamins (tylosin), which provides for the use of tylosin in swine drinking water for control and treatment of swine dysentery. Elanco Animal Health requested withdrawal of approval of the NADA because the animal drug product is no longer being marketed.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 13–029 and all supplements and amendments thereto is hereby withdrawn, effective July 25, 1997.

Dated: June 20, 1997.

Michael J. Blackwell,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. 97–18456 Filed 7–14–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0268]

Draft Guidance for Industry; Submission of Documentation in Drug Applications for Container Closure Systems Used for the Packaging of Human Drugs and Biologics; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Guidance for Industry: Submission of Documentation in Drug Applications for Container Closure Systems Used for the Packaging of Human Drugs and Biologics.'' This draft guidance was prepared by FDA's Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER). The draft guidance discusses information on container closure systems used in packaging drugs that manufacturers should provide to CDER in meeting regulatory requirements for new drug applications (NDA's), abbreviated new drug applications (ANDA's), investigational new drug applications (IND's), abbreviated antibiotic applications (AADA's), and supplements to these applications, and to CBER in meeting requirements for biologics license applications (BLA's) and product license applications (PLA's). The draft guidance, when completed, will supersede the agency's ''Guideline for Submitting Documentation for Packaging for Human Drugs and Biologics,'' issued February 1987. The agency requests comments on the draft guidance.

DATE: Written comments by September 15, 1997. General comments on agency guidance documents are welcomed at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance entitled ''Guidance for Industry: Submission of Documentation in Drug Applications for Container Closure Systems Used for the Packaging of Human Drugs and Biologics'' to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Alan C. Schroeder, Center for Drug Evaluation and Research (HFD–570), 5600 Fishers Lane, Rockville MD 20857, 301–827–1050.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance entitled ''Guidance for Industry: Submission of Documentation in Drug Applications for Container Closure Systems Used for Packaging of Human Drugs and Biologics.'' The guidance discusses information on container closure systems used in packaging drugs that manufacturers should provide to CDER and CBER in meeting regulatory requirements for initial applications, amendments, and supplements.

The Federal Food, Drug, and Cosmetic Act (the act) authorizes FDA to establish standards for drug product packaging, including containers and closures. According to section 501(a)(3) of the act (21 U.S.C. 351(a)(3)), a drug is deemed to be adulterated if its container is composed, in whole or part, of any poisonous or deleterious substance which may render the contents injurious to health * * *. Under section 505(b)(1)(D) of the act (21 U.S.C. 355(b)(1)(D)), an application for approval to market a new drug must include ''a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug.'' FDA's regulations on current good manufacturing practices for the control of drug product containers and closures are set forth in subpart E of part 211 (21 CFR part 211). In particular, § 211.94 states that finished drug manufacturers must establish and follow ''[s]tandards or specifications, methods of testing, and, where indicated, methods of cleaning, sterilizing, and processing to remove pyrogenic properties * * * for drug product containers and closures.''

In February 1987, FDA issued a ''Guideline for Submitting Documentation for Packaging for Human Drugs and Biologics.'' The guideline was intended to provide drug manufacturers with guidance on preparing information on the fabrication and quality of containers and container components for use in the submission of NDA's, ANDA's, IND's, or PLA's.

The draft ''Guidance for Industry: Submission of Documentation in Drug Applications for Container Closure Systems Used for Packaging of Human Drugs and Biologics'' revises and updates the February 1987 guideline to reflect innovations in drug product container closure systems that have occurred in the past decade. In addition, the document provides more extensive guidance on qualification and quality control of packaging components used with drug products having particular dosage forms and routes of administration, including the following: Inhalation drug products, drug products for injection and ophthalmic drug products, liquid-based oral and topical drug products and topical delivery systems, solid oral dosage forms and powders for reconstitution, and other dosage forms. The draft guidance also addresses post-approval packaging changes, Type III drug master files, and bulk containers. The draft guidance, when completed, will supersede the 1987 guideline.

This draft guidance represents the agency's current thinking on submitting information in drug applications on container closure systems used in packaging human drugs and biologics. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. A regulated entity may adopt an alternative approach to submitting information on container closure systems if such approach satisfies the applicable statutory and regulatory requirements.

Interested persons may, on or before September 15, 1997, submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments should 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. The draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. An electronic version of this draft guidance is available via Internet using the World Wide Web (WWW) at http://www.fda.gov/cder/guidance.htm.

Dated: July 6, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–18460 Filed 7–14–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Gastroenterology and Urology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on August 6, 1997, 10 a.m. to 5 p.m., and August 7, 1997, 9:30 a.m. to 2 p.m.

Location: Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD.

Contact Person: Mary J. Cornelius, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2194, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12523. Please call the Information Line for up-to-date information on this meeting.

Agenda: On August 6, 1997, the committee will hear a presentation of the basic concepts of FDA's Product Development Protocol Process. The committee will discuss issues relating to a premarket approval application (PMA) for an implanted neuromuscular stimulator for the management of urinary urge incontinence. On August 7, 1997, the committee will discuss and advise FDA on the classification of External Penile Rigidity Devices and an update of the Triage list of gastroenterology and urology devices will be presented and discussed.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 30, 1997. Oral presentations from the public will be scheduled between approximately 10 a.m. and 11 a.m. on August 6, 1997, and between approximately 9 a.m. and 10 a.m. on August 7, 1997. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 30, 1997, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 9, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–18524 Filed 7–14–97; 8:45 am]

BILLING CODE 4160–01–F

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.

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

PRT–831781

Applicant: Herbert M. Jones, South Bend, IN.

The applicant requests a permit to take (capture, handle, band and release) peregrine falcons (*Falco peregrinus*) in Minnesota, Wisconsin, and Michigan for enhancement of the species in the wild through scientific research.

PRT–831774

Applicant: Biological Resources Division, U.S. Geological Survey, North Central Forest Experiment Station, St. Paul, Minnesota, L. David Mech, Principle Investigator.

The applicant requests a permit to take gray wolves (*Canis lupus*) throughout the lower 48 states to continue research, restoration and public education efforts previously conducted under the authority of the U.S. Fish and Wildlife Service. Activities are proposed for survival, enhancement and recovery of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/725–3536 x250); FAX: (612/725–3526).

Dated: July 8, 1997.

John A. Blankenship,

Assistant Regional Director, IL, IN, MO (Ecological Services), Region 3, Fort Snelling, Minnesota.

[FR Doc. 97–18530 Filed 7–14–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Resighini Rancheria Liquor Licensing Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983). I certify that the Resighini Rancheria Liquor Licensing Ordinance was duly adopted by Resolution 96–09 of the Coast Indian Community of the Resighini Rancheria of California on December 11, 1996. The ordinance provides for the control of distribution, sale and possession of liquor on lands within the Tribe's jurisdiction.

DATES: This ordinance is effective as of July 15, 1997.

FOR FURTHER INFORMATION CONTACT: Jerry Cordova, Office of Tribal Services, 1849 C Street, NW., MS 4641 MIB, Washington, DC 20240–4001; telephone (202) 208–4401.

SUPPLEMENTARY INFORMATION: The Resighini Rancheria Liquor Licensing Ordinance shall read as follows:

RESIGHINI RANCHERIA LIQUOR LICENSING ORDINANCE

Chapter 1. General Provisions

Section 1.1. Declaration of Findings. The Business Council of the Coast Indian Community of the Resighini Rancheria hereby finds as follows:

1. Under the Constitution of the Tribe, Article V, Section 3(h), the Business Council is charged with the duty of protecting the safety and welfare of the Coast Indian Community of the Resighini Rancheria.

2. The introduction, possession and sale of alcoholic beverages on the Resighini Rancheria is a matter of special concern to the Tribe.

3. Federal law leaves to tribes the decision regarding when and to what extent alcoholic beverage transactions shall be permitted on Indian reservations.

4. Present day circumstances make a complete ban on alcoholic beverages within the Resighini Rancheria ineffective and unrealistic. At the same time, a need still exists for strict Tribal regulation and control over alcoholic beverage distribution.

5. The enactment of an ordinance governing alcoholic beverage sales on the Resighini Rancheria and providing for the purchase and sale of alcoholic beverages through Tribally licensed outlets will increase the ability of the Tribal government to control the distribution, sale, and possession of liquor on the Resighini Rancheria, and at the same time will provide an important and urgently needed source of revenue for the continued operation of the Tribal government and delivery of Tribal governmental services.

Section 1.2. Declaration of policy. Under the inherent sovereignty of the Tribe, the Resighini Rancheria Liquor Licensing Ordinance shall be deemed an exercise of the Tribe's power, for the protection of the welfare, health, peace, morals, and safety of the people of the Tribe, and all its provisions shall be liberally construed for the accomplishment of that purpose, and it is declared to be public policy that the sale and possession of alcoholic beverages affects the public interest of the people, and should be regulated to the extent of prohibiting all sale and possession of alcoholic beverages, except as provided in this Ordinance. In order to provide for Tribal control over liquor sales and possession within the Reservation, and to provide a source of revenue for the continued operation of the Tribal government and the delivery of Tribal governmental services, the Business Council promulgates this Ordinance.

Section 1.3. Repeal of prior liquor ordinances. To the extent not previously repealed either expressly or by implication, any prior Liquor Ordinance remaining in effect is hereby expressly repealed.

Section 1.4. Short title. This Ordinance shall be known and cited as the ''Resighini Rancheria Liquor Licensing Ordinance.''

Section 1.5. Purpose. The purpose of this Ordinance is to prohibit the importation, manufacture, distribution and sale of alcoholic beverages on the Resighini Rancheria, except pursuant to a license issued by the Business Council under the provisions of this ordinance.

Section 1.6. Sovereign immunity preserved. Nothing in this ordinance is intended or shall be construed as a waiver of the sovereign immunity of the Coast Indian Community of the Resighini Rancheria. No officer or employee of the Resighini Rancheria is authorized nor shall he/she attempt to waive the immunity of the Tribe under the provisions of this ordinance unless such officer or employee has express, specific written authorization from the Business Council.

Section 1.7. Applicability within the reservation. This ordinance shall apply to all persons within the exterior boundaries of the Resighini Rancheria consistent with the applicable federal Indian liquor laws.

Section 1.8. Interpretation and findings. The Business Council, in the first instance, may interpret any ambiguities contained in this Ordinance.

Section 1.9. Application of 18 U.S.C. 1161. The importation, manufacture, distribution and sale of alcoholic beverages on the Resighini Rancheria shall be in conformity with this Ordinance and in conformity with the laws of the State of California as that phrase or term is used in 18 U.S.C. 1161.

Section 1.10. Severability. If any part or provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end the provisions of this Ordinance are severable.

Section 1.11. Effective date. This Ordinance shall be effective on such date as the Secretary of the Interior certifies this Ordinance and publishes the same in the **Federal Register**.

Chapter 2. Definitions

Section 2.1. Interpretation. In construing the provisions of this Ordinance, the following words or phrases shall have the meaning designated unless a different meaning is expressly provided or the context clearly indicates otherwise.

Section 2.2. Alcohol. ''Alcohol'' means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

Section 2.3. Alcoholic beverage. ''Alcoholic beverage'' includes all alcohol, spirits, liquor, wine, beer, and any liquid or solid containing alcohol, spirits wine or beer, and which contains one half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances. It shall be interchangeable in this ordinance with the term ''liquor.''

Section 2.4. Beer. ''Beer'' means any alcoholic beverage obtained by the fermentation of any infusion or decoction or barley, malt, hops, or any other similar product, or any combination thereof in water, and includes ale, porter, brown, stout, lager beer, small beer, and strong beer, and also includes sake otherwise known as Japanese rice wine.

Section 2.5. Business Council. ''Business Council'' means the governing body of the Coast Indian Community of the Resighini Rancheria as provided for under Article III, Sec. 1 of the Tribal Constitution.

Section 2.6. Distilled spirits. ''Distilled spirits'' means any alcoholic beverage obtained by the distillation of fermented agricultural products, and includes alcohol for beverage use, spirits of wine, whiskey, rum, brandy, and gin, including all dilutions and mixtures thereof.

Section 2.7. Importer. ''Importer'' means any person who introduces alcohol or alcoholic beverages into the Resighni Rancheria from outside the exterior boundaries thereof for the purpose of sale or distribution within the Rancheria, provided however, the term importer as used herein shall not include a wholesaler licensed by any state or tribal government selling alcoholic beverages to a seller licensed by a state or tribal government to sell at retail.

Section 2.8. Liquor license. ''Liquor license'' means a license issued by the Tribal Business Council under the provisions of this Ordinance authorizing the sale, manufacture, or importation of alcoholic beverages on or within the Rancheria, consistent with federal law.

Section 2.9. Manufacturer. ''Manufacturer'' means any person engaged in the manufacture of alcohol or alcoholic beverages.

Section 2.10. Person. ''Person'' means any individual, whether Indian or non-Indian, receiver, assignee, trustee in bankruptcy, trust, estate, firm, partnership, joint corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit or otherwise, and any other Indian tribe, band or group, whether recognized by the United States Government or otherwise. The term shall also include the business enterprises of the Tribe. It shall be interchangeable in this ordinance with the term ''seller'' or ''licensee.''

Section 2.11. Rancheria. ''Rancheria'' means all lands within the exterior boundaries of the Resighini Rancheria and such other lands as may hereafter be acquired by the Tribe, whether within or without said boundaries, under any grant, transfer, purchase, gift, adjudication, executive order, Act of Congress, or other means of acquisition.

Section 2.12. Sale. ''Sale'' means the exchange of property and/or any transfer of the ownership of, title to, or possession of property for a valuable consideration, exchange or barter, in any manner or by any means whatsoever. It includes conditional sales contracts, leases with options to purchase, and any other contract under which possession of property is given to the purchaser, buyer, or consumer but title is retained by the vendor, retailer, manufacturer, or wholesaler, as security for the payment of the purchase price. Specifically, it shall include any transaction whereby, for any consideration, title to alcoholic beverages is transferred from one person to another, and includes the delivery of alcoholic beverages pursuant to an order placed for the purchase of such beverages, or soliciting or receiving such beverages. The term ''sale'' shall also specifically include the transfer of alcoholic beverages from one person to another pursuant to a complimentary or free beverage policy, promotion, plan, or scheme of the seller.

Section 2.13. Seller. ''Seller'' means any person who, while within the exterior boundaries of the Rancheria, sells, solicits or receives an order for any alcohol, alcoholic beverages, distilled spirits, beer, or wine.

Section 2.14. Wine. ''Wine'' means the product obtained from the normal alcoholic fermentation of the juice of the grapes or other agricultural products containing natural or added sugar or any such alcoholic beverage to which is added grape brandy, fruit brandy, or spirits of wine, which is distilled from the particular agricultural product or products of which the wine is made, and other rectified wine products.

Chapter 3. Prohibition of the Unlicensed Sale of Liquor

Section 3.1. Prohibition of the unlicensed sale of liquor. No person shall import for sale, manufacture, distribute or sell any alcoholic beverages within the reservation without first applying for and obtaining a written license from the Business Council issued in accordance with the provisions of this Ordinance.

Section 3.2. Authorization to sell liquor. Any person applying for and obtaining a liquor license under the provisions of this ordinance shall have the right to engage only in those liquor transactions expressly authorized by such license and only at those specific places or areas designated in said license.

Section 3.3. Types of licenses. The Business Council shall have the authority to issue the following types of liquor licenses within the reservation:

A. ''Retail on-sale general license'' means a license authorizing the applicant to sell alcoholic beverages at retail to be consumed by the buyer only on the premises or at the location designated in the license.

B. ''Retail on-sale beer and wine license'' means a license authorizing the applicant to sell beer and wine at retail to be consumed by the buyer only on the premises or at the location designated in the license.

C. ''Retail off-sale general license'' means a license authorizing the applicant to sell alcoholic beverages at retail to be consumed by the buyer off of the premises or at a location other than the one designated in the license.

D. ''Retail off-sale beer and wine license'' means a license authorizing the applicant to sell beer and wine at retail to be consumed by the buyer off of the premises or at a location other than the one designated in the license.

E. ''Manufacturers license'' means a license authorizing the applicant to manufacture alcoholic beverages for the purpose of sale on the Rancheria.

Chapter 4. Applications for Licenses

Section 4.1. Application form and content. An application for licensing under this Ordinance shall be made to the Business Council and shall contain the following information:

A. The name and address of the applicant. In the case of a corporation, the names and addresses of all of the principal officers, directors and stockholders of the corporation. In the case of a partnership, the name and address of each partner.

B. The specific area, location and/or premises for which the license is applied for.

C. The type of liquor license applied for (i.e. retail on-sale general license, etc.).

D. Whether the applicant has a California state liquor license.

E. A statement by the applicant to the effect that the applicant has not been convicted of a felony and has not violated and will not violate or cause or permit to be violated any of the provisions of this Ordinance or any of the provisions of the California Alcoholic Beverage Control Act.

F. The signature and fingerprint of the applicant. In the case of a partnership, the signature and fingerprint of each partner. In the case of a corporation, the signature and fingerprint of each of the officers of the corporation under the seal of the corporation. In the case of a tribal business enterprise, the signature and fingerprint of the officers of the enterprise or any persons maintaining day-to-day control and management of the enterprise, whichever is applicable.

G. The application shall be verified under oath, notarized and accompanied by the license fee required by this Ordinance.

Section 4.2. Fee accompanying application. The Business Council shall by resolution establish a fee schedule for the issuance, renewal and transfer of the following types of licenses:

A. Retail on-sale general license;

B. Retail on-sale beer and wine license;

C. Retail off-sale general license;

D. Retail off-sale beer and wine license; and

E. Manufacturers license.

Section 4.3. Investigation. Upon receipt of an application for the issuance, transfer or renewal of a license and the application fee required herein, the Business Council shall make a thorough investigation to determine whether the applicant and the premises for which a license is applied for qualify for a license and whether the provisions of this Ordinance have been complied with, and shall investigate all matters connected therewith which may affect the health, safety, and welfare of the Tribe.

Section 4.4. Denial of application. An application shall not be denied, except for good cause. However, the Business Council shall deny an application for issuance, renewal, or transfer of a license if either the applicant or the proposed Premises:

A. Has not complied with application procedures;

B. Does not meet application requirements;

C. Would tend to create a law enforcement problem;

D. Obtained a license on the basis of false, misleading, or misrepresented information; or,

E. Fails to qualify for the issuance of findings of the Business Council required by Section 5.2 of this ordinance.

Chapter 5. Issuance, Renewal and Transfer of Licenses

Section 5.1. Public hearing. Upon receipt of proper application for issuance, renewal or transfer of a license, and the payment of all fees required under this Ordinance, the Secretary of the Business Council shall set the matter for a public hearing. Notice of the time and place of the hearing shall be given to the applicant and the public at least ten (10) calendar days before the hearing. Notice shall be given to the applicant by prepaid U.S. mail at the address listed in the application. Notice shall be given to the public by publication in a newspaper of general circulation sold on the Rancheria. The notice published in the newspaper shall include the name of the applicant and the type of license applied for and a general description of the area where liquor will be sold. At the hearing, the Business Council shall hear from any person who wishes to speak for or against the application. The Business Council shall have the authority to place time limits on each speaker and limit or prohibit repetitive testimony.

Section 5.2. Business Council action on the application. Within thirty (30) days of the conclusion of the public hearing, the Business Council shall act on the matter. The Business Council shall have the authority to deny, approve, or approve with conditions the application. Before approving the application, the Business Council shall find: (1) That the applicant has met all procedural requirements of the application process; (2) that investigation of the applicant has not produced any information that would disqualify the applicant from obtaining a license under this Ordinance; (3) that the site for the proposed premises has adequate parking, lighting, security and ingress and egress so as not to adversely affect adjoining properties or businesses; and, (4) that the sale of alcoholic beverages at the proposed premises is consistent with the Tribe's Zoning Ordinance.

Upon approval of an application, the Business Council shall issue a license to the applicant in a form to be approved from time to time by the Business Council by resolution. All businesses shall post their Tribal liquor licenses issued under this Ordinance in a conspicuous place upon the premises where alcoholic beverages are sold, manufactured or offered for sale.

Section 5.3. Multiple locations. Each license shall be issued to a specific person. Separate licenses shall be issued for each of the premises of any business establishment having more than one location.

Section 5.4. Term of license. Temporary licenses. All licenses issued by the Business Council shall be issued on a calendar year basis and shall be renewed annually; provided, however, that the Business Council may issue special licenses for the sale of alcoholic beverages on a temporary basis for premises temporarily occupied by the licensee for a picnic, social gathering, or similar occasion at a fee to be established by the Business Council by resolution.

Section 5.5. Transfer of licenses. Each license issued or renewed under this Ordinance is separate and distinct and is transferable from the licensee to another person and/or from one premises to another premises only with the approval of the Business Council. The Business Council shall have the authority to approve, deny or approve with conditions, any application for the transfer of any license. In the case of a transfer to a new person, the application for transfer shall contain all of the information required of an original applicant under Section 4.1 of this Ordinance. In the case of a transfer to a new location, the application shall contain an exact description of the location where the alcoholic beverages are proposed to be sold.

Chapter 6. Revocation of Licenses

Section 6.1. Revocation of license. The Business Council shall revoke a license upon any of the following grounds:

A. The misrepresentation of a material fact by an applicant in obtaining a license or a renewal thereof.

B. The violation of any condition imposed by the Business Council on the issuance, transfer, or renewal of a license.

C. A plea, verdict, or judgment of guilty, or the plea of nolo contendere to any public offense involving moral turpitude under any federal or state law prohibiting or regulating the sale, use, possession, or giving away of alcoholic beverages or intoxicating liquors.

D. The violation of any tribal ordinance.

E. The failure to take reasonable steps to correct objectionable conditions on the licensed premises or any immediate adjacent area leased, assigned or rented by the licensee constituting a nuisance within a reasonable time after receipt of a notice to make such corrections has been received from the Business Council or its authorized representative.

Section 6.2. Accusations. The Business Council on its own motion, through the adoption of an appropriate resolution meeting the requirements of this Section, or any person, may initiate revocation proceedings by filing an accusation with the Secretary of the Business Council. The accusation shall be in writing and signed by the maker, and shall state facts showing that there are specific grounds under this ordinance which would authorize the Business Council to revoke the license or licenses of the licensee against whom the accusation is made. Upon receipt of an accusation which meets the foregoing requirements, the Secretary shall cause the matter to be set for a hearing before the Business Council. Thirty (30) days prior to the date set for the hearing, the Secretary shall mail a copy of the accusation along with a notice of the day and time of the hearing before the Business Council. The notice shall command the licensee to appear and show cause why the licensee's license should not be revoked. The notice shall state that the licensee has the right to file a written response to the accusation, verified under oath and signed by the licensee ten (10) days prior to the hearing date.

Section 6.3. Hearing. Any hearing held on any accusation shall be held before a quorum of the Business Council under such rules of procedure as it may adopt. Both the licensee and the person filing the accusation, including the Tribe, shall have the right to present witnesses to testify and to present written documents in support of their positions to the Business Council. The Business Council shall render its decision within sixty (60) days after the date of the hearing. The decision of the Business Council shall be final and non-appealable.

Chapter 7. Enforcement

Section 7.1. General penalties. Any person adjudged to be in violation of this Ordinance shall be subject to a civil penalty of not more than Five Hundred Dollars ($500.00) for each such violation. The Business Council may adopt by resolution a separate schedule of fines for each type of violation, taking into account its seriousness and the

threat it may pose to the general health and welfare of tribal members. Such schedule may also provide, in the case of repeated violations, for imposition of monetary penalties greater than the Five Hundred Dollars ($500.00) limitation set forth above. The penalties provided for herein shall be in addition to any criminal penalties which may hereafter be imposed in conformity with Federal law by separate Chapter, or provision of this Ordinance or by a separate ordinance adopted by the Business Council.

Section 7.2. Initiation of action. Any violation of this ordinance shall constitute a public nuisance. The Business Council may initiate and maintain an action in tribal court or any court of competent jurisdiction to abate and permanently enjoin any nuisance declared under this Ordinance. Any action taken under this Section shall be in addition to any other penalties provided for by this Ordinance.

Dated: July 8, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–18504 Filed 7–14–97; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service, DOI.

ACTION: Notice of information collection solicitation.

SUMMARY: Under the Paperwork Reduction Act of 1995, the Minerals Management Service (MMS) is soliciting comments on an information collection. A customer survey was initiated under an information collection titled MMS' Generic Customer Satisfaction Surveys, Office of Management and Budget (OMB) Control Number 1010–0098. This ''generic'' information collection expired on June 30, 1997. We are requesting OMB approval for a new information collection titled Office of Indian Royalty Assistance Customer Satisfaction Survey.

Individual Indian mineral owners are requested to respond, using a customer comment card, to three questions by checking ''Yes'' or ''No'' boxes and to a fourth question with a written response. The four questions are:

1. Did we answer your questions?
2. Did we respond timely?
3. Did we treat you courteously?
4. How can we improve our service?

We estimate that it takes about 2 minutes to respond to these questions and that approximately 60 respondents will respond annually.

DATES: Written comments should be received on or before September 15, 1997.

ADDRESSES: Comments sent via the U.S. Postal Service should be sent to Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; courier address is Building 85, Room A–212, Denver Federal Center, Denver, Colorado 80225; e:Mail address is David__Guzy@mms.gov.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, phone (303) 231–3046, FAX (303) 231–3385, e-Mail Dennis__C__Jones@mms.gov.

SUPPLEMENTARY INFORMATION: In compliance with the Paperwork Reduction Act of 1995, Section 3506 (c)(2)(A), we are notifying you, members of the public and affected agencies, of this collection of information, and are inviting your comments. Is this information collection necessary for us to properly do our job? Have we accurately estimated the public's burden for responding to this collection? Can we enhance the quality, utility, and clarity of the information we collect? Can we lessen the burden of this information collection on the respondents by using automated collection techniques or other forms of information technology?

Dated: July 9, 1997.

Donald T. Sant,

Associate Director for Royalty Management.

[FR Doc. 97–18466 Filed 7–14–97; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service, DOI.

ACTION: Notice of information collection solicitation.

SUMMARY: Under the Paperwork Reduction Act of 1995, the Minerals Management Service (MMS) is soliciting comments on an information collection, Gas Transportation and Processing Allowances (OMB Control Number 1010–0075); this information collection pertains to Indian leases only.

FORMS: MMS–4109, Gas Processing Allowance Summary Report; MMS–4295, Gas Transportation Allowance Report.

DATES: Written comments should be received on or before September 15, 1997.

ADDRESSES: Comments sent via the U.S. Postal Service should be sent to Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; courier address is Building 85, Room A–212, Denver Federal Center, Denver, Colorado 80225; e:Mail address is David__Guzy@smtp.mms.gov.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, phone (303) 231–3046, FAX (303) 231–3385, e-Mail Dennis__C__Jones@smtp.mms.gov.

SUPPLEMENTARY INFORMATION: In compliance with the Paperwork Reduction Act of 1995, Section 3506(c)(2)(A), we are notifying you, members of the public and affected agencies, of this collection of information, and are inviting your comments. Is this information collection necessary for us to properly do our job? Have we accurately estimated the industry burden for responding to this collection? Can we enhance the quality, utility, and clarity of the information we collect? Can we lessen the burden of this information collection on the respondents by using automated collection techniques or other forms of information technology?

The Secretary of the Interior is responsible for collecting royalties from lessees who produce minerals from leased Indian lands. The Secretary is required by various laws to manage mineral production on Indian lands, to collect the royalties due, and to distribute royalty funds in accordance with those laws. The product valuation and allowance determination process is essential to assure that the Indian community receives payment on the proper value of the minerals being removed. The value of the gas and gas plant products being sold, or otherwise disposed of, as well as the costs associated with the allowable deductions from the value of the products must be established to determine whether the royalty amount tendered represents the proper royalty due.

Processing allowances may be taken as a deduction from royalty payments. We normally accept the cost as stated in the lessee's arm's-length processing contract as being the processing allowance cost. In those instances where

gas is processed through a lessee-owned plant, the processing costs shall be based upon the actual plant operating and maintenance expenses, depreciation, and a reasonable return on investment. The allowance is expressed as a cost per unit of individual plant products.

Under certain circumstances lessees are authorized to deduct from royalty payments reasonable actual costs of transporting the royalty portion of produced minerals from the lease to a processing or sales point not in the immediate lease area. Transportation allowances are a part of the product valuation process which MMS uses to determine if the lessee is reporting and paying the proper royalty amount.

Lessees of Indian leases submitting allowance forms may take deductions from royalties due. Regulations at 30 CFR 212 require revenue payors to make and retain accurate and complete records necessary to demonstrate the accuracy of royalty payments. Failure to collect this information could result in undervaluing leased minerals and render it impossible for us to fulfill our trust responsibilities to Indians for their leases. Without such information, we cannot evaluate the correctness of values or allowances reported and claimed.

Small organizations are among the potential respondents. We have carefully analyzed requirements to ensure that the information requested is the minimum necessary and places the least possible burden on industry. There are no special reporting provisions for small organizations. We provide toll-free telephone assistance upon request and annually schedule product valuation training in addition to other RMP training sessions offered throughout the year.

The Federal government spends about 16 hours reviewing all categories of allowance proposals. The categories involve whether or not a contract is arm's-length or non-arm's-length and involve a request for a transportation or processing allowance or both. Using a cost estimate of $35 per hour, our annual cost is $560.

Sixty-five Indian lease lessees submit about 3,000 allowance data lines annually. Lessees may be involved in more than one type of allowance proposal and can complete an allowance data line in about 1/4 hour. The annual industry burden estimate is 750 burden hours (3,000 allowance data lines × 1/4 hour per line). Using an estimate of $35 per hour, the annual cost burden to industry is $26,250.

The burden currently associated with this information collection is 16,153 hours. However, we now estimate the burden at 750 hours. The decrease in burden hours is due to our amending valuation regulations on transportation, processing, and washing allowance deductions used to calculate royalties due on Federal oil and gas, and coal leases (61 FR 5448, Feb. 12, 1996). The amended valuation regulations eliminate allowance forms-filing requirements and associated sanctions for lessees of Federal leases only.

Dated: June 3, 1997.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 97–18540 Filed 7–14–97; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF JUSTICE

Federal Bureau of Identification, Criminal Justice Information Services; Agency Information Collection Activities: Proposed Collection: Comment Request

ACTION: Notice of information collection under review: Number of Full-Time Law Enforcement Employees as of October 31.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until September 15, 1997.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to SSA Paul J. Gans (phone number and address listed below). If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact SSA Paul J. Gans, 304 625–4830, FBI, CJIS, Statistical Unit, P.O. Box 4142, Clarksburg, WV 26302–9921. Overview of this information collection:

(1) Type of information collection: Extension of Current Collection.

(2) The title of the form/collection: Number of Full-Time Law Enforcement Employees as of October 31.

(3) The agency form number, if any, and applicable component of the Department sponsoring the collection. Form: I–711A/I–711B/7–711C. Federal Bureau of Identification, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as brief abstract. Primary: State and Local Law Enforcement Agencies. This collection is needed to determine the number of civilian and sworn full-time law enforcement employees in the United States. Data is tabulated and published in the annual ''CRIME in the United States.''

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 17,125 agencies; 17,125 responses; and with an average completion time of 8 minutes a year per responding agency.

(6) An estimate of the total public burden (in hours) associated with this collection: 2,286 hours annually.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: July 7, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–18473 Filed 7–14–97; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Bureau of Justice Statistics

Agency Information Collection Activities: Extension of a Currently Approved Collection; Comment Request

ACTION: Notice of information collection under review; National Crime Victimization Survey.

The Department of Justice, Bureau of Justice Statistics previously published this notice in the **Federal Register** on April 16, 1997 for 60 days. During this comment period no comments were received by the Department of Justice. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until August 14, 1997.

This information collection is published to obtain comments from the public and comments should be directed to OMB, Office of Information and Regulatory Affairs, Attention: Ms. Victoria Wassmer, 202–395–5871, Department of Justice Desk Officer, Washington, DC 20530.

Your comments should address one or more of the following four points:

1. Evaluate whether the 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 agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Additionally, comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530. Additional comments may be submitted to DOJ via facsimile at 202–514–1590.

Overview of this information collection:

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* National Crime Victimization Survey.

3. *Agency form number and applicable components.* Forms: NCVS–1; NCVS–1A; NCVS–1A(SP); NCVS–2; NCVS–2(SP); NCVA–7; NCVS–110; NCVS–500; NCVS–541; NCVS–545; NCVS–548; NCVS–551; NCVS–554; NCVS–554(SP); NCVS–572(L)KOR/SP/CHIN(T)/CHIN(M)/VIET; NCVS–573(L); NCVS–593(L); and NCVS–594(L). Component: Victimization Statistics Branch, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked to respond.* Primary: US households and individuals age 12 or older.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 111,100 respondents at 1.95 hours per interview.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 217,000 hours annual burden.

Public comment on this proposed information collection is strongly encouraged.

Dated: July 7, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–18474 Filed 7–14–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of information collection under review; Visa Waiver Pilot Program Carrier Agreement.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 24, 1997 at 62 FR 20031–20032, allowing for a 60-day public comment period. No comments were received by the Immigration and Naturalization Service. The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the **Federal Register.** This process is conducted in accordance with 5 CFR part 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC, 20530. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC, 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Visa Waiver Pilot Program Carrier Agreement.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form I–775, Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Businesses or other for-profit. The agreement between a transportation company and the United States is needed to assure the United States that the transportation company will remain responsible for the aliens that it transports to the United States under the Visa Waiver Pilot Program (8 U.S.C. 1187).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 responses at one (1) hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 50 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, 425 I Street, N.W., Room 5307, Washington, DC 20536 (202–514–3291). Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: July 7, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–18475 Filed 7–14–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of information collection under review, Application for Nonresident Alien's Canadian Border Crossing Card.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 24, 1997 at 62 FR 20031, allowing for a 60-day public comment period. No comments were received by the Immigration and Naturalization Service. The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the **Federal Register.** This process is conducted in accordance with 5 CFR part 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Application for Nonresident Alien's Canadian Border Crossing Card.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form I–175, Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collected is used to determine eligibility of an applicant for issuance of a Canadian Border Crossing Card to facilitate entry into the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 9,200 responses at 20 minutes (.333) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,063 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, 425 I Street, N.W., Room 5307, Washington, DC 20536 (202–514–3291). Additionally, comments and/or suggestions regarding the items(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street N.W., Washington, DC 20530.

Dated: July 7, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–18476 Filed 7–14–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Request OMB emergency approval: Application for Employment Authorization.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. OMB approval has been requested by July 31, 1997. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information and Regulatory Affairs, Attention: Ms.

Debra Bond, 202–395–7316, Department of Justice Desk Officer, Washington, DC 20503.

During the first 60 days of this same period a regular review of this information collection is being undertaken. Comments are encouraged and will be appected until; September 15, 1997. Request written comments and suggestions from the public and affected agencies concerning the proposed collection or information. Your comments should address one or more of the following four points.

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of Form/Collection:* Application for Employment Authorization.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–765. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. As provided in 8 CFR 274a, certain aliens temporarily in the United States may file for an employment authorization utilizing this information collection. The information collected will be used by the INS to determine the application's statutory eligibility for the benefit sought.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,000,000 respondents at one (1) hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,000,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Mr. Richard A. Sloan, 202–616–7600, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Office, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: July 7, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–18477 Filed 7–14–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–97–34]

Agency Information Collection Activities; Proposed Collection; Comment Request; Crawler, Locomotive and Truck Cranes (29 CFR 1910.180(d)(6), 29 CFR 1910.180(g)(1), and 29 CFR 1910.180(g)(2)(ii))—Inspection Certifications

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95 (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed approval of the paperwork requirements of 29 CFR 1910.180(d)(6); 29 CFR 1910.180(g)(1) and 29 CFR 1910.180(g)(2)(ii) of the standard for crawler, locomotive and truck cranes. The Agency is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted on or before September 15, 1997.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–97–34, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, D.C. 20210. Telephone: (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Richard Sauger, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW, Washington, D.C. 20210, Telephone: (202) 219–7202, ext. 137. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Theda Kenney at (202) 219–8061, ext. 100, or Barbara Bielaski at (202) 219–8076, ext. 142. For electronic copies of the Information Collection Request on the certification provisions in Crawler Locomotive and Truck Cranes, contact OSHA's WebPage on the Internet at http://www.osha.gov/and click on ''standards.''

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Safety and Health Act of 1970 (the Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

Included in 29 CFR 1910.180 are requirements that monthly inspections on critical items in use on cranes be certified; that a thorough inspection of ropes be certified; and that ropes idle for a month or more be given a thorough inspection and certified.

II. Current Actions

This notice requests an extension of the current OMB approval of the paperwork requirements contained in 29 CFR 1910.180(d)(6); 29 CFR 1910.180(g)(1); and 29 CFR 1910.180(g)(2)(ii).

Type of Review: Extension.

Agency: U.S. Department of Labor, Occupational Safety and Health Administration.

Title: Crawler, Locomotive and Truck Cranes (29 CFR 1910.180(d)(6), 1910.180(g)(1), and 1910.180(g)(2))—Inspection Certifications.

OMB Number: 1218.

Agency Number: ICR–97–34.

Frequency: Monthly.

Affected Public: State or local governments; Business or other for-profit.

Number of Respondents: 2,280.

Average Time per Response: 1½ hours.

Estimated Total Burden Hours: 174,015.

Total Annualized Capital/Startup Costs: $0.

Signed at Washington, D.C., this 9th day of July 1997.

John F. Martonik,

Acting Director, Directorate of Safety Standards Programs.

[FR Doc. 97–18548 Filed 7–14–97; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket Number ICR–97–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; Formaldehyde Standard

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resource) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Occupational Safety and Health Administration is soliciting comments concerning the proposing extension of the information collection request for the Formaldehyde Standard 29 CFR 1910.1048. 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 clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comment must be submitted by September 15, 1997.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–97–9, U.S. Department of Labor, Room N–2625, 200 Constitution Ave. NW., Washington, D.C. 20210, telephone (202) 219–7894. Written comments limited to 10 pages or fewer may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION: Contact Todd Owen, Directorate of Health Standard Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3647, 200 Constitution Ave., NW, Washington, D.C. 20210. Telephone: (202) 219–7075. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Todd Owen at (202) 219–7075 or Barbara Bielaski at (202) 219–8076. For electronic copies of the Information Collection Request on formaldehyde contact OSHA's Webpage on Internet at http://www.osha.gov/ and click on standards.

SUPPLEMENTARY INFORMATION:

I. Background

The Formaldehyde Standard and its information collection is designed to provide protection for employees from the adverse health effects associated with occupational exposure to formaldehyde.

The Standard requires employers to monitor employee exposure to formaldehyde and provide notification to employees of their exposure to formaldehyde. Employers are required to make available medical exams to employees who are or may be exposed to formaldehyde at or above the action level (0.5 parts per million calculated as an eight hour time-weighted average), or exceeding the short term exposure limit (two parts formaldehyde per million parts of air). Exposure monitoring and medical records are to be retained for prescribed amounts of time, and under certain circumstances such records may be transferred to the National Institute for Occupational Safety and Health. Employers are also required to communicate the hazards associated with exposure to formaldehyde through signed, labels, material safety data sheets, and training.

II. Current Actions

This action requests an extension of the current Office of Management and Budget approval of the paperwork requirements in the Formaldehyde Standard. Extension is necessary to continue protection to employees from

the health effects associated with occupational exposure to formaldehyde.

Type of Review: Extension.

Agency: Occupational Safety and Health Administration.

Title: Formaldehyde Standard 29 CFR 1910.1048.

OMB Number: 1218–0145.

Affected Public: Business or other for-profit, Federal government and State, Local or Tribal governments.

Total Respondents: 112,066.

Frequency: On occasion.

Total Responses: 1,487,946.

Average Time per Response: Time per response ranges from 5 minutes to maintain records to 1 hour for medical exams.

Estimated Total Burden Hours: 521,110.

Total Annualized capital/startup costs: 0.

Total initial annual costs: (operating/maintaining systems or purchasing services): $54,209,103.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request. The comments will become a matter of public record.

Dated: July 8, 1997.

Adam M. Finkel,

Director, Directorate of Health Standards Programs.

[FR Doc. 97–18549 Filed 7–14–97; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–97–45]

Agency Information Collection Activities: Proposed Collection; Comment Request; Bloodborne Pathogens Standard

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Occupational Safety and Health Administration is soliciting comments concerning the proposed extension of the information collection request for the Bloodborne Pathogen Standard 29 CFR 1910.1030 and 1915.1030. 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 clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comment must be submitted by September 15, 1997.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–97–45, U.S. Department of Labor, Room N–2625, 200 Constitution Ave. NW., Washington, D.C. 20210, telephone (202) 219–7894. Written comments limited to 10 pages or fewer may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Health Standard Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3647, 200 Constitution Ave., NW., Washington, D.C. 20210. Telephone: (202) 219–7075. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Todd Owen at (202) 219–7075 or Barbara Bielaski at (202) 219–8076. For electronic copies of the Information Collection Request on Bloodborne Pathogen contact OSHA's Webpage on Internet at http://www.osha.gov/ and click on standards.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Bloodborne Pathogen Standard and its information collection requirements are to provide protection to employees from adverse health effects associated with occupational exposure to bloodborne pathogens. The Standard requires that employers establish and maintain an exposure control plan, develop a housekeeping schedule, provide employees with Hepatitis B vaccinations, post exposure evaluation and medical follow-up, provide employees with information and training, and maintain medical and training records for prescribed periods. HIV and HBV Research Labs must also adopt or develop and annually review a biosafety manual.

II. Current Actions

This notice requests an extension of the current Office of Management and Budget approval of the paperwork requirements in the Bloodborne Pathogen Standard. Extension is necessary to continue protection to employees from occupational exposure to bloodborne pathogens.

Type of Review: Extension.

Agency: Occupational Safety and Health Administration.

Title: Bloodborne Pathogens 29 CFR 1910.1030 and 1915.1030.

OMB Number: 1218–0180.

Affected Public: Business or other for-profit, Federal government and State, Local or Tribal governments.

Total Respondents: 511,805.

Frequency: On occasion.

Total Responses: 11,345,833.

Average Time per Response: 0.46 hour.

Estimated Total Burden Hours: 5,162,397.

Total Annualized capital/startup costs: 0.

Total initial annual costs: (operating/maintaining systems or purchasing services): $17,260.491 for Hepatitis B vaccines and post exposure follow-up).

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request. The comments will become a matter of public record.

Dated: July 8, 1997.

Adam M. Finkel,

Director, Directorate of Health Standards Programs.

[FR Doc. 97–18550 Filed 7–14–97; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket Number ICR–97–42]

Agency Information Collection Activities: Proposed Collection; Comment Request; Occupational Noise Exposure Standard

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Occupational Safety and Health Administration is soliciting comments concerning the proposed extension of the information collection request for the Occupational noise exposure Standard 29 CFR 1910.95.

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 clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comment must be submitted by September 15, 1997.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–97–42, U.S. Department of Labor, Room N–2625, 200 Constitution Ave. NW, Washington, D.C. 20210, telephone (202) 219–7894.

Written comments limited to 10 pages or fewer may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Health Standard Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3647, 200 Constitution Ave., NW, Washington D.C. 20210. Telephone: (202) 219–7075. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Barbara Bielaski at (202) 219–8076 or Todd Owen at (202) 219–7075. For electronic copies of the Information Collection Request on Occupational noise exposure contact OSHA's Webpage on Internet at Http://www.osha.gov/ and click on standards.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Occupational noise exposure Standard and its information collection requirements are to provide protection for employees from adverse health effects associated with occupational exposure to noise. The standard requires employers to establish and maintain accurate records of employee exposures to noise and audiometric testing performed in compliance with the standard. These records are used by the physician, employer, employee and the Government to determine whether occupation-related hearing loss has occurred, to prevent further deterioration of hearing, and to determine the effectiveness of the employer's hearing conservation program.

II. Current Actions

This notice requests an extension of the current OMB approval of the paperwork requirements in the Occupational noise exposure Standard. Extension is necessary to continue to ensure protection for employees from occupational exposure to noise.

Type of Review: Extension.

Agency: Occupational Safety and Health Administration.

Title: Occupational noise exposure 29 CFR 1910.95.

OMB Number: 1218–0048.

Agency Number: Docket Number ICR–97–45.

Affected Public: Business or other for-profit, Federal government and State, Local or Tribal governments.

Total Respondents: 379,512.

Frequency: On occasion.

Total Responses: 8,859,832.

Average Time per Response: 0.58 hour.

Estimated Total Burden Hours: 5,166,401.

Total Annualized capital/startup costs: 0.

Total initial annual costs: (operating/maintaining systems or purchasing services): $53,891,845.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request. The comments will become a matter of public record.

Dated: July 7, 1997.

Adam M. Finkel,

Director, Directorate of Health Standards Programs.

[FR Doc. 97–18551 Filed 7–14–97; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–97–28]

Agency Information Collection Activities; Proposed Collection; Comment Request; Aerial Lifts (29 CFR 1910.67(b)(2))—Manufacturer's Certification

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and impact of collection requirements on respondents can be properly assessed. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed approval of the paperwork requirements of 29 CFR 1910.67(b)(2), when vehicle-mounted elevating and rotating work

platforms are ''field modified'' for uses other than those intended by the manufacturer.

- Evaluate whether the proposed collection of information is necessary for the property performance of the functions of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used:
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted on or before September 15, 1997.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–97–28, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone: (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Richard Sauger, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW., Washington, D.C. 20210. Telephone: (202) 219–7202, ext. 137. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Theda Kenney at (202) 219–8061 ext. 100, or Barbara Bielaski at (202) 219–8076, ext. 142. For electronic copies of the Information Collection Request on the certification provisions of Aerial Lifts, contact OSHA's WebPage on the Internet at http://www.osha.gov/ and click on ''standards.''

SUPPLEMENTARY INFORMATION:

I. Background

On May 29, 1971 (36 FR 10466), OSHA adopted some of the existing Federal standards and national consensus standards as OSHA standards under the procedures described in section 6(a) of the Occupational Safety and Health Act (OSH Act) (29 U.S.C. 655, *et al.*). Section 6(a) permitted OSHA to adopt, without any established Federal standard or national consensus standard. These existing Federal standards and national consensus standards became OSHA standards simply by their publication in the **Federal Register.**

One of the consensus standards that was adopted under the 6(a) procedure was the American National Standards Institute (ANSI) A92.2–1969, American National Standard for Vehicle-Mounted Elevating and Rotating Aerial Devices. Included in the consensus standard, and consequently the OSHA standard, is a requirement that when these devices are ''field modified'' for uses other than those intended by the manufacturer, that the modification must be certified in writing by the manufacturer or by an equivalent entity, such a nationally recognized testing laboratory, to be in conformity with all applicable provision of ANSI A92.2–1969 and the OSHA standard, and to be at least as safe as the equipment was before modification.

II. Current Actions

This notice requests an extension of the current Office of Management and Budget (OMB) approval of the inspection certification requirement contained in 29 CFR 1910.67(b)(2)—Aerial Lifts (currently approved under OMB Control No. 1218–0210).

Type of Review: Extension.

Agency: U.S. Department of Labor, Occupational Safety and Health Administration.

Title: Aerial Lifts (29 CFR 1910.67(b)(2)—Manufacturer's Certification.

OMB Number: 1218.

Agency Number: ICR–97–28.

Affected Public: State of local governments; Business or other for-profit.

Number of Respondents: 900.

Frequency: Varies.

Average Time per Response: 0.08 hours.

Estimated Total Burden Hours: 72.

Total Annualized Capital/Startup Costs: $0.

Signed at Washington, D.C., this 9th day of July 1997.

John F. Martonik,

Acting Director, Directorate of Safety Standards Programs.

[FR Doc. 97–18552 Filed 7–14–97; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 97–5]

Agency Information Collection Activities: Proposed Collection; Comment Request; Respiratory Protection

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Occupational Safety and Health Administration is soliciting comments concerning the proposed extension of the information collection request for the Respiratory Protection standard 29 CFR 1910.134. A copy of the proposed information collection request (ICR) can be obtained by contacting the employee listed below in the addressee section of this notice. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection technique or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted by September 15, 1997.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR 97–5, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210, telephone number (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION: Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed immediately to persons who request copies by telephoning Barbara Bielaski at (202) 219–8076 or Todd Owen at (202) 219–7075. For electronic copies of the Information Collection Request on Respiratory Protection contact OSHA's WebPage on the Internet at http://www.osha.gov/ and click on standards.

SUPPLEMENTARY INFORMATION:

I. Background

The Respiratory Protection standard and its information collection is designed to provide protection for employees workplace atmosphere contamination. The standard requires employers to develop a written respiratory protection program, to inspect and certify emergency use respirators, and mark emergency use respirator storage compartments.

II. Current Actions

This notice requests an extension of the current OMB approval of the paperwork requirements in the Respiratory Protection Standard. Extension is necessary to provide continued protection to employees from the workplace atmosphere contamination.

Type of Review: Extension.

Agency: Occupational Safety and Health Administration.

Title: Respiratory Protection.

OMB Number: 1218–0099.

Agency Number: Docket Number ICR 97–5.

Affected Public: Business and other for-profit, Federal and State government, Local or Tribal governments.

Total Respondents: 130,000.

Frequency: On Occasion.

Total Responses: 874,680.

Average Time per Response: Time per response ranges from 5 minutes to mark storage compartments to 8 hours to develop a written respiratory protection program.

Estimated Total Burden Hours: 1,166,092.

Estimated Capital, Operation/Maintenance Burden Cost: $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 2, 1997.

Adam M. Finkel,

Director, Directorate of Health Standards Programs.

[FR Doc. 97–18553 Filed 7–14–97; 8:45 am]

BILLING CODE 4510–26–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

July 10, 1997.

TIME AND DATE: 2:00 p.m., Wednesday, July 2, 1997.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of the Commissioners that the Commission consider and act upon the following in closed session:

1. *Secretary of Labor* v. *Peabody Coal Co.,* Docket No. KENT 93–369.

No earlier announcement of the scheduling of this meeting was possible.

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief, Docket Clerk.

[FR Doc. 97–18761 Filed 7–11–97; 3:43 pm]

BILLING CODE 6735–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts Combined Arts Panel Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Local Arts Agencies Section (Creation & Presentation, Heritage & Preservation, Education & Access, and Planning & Stabilization categories) to the National Council on the Arts will be held on August 5–7, 1997. The panel will meet from 9:00 a.m. to 5:00 p.m. on August 5 and 7 from 9:00 a.m. to 5:30 p.m. on August 6, in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

A portion of this meeting, from 10:00 a.m. to 12:00 p.m. on August 7, will be open to the public for a policy discussion of guidelines, planning, Leadership Initiatives, Millennium, and field needs and trends.

The remaining portions of this meeting, from 9:00 a.m. to 5:00 p.m. on August 5, from 9:00 a.m. to 5:30 p.m. on August 6, and from 9:00 a.m. to 10:00 a.m. and 1:00 p.m. to 5:00 p.m. on August 7, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 31, 1997, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Committee Management Officer, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5691.

Dated: July 9, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–18508 Filed 7–14–97; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Submission for OMB Review: NSF Applicant Survey, OMB No. 3145–0096

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 et seq.), and as part of its continuing effort to reduce

paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment, the first was published in the **Federal Register** at 62 FR 18818–18819, April 17, 1997 and no comments were received. NSF is forwarding the proposed renewal submission to OMB for clearance simultaneously with the publication of this second notice.

FOR FURTHER INFORMATION CONTACT: Gail A. McHenry, NSF Reports Clearance Officer, on (703) 306–1125 x2010 or send e-mail to gmchenry@nsf.gov.

SUPPLEMENTARY INFORMATION:

1. *Abstract*. The current National Science Foundation Applicant Survey has been in use for 3 years. Data were collected from applicant pools to examine the racial/sexual/disability composition and to determine the source of information about NSF vacancies. Use of the information: Analysis of the applicant pools is necessary to determine if NSF's targeted recruitment efforts are reaching groups that are underrepresented in the Agency's workforce and/or to defend the Foundation's practices in discrimination cases.

2. *Expected Respondents*. NSF anticipates that about 5,000 applicants for NSF positions will complete the survey in the course of one year.

3. *Burden on the Public*. The Foundation estimates a total annual reporting and recordkeeping burden of 3 minutes. It is anticipated that this will result in a total of 250 hours annually. The calculation is: 3 minutes × 5,000 = 15,000 minutes/60 = 250 hours.

Comments Requested

Date: The Office of Management and Budget (OMB) should receive written comments on or before August 14, 1997.

Address: Submit comments to Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street, N.W., Room 10235, Washington, D.C. 20503, Please include OMB Control No. 3145–0096 in any correspondence.

Special Areas for Review: NSF especially requests comments on:

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility;

(b) The accuracy of the Agency's estimate of the burden of the proposed collection of information;

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

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, e.g., permitting electronic submission of responses.

Dated: July 9, 1997.

Gail A. McHenry,

NSF Reports Clearance Officer.

[FR Doc. 97–18532 Filed 7–14–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–369 and 50–370]

Duke Power Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–9 and NPF–17 issued to the Duke Power Company (DPC or the licensee) for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

The proposed amendments, requested by the licensee in a letter dated May 27, 1997, would represent a full conversion from the current Technical Specifications (TSs) to a set of TSs based on NUREG–1431, Revision 1, ''Standard Technical Specifications—Westinghouse Plants,'' dated April 1995. NUREG–1431 has been developed through working groups composed of both NRC staff members and industry representatives and has been endorsed by the staff as part of an industry-wide initiative to standardize and improve TSs. As part of this submittal, the licensee has applied the criteria contained in the Commission's ''Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors (Final Policy Statement),'' published in the **Federal Register** on July 22, 1993 (58 FR 39132), to the current McGuire TSs, and, using NUREG–1431 as a basis, developed a proposed set of improved TSs for McGuire. The criteria in the Final Policy Statement were subsequently added to 10 CFR 50.36, ''Technical Specifications,'' in a rule change, which was published in the **Federal Register** on July 19, 1995 (60 FR 36953) and became effective on August 18, 1995.

The licensee has categorized the proposed changes to the existing TSs into five general groupings. These groupings are characterized as administrative changes, relocated changes, more restrictive changes, less restrictive changes, and removed detail changes.

Administrative changes are those that involve restructuring, renumbering, rewording, interpretation, and complex rearranging of requirements and other changes not affecting technical content or substantially revising an operational requirement. The reformatting, renumbering, and rewording process reflects the attributes of NUREG–1431 and do not involve technical changes to the existing TSs. The proposed changes include: (a) Providing the appropriate numbers, etc., for NUREG–1431 bracketed information (information which must be supplied on a plant-specific basis, and which may change from plant to plant), (b) identifying plant-specific wording for system names, etc., and (c) changing NUREG–1431 section wording to conform to existing licensee practices. Such changes are administrative in nature and do not impact initiators of analyzed events or assumed mitigation of accident or transient events.

More restrictive changes are those involving more stringent requirements for operation of the facility or eliminate existing flexibility. These more stringent requirements do not result in operation that will alter assumptions relative to mitigation of an accident or transient event. The more restrictive requirements will not alter the operation of process variables, structures, systems and components described in the safety analyses. For each requirement in the current McGuire TSs that is more restrictive than the corresponding requirement in NUREG–1431, which the licensee proposes to retain in the improved Technical Specifications (ITSs), the licensee has provided an explanation of why they have concluded that retaining the more restrictive requirement is desirable to ensure safe operation of the facilities because of specific design features of the plant.

Less restrictive changes are those where current requirements are relaxed or eliminated, or new flexibility is provided. The more significant ''less restrictive'' requirements are justified on a case-by-case basis. When requirements have been shown to provide little or no safety benefit, their removal from the TSs may be appropriate. In most cases, relaxations previously granted to

individual plants on a plant-specific basis were the result of (a) generic NRC actions, (b) new NRC staff positions that have evolved from technological advancements and operating experience, or (c) resolution of the Owners Groups' comments on the ITSs. Generic relaxations contained in NUREG–1431 were reviewed by the staff and found to be acceptable because they are consistent with current licensing practices and NRC regulations. The licensee's design will be reviewed to determine if the specific design basis and licensing basis are consistent with the technical basis for the model requirements in NUREG–1431 and, thus, provides a basis for these revised TSs or if relaxation of the requirements in the current TSs is warranted based on the justification provided by the licensee.

Removed detail changes move details from the current TSs to a licensee-controlled document. The details being removed from the current TSs are not considered to be initiators of any analyzed events and are not considered to mitigate accidents or transients. Therefore, the relocations do not involve a significant increase in the probability or consequences of an accident previously evaluated. Moving some details to a licensee-controlled document will not involve a significant change in design or operation of the plant and no hardware is being added to the plant as part of the proposed changes to the current TSs. The changes will not alter assumptions made in the safety analysis and licensing basis. Therefore, the changes will not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes do not reduce the margin of safety since they have no impact on any safety analysis assumptions. In addition, the details to be moved from the current TSs to a licensee-controlled document are the same as the existing TSs.

Relocated changes are those involving relocation of requirements and surveillances for structures, systems, components, or variables that do not meet the criteria for inclusion in the TSs. Relocated changes are those current TS requirements which do not satisfy or fall within any of the four criteria specified in the Commission's policy statement and may be relocated to appropriate licensee-controlled documents.

The licensee's application of the screening criteria is described in that portion of its May 27, 1997, application titled ''Application of Selection Criteria to the McGuire Units 1 and 2 Technical Specifications'' in Volume 1 of the submittal. The affected structures, systems, components, or variables are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and surveillances for these affected structures, systems, components, or variables will be relocated from the TSs to administratively controlled documents such as the Updated Final Safety Analysis Report (UFSAR), the TS Bases, the Selected Licensee Commitments manual, or plant procedures and licensee-controlled programs. Changes made to these documents will be made pursuant to 10 CFR 50.59 or other appropriate control mechanisms. In addition, the affected structures, systems, components, or variables are addressed in existing surveillance procedures which are also subject to 10 CFR 50.59. These proposed changes will not impose or eliminate any requirements.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By August 14, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, North Carolina. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to

present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated May 27, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the local public document room located at the J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, North Carolina.

Dated at Rockville, Maryland, this 8th day of July 1997.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 97–18512 Filed 7–14–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guides, Standard Review Plans and NUREG Document in Support of Risk-Informed Regulation for Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public workshop meeting.

SUMMARY: On June 25, 1997, the Nuclear Regulatory Commission published a **Federal Register** Notice (FR 34321 Vol. 62, Number 122), ''Use of PRA in Plant Specific Reactor Regulatory Activities: Proposed Regulatory Guides, Standard Review Plan Sections, and Supporting NUREG.'' This **Federal Register** Notice announced the availability of four draft regulatory guides, three draft Standard Review Plan Sections, and a draft NUREG document for public comment. These issuances follow the publication of the Commission's August 16, 1995 (60 FR 42622) Policy Statement on the Use of PRA Methods in Nuclear Regulatory Activities. The NRC developed these draft guidance documents for power reactor licensees to describe acceptable methods for using probabilistic risk assessment (PRA) information and insights in support of plant-specific applications to change the current licensing basis (CLB). The use of such PRA information and guidance is voluntary. A public workshop on the staff developed guidance will be held in Rockville, MD., August 11 through August 13, 1997, at the Doubletree Hotel.

SUPPLEMENTARY INFORMATION: The following documents are available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street N.W. (Lower Level), Washington D.C. 20555–0001. A free single copy of each document, to the extent of supply, may be requested by writing to Distribution Services, Printing and Mail Services Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001: Draft Regulatory Guide DG–1061—General Guidance, Draft Regulatory Guide DG–1062—IST, Draft Regulatory Guide DG–1064—Graded QA, Draft Regulatory Guide DG–1065—Technical Specifications, Draft Standard Review Plan—General Guidance, Draft Standard Review Plan—IST, Draft Standard Review Plan—Technical Specifications, and Draft NUREG–1602, Use of PRA in Risk-Informed Applications.

Electronic copies of the draft document are also accessible on the NRC's Interactive Rulemaking Website through the NRC home page (http://www.nrc.gov). This site provides the same access as the FedWorld bulletin board, including the facility to upload comments as files (any format), if your web browser supports the function. For more information on the NRC bulletin boards call Mr. Arthur Davis, Systems Integration and Development Branch, NRC, Washington, D.C. 20555–0001, telephone (301) 415–5780; e-mail axd3@nrc.gov. For further information about the Interactive Rulemaking Website, contact Ms. Carol Gallagher, (301) 415-5905; e-mail cag@nrc.gov.

The NRC subsystems on FedWorld can be accessed directly by dialing the toll free number: 1–800–303–9672. Communication software parameters should be set as follows: parity to none, data bits to 8, and stop bits to 1 (N,8,1). Using ANSI or VT–100 terminal emulation, the NRC NUREGs and Reg Guides for Comment subsystem can then be accessed by selecting the ''Rule Menu'' option from the ''NRC Main Menu.'' For further information about options available for NRC at FedWorld, consult the ''Help/Information Center'' from the ''NRC Main Menu.'' Users will find the FedWorld online ''User's Guides'' particularly helpful. Many NRC subsystems and databases also have a ''Help/Information Center'' option that is tailored to the particular subsystem.

The NRC subsystem on FedWorld can also be accessed by a direct dial phone number for the main FedWorld BBS, 703–321–3339, or by using Telnet via Internet, fedworld.gov. If using 703–321–3339 to contact FedWorld, the NRC subsystem will be accessed from the main FedWorld menu by selecting the ''Regulatory, Government Administration and State Systems,'' then selecting ''Regulatory, information Mall.'' At that point, a menu will be displayed that has an option ''U.S. Nuclear Regulatory Commission'' that will take you to the NRC Online main menu. The NRC Online area also can be accessed directly by typing ''/go nrc'' at a FedWorld command line. If you access NRC from FedWorld's main menu, you will return to FedWorld by selecting the ''Return to FedWorld'' option from the NRC Online Main Menu. However, if you access NRC at FedWorld by using NRC's toll-free number, you will have full access to all NRC systems but you will not have access to the main FedWorld system.

If you contact FedWorld using Telnet, you will see the NRC area and menus, including the Rules menu. Although you will be able to download documents and leave messages, you will not be able to write comments or upload

files (comments). If you contact FedWorld using FTP, all files can be accessed and downloaded but uploads are not allowed; all you will see is a list of files without descriptions (normal Gopher look). An index file listing all files within a subdirectory, with descriptions, is included. There is a 15-minute time limit for FTP access.

Although FedWorld can be accessed through the World Wide Web, like FTP, that mode only provides access for down loading files and does not display the NRC Rules menu.

Workshop Meeting Information

A 3-day workshop will be held to review the subject documents, address comments and answer questions. Persons other than NRC staff and NRC contractors interested in making a presentation at the workshop should notify Jack Guttmann, US Nuclear Regulatory Commission, MS T10E50, phone (301) 415–7732, e-mail jxg@nrc.gov. Comments on the regulatory guidance, standard review plan and NUREG documents for discussion at the workshop should be submitted in writing and in electronic mail (JXG@nrc.gov) in WordPerfect 5 or 6.1 compatible format.

Date: August 10–13, 1997.

Agenda: Preliminary agenda is as follows: (A final agenda will be available at the workshop.)

Sunday, August 10, 1997

Time: 3:00 pm to 7:00 pm—Registration.

Monday, August 11, 1997

Time: 7:00 am to 4:00 pm—Registration.

Session 1: (Morning 8/11/97—8:00 am–11:30 am) [1]

Overview by NRC management on the draft regulatory guides, standard review plans, and NUREG 1602, followed by NRC staff presentation on the general guidance draft documents (DG–1061 and SRP Chapter 19).

Session 2: (Afternoon 8/11/97—1:00 pm–5:00 pm)

Public/Industry presentations on issues and recommendations for the general guidance documents, followed by open discussions.

Tuesday, August 12, 1997

Session 3: (All day 8/12/97—8:00 am–5:00 pm) [2]

Breakaway session on Inservice Testing (DG–1062 and SRP Chapter 3.9.7). Session includes staff, public, and industry presentations followed by open discussion of issues.

Session 4: (All day 8/12/97—8:00–5:00 pm) [2]

Breakaway session Technical Specifications (DG–1065 and SRP Chapter 16.1). Session includes staff, public, and industry presentations followed by open discussion of issues.

Session 5: (All day 8/12/97—8:00 am–5:00 pm) [2]

Breakaway session on Graded Quality Assurance (DG–1064). Session includes presentations by staff, public, and industry representatives, followed by open discussion of issues.

Wednesday, August 13, 1997

Session 6: (*Morning 8/13/97—8:00 am–noon*)

Overview of comments, issues and resolution options identified in the general and breakaway sessions. Concluding remarks and near-term plans will be covered by the staff.

Each Breakaway session is comprised of three formats:

(1) Presentation by NRC of specific topic.

(2) Presentation by NRC of staff's interpretation of comments received prior to the workshop and staff's response.

(3) Presentation by the Public/Industry on issues and recommendations.

(4) Open time for questions and discussions.

Location: Rockville, Maryland.

Hotel: Doubletree Hotel, 1750 Rockville Pike, Rockville, Maryland, (301) 468–1100.

Registration: The workshop registration fee is $100.00 USD; registration fee is payable by check or money orders drawn on US banks payable to Kesselman-Jones; no credit cards accepted. Mail registration fees to Kesselman-Jones, 8912 James Ave. NE, Albuquerque, New Mexico 87111. Please include name, organization, address and phone number with your registration fee. Registration fee includes daily continental breakfast and afternoon snack, and one lunch. Registration fee ($100.00) can be paid at time of workshop/meeting (cash is accepted for registration payment at workshop). Notification of attendance (e.g., pre-registration) is requested so that adequate space, etc. for the workshop can be arranged. Questions regarding meeting registration or fees should be directed to Kesselman-Jones, Phone (505) 271–0003, fax (505) 271–0482, e-mail kessjones@aol.com.

Dated at Rockville, Maryland, this 9th day of July, 1997.

For the Nuclear Regulatory Commission.

Mary Drouin,

Acting Branch Chief, Probabilistic Risk Analysis Branch, Division of Systems Technology, Office of Nuclear Regulatory Research.

[FR Doc. 97–18511 Filed 7–14–97; 8:45 am]

BILLING CODE 7590–01–P

[1] Lunch: 11:30 am–1:00 pm (Included in registration fee).

[2] Lunch: 11:30 am–1:00 pm.

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of July 14, 21, 28, and August 4, 1997.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 14

Thursday, July 17

4:00 p.m.
Affirmation Session (Public Meeting) (if needed)

Week of July 21—Tentative

There are no meetings scheduled for the week of July 21.

Week of July 28—Tentative

There are no meetings scheduled for the week of July 28.

Week of August 4—Tentative

Monday, August 4

2:00 p.m.
Briefing by International Programs (Close—Ex. 1)

Wednesday, August 6

9:30 a.m.
Meeting with Northeast Nuclear on Millstone (Public Meeting)
(Contact: Bill Travers, 301–415–1200)

2:00 p.m.
Briefing on Shutdown Risk Proposed Rule for Nuclear Power Plants (Public Meeting)

3:30 p.m.
Affirmation Session (Public Meeting) (if needed)

Thursday, August 7

9:30 a.m.
Meeting with NRC Executive Council (Public Meeting)
(Contact: James L. Blaha, 301–415–1703)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill, (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www./nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: July 11, 1997.

William M. Hill, Jr.,

Secy, Tracking Officer, Office of the Secretary.

[FR Doc. 97–18759 Filed 7–11–97; 3:43 pm]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's home page (http://www.pbgc.gov).

DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in July 1997. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in August 1997. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the third quarter (July through September) of 1997.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the ''applicable percentage'' (described in the statute and the regulation) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the ''premium payment year''). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

For plan years beginning before July 1, 1997, the applicable percentage of the 30-year Treasury yield has been 80 percent. The Retirement Protection Act of 1994 (RPA) amended ERISA section 4006(a)(3)(E)(iii)(II) to provide that the applicable percentage is 85 percent for plan years beginning on or after July 1, 1997, through (at least) plan years beginning before January 1, 2000.

However, under section 774(c) of the RPA, the application of the amendment is deferred for certain regulated public utility (RPU) plans for as long as six months. The applicable percentage for RPU plans will therefore remain 80 percent for plan years beginning before January 1, 1998. (The rules governing the applicable percentages for ''partial'' RPU plans are described in § 4006.5(g) of the premium rates regulation.)

For plans for which the applicable percentage is 85 percent, the assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in July 1997 is 5.75 percent (*i.e.*, 85 percent of the 6.77 percent yield figure for June 1997).

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between August 1996 and July 1997. The rate for July 1997 in the table reflects an applicable percentage of 85 percent and thus applies only to non-RPU plans. However, the rates for months before July 1997, which reflect an applicable percentage of 80 percent, apply to RPU (and ''partial'' RPU) plans as well as to non-RPU plans.

For premium payment years beginning in—	The assumed interest rate is—
August 1996	5.62
September 1996	5.47
October 1996	5.62
November 1996	5.45
December 1996	5.18
January 1997	5.24
February 1997	5.46
March 1997	5.35
April 1997	5.54
May 1997	5.67
June 1997	5.55
July 1997	5.75

For premium payment years beginning in July 1997, the assumed interest rate to be used in determining variable-rate premiums for RPU plans (determined using an applicable percentage of 80 percent) is 5.42 percent. For ''partial'' RPU plans, the assumed interest rates to be used in determining variable-rate premiums can be computed by applying the rules in § 4006.5(g) of the premium rates regulation. The PBGC's premium payment instruction booklet also describes these rules and provides a worksheet for computing the assumed rate.

Late Premium Payments; Underpayments and Overpayments of Single-Employer Plan Termination Liability

Section 4007(b) of ERISA and § 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the third quarter (July through September) of 1997, as announced by the IRS, is 9 percent.

The following table lists the late payment interest rates for premiums and employer liability for the specified time periods:

From—	Through—	Interest rate (percent)
4/1/91	12/31/91	10
1/1/92	3/31/92	9
4/1/92	9/30/92	8
10/1/92	6/30/94	7
7/1/94	9/30/94	8
10/1/94	3/31/95	9
4/1/95	6/30/95	10
7/1/95	3/31/96	9
4/1/96	6/30/96	8
7/1/96	12/31/96	9
1/1/97	3/31/97	9
4/1/97	6/30/97	9
7/1/97	9/30/97	9

Underpayments and Overpayments of Multiemployer Withdrawal Liability

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 (''Selected Interest Rates''). The rate for the third quarter (July through September) of 1997 (*i.e.*, the rate reported for June 16, 1997) is 8.50 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates for the specified time periods:

From—	Through—	Rate (percent)
7/1/91	9/30/91	8.50
10/1/91	12/31/91	8.00
1/1/92	3/31/92	7.50
4/1/92	9/30/92	6.50
10/1/92	6/30/94	6.00
7/1/94	9/30/94	7.25
10/1/94	12/31/94	7.75
1/1/95	3/31/95	8.50
4/1/95	9/30/95	9.00
10/1/95	3/31/96	8.75
4/1/96	12/31/96	8.25
1/1/97	3/31/97	8.25
4/1/97	6/30/97	8.25
7/1/97	9/30/97	8.50

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in August 1997 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 10th day of July 1997.

John Seal,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97–18573 Filed 7–14–97; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17f–6, SEC File No. 270–392, OMB Control No. 3235–0447

Rule 2a19–1, SEC File No. 270–294, OMB Control No. 3235–0332

Rule 17f–2, SEC File No. 270–233, OMB Control No. 3235–0223

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 17f–6 under the Investment Company Act of 1940 (''Act'') permits registered investment companies (''funds'') to maintain assets (i.e., margin) with futures commission merchants (''FCMs'') in connection with commodity transactions effected on both domestic and foreign exchanges.[1] Prior to the adoption of the rule, funds generally were required to maintain such assets in special accounts with a custodian bank.

Rule 17f–6 permits funds to maintain their assets with FCMs that are registered under the Commodity Exchange Act (''CEA'') and that are not affiliated with the fund. The rule requires that the manner in which the FCM maintains a fund's assets be governed by a written contract, which must contain certain provisions. First, the contract must provide that the FCM must comply with the segregation requirements of section 4d(2) of the CEA [7 U.S.C. 6d(2)] and the rules thereunder [17 CFR Chapter I] or, if applicable, the secured amount requirements of rule 30.7 under the CEA [17 CFR 30.7]. Second, the contract must provide that when placing the fund's margin with another entity for clearing purposes, the FCM must obtain an acknowledgment that the fund's assets are held on behalf of the FCM's customers in accordance with provisions under the CEA. Lastly, the contract must require the FCM, upon request, to furnish records on the fund's assets to the Commission or its staff.

The requirement of a written contract that contains certain provisions ensure important safeguards and other benefits relative to the custody of investment company assets by FCMs. For example, requiring FCMs upon request to furnish to the Commission or its staff information concerning the investment company's assets facilitates Commission inspections of investment companies. The contract requirement governing transfers of investment company margin seeks to accommodate the legitimate needs of the participants in the commodity settlement process, consistent with the safekeeping of investment company assets. The contract requirement requiring FCMs to comply with the segregation or secured amount requirements of the CEA and the rules thereunder is designed to safeguard fund assets held by FCMs.

The Commission estimates that approximately 2,000 investment companies could deposit margin with FCMs under rule 17f–6 in connection with their investments in futures contracts and commodity options. It is estimated that each investment company uses and deposits margin with 3 different FMCs in connection with its commodity transactions. Approximately 241 FCMs are eligible to hold

[1] Custody of Investment Company Assets With Futures Commission Merchants and Commodity Clearing Organizations, Investment Company Act Release No. 22389 (Dec. 11, 1996) [61 FR 66207 (Dec. 17, 1996)].

investment company margin under the rule.[2]

The only paperwork burden of the rule consists of meeting the rule's contract requirements. The Commission estimates that after the first year, 2,000 investment companies will spend an average of 1 hour complying with the contract requirements of the rule (e.g., signing contracts with additional FCMs), for a total of 2,000 burden hours. The Commission estimates that each of the 241 FCMs eligible to hold investment company margin under the rule will spend 2 hours complying with the rule's contract requirements, for a total of 482 burden hours. The total annual burden for the rule are estimated to be 2,482 hours.

Rule 2a19–1 under the Act provides that investment company directors will not be considered interested persons, as defined by section 2(a)(19) of the Act, solely because they are registered broker-dealers or affiliated persons of registered broker-dealers, provided that the broker-dealer does not execute any portfolio transactions for the company's complex, engage in any principal transactions with the complex or distribute shares for the complex for at least six months prior to the time that the director is to be considered not to be an interested person and for the period during which the director continues to be considered not to be an interested person. The rule also requires the investment company's board of directors to determine that the company would not be adversely affected by refraining from business with the broker-dealer. In addition, the rule provides that no more than a minority of the disinterested directors of the company may be registered broker-dealers or their affiliates.

Before the adoption of rule 2a19–1, many investment companies found it necessary to file with the Commission applications for orders exempting directors from section 2(a)(19) of the Act. Rule 2a19–1 is intended to alleviate the burdens on the investment company industry of filing for such orders in circumstances where there is no potential conflict of interest. The conditions of the rule are designed to indicate whether the director has a stake in the broker-dealer's business with the company such that he or she might not be able to act independently of the company's management.

It is estimated that approximately 3,200 investment companies may choose to rely on the rule, and each investment company may spend one hour annually compiling and keeping records related to the requirements of the rule. The total annual burden associated with the rule is estimated to be 3,200 hours.

Rule 17f–2, under the Act, established safeguards for arrangements in which a registered management investment company is deemed to maintain custody of its own assets, such as when the fund maintains its assets in a facility that provides safekeeping but not custodial services. The rule includes several recordkeeping or reporting requirements. The funds directors must prepare a resolution designating not more than five fund officers or responsible employees who may have access to the fund's assets. The designated access persons (two or more of whom must act jointly when handling fund assets) must prepare a written notation providing certain information about each deposit or withdrawal of fund assets, and must transmit the notation to another officer or director designated by the directors. Independent public accountants must verify the fund's assets without prior notice to the fund twice each year.

The requirement that directors designate access persons is intended to ensure that directors evaluate the trustworthiness of insiders who handle fund assets. The requirements that access persons act jointly in handling fund assets, prepare a written notation of each transaction, and transmit the notation to another designated person are intended to reduce the risk of misappropriation of the fund assets by access persons, and to ensure that adequate records are prepared, reviewed by a responsible third person, and available for examination by the Commission.

The Commission estimates that approximately 110 funds rely upon the rule (and that each fund offers an average of two separate series or portfolios subject to the rule). It is estimated that each fund spends approximately 2 hours annually in drafting pertinent resolutions by directors, 24 hours annually in preparing transaction notations, and 100 hours annually in performing unscheduled verifications of assets. Therefore, the total annual burden associated with this rule is estimated to be 13,860 hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549.

Dated: July 3, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–18454 Filed 7–14–97; 8:45 am]

BILLING CODE 8010–01–M

[2] Commodity Futures Trading Commission, Annual Report (1996).

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–12748]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (Chesapeake Biological Laboratories, Inc., Class A Common Stock, $.01 Par Value)

July 9, 1997.

Chesapeake Biological Laboratories, 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 Emerging Company Marketplace of the American Stock Exchange, Inc. (''Amex'').

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

According to the Company, the Board of Directors unanimously approved a resolution on April 23, 1997 to withdraw the Company's Security from listing on the Emerging Company Marketplace of the Amex in order to move to the Nasdaq Stock Market National Market. The Company desires to delist its Security as it could not justify the increased expenses and administrative requirements associated with a dual listing. The Security was listed on Nasdaq effective May 27, 1997.

The Company has complied with the Rules of the Amex by notifying the Amex of its intention to withdraw its Common Stock from listing on the

Exchange by letter dated May 1, 1997. The Amex has notified the Company, by letter dated May 1, 1997, that it would not interpose any objection to the Company's appreciation to delist its Security.

Any interested person may, on or before July 30, 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 exchange 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. 97–18516 Filed 7–14–97; 8:45 am]

BILLING CODE 8010–16–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38820; File No. SR–DTC–97–05]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Relating to the Establishment of Procedures to Distinguish Repurchase Transactions and Other Financing Transactions From Securities Pledges

July 7, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 14, 1997, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–DTC–97–05) as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends DTC's Collateral Loan Program (''CLP'') procedures[2] to enable DTC's participants to distinguish repurchase transactions (''repos'') and other types of financing transactions from pledges of securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

According to DTC, many of its participants use the CLP to effect repurchase transactions (''repos''). The CLP's current procedures do not differentiate between a securities transaction that involves the transfer of the entire interest in securities (*i.e.*, as in a repo transaction) from a securities transaction that involves the transfer of a security interest or other limited interest in the securities (*i.e.*, a pledge).

The proposed rule change implements procedures that allow DTC's participants to distinguish repos or other types of financing transactions from pledges of collateral. Under the proposed rule change, any organization that is eligible to establish a pledgee account (*i.e.*, ''receiver'') at DTC may establish a repo account. Consequently, a participant engaging in a repo or other type of financing transaction will be able to deliver securities to the receiver's repo account instead of the receiver's pledgee account. DTC will deem instructions to deliver securities to a repo account as instructing DTC to transfer to the receiver the entire interest in the securities and not just a security interest or other limited interest.

According to DTC's proposed procedures for repo accounts, the operation of a repo account will be identical to the operation of a pledgee account. As with a pledgee account: (1) The voting rights on securities credited to a repo account will be assigned to the participant that delivered the securities to the repo account; (2) cash dividend and interest payments and other cash distributions on the securities will be credited to the account of the delivering participant; (3) distributions of securities for which the ex-distribution date is on or prior to the payable date or in which the distribution is payable in a different security will be credited to the account of the delivering participant; and (4) any stock splits or other distributions of the same securities for which the ex-distribution date is after the payable date will be credited to the repo account of the receiver. Also, the reports and statements that DTC sends to participants and receivers for transactions involving repo accounts will be the same as the reports that DTC generates for a pledgee account except that such reports and statements will carry a repo account number.

DTC will accept instructions solely from a receiver with respect to the disposition of securities credited to the receiver's repo account. The receiver may instruct DTC to deliver securities credited to its repo account to its DTC participant account if the receiver is also a DTC participant or to any other DTC participant account. Any receiver that instructs DTC to deliver securities credited to its repo account to another receiver or to a DTC participant other than the original delivering participant will be required to provide DTC with certain warranties and must indemnify DTC, its stockholders, and certain employees against potential liability.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F) of the Act[4] and the rules and regulations thereunder because it will facilitate the processing of repo and other types of financing transactions through DTC's facilities and therefore, is consistent with DTC's obligations to safeguard securities and funds in DTC's custody or control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no adverse impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was developed through discussions with

[1] 15 U.S.C. 78s(b)(1).

[2] A copy of DTC's procedures for repo accounts is attached as Exhibit 2 to DTC's proposed rule change, which is available for inspection and copying at the Commission's Public Reference Room or through DTC.

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] 15 U.S.C. 78q–1(b)(3)(F).

several participants. Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(A) By order approve such proposed rule change or;

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR–DTC–97–05 and should be submitted by August 5, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–18455 Filed 7–14–97; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Administration of Plans for Achieving Self-Support (PASS); Public Forums

AGENCY: Social Security Administration (SSA).

ACTION: Notice.

PLACES AND TIMES OF PUBLIC FORUMS:

St. Paul, Minnesota, July 25, 1997, 9:00 a.m.–1:00 p.m.—State Office Building, House of Representatives, Hearing Room #10, 100 Constitution Avenue, St. Paul, MN 55111

Denver, Colorado, July 31, 1997, 10:00 a.m.–12:00 noon, and 1:00 p.m.–3:00 p.m.—Holiday Inn-Southeast, 3200 S. Parker Road, Aurora, CO 80014.

SUPPLEMENTARY INFORMATION:

Type of Meeting: The forums are open to the public. Individuals/organizations wishing to present oral statements should register with the Social Security Administration (SSA) prior to the date of the forum.

Purpose: SSA is seeking information and suggestions from the public about its administration of Plans for Achieving Self-Support (PASS), a Supplemental Security Income (SSI) provision. SSI is a federal needs-based program. Under this program, PASS is intended to increase an individual's potential to be self-supporting. It encourages individuals who are blind or disabled to return to work by allowing certain income and resources to be excluded from consideration in SSI eligibility determinations and benefit computations. In so doing, the income and resources used for goods and services purchased in order to complete the PASS will not be considered as countable income and resources which could be used for food, clothing and shelter, and may allow the person to receive payments up to the monthly SSI federal benefit rate (plus any State supplementary payment). In order for the provision to apply, the PASS must be approved by SSA. The PASS must stipulate a specific occupational goal, and specify the income and resources to be excluded and how they would be used toward attaining the goal.

SSA is seeking information on areas of particular concern to the public, in order to improve the administration of PASS. While any information and all views about PASS are welcome, SSA is focusing on the following issues:

SSA is responsible for evaluating the feasibility of occupational goals under a PASS. *What standards should SSA use to determine if an occupational goal is feasible for a particular individual?*

SSA must also discern a link between the goods and services sought through a PASS and the stated goal. *What elements should we expect to be present in a plan to demonstrate such a connection?*

What types of goods and services are appropriate for a PASS? What types of goods and services are inappropriate for a PASS? How should SSA evaluate whether the planned costs are reasonable?

PASS recipients must demonstrate progress under an approved PASS. *How should this progress be evaluated by SSA?*

In response to concerns about PASS outcomes, *how should SSA define success for the purposes of a PASS?*

Since SSA wants the use of PASS to promote movement towards financial independence, *how can SSA increase a person's opportunity for success, as you propose defining it?*

Agenda: The forums will begin with opening statements by representatives from the Social Security Administration providing a historical perspective of the PASS provision.

The remainder of the agenda will be devoted to the presentation of oral statements by members of the public. Statements will be limited to 5 minutes per speaker.

Persons wishing to provide oral testimony at the St. Paul forum should contact Helen Fitch of the SSA Regional Public Affairs Office in Chicago, Illinois to reserve time to speak. Telephone: (312) 575–4052, E-Mail: chi.rpa@ssa.gov, FAX: (312) 575–4051, TTY: (410) 965–0045 (Laura Vogt, Baltimore, MD).

Persons wishing to provide oral testimony at the Denver forum should contact Rita Salomon of the SSA Regional Public Affairs Office in Denver, Colorado to reserve time to speak. Telephone: (303) 844–4441, E-Mail: den.rpa@ssa.gov, FAX: (303) 844–3674, TTY: (410) 965–0045 (Laura Vogt, Baltimore, MD).

Persons who cannot attend the forums but wish to provide information or views for the Agency's consideration can send written statements to: Mail: Social Security Administration, PASS Testimony, P. O. Box 17746, Baltimore, MD 21235, E-Mail: pass.comments@ssa.gov, FAX: PASS Testimony, 410–966–5366.

SSA will allow unscheduled testimony from members of the public. However, depending on the number of individuals/organizations wishing to present statements, the time allotted for unscheduled testimony may be limited.

For further information about PASS, you may also contact Steve Fear at (410) 965–9824 or TTY (410) 965–0045.

Dated: July 10, 1997.

Marilyn O'Connell,

Acting Associate Commissioner for Program Benefits Policy.

[FR Doc. 97–18660 Filed 7–14–97; 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: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (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 extension of a currently approved collection. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 30, 1997 [62 FR 23530].

DATES: Comments must be submitted on or before (Insert 30 days from date of publication).

FOR FURTHER INFORMATION CONTACT: Richard Weaver, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2811.

SUPPLEMENTARY INFORMATION:

Maritime Administration

Title: Records Retention Schedule.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0501.

Affected Public: U.S. Shipping Companies.

Abstract: Section 801, Merchant Marine Act, 1936 as amended (46 APP U.S.C 1211) requires retention of construction differential subsidy or operating differential subsidy records.

Need and Use of the Information: The information will be used to audit pertinent records at the conclusion of a contract when the contractor was receiving financial assistance from the government.

Estimated Annual Burden Hours: 750 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT 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.

Issued in Washington, DC, on July 9, 1997.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–18470 Filed 7–14–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974; Notice To Amend a System of Records

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice to amend a system of records.

SUMMARY: The National Highway Traffic Safety Administration proposes to amend a system of records notice in its inventory of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

EFFECTIVE DATE: August 25, 1997.

FOR FURTHER INFORMATION CONTACT: Crystal M. Bush, Privacy Act Coordinator, U.S. Department of Transportation, Washington, DC 20590. Telephone: (202) 366–9713.

SUPPLEMENTARY INFORMATION: This amendment establishes a new routine use of the names, addresses, and other personal data in the system in order for NHTSA to make complaints about recall performance available to applicable automobile and automobile part manufacturers in order to allow them to rectify owner complaints and problems.

Dated: July 2, 1997.

Crystal M. Bush,

Privacy Act Coordinator.

DOT/NHTSA 415

SYSTEM NAME:

Office of Defects Investigation/Defects Information Management System (ODI/DIMS).

SECURITY CLASSIFICATION:

Sensitive.

SYSTEM LOCATION:

U.S. Department of Transportation (DOT), National Highway Traffic Safety Administration (NHTSA), Office of Defects Investigation (ODI), 400 7th Street, SW., Room 5326, Washington, DC 20590.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Vehicle owners.

CATEGORIES OF RECORDS IN THE SYSTEM:

Vehicle identification, vehicle problem, vehicle owner.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 30116.

PURPOSE(S):

The agency is authorized to ensure that manufacturers recall and repair or replace defective or noncompliant motor vehicles or items of motor vehicle equipment and to ensure that they do so in an effective manner. In order to determine whether recalls are necessary and whether the recalls are conducted in accordance with agency requirements, safety-related information from motor vehicle and motor vehicle equipment owners are collected and analyzed to identify problems and trends.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To permit the Office of Defects Investigation to review complaints about defects in motor vehicles and items of motor vehicle equipment in order to identify trends that could result in defect investigations; to make complaints about recall performance available to applicable manufacturers in order to allow them to rectify owner complaints and problems; and to identify those uncorrected recall performance problems which require investigation into the adequacy of the notification or remedy in accordance with agency regulations.

See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Disc pack and paper file.

RETRIEVABILITY:

Identification number for each vehicle owner.

SAFEGUARDS:

Coded entry numbers.

RETENTION AND DISPOSAL:

Eight years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Special Projects Staff, U.S. Department of Transportation (DOT), National Highway Traffic Safety Administration (NHTSA), Office of Defects Investigation, 400 7th Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

Write or visit the: U.S. Department of Transportation (DOT), National Highway Traffic Safety Administration (NHTSA), Director, Technical Reference Division, 400 7th Street, SW., Washington, DC 20590.

RECORD ACCESS PROCEDURES:

Same as ''Notification Procedure'' above.

CONTESTING RECORD PROCEDURES:

Same as ''Notification Procedure'' above.

RECORD SOURCE CATEGORIES:

General public, State highway offices, insurance companies, vehicle manufacturers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–18471 Filed 7–14–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 97–038]

Chemical Transportation Advisory Committee; Subcommittee on the Review/Update of Vapor Control System Regulations Meetings

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Vapor Control System (VCS) Regulations Review/Update Subcommittee of the Chemical Transportation Advisory Committee (CTAC) will meet to continue work on developing a recommended revision of the marine vapor control regulations found in Title 33, Code of Federal Regulations, Part 154 and Title 46, Code of Federal Regulations, Part 39. The meetings are open to the public.

DATES: The meetings of the VCS Subcommittee will be held on July 22, 1997, from 9 a.m. to 4 p.m. and July 23, 1997, from 8 a.m to 3 p.m. Written material and requests to make oral presentations should reach the Coast Guard on or before July 15, 1997.

ADDRESSES: The meetings of the VCS Subcommittee will be held in the training academy conference room ABS Plaza, 16855 Northchase Drive, Houston, TX 77060. For directions to the meetings, please contact Lieutenant J.J. Plunkett, Commandant (G–MSO–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Lieutenant J.J. Plunkett, Commandant (G–MSO–3), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001; telephone 202–267–0087, fax 202–267–4570 or Mr. Paul J. Book, American Commercial Barge Line Company, 1701 East Market Street, Box 610, Jeffersonville, IN 47131–0610; telephone (812) 288–0220, fax (812) 288–0478.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meetings

The agenda includes the following:

(1) Presentation of each subcommittee member's work thus far and plans for the future.

(2) Review and discussion of the work completed by each member.

(3) Discussion of joint facility/vessel opportunities for improvements to the VCS program. After meeting together, the subcommittee members will form into two work group to discuss in detain their assigned tasks. The two groups are Facility VCS work group and Vessel VCS work group.

Procedural

These meetings are open to the public. At the Subcommittee Chairperson's discretion, members of the public may make oral presentations during the meetings. Persons wishing to make oral presentations at the meetings should notify Mr. Book no later than July 15, 1997. Written material for distribution at the meetings should reach the Coast Guard no later than July 15, 1997. If you are submitting material, and would like a copy distributed to each member of the subcommittee in advance of the meetings, you should submit 25 copies to Mr. Book no later than July 15, 1997.

Information on Services for the Disabled

For information on facilities or services for the disabled or to request special assistance at the meetings, contact Lieutenant Plunkett as soon as possible.

Dated: July 2, 1997.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 97–18469 Filed 7–14–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Correction of Coordinating Council meeting date.

SUMMARY: Notice of the meeting of the Coordinating Council of the Intelligent Transportation Society of America was published in the **Federal Register** on July 8, 1997 on page 36606. The correct Summary, Date and Address should read:

''SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Coordinating Council on Thursday, August 7, 1997.''

''DATE: The Coordinating Council of ITS AMERICA will meet on Thursday, August 7, 1997, 10 a.m.–2 p.m.''

''ADDRESS: San Diego Marriot Mission Valley, 8757 Rio San Diego Dr., San Diego, California 92108. Phone no. (800) 842–5329. Fax no. (619) 692–0769.''

Issued on: July 10, 1997.

Jeffrey Lindley,

Deputy Director, ITS Joint Program Office.

[FR Doc. 97–18517 Filed 7–14–97; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 97–039; Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 1990–1996 Toyota Landcruiser Multi-Purpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1990–1996 Toyota Landcruiser multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety

Administration (NHTSA) of a petition for a decision that 1990–1996 Toyota Landcruiser MPVs that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is August 14, 1997.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.)

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

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether 1990–1996 Toyota Landcruiser MPVs are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are the 1990–1996 Toyota Landcruisers that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Toyota Motor Corporation, as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1990–1996 Toyota Landcruisers to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1990–1996 Toyota Landcruisers, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1990–1996 Toyota Landcruisers are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 Transmission Shift Lever Sequence, 103 Defrosting and Defogging Systems, 104 Windshield Wiping and Washing Systems, 105 Hydraulic Brake Systems, 106 Brake Hoses, 112 Headlamp Concealment Devices, 113 Hood Latch Systems, 116 Brake Fluid, 119 New Pneumatic Tires for Motor Vehicles other than Passenger Cars, 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 non-U.S. certified 1990–1996 Toyota Landcruisers comply with the Bumper Standard found in 49 CFR part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 Controls and Displays: (a) Substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp; (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; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies.

Standard No. 111 Rearview Mirror: Replacement of the passenger side convex rearview mirror.

Standard No. 114 Theft Protection: Installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 118 *Power Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 120 *Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars:* Installation of a tire information placard.

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 light and buzzer; (c) replacement of the driver's side air bag and knee bolster (on 1995 models) with U.S.-model components; (d) replacement of the driver's and passenger's side air bags and knee bolsters (on 1996 models) with U.S.-model components. The petitioner states that non-U.S. certified 1990–1996 Toyota Landcruisers are 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 at each front designated seating position, with a combination lap and shoulder restraint that releases by means of a single push button at each rear outboard designated seating position, and with a lap belt in the rear center designated seating position.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner states that a vehicle identification number (VIN) plate must be installed on non-U.S. certified 1990–1996 Toyota Landcruisers 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: July 9, 1997.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 97–18468 Filed 7–14–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Indexing the Annual Operating Revenues of Railroads

This Notice sets forth the annual inflation adjusting index numbers which are used to adjust gross annual operating revenues of railroads for classification purposes. This indexing methodology will insure that regulated carriers are classified based on real business expansion and not from the effects of inflation. Classification is important because it determines the extent of reporting for each carrier.

The railroad's inflation factors are based on the annual average Railroad's Freight Price Index. This index is developed by the Bureau of Labor Statistics (BLS).

The base year for railroads is 1991. The inflation index factors are presented as follows:

RAILROAD FREIGHT INDEX

	Index	Deflator percent
1991	409.5	[1] 100.00
1992	411.8	99.45
1993	415.5	98.55
1994	418.8	97.70
1995	418.17	97.85

RAILROAD FREIGHT INDEX—Continued

	Index	Deflator percent
1996	417.46	98.02

[1] Ex Parte No. 492, *Montana Rail Link, Inc., and Wisconsin Central Ltd., Joint Petition For Rulemaking With Respect To 49 CFR 1201,* 8 I.C.C. 2d 625 (1992), raised the revenue classification level for Class I railroads from $50 million to $250 million (1991 dollars), effective for the reporting year beginning January 1, 1992. The Class II threshold was also revised to reflect a rebasing from $10 million (1978 dollars) to $20 million (1991 dollars).

Effective Date: January 1, 1996.

For Further Information Contact: Scott Decker (202) 565–1531. (TDD for the hearing impaired: (202) 565–1695).

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams,

Secretary.

[FR Doc. 97–18542 Filed 7–14–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 32963]

Steuben County Industrial Development Agency—Acquisition Exemption—Line of Bath and Hammondsport Railroad Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts from the prior approval requirements of 49 U.S.C. 10902, the acquisition by Steuben County Industrial Development Agency of 7.83 miles of rail line belonging to Bath and Hammondsport Railroad Company, between milepost 0.85 at Bath, NY, and milepost 8.68 at Hammondsport, NY.

DATES: This exemption will be effective on August 14, 1997. Petitions to stay must be filed by July 30, 1997, and petitions to reopen must be filed by August 11, 1997.

ADDRESSES: Send pleadings referring to STB Finance Docket No. 32963 to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Petitioner's representative: John F. Leyden, Sullivan & Leyden, P.C., 110 North Main St., Wayland, NY 14572.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., 1925 K Street, N.W., Suite 210, Washington, DC 20006. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 565–1695.)

Decided: July 1, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–18543 Filed 7–14–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF VETERANS AFFAIRS

Summary of Precedent Opinions of the General Counsel

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of legal interpretations issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. These interpretations are considered precedential by VA and will be followed by VA officials and employees in future claim matters. The summary is published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue.

FOR FURTHER INFORMATION CONTACT: Jane L. Lehman, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–6558.

SUPPLEMENTARY INFORMATION: VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of

the General Counsel that must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

VAOPGCPREC 11–97

Questions Presented

a. Do any of the amendments to the Department of Veterans Affairs (VA) Schedule for Rating Disabilities pertaining to ratings for mental disorders, which became effective November 7, 1996, contain liberalizing criteria?

b. Must the Board of Veterans' Appeals (Board) remand claims involving ratings for mental disorders which were pending on November 7, 1996, to permit the agency of original jurisdiction (AOJ) to consider the effect of the amended regulations in the first instance?

Held

a. Questions as to whether any of the recent amendments to VA's rating schedule pertaining to mental disorders are more beneficial to claimants than the previously-existing provisions must be resolved in individual cases where those questions are presented. The determination as to whether a particular amended regulation is more favorable to a claimant than the previously-existing regulation may depend upon the facts of the particular case.

b. Where a regulation is amended during the pendency of an appeal to the Board of Veterans' Appeals (Board), the Board must first determine whether the amended regulation is more favorable to the claimant than the prior regulation, and, if it is, the Board must apply the more favorable provision. Under VAOPGCPREC 16–92 (O.G.C. Prec. 16–92) and *Bernard* v. *Brown*, 4 Vet. App. 384, 393–94 (1993), the Board may consider regulations not considered by the agency of original jurisdiction if the claimant will not be prejudiced by the Board's action in applying those regulations in the first instance. With respect to claims pending on November 7, 1996, which involve ratings for mental disorders, the Board may determine whether the amended regulations, which became effective on that date, are more favorable to the claimant and may apply the more favorable regulation, unless the claimant will be prejudiced by the Board's actions in addressing those questions in the first instance. The Board is free to adopt a rule requiring notice to a claimant when a pertinent change in a statute or regulation occurs prior to a final Board decision on a claim and permitting the claimant to waive the opportunity for a remand to the agency of original jurisdiction for initial consideration of the new statute or regulation.

Effective Date: March 25, 1997.

VAOPGCPREC 12–97

Question Presented

a. Whether an attorney representing a successful claimant before the Department of Veterans Affairs (VA) may collect attorney fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d), and from past-due benefits under 38 U.S.C. § 5904(d), without refunding to the claimant the amount of the smaller fee?

b. If an attorney may not collect both an EAJA fee and a section 5904(d) fee without refunding to the claimant the smaller fee, what action must the Board of Veterans' Appeals (Board) take where the attorney is otherwise eligible for attorney fees under both the EAJA and 38 U.S.C. § 5904(d)?

c. Where a case has been remanded or reversed by the United States Court of Veterans Appeals (CVA), must the Board, as a matter of practice, in making its determination as to either payment of attorney fees from past-due benefits under 38 U.S.C. § 5904(d) or reasonableness of fee under 38 U.S.C. § 5904(c)(2) determine whether the attorney has received fees under the EAJA?

Held

a. The claimant's attorney is permitted to seek recovery of attorney fees under both 38 U.S.C. § 5904 and 28 U.S.C. § 2412. Section 506(c) of the Federal Courts Administration Act of 1992 expressly provides that, where the claimant's attorney receives fees for the same work under both 38 U.S.C. § 5904(d) and 28 U.S.C. § 2412, the claimant's attorney must refund to the claimant the amount of the smaller fee. The attorney may keep the larger of the fees recovered, but must return the amount of the smaller fee to the claimant.

b. There is no authority for the Board to take any action, such as offset of the amount of the EAJA fees, to ensure that the attorney fulfills his responsibility to refund the smaller fee to the claimant.

c. Where the case has been remanded or reversed by the CVA, the Board does not have to first determine whether the attorney has received fees under the EAJA to determine whether attorney fees are payable directly by VA from past-due benefits under section 5904(d). Where the attorney fee agreement does not require direct payment by VA from past-due benefits under section 5904(d), the Board's review of the agreement under 38 U.S.C. § 5904(c)(2), to determine whether the fee is excessive or unreasonable, may require the Board to determine whether the attorney has received fees under the EAJA and if so, the impact of the EAJA fees on the reasonableness of the agreed-upon fee. Thus, where a case has been remanded or reversed by the CVA, the Board, in making its determination as to whether the attorney fee is excessive or unreasonable under 38 U.S.C. § 5904(c)(2), must determine on a case-by-case basis the impact of any attorney fees received under the EAJA.

Effective Date: March 26, 1997.

VAOPGCPREC 13–97

Question Presented

May a total disability rating based on individual unemployability be reduced based solely on a veteran's removal from the ''work possible environment''?

Held

There is no statutory or regulatory authority for VA to reduce a total disability rating based on individual unemployability, as authorized by 38 C.F.R. §§ 3.340(a), 3.341(a), 4.16(a), based solely on a veteran's removal from a ''work possible environment.'' Such reduction of a total disability rating based on individual unemployability would be inconsistent with the requirement of 38 C.F.R. § 3.343(c)(1) that, in order to reduce such a rating, actual employability be established by clear and convincing evidence.

Effective Date: April 7, 1997.

VAOPGCPREC 14–97

Question Presented

May a work related injury sustained by a veteran who is receiving employment services as part of a ''vocational rehabilitation program'' under chapter 31 of title 38, United States Code, be considered the result of ''pursuit of a course of vocational rehabilitation under chapter 31,'' for purposes of entitlement to compensation under 38 U.S.C. § 1151?

Held

An individual participating in a chapter 31 ''vocational rehabilitation program'' (as defined in 38 U.S.C. § 3101(9)) is not, solely by virtue of that status, considered in ''pursuit of a course of vocational rehabilitation'' for purposes of 38 U.S.C. § 1151. The intent of the section 1151 provisions pertinent

to this matter is to provide compensation for injuries sustained only as a result of pursuing vocational rehabilitation training to achieve employability, not as a result of engaging in post-training employment. Thus, a chapter 31 ''vocational rehabilitation program'' participant who is receiving only a period of employment services while engaged in post-training employment is not pursuing ''a course of vocational rehabilitation'' within the meaning of section 1151 so as to qualify for disability compensation benefits under that section.

Effective Date: April 7, 1997.

VAOPGCPREC 15–97

Questions Presented

a. Are interest payments received from bonds issued by Menominee Enterprises, Inc. countable as income for purposes of determining entitlement to improved pension?

b. Are interest payments received from such bonds countable as income under the section 306 pension program, the old law pension program, or the parents' dependency and indemnity compensation program?

Held

a. Interest payments received by individuals based upon their status as holders of bonds issued by Menominee Enterprises, Inc., a corporation formed upon termination of Federal supervision of the Menominee Indian Tribe, must be included in annual income for purposes of determining eligibility for improved pension.

b. Interest payments received by individuals based on their status as holders of bonds issued by Menominee Enterprises, Inc. are likewise countable as income for purposes of determining entitlement under the section 306 pension, old law pension, and parents' dependency and indemnity compensation programs.

Effective Date: April 10, 1997.

VAOPGCPREC 16–97

Questions Presented

a. Whether, under Section 502 of the Veterans' Benefits Improvements Act of 1996, which added section 38 U.S.C. § 5313A, the period for which the clothing allowance of certain incarcerated veterans is to be reduced begins on the first day of incarceration or on the sixty-first day of incarceration.

b. Whether the amendment made to 38 U.S.C. § 5121(a) by section 507 of the Veterans' Benefits Improvements Act of 1996, which increased from one year to two years the period for which accrued benefits may be paid, applies only in claims involving deaths which occur on or after October 9, 1996, the date of enactment of the amendment.

Held

a. Section 5313A of title 38, United States Code, as added by section 502 of the Veterans' Benefits Improvements Act of 1996, requires that the Department of Veterans Affairs reduce the annual clothing allowance payable under 38 U.S.C. § 1162 to certain incarcerated veterans by 1/365th for each day on which the veteran was incarcerated during the twelve-month period preceding the date on which the payment of the allowance would be due, beginning with the sixty-first day of the period of incarceration.

b. Section 5121(a) of title 38, United States Code, as amended by section 507 of the Veterans' Benefits Improvements Act of 1996, which authorizes payment of accrued benefits for a period of two years prior to the death of an individual entitled to periodic monetary benefits at death under existing ratings or decisions or based on evidence on file at the date of death, is applicable in claims for accrued benefits based on deaths which occurred prior to the October 9, 1996, date of enactment of the amending statute which were not finally decided prior to that date.

Effective Date: April 17, 1997.

VAOPGCPREC 17–97

Questions Presented

a. Under what circumstances may a veteran attending school as part of a vocational rehabilitation program under chapter 31 of title 38, United States Code, be paid directly for ''tuition, fees, and miscellaneous expenses, etc.''?

b. Can such payment for ''tuition, fees, and miscellaneous expenses, etc.'' be withheld to satisfy an existing account receivable for overpayment of subsistence allowance under the chapter 31 program?

Held

1. When VA, in its discretion, determines the facts and equities of the individual circumstances so warrant, it may directly reimburse an eligible veteran for the costs of tuition and fees, necessary supplies, and services paid by the veteran which VA retroactively approves as a required part of a vocational rehabilitation program under chapter 31 of title 38, United States Code.

2. VA may deduct the amount of a veteran's existing VA benefits program debt from the amount due the veteran as a retroactive chapter 31 reimbursement payment.

Effective Date: May 2, 1997.

VAOPGCPREC 18–97

Question Presented

Does the presumption of service connection established in 38 U.S.C. § 1116 and 38 CFR §§ 3.307(a)(6) and 3.309(e) for diseases associated with herbicide exposure apply to both primary cancers and cancers resulting from metastasis?

Held

Presumptive service connection may not be established under 38 U.S.C. § 1116 and 38 CFR 3.307(a) for a cancer listed in 38 CFR 3.309(e) as being associated with herbicide exposure, if the cancer developed as the result of metastasis of a cancer which is not associated with herbicide exposure. Evidence sufficient to support the conclusion that a cancer listed in section 3.309(e) resulted from metastasis of a cancer not associated with herbicide exposure will constitute ''affirmative evidence'' to rebut the presumption of service connection for purposes of 38 U.S.C. § 1113(a) and 38 CFR 3.307(d). Further, evidence that a veteran incurred a form of cancer which is a recognized cause, by means of metastasis, of a cancer listed in 38 CFR 3.309(e) between the date of separation from service and the date of onset of the cancer listed in section 3.309(e) may be sufficient, under 38 U.S.C. § 1113(a) and 38 CFR 3.307(d), to rebut the presumption of service connection.

Effective Date: May 2, 1997

VAOPGCPREC 19–97

Question Presented

Under what circumstances may service connection be established for tobacco-related disability or death on the basis that such disability or death is secondary to nicotine dependence which arose from a veteran's tobacco use during service?

Held

a. A determination as to whether service connection for disability or death attributable to tobacco use subsequent to military service should be established on the basis that such tobacco use resulted from nicotine dependence arising in service, and therefore is secondarily service connected pursuant to 38 CFR § 3.310(a), depends upon whether nicotine dependence may be considered a disease for purposes of the laws governing veterans' benefits, whether the veteran acquired a dependence on nicotine in service, and whether that dependence may be considered the

proximate cause of disability or death resulting from the use of tobacco products by the veteran. If each of these three questions is answered in the affirmative, service connection should be established on a secondary basis. These are questions that must be answered by adjudication personnel applying established medical principles to the facts of particular claims.

b. On the issue of proximate cause, if it is determined that, as a result of nicotine dependence acquired in service, a veteran continued to use tobacco products following service, adjudicative personnel must consider whether there is a supervening cause of the claimed disability or death which severs the causal connection to the service-acquired nicotine dependence. Such supervening causes may include sustained full remission of the service-related nicotine dependence and subsequent resumption of the use of tobacco products, creating a de novo dependence, or exposure to environmental or occupational agents.

Effective Date: May 13, 1997.

VAOPGCPREC 20–97

Questions Presented

a. What is the meaning of the term ''constitutionally psychopathic'' as used in 38 CFR § 3.354(a)?

b. Does the definition of insanity in 38 CFR § 3.354(a) exclude behavior which is due to a personality disorder or a substance-abuse disorder, except where a psychosis is also present?

c. What are the intended parameters of the types of behavior which are defined as insanity in 38 CFR § 3.354(a)?

(1) Does the definition of insanity include behavior involving a minor episode, or episodes, of disorderly conduct or eccentricity, if the behavior is due to a disease?

(2) How significantly must an individual's behavior deviate from his or her ''normal method of behavior'' for the person to be considered insane under 38 CFR § 3.354(a)? Is this a purely subjective standard?

(3) What is the meaning of the phrase ''interferes with the peace of society,'' and to what extent must an individual ''interfere'' with society's peace to meet the definition of insane?

(4) What is the meaning of the phrase ''become antisocial'' as used in 38 CFR § 3.354(a)?

(5) Are the ''accepted standards of the community to which by birth and education he belongs,'' as referred to in 38 CFR § 3.354(a), necessarily identical with the ''social customs of the community in which he resides?'' If not, must an individual both deviate from the standards of his community of ''birth and education'' as well as be unable to adapt in order to further adjust ''to the social customs of the community in which he resides,'' in order to meet the regulatory definition of insanity? What evidence, if any, would be necessary to establish either or both such community standards?

Held

a. The term ''constitutionally psychopathic'' in 38 CFR § 3.354(a) refers to a condition which may be described as an antisocial personality disorder.

b. Behavior which is attributable to a personality disorder does not satisfy the definition of insanity in section 3.354(a). Assuming that a particular substance-abuse disorder is a disease for disability compensation purposes, behavior which is generally attributable to such disorders does not exemplify the severe deviation from the social norm or the gross nature of conduct which is generally considered to fall with the scope of the term insanity and therefore does not constitute insane behavior under section 3.354(a).

c.(1) Behavior involving a minor episode or episodes of disorderly conduct or eccentricity does not fall within the definition of insanity in section 3.354(a).

c.(2) Determination of the extent to which an individual's behavior must deviate from his or her normal method of behavior for purposes of section 3.354(a) may best be resolved by adjudicative personnel on a case-by-case basis in light of the authorities defining the scope of the term insanity.

c.(3) The phrase ''interferes with the peace of society'' in 38 CFR § 3.354(a) refers to behavior which disrupts the legal order of society. Determination of the extent to which an individual must interfere with the peace of society so as to be considered insane for purposes of section 3.354(a) may be resolved by adjudicative personnel on a case-by-case basis in light of the authorities defining the scope of the term insanity.

c.(4) The term ''become antisocial'' in 38 CFR § 3.354(a) refers to the development of behavior which is hostile or harmful to others in a manner which deviates sharply from the social norm and which is not attributable to a personality disorder.

c.(5) Reference in 38 CFR § 3.354(a) to ''accepted standards of the community to which by birth and education'' an individual belongs requires consideration of an individual's ethnic and cultural background and level of education. The regulatory reference to ''social customs of the community'' in which an individual resides requires assessment of an individual's conduct with regard to the contemporary values and customs of the community at large.

Effective Date: May 22, 1997.

VAOPGCPREC 21–97

Question Presented

Are amounts received as per capita distributions of revenues from gaming activity on tribal trust property considered income for purposes of improved pension, section 306 pension, old-law pension, or parent's dependency and indemnity compensation (DIC)?

Held

Amounts received by an individual pursuant to a per capita distribution of proceeds from gaming on Indian trust lands pursuant to the Indian Gaming Regulatory Act are considered income for purposes of Department of Veterans Affairs income-based benefits.

Effective Date: May 23, 1997.

By Direction of the Secretary.

Mary Lou Keener,

General Counsel.

[FR Doc. 97–18495 Filed 7–14–97; 8:45 am]

BILLING CODE 8320–01–P

federal register

Tuesday
July 15, 1997

Part II

Department of Commerce

International Trade Administration

Final Results of Antidumping Duty Administrative Reviews: Elemental Sulphur From Canada; Notices

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–047]

Elemental Sulphur From Canada: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On January 7, 1997, the Department of Commerce (the Department) published in preliminary results of its administrative review of the antidumping duty order on elemental sulphur from Canada (62 FR 969). This review covers two manufacturers/exporters of the subject merchandise to the United States and the period December 1, 1994 through November 30, 1995. We gave interested parties an opportunity to comment on our preliminary results. Based upon our analysis of the comments received, the results presented in the preliminary results of review have changed.

We determine that sales have been made below normal value (''NV'') by companies subject to these reviews. Thus, we will instruct U.S. Customs to assess antidumping duties based on the difference between the export price (''EP'') and the NV.

EFFECTIVE DATE: July 15, 1997.

FOR FURTHER INFORMATION CONTACT: Rick Johnson or Jean Kemp, Office of Antidumping and Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute refer to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130).

Background

On January 7, 1997, the Department published in the **Federal Register** (62 FR 969) the preliminary results of its administrative review of the antidumping duty order on elemental sulphur from Canada (hereafter referred to as ''Preliminary Results''). We gave interested parties an opportunity to comment on our preliminary results. We received written comments on February 10 and February 21, 1997 from Mobil Oil Canada (''Mobil'') and Husky Oil Canada (''Husky''), respondents; and from petitioners, Pennzoil and Freeport McRoran.

No antidumping duty absorption request was made by interested parties, therefore for this review we have not made a determination of whether antidumping duties have been absorbed.

Under the Act, the Department may extend the deadline for completion of administrative reviews if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. On August 5, 1996, the Department extended the time limits for the preliminary and final results in this case. *See Elemental Sulphur from Canada: Extension of Time Limit for Antidumping Duty Administrative Review* 61 FR 40604 (1996).

We have now completed the administrative review in accordance with section 751 of the Act.

Scope of the Review

Imports covered by these reviews are shipments of elemental sulphur from Canada. This merchandise is classifiable under Harmonized Tariff Schedule (HTS) subheadings 2503.10.00, 2503.90.00, and 2802.00.00. Although the HTS subheadings are provided for convenience and for U.S. Customs purposes, the written description of the scope of this finding remains dispositive.

Interested Party Comments

Husky

Comment 1

Petitioners allege that Husky's reported liquid sulphur cost of manufacturing at one plant is understated as a result of Husky's allegedly improper allocation of certain common costs. Petitioners argue that Husky's treatment of these costs essentially is based on what they claim to be the ''faulty'' premise that these costs are purely indirect costs and that the other three cost centers at the facility (pouring, forming, and remelt) contain the only costs incurred for direct production activity at this facility. The result, according to petitioners, is a distortive allocation because liquid sulphur is handled at the plant in question, sulphur is stored in major block storage facilities there, and significant costs are associated with these activities.

Furthermore, petitioners point to Husky's reported pouring costs (which cannot be zero in any month, according to petitioners), as an impossible result, given that block storage was performed at this plant throughout the POR. Additionally, petitioners assert that the common costs, as a percentage of total costs at this plant, are such that these common costs cannot be purely indirect costs that may be allocated to other cost centers.

Finally, petitioners allege that Husky's treatment of these common costs departs from the Department's sulphur cost methodology, as found in the preliminary results of the 1992/93 and 1993/94 reviews, by assigning liquid sulphur handling and block storage costs to the process of forming, thereby understating the cost of manufacture (COM) of liquid sulphur.

Husky rebuts petitioners' contention, stating foremost that the facility in question is a forming facility. Therefore, the vast majority of operating (and indirect) costs are related solely to the forming process, even if the Department allocates some costs to the liquid sulphur input for purposes of the antidumping proceeding.

Husky states that the functional unit in question is not a direct operating cost unit, but instead is the unit where general facility and/or indirect costs are booked. Husky maintains that the Department's treatment of these costs in its preliminary results of the 1992/93 and 1993/94 reviews arose from the fact that the Department mistook this functional unit to be a direct cost unit. Husky claims that it has clarified the issue in the current review, and that the Department therefore properly accepted Husky's allocation of these indirect costs for this review.

Further, Husky claims that all direct costs related to liquid sulphur have been allocated. According to Husky, the insignificant percentage of the facility's total costs accounted for by the two functional units considered joint costs by the Department is consistent with the fact that all of the activities at this facility are related to forming.

With regard to petitioners' assertion concerning the feasibility of having zero block storage costs in any month, Husky states that the record shows otherwise for the period of review. Husky explains this by noting that when it forms all of the sulphur collected from its gas production, it does not incur costs for pouring sulphur to block or maintaining the block. Therefore, Husky maintains

that only when it pours to block does it incur such expenses.

Husky also points to the fact that Husky's operating costs for liquid sulphur at the plant in question are virtually identical to its operating costs for liquid sulphur at another plant (about which petitioners have not made the same allegation). Husky asserts that this fact shows that Husky's allocation of costs to the liquid input are thus reflective of the actual operating costs incurred to produce the liquid input at this plant.

Department's Position: In the final results of review for the 1992/93 and 1993/94 periods, the Department agreed with Husky that the ''common'' costs for this facility should be allocated to all of the direct cost centers at that facility. Moreover, we stated that it is reasonable that this facility's ''common'' cost center should be treated as general expenses and allocated to the three functional units because the other cost centers are direct and this facility must incur common (indirect) expenses. Therefore, we concluded that it was appropriate to allocate these common costs to all functional units of the facility based on direct costs. *See Final Results of Antidumping Duty Administrative Review: Elemental Sulphur from Canada (1992/93 and 1993/94) (''1992/93 and 1993/94 Final Results'')* published concurrently with this notice of final results.

In the current review, in its September 4, 1996 submission to the Department (at page 12), Husky describes the unit in question as a common cost unit which covers three direct functional units—forming, pouring, remelt—for a particular facility. Husky further states that ''all costs charged to this common unit are allocable to sulphur production, and were reported in the column 'allocated general expenses.' ''

With regard to petitioners' assertion that there cannot be zero pouring costs when block storage was performed throughout the POR, we agree with Husky that record evidence submitted by Husky shows otherwise. Moreover, we do not find it unreasonable to accept the fact that, when all sulphur collected from gas production is formed, Husky incurs no costs at this facility for pouring sulphur to block or maintaining the block.

Based on the Department's determinations in the two prior reviews regarding the treatment of costs in this cost center, and information on the record of this review, we determine that Husky properly allocated these common (and indirect) costs in calculating cost of manufacture for liquid sulphur.

Comment 2

Petitioners argue that Husky misallocated the complex-wide costs incurred for production of all joint products at one facility. Because common cost centers are part of the complex, some portion of complex-wide costs, such as certain administrative and communications expenses, necessarily are attributable to activities that occur in the common cost centers. However, according to petitioners, since Husky allocated none of the complex-wide costs to a specific common cost center, it improperly allocated zero complex-wide costs to the processes of liquid sulphur handling at the facility and operation of the block storage facilities. Petitioners assert that under generally accepted cost accounting principles, it is proper to allocate the costs recorded in a particular indirect cost center to all cost centers that benefit from the services provided by that particular indirect cost center.

Finally, petitioners maintain that this underallocation of the complex-wide cost to sulphur results in a corresponding underallocation of depreciation to sulphur.

Husky maintains that common costs were properly allocated to all direct functional units related to both liquid and formed sulphur, based on each direct functional unit's percentage of operating costs within the facility, and complex-wide common costs and utilities were allocated on the same basis. Petitioners' proposed allocation, according to Husky, is inappropriate in that common costs would be allocated to other common cost units. Husky claims that petitioners have failed to establish any basis for allocating complex-wide common costs to the other indirect cost units. Nevertheless, Husky argues that the inclusion of common cost units in the allocation does not alter the results, as long as common costs for the gas plant and common costs for the sulphur handling facilities are both accounted for in the equation.

Department's Position: As evidenced in our position on Comment One of the 1992/93 and 1993/94 Final Results, the Department's practice in these reviews has been to allocate common (general) costs based on the direct cost centers which relate to the functional units within the facility. *See 1992/93 and 1993/94 Final Results.* Because, as we noted above, the common cost unit at a particular facility is an indirect unit, we find that Husky reported the cost information in accordance with the Department's practice of allocating general costs by allocating complex-wide common costs based on direct cost centers. Based on the above, petitioners' argument with respect to depreciation is therefore moot.

Comment 3

Petitioners claim that Husky failed to report the sulphur handling costs prior to a certain point in the sulphur production process at one plant. Petitioners note that the Department has instructed Husky, in the previous two reviews, to report all costs ''incurred by each facility after sulphur recovery, including . . . liquid sulphur storage.'' Petitioners maintain that these costs which Husky has not reported are incurred after liquid sulphur is produced at the plant, and thus are sulphur costs under the Department's methodology, regardless of where these costs are recorded in Husky's accounting system.

Furthermore, petitioners argue that there must be, at the least, labor and maintenance costs in addition to energy costs incurred for operating one of the two assets allegedly omitted in Husky's cost reporting.

Petitioners assert that given Husky's alleged reporting deficiencies, the Department should rely on facts available to determine the liquid sulphur storage costs incurred prior to a certain point at this plant.

Husky notes that it has stated for the record that no sulphur handling costs are incurred prior to those associated with the point in the sulphur production process identified by petitioners. Husky argues that its reporting is consistent with the Department's prior decisions on the appropriate split-off point (*i.e.*, subsequent to the sulphur recovery unit).

Department's Position: Husky has certified for the record that no sulphur handling costs are incurred prior to those associated with the point in the sulphur production process identified by petitioners. However, Husky's statement seems to be founded on the presumption that if a cost has been ascribed to the sulphur recovery unit, Husky does not consider that cost to be a sulphur handling cost. In this instance, that presumption stands against the Department's methodology. As the Department stated in supplemental cost questionnaires in both the 1992/93 and 1993/94 reviews, ''the reported costs of manufacturing should include costs incurred by each facility after sulphur recovery, including costs associated with pouring sulphur straight to block, liquid sulphur storage, transferring of the product, and a portion of general facilities costs.'' *See*

Supplemental Request for Cost Information for Husky in the 1992/93 Administrative Review, at page 3 (February 2, 1996); Supplemental Request for Cost Information for Husky in the 1993/94 Administrative Review, at page 3 (February 2, 1996). This language clearly indicates the Department's determination that liquid sulphur storage costs are incurred after the sulphur recovery functional unit, and should be reported as a cost of manufacture of sulphur for the Department's purposes. Whether these costs are subsumed in the sulphur recovery functional unit at this facility, as Husky has stated they are, is not relevant in light of the Department's statements on this point. That is, because liquid sulphur storage occurs after sulphur recovery, the Department considers it to be a part of the COM of sulphur.

Husky has stated for the record, in its December 6, 1996 submission, that the only sulphur recovery costs associated with a certain tank located prior to the sulphur pipeline are energy costs. Husky also provided an estimate of those costs. Petitioners' assertion that there must be labor and maintenance costs, in light of Husky's statement, is speculative and not supported by evidence on the record of this review. Therefore, we have taken Husky's estimated costs provided in that submission and added it to the sulphur COM for the plant.

With regard to the other asset to which petitioners have referred (and about which respondents have not commented), Section 776(a)(1) of the Act stipulates that if the ''necessary information is not available on the record * * * the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.'' We have no record information regarding costs associated with this other asset. Therefore, for reasons discussed in the analysis memorandum, for the final results of review the Department has also applied the costs for the certain tank discussed above as facts available to this other asset. We have not, as petitioners suggested in their case brief, used block storage costs as facts available to assign a cost to liquid storage, because petitioners have provided no basis which would lead the Department to conclude that block storage costs and liquid storage costs are in any way related.

Comment 4

Petitioners state that the Department should include in COP/CV depreciation reflective of the actual depreciation costs of the sulphur handling assets at one plant. Petitioners insist that, despite Husky's claim to the contrary, Husky must possess or have access to information regarding construction costs for the plant, because respondent is an owner and one of the original developers of this plant. Furthermore, petitioners note that the Department determined in the 1991/92 review that it is distortive for antidumping purposes not to assign sulphur handling costs to sulphur, even if the respondent does not assign these costs to sulphur in its normal accounting records. Therefore, petitioners maintain that the Department should require Husky to report the information available to it regarding these costs, or, if the Department does not obtain this information, it should determine Husky's depreciation for a particular sulphur handling asset using public information (in this case, a newspaper article) regarding Husky's share of the cost of the asset.

Husky asserts that it has certified that it does not maintain depreciation by asset, that it has adhered to the methodology accepted by the Department in an earlier review of this case, and that the Department should not base Husky's depreciation expense on a newspaper article when Husky has provided actual data. Furthermore, Husky claims that petitioners' recommendations for calculating the cost of production result in a distortion of the costs, as is demonstrated by the fact that petitioners' method would lead to a depreciation expense for the pipeline significantly higher than the depreciation expense associated with forming the sulphur.

Department's Position: We agree with respondents. In the Department's supplemental cost questionnaire of November 26, 1996 (at page 2), we asked Husky to indicate whether it possesses or can obtain sufficient information to determine the specific depreciation expenses associated with sulphur handling assets at any of its plants. Husky clearly stated, in its December 6, 1996 response, that it does not possess and cannot obtain such information, noting that under Canadian GAAP, the net book value of property, plant and equipment associated with oil and gas production is pooled on a property-by-property basis. *See* Supplemental Cost Questionnaire Response of Husky Oil Ltd., page 6 (Public Version) (December 9, 1996). Therefore, Husky has reported depreciation expenses allocated to the functional units connected to sulphur production on the basis of cost. We agree that this methodology is consistent with the Department's final determination in the 1991/92 administrative review and have accepted it here. *See Elemental Sulphur from Canada; Final Results of Antidumping Finding Administrative Review*, (''*1991/92 Final Results*'') at 8239, 8245 (March 4, 1996). While petitioners appear to believe that Husky must nevertheless possess or have access to such information because Husky is an owner and one of the original developers of the plant, such speculation cannot form the basis of an adverse ruling from the Department when it stands in direct conflict with Husky's record statement. Moreover, petitioners' proposal to calculate depreciation based on an unaudited figure from a newspaper article is not, in the Department's view, in any way preferable to basing depreciation on actual figures, as the Department has accepted in the prior three reviews of this case. *See, e.g, 1991/92 Final Results*, pp. 8245–46.

Comment 5

Petitioners assert that Husky overallocated its crown royalties at one facility to formed sulphur and by doing so ''greatly understated'' its liquid sulphur COM. According to petitioners, Husky's method derives a different per-unit Crown royalty expense for formed sulphur than for liquid sulphur when Husky paid the same amount of Crown royalties on each metric ton of liquid sulphur produced regardless of whether that sulphur was to be formed, poured to block or loaded for sale in liquid form. Petitioners claim that under the Department's cost methodology, the sulphur common costs at a given plant are not divided between liquid and formed sulphur based on production volume, as Husky did for Crown royalties. Rather, petitioners claim that the sulphur common costs at a plant should be added together, and divided by the common production volume (the sulphur either formed or loaded for sale in liquid form) at that plant. Then, the same resulting per-unit amount of common costs should be included in the COMs of liquid and formed sulphur for that plant.

Husky contends that it has calculated royalty correctly, and that following petitioners' proposed remedy would lead to the ''ludicrous'' result that royalty would become the largest cost element of the cost of liquid sulphur produced at the facility in question, accounting for over half of the total cost.

Husky notes that, for Crown royalties, it paid 16⅔ percent of the average price of sulphur for each ton of sulphur produced at facilities owned by the

Crown during fiscal year 1995. Since liquid and formed revenues differ (as do liquid and formed costs), Husky claims that as a consequence, the average price is the weighted average of lower-priced liquid sulphur sales and high-priced formed sulphur sales. Husky stresses that the *ad valorem* nature of the royalty charge indicates that this cost differs depending on the sales price of the product. Liquid sulphur, Husky contends, has a lower sales price, a lower production cost, and accordingly must be assigned a smaller portion of the royalty expense.

Department's Position: In the 1992/93 and 1993/94 final results of reviews notice, the Department determined that ''because sulphur poured to block must be remelted and then processed through either liquid or forming facilities before it can be sold, block sulphur is not considered finished production.'' Therefore, we did not include the block volume in the allocation of sulphur costs or the weighted-average COM for the final results. *See* Comment 5 of *1992/93 and 1993/94 Final Results.*

Husky has calculated its royalty expense for the facility in question based on the presumption that there is a liquid sulphur cost element embedded in the sulphur poured to block which must be captured in Husky's liquid sulphur COM. However, based on the above-referenced Departmental determination in the 1992/93 and 1993/94 reviews that block production is not finished production, no royalty expense should be allocated to sulphur poured to block for the purposes of calculating a liquid sulphur COM.

Furthermore, we note that Husky did not have any sales of liquid sulphur for the POR for the facility in question. Therefore, we determine that all of Husky's royalty expense for this facility should be assigned to formed sulphur. We have recalculated Husky's per unit COM for liquid sulphur accordingly. *See Memorandum to the File: Analysis Memorandum for Husky Oil, Ltd. for the Final Results of the Antidumping Administrative Review of Elemental Sulphur from Canada (1994/95)* page 3 (May 7, 1997).

Comment 6

Petitioner claims that Husky's crown royalty allocation is distortive because it double-allocates the royalties to formed sulphur. Specifically, by first splitting the royalties between liquid and formed sulphur based on production volume, Husky assigned an inappropriate portion of the royalties directly to formed sulphur. Then, according to petitioners, Husky indirectly allocated most of the other portion of the royalties to that same formed sulphur by dividing that other portion by a volume including the volume of formed sulphur.

Husky argues that its approach in calculating the royalty assessed on formed sulphur is consistent with that taken for all other costs incurred in the sulphur handling facility (except the loading costs which are assigned to specific products). The allocated portion of the royalty payment to liquid sulphur, according to Husky, represents the portion of the royalty associated with the liquid production processes, while the portion charged to the formed sulphur is associated with the formed production process.

Department's Position: Because we have determined that all of Husky's royalty expense for this facility should be assigned to formed sulphur (see Comment 5), the question of double-allocation is moot.

Comment 7

Petitioners assert that Husky failed to include in COM the cost of transferring liquid sulphur to one plant. Petitioners argue that under the Department's sulphur cost methodology, the cost of transferring liquid sulphur is a common cost, and as such must be included in the COMs of both formed and liquid sulphur. Furthermore, petitioners claim that, despite Husky's statements to the contrary, sulphur trucked from certain facilities to another facility could not have all been formed.

Husky states that it would be economically impractical, and ''completely illogical,'' for Husky to incur additional expense to transfer liquid sulphur from one facility to another to sell the sulphur as liquid or to pour it to block. Husky stated for the record that it transferred liquid sulphur to one plant only to form that sulphur. Husky claims that petitioners' supposition that Husky would not know if a portion of the truck volume was poured to block because Husky noted that forming *costs* cannot be tracked by source begs the question of whether Husky actually incurred the transportation expense for liquid production. Husky concludes that the allocation of transfer costs to liquid sulphur is nonsensical given the fact that the transfer price is greater than the cost of producing the liquid, and that the volume of sulphur affected is so small that the importance of the subject has been overstated by petitioners.

Department's Position: We disagree with petitioners' characterization of the Department's policy with regard to treatment of the cost of transferring liquid sulphur. Specifically, petitioners appear to have concluded from two separate statements from different prior reviews that the Department necessarily views the cost of transferring liquid sulphur during manufacturing as a cost of producing liquid sulphur, regardless of whether that liquid sulphur is all formed during a particular review period. First, petitioners state that the Department specifically determined in the 1991–92 review that costs incurred in ''transferring of the product'' are sulphur production costs. *See Memorandum from Joseph A. Spetrini to Susan G. Esserman, Regarding Team Recommendation Related to the Cost Accounting Treatment of Elemental Sulphur from Canada in the 1991–92 Administrative Review*, page 6 (public version) (June 29, 1995). Second, they note that the Department wrote in the 1993/94 review that Husky ''should have included the liquid sulphur costs at certain plants * * *. in the calculation of its weighted-average COM for liquid sulphur, and deducted the forming costs from the total reported sulphur costs to determine the liquid sulphur costs at those plants.'' *See Memorandum from Holly A. Kuga to Joseph A. Spetrini in the 1993/94 Administrative Review*, page 4 (public version) (June 4, 1996). Finally, petitioners seem to suggest that Husky itself has treated the cost of transferring liquid sulphur at certain plants as common costs, notwithstanding the fact that all liquid sulphur transferred within these plants was either formed or poured to block during the POR. *See* Petitioners' Case Brief, page 14 (footnote 41).

With regard to petitioners' citation to the 1991/92 review period, we note that the Department was discussing costs incurred in the sulphur handling facility, such as the costs of prilling, slating, remelting, loading, etc., in addition to the costs of transferring the product. The Department considers the cost of prilling to be associated with formed sulphur, and not a common cost of sulphur production. Thus, one cannot reasonably assume that the Department recommended in that review that liquid transferral of the product must necessarily be a common cost. Given that transferral of liquid sulphur is not necessarily a cost of producing liquid sulphur, petitioners' cite to the 1993/94 memorandum concerning the inclusion of liquid sulphur costs in Husky's weighted-average COM for liquid sulphur does not support its point on this issue.

Lastly, we note that there is no indication from the record that all liquid sulphur transferred between certain other plants, which was either formed

or poured to block during the POR, was formed for offshore sales. Therefore, petitioners' reference to Husky's treatment of transferral costs for these plants is inapposite. Most importantly, Husky has stated for the record that during the POR, all sulphur transferred from the plant in question was formed for offshore sales. *See* Supplemental Cost Questionnaire Response at page 5 (public version) (September 4, 1996). Contrary to petitioners' allegation, this statement does not necessarily contradict Husky's August 2, 1996 response, in which Husky stated that a portion of sulphur from a certain other facility is poured to block or formed for offshore sale at this plant. Specifically, this earlier response may be interpreted as a general description of the disposition of transferred sulphur, and not necessarily as a description pertaining only to the POR. In contrast, the September 4 submission clearly indicated that the applicable time period was the POR.

In this case, because Husky has certified that all liquid sulphur transferred from the facility in question to another facility is formed for offshore sale, the cost associated with that transfer are associated with formed sulphur, not liquid sulphur, much as prilling is considered a cost of formed sulphur. Because all of the sulphur in question was sold offshore, this information is not pertinent to our margin analysis, since we are comparing U.S. sales of liquid sulphur to home market sales of liquid sulphur.

Comment 8

Petitioners claim that the Department should include an allocated portion of plant-wide general facilities expenses at one plant in the calculation of COP/CV. Petitioners assert that Husky did not identify plant-wide general facilities costs at the plant or state whether a portion of these expenses was allocated to sulphur handling, despite the explicit request of the Department. Thus, petitioners argue that the Department should either require Husky to answer the questions originally posed in a supplemental cost questionnaire, or the Department should resort to adverse facts available to calculate these costs.

Husky responds that the Department has determined in every review since Husky was named as a respondent that the gas plant general facilities expenses in a particular lease unit at the plant in question are not related in any way to sulphur production. Husky also states that the Department determined, based on a verification in an earlier review, that the only general facilities costs allocable to sulphur at this plant are contained in the sulphur handling functional unit.

Department's Position: In response to the Department's question requiring Husky to identify all plant-wide expenses incurred relating to the operation of the entire plant in question, Husky stated that its general facilities functional units were distinct, for the gas plant and for the sulphur handling facility, with ''no overlap of costs.'' *See* Supplemental Cost Questionnaire Response at page 11 (public version) (September 4, 1996). This corresponds to Husky's description of the cost accumulation system in place which the Department verified in the 1991/92 segment of this proceeding. *See Memorandum to the File: Elemental Sulphur from Canada: Final Results of Antidumping Administrative Review (March 4, 1996),* at page 2 (March 29, 1996), in which the Department noted that ''at verification, we reviewed evidence demonstrating that {a certain lease} related solely to natural gas production while {a certain other lease} related solely to sulphur production.'' There is no indication that the cost accounting system has changed for this plant since that review (while Husky notes that there have been leases added since then, such a change cannot reasonably be described as the type of change in the accounting system referred to on page D–9 of the Department's original questionnaire in this review). Thus, we find that Husky adequately responded to the Department's inquiry regarding the identification of all plant-wide general expenses relating to the operation of the entire plant. Furthermore, given the structure of cost accounting at this plant, Husky was not compelled to identify lease 630 (another general facilities lease) in response to any of the Department's questions: that lease did not apply to sulphur production in any way.

Comment 9

Petitioners contend that the Department should obtain information necessary to account for the depreciation incurred for sulphur belonging to another company at one plant. Petitioners claim that Husky has added the sulphur production volume of this company for the purpose of calculating the per-unit depreciation expense at this plant, but has not accounted for the other company's depreciation associated with the additional volume. Furthermore, petitioners note that Husky has not ''even'' asserted that it incurs all of the depreciation for the other company's production volume, and that in this review, unlike the 1991/92 proceeding, petitioners specifically asked the Department prior to the preliminary results to investigate whether the other company incurred any depreciation for its volume.

Husky notes that, in the 1991/92 review, the Department verified and accepted Husky's allocation of the depreciation expense incurred at this plant over the total production of Husky and the other company. Husky insists that it has followed the same allocation methodology, and the agreement between the two companies has not changed.

Department's Position: In the final results of the 1991/92 review, we stated that ''* * * it is appropriate to include a certain company's sulphur production quantity in the calculation of per-unit depreciation expense. Therefore, we have accounted for all quantities processed at the facility, regardless of whether the product was owned by Husky, in establishing the per-unit depreciation costs.'' *See 1991/92 Final Results* at page 8246. The record is clear that the allocation methodology followed by Husky in this review is the same as in the 1991/92 segment of this proceeding. Further, the record shows that the agreement between Husky and the other company has not changed. Moreover, the Department verified Husky's allocation of the depreciation expense in the 1991–92 review. The lack of a verification of Husky in the current segment of the proceeding is not sufficient reason for the Department to revisit an allocation methodology which the Department has previously determined to be appropriate, especially where the record indicates that there have been no changes to the applicable agreement between Husky and the other company.

Petitioners' statement that Husky has not ''even'' asserted that it incurs all of the depreciation incurred for the other company's production volume is misleading, as the Department never required Husky to state what proportion of depreciation it incurs for the other company's production volume. Petitioners also comment that it requested, prior to the preliminary results of this review, that the Department ask Husky whether the other company incurred depreciation for its volume. However, there is no indication on the record of the 1991/92 review that the Department based its decision to include the other company's sulphur production quantity in the calculation of per-unit depreciation expense, without adjusting for some depreciation incurred by the other company, on the fact that petitioners

had failed to ask for such information prior to the preliminary results. In fact, the timing of petitioners' comments regarding depreciation for this plant was not at issue in the 1991/92 review.

Finally, we agree with petitioners that it would be distortive to include the other company's volume in the calculation of the per-unit costs unless all of the depreciation incurred in connection with the other company's volume was incurred by Husky. By the same token, it would also be distortive to exclude the other company's production volume when Husky incurs all of the depreciation. Based upon the fact that Husky followed the same allocation methodology from the previous review, which was specifically verified, and based on the fact that there have been no changes to the agreement between Husky and the other company, we are satisfied that Husky has properly allocated depreciation for this plant in the current review.

Comment 10

Petitioners allege that Husky underreported depreciation for sulphur handling assets at one facility. Petitioners maintain that under generally accepted cost accounting principles, depreciation of fixed assets is based on acquisition cost, not book value (as Husky has done). Petitioners claim that the Department cannot base depreciation on book value rather than acquisition cost when Husky failed to explain and support its use of book value as required by the Department. To do so, petitioners argue, would allow Husky to arbitrarily choose any depreciation method that results in the least amount of depreciation for the subject merchandise.

Petitioners also note that Husky reported no depreciation for the original assets of this facility that Husky acquired. However, petitioners maintain that Husky could not have fully depreciated these original assets by 1993 because it stated that it has not recorded depreciation for this facility in any year. Petitioners also claim that record evidence indicates that the original assets cannot be fully depreciated based on petitioners' understanding of the original purchase date of these assets and the useful life used by Husky for depreciation purposes. Furthermore, petitioners claim that it has been the Department's practice (and is supported by the Statement of Administrative Action) to include depreciation of assets used to produce the subject merchandise in the COP/CV even where the respondent did not record depreciation for those assets in the normal course of business during their useful lives.

Petitioners state that, due to the alleged deficiencies in Husky's reported depreciation at one facility, the Department should obtain the information necessary to calculate depreciation of the original assets of this facility based on acquisition cost. If the Department does not obtain this information, petitioners state that it should rely on adverse facts available to determine the depreciation for the sulphur handling assets at this facility.

Husky argues that the only asset value associated with this facility was related to upgrading the forming assets. Additionally, Husky claims that the asset summary for this facility, which is on the record of this review, disproves petitioners' claim that Husky could not have fully depreciated the assets by 1993. Finally, Husky argues that it is not Departmental policy to impute an additional depreciation expense when a respondent has fully depreciated relevant assets. On the contrary, according to Husky, the Department's statutory mandate is to calculate actual costs of production.

Department's Position: We agree with respondents. Petitioners have asserted that contrary to Husky's claim, the assets at this plant could not have been fully depreciated by 1993. Petitioners have based this claim on an inference they have made with regard to the circumstances surrounding Husky's obligation to purchase liquid sulphur output from a certain gas plant at this facility. However, we note that there is no indication from the record that this obligation coincided with Husky's acquisition of the facility itself. Furthermore, the record information regarding Husky's recorded depreciation supports Husky's claim that these assets were fully depreciated by 1993. *See* Exhibit 42 of Husky's December 6, 1996 submission. Therefore, petitioners' argument that this asset could not be fully depreciated by 1993 is unpersuasive.

With regard to the basis of depreciating those assets related to upgrading the forming assets, we note that Husky has calculated depreciation based on actual asset values, which tie to Husky's audited financial statements. *See* Exhibit 42 of the December 6, 1996 response. In fact, there is no indication that these values, as appearing on the fixed asset summaries for 1993, 1994, and 1995, represent anything other than the actual costs to Husky for the additions.

For the above reasons, we do not agree with petitioners regarding the need to obtain any further information regarding depreciation at this facility, nor do we believe that Husky's reporting methodology warrants the application of facts available to determine the depreciation for the sulphur handling assets at this facility.

Comment 11

Petitioners contend that Husky failed to follow the Department's method for calculating plant-specific COMs and then weight-averaging those COMs. The method employed by Husky, petitioners assert, improperly shifts costs to the volume of sulphur poured to block, thereby excluding those costs from the COP/CV of sulphur. Additionally, petitioners maintain that Husky has improperly shifted block storage costs (which are to be treated as a common cost of producing liquid and formed sulphur, according to petitioners' interpretation of the Department's methodology) to block sulphur, and that by doing so, it has excluded those block storage costs from the COP/CV of sulphur.

Husky contends that petitioners' claim that Husky did not allocate any costs to block sulphur is ''patently incorrect.'' At one plant, Husky claims that it allocated the costs of the block unit over the block unit throughput, then allocated the costs of sulphur handling over sulphur handling throughput, to determine the cost for the block sulphur product, the liquid sulphur input, and formed sulphur. To weight-average all these facilities, Husky maintains that it included the volume of the block sulphur and the volume of the liquid sulphur input as liquid production.

Husky argues that petitioners would have the Department exclude the block production from the allocation of sulphur handling and block costs, but then include the block volume in weight-averaging these plant costs with the costs of the other facilities to derive the reported, single weighted-average cost. Husky asserts that sulphur cannot be production for one purpose but not for another.

As for the other facilities, Husky claims that its calculations are somewhat different by necessity. For example, at one facility, the block costs are not separately broken down, preventing Husky from allocating block over block volume alone. At another facility, the block costs were allegedly ''so low'' that Husky chose not to calculate a separate block product cost. Husky suggests that had it calculated a separate block cost, the final per unit block cost would have been the same.

Department's Position: In the 1992/93 and 1993/94 final results of reviews

notice, the Department determined that, ''consistent with the Department's decision in the 1991/92 review * * * block costs are appropriate to include as part of the cost of producing sulphur.'' We also stated that ''because sulphur poured to block must be remelted and then processed through either liquid or forming facilities before it can be sold, block sulphur is not considered finished production.'' Furthermore, based on this determination, we concluded that it would be improper to allocate any sulphur costs to sulphur poured to block. *See* Comments 5 and 6 of *1992/93 and 1993/94 Final Results.* Thus, for this review, we have recalculated Husky's COM for liquid sulphur to include block storage costs, but to exclude block volume. *See Memorandum to the File: Analysis Memorandum for Husky Oil, Ltd. for the Final Results of the Antidumping Administrative Review of Elemental Sulphur from Canada (1994/95)* page 4 and Attachment 2 (May 7, 1997).

Comment 12

Petitioners note that Husky failed to include in COP/CV the cost of sulphur royalties paid to private parties.

Husky acknowledges that it excluded the freehold royalty expense from its cost calculation. Husky claims, however, that the per ton cost is so insignificant that no adjustment to the reported cost for liquid sulphur is necessary.

Department's Position: We agree with petitioners that Husky failed to include in COP/CV the cost of sulphur royalties paid to private parties. Section 776(a)(1) of the Act stipulates that if the ''necessary information is not available on the record * * * the administering authority and the Commission shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.'' Absent any record information on the method in which sulphur royalties are paid to private parties, we have assumed as facts available that sulphur royalties paid to private parties are a cost common to the production of liquid and formed sulphur, and have allocated these costs based on the facility's direct cost units. *See Memorandum to the File: Analysis Memorandum for Husky Oil, Ltd. for the Final Results of the Antidumping Administrative Review of Elemental Sulphur from Canada (1994/95),* page 4 and attachment 4 (May 7, 1997).

Comment 13

Petitioners claim that the Department should include at least a portion of sulphur recovery costs in its calculation of the COM and CV of Husky's sulphur. The Department should do so, according to petitioners, for several reasons.

First, petitioners state that the statute at 19 U.S.C. section 1677b(e)(1)(A) requires that the cost of ''fabrication or other processing of any kind'' be included in CV. Second, petitioners maintain that generally accepted cost accounting principles require all post-split-off costs to be included in the cost of producing by-products. Third, petitioners argue that the Department's practice in cases in which by-products are the subject merchandise requires that all after-separation costs be included in CV. Fourth, citing *Silicon Metal from Argentina,* petitioners contend that the Department's practice in cases in which by-products are not the subject merchandise requires that all after-separation costs be assigned to the by-product. Fifth, petitioners point to the Department's cost initiation memoranda in the 1992/93 and 1993/94 reviews, noting that they included the cost of the ''sulphur plant'' (sulphur recovery unit) and ''plant supporting facilities'' (sulphur handling) in its calculation of the cost of producing sulphur. Sixth, petitioners argue that record evidence shows that the sales value of sulphur and natural gas on a per metric ton basis were roughly equivalent from the mid-1980s through the early 1990s. Finally, petitioners argue that record evidence shows that sulphur revenues were, and continue to be, important considerations in decisions to develop and operate major sour gas facilities.

Department's Position: We disagree with petitioners. Consistent with our established practice for this product, we have determined that costs incurred subsequent to the sulphur recovery unit are appropriately allocated to sulphur production. With regard to the reasons put forward by petitioners to reconsider its methodology in calculating costs for sulphur, we note that the first three of these bases for consideration of the appropriate sulphur cost methodology were raised and addressed in the 1991/92 administrative review of this case. *See* Comments 2 and 3 of the *1991/92 Final Results* notice at 8240–44. The Department's position on these points remains the same. Therefore, we will restrict comment to the latter four points.

Petitioners have cited *Silicon Metal from Argentina,* a case in which the by-product is not the subject merchandise, as a case in which the Department required that all after-separation costs be assigned to the by-product. In fact, in *Silicon Metal from Argentina,* the Department stated that its practice is to credit the cost of production of the primary product for revenues received as a result of the sale of any by-product. *See Silicon Metal from Argentina; Final Results of Antidumping Duty Administrative Review,* 58 FR 65336, 65340 (December 14, 1993). There is no discussion of the appropriate stage in the production process at which to divide costs between the primary product and the by-product. In any event, the Department made clear its position in the 1991/92 review that the case of elemental sulphur is unique, ''in that even though the physical split-off point is prior to the sulphur recovery unit, Husky does not have the option of disposing of all H2S. * * * {i}n order to refine natural gas, Husky must incur costs in the sulphur recovery unit.'' *See 1991/92 Final Results* at 8244. In contrast, there is no indication of any legal requirement that either charcoal or quartz fines (by-products in the production of silicon metal) be further processed in order to produce and market silicon metal.

With regard to the Department's cost initiation memoranda in the 1992/93 and 1993/94 reviews, these were issued prior to the final results notice in the 1991/92 review, which determined the appropriate cost methodology for the sulphur under review. In addition, the Department's policy with regard to the criteria needed to initiate a cost investigation states only that ''a reasonable methodology'' be employed. In light of the fact that the appropriate cost methodology was not finalized until the publication of the 1991/92 final results of review, the Department's decision to act upon a cost allegation that included sulphur plant costs (which did not explicitly reference sulphur recovery unit costs) is in no way determinative of the appropriate cost methodology. Indeed, in their cost allegation for this review, petitioners apparently recognize that the cost methodology used to meet the Department's cost initiation standard does not determine the final cost treatment for a review. Specifically, petitioners stated their belief that the costs it calculated for Husky were understated in several respects. *See Allegations of Sales-Below-Cost by Husky and Mobil,* pp. 3–5 (May 31, 1996).

While petitioners have also cited ''record evidence that the sales value of sulphur and natural gas on a per-MT basis were roughly equivalent from the mid-1980s through the early 1990s,'' there is no discussion in petitioners' case brief as to why this is relevant to the Department's determination that only post-sulphur-recovery costs be

included in sulphur's COM. Petitioners provide no justification for comparing sales values of sulphur and natural gas on a per metric ton basis. Furthermore, the time period referenced ostensibly does not relate to the period of review.

With regard to petitioners' assertion that ''record evidence indicates that sulphur revenues were, and continue to be, important considerations in the decision to develop and operate major sour gas facilities,'' we do not agree with petitioners that the evidence cited by them supports the inclusion of sulphur recovery costs in the COM of sulphur. First, in the 1991/92 review, the Department recognized that Husky's exploration ceased when it was found that the gas stream's H2S concentration was too high, making commercial development of the field impractical. This was stated by the Department in support of Husky's claim that it does not seek out sour gas for sulphur production opportunities. *See Memorandum to Susan G. Esserman: Team Recommendation Related to the Cost Accounting Treatment of Elemental Sulphur from Canada,* pp. 1–2 (June 29, 1995).

Second, the information put on the record of this review by petitioners is unpersuasive for several reasons. First, petitioners have referred to Husky's financial statements and brochures as indications that its plants were not only built for the purpose of processing natural gas. In fact, the statements to which petitioners have referred are also consistent with those made by a company desiring to offset its gas production costs by maximizing its sales of produced sulphur. The desire of a company to maximize overall profits by selling as much of its by-product as possible does not, however, change the fact that the by-product is not a primary goal of production. Second, petitioners' reference to Shell Oil Canada's document discussing a sour gas project at Caroline is indicative only of Shell Oil Canada's considerations, in 1988, for development at Caroline. Shell Oil Canada's motives, however, are irrelevant to the review of Husky.

Third, petitioners' assertion regarding Husky's motivations for investing remains speculative, as the Department also found in the 1991/92 review. *See 1991/92 Final Results* at 8242.

Therefore, given the low percentage for which sulphur revenues account on a corporate-wide basis for this review, as compared to Husky's oil and gas revenues (*see Husky's November 13, 1996 letter to the Department,* page 2) and the lack of record evidence that Husky has built its plants for purposes beyond that of processing natural gas, we do not find that the evidence supports petitioners' assertion that the Department should include the costs of sulphur recovery in calculating COM.

Comment 14

Petitioners assert that the Department must include profit in CV based on the profit realized on sales made in the ordinary course of trade.

Husky asserts that petitioners' discussion of profit is irrelevant, given that the preliminary results were calculated by comparing weighted-average home market prices with U.S. prices.

Department's Position: We agree with respondent. Petitioners' assertion is moot, given that we have performed the margin calculation based solely on price-to-price comparisons.

Mobil

Comment 15

Petitioners support the Department's assignation of a margin to Mobil based on total adverse facts available, as Mobil's responses are, according to petitioners, so deficient that the Department lacks the basic cost data necessary to calculate the COP and CV of Mobil's sulphur.

First, petitioners assert that Mobil improperly based its initially-reported COM on data for only one self-selected facility which accounted for approximately 5% of Mobil's sulphur production during the POR, and were only estimates which were not proven to bear any relation to Mobil's actual costs as recorded in Mobil's cost accounting system.

Second, petitioners claim that Mobil's supplemental questionnaire response failed to follow the Department's methodology to calculate COP and CV for sulphur, used an improper allocation basis in using the barrel of oil equivalent (BOE), failed to separately identify sulphur costs in the reported figures, and made significant improper offsets to the costs.

Finally, petitioners claim that Mobil substantially revised its reported costs at verification. In and of itself, petitioners maintain, this warrants the application of total facts available to establish Mobil's margin.

Mobil contends that Mobil's supplemental cost submission addressed the Department's concerns regarding its reporting methodology in its first cost submission. Furthermore, Mobil claims that its first cost reporting methodology indeed bears a relation to the company's actual, recorded costs. Mobil also claims that it did not fail to report major costs that are sulphur production costs, and indeed, under the BOE methodology, all costs subsequent to the sulphur split-off point have been reported.

Mobil claims that the use of the BOE as the basis of its cost allocation does not justify adverse facts available treatment. Mobil claims that: it did not conceal its use of one BOE figure for internal purposes while the Government of Alberta used a higher figure; it never claimed that sulphur was used for heating purposes; and it did not receive explicit instructions from the Department not to use the BOE methodology. Mobil also notes that petitioners have argued against the BOE methodology without proposing an alternative.

Finally, Mobil explains that its cost revisions at the outset of verification pertain to a change in accounting systems during the POR. Mobil asserts that the Department did not object to this change in its preliminary results.

Department's Position: Mobil takes issue with the Department's statement in the preliminary results notice with regard to Mobil's first cost submission. Specifically, the Department stated that Mobil ''could not prove that this estimate bore any relation to Mobil's actual costs as recorded in Mobil's cost accounting system.'' *See Preliminary Results* at 969. In the notice, this statement is included as partial explanation for Mobil's utilization of an entirely different methodology in its cost response to the Department's September 3, 1996 supplemental questionnaire. Mobil did not take issue with the Department's characterization of its initial cost response at that time. In its supplemental questionnaire, the Department asked Mobil to ''provide a detailed, clear explanation as to why you have reported estimated costs {accounting for only 5% of production}, rather than basing your reported costs on actual costs incurred for all of your facilities.'' *See* Supplemental Cost Questionnaire at page 2 (September 3, 1996). In response, Mobil stated that it does not maintain cost accounting records at a level of detail that allows identification of the cost of handling sulphur, and thus it had instead provided a ''reasonable estimate of this cost, based on the number of employees required, the time required, and the hourly labor cost, together with the cost of steam generation, power, and administrative expenses.'' *See* Supplemental Cost Response at page 2. Therefore, while it is true that certain individual elements of Mobil's first estimate of costs were traceable to accounting records, the sulphur cost estimate obviously could not have borne

any relation to Mobil's actual sulphur costs as recorded in Mobil's cost accounting system, based on Mobil's own description of an accounting system which purportedly did not allow identification of the costs of handling sulphur.

Mobil's claim that it did not fail to report major costs that are sulphur production costs under the BOE methodology is irrelevant. Of course, when a company provides total plant costs, then by definition all costs (including, in this case, sulphur costs) would be included. This is not the issue. As we noted in the December 13, 1996 decision memorandum, Mobil did not provide information in the form and manner requested by the Department. *See* Decision Memorandum, page 4. The Department discovered at verification that sulphur cost centers existed during the period of review for five plants, directly contradicting Mobil's repeated assertions that it did not keep costs in sulphur-specific cost centers. *See, e.g.*, August 5, 1996 cost response at pages 3–4 (''because it does not break out sulphur costs in its accounting system, Mobil does not have available in its normal accounting system separate information for sulphur handling costs''), page 20 (''Consequently, no effort is made to create any costing mechanism for this material''), page 25 (''As such, Mobil assigns no costs to sulphur in its ordinary books and records''); September 25, 1996 supplemental cost response at page 9 (''As explained above, Mobil does not break out the costs associated with sulphur production and therefore cannot report the actual cost of each step of the sulphur production process'').

With regard to Mobil's use of the BOE methodology, the Department's December 13, 1996 decision memorandum makes it clear that the Department applied facts available with adverse inference for three reasons: (1) Mobil withheld information requested by the Department, (2) Mobil did not provide information in the form and manner requested by the Department, and (3) Mobil's September 25, 1996 allocation methodology did not verify. *See* Decision Memorandum at page 4. Clearly, there is no indication from this statement that the inability of Mobil to support its use of the BOE methodology, by itself, caused the Department to apply adverse facts available. Nevertheless, the deficiencies surrounding the use of the BOE methodology are significant, both with regard to Mobil's statements regarding its internal use of the BOE figure as well as with the overall appropriateness of basing an allocation on the BOE.

First, Mobil stated in its supplemental cost response that it ''generally uses a certain BOE per metric ton value * * * for sulphur in its internal reports.'' *See* supplemental cost response at page 6 (September 25, 1996). At verification, however, Mobil was unable to provide any documentation showing that Mobil used the figure during the POR, or that it generally ''uses'' this figure. In fact, Mobil stated at verification that this figure had ''probably'' not been used since the 1980s, when the company included sulphur reserves in its reserve surveys. *See Cost Verification Report* at page 9 (November 18, 1996). Thus, Mobil could not prove at verification that it had accurately represented its internal use of the BOE value.

Second, Mobil has argued that the Department ''had not expressed dissatisfaction with this methodology in any of the previous reviews'' (*see* Case Brief at page 30), and that it had received ''no indication from the Department (in either this review or the previous three reviews) that it disagreed with that methodology.'' *See* Hearing Transcript, page 97 (March 6, 1997). However, the cost verification report for the 1991/92 review clearly states in its report summary that ''this {BOE} methodology might not be an appropriate basis for the allocation of joint costs'' (page 2), and also specifically states that: ''it was noted by company officials that sulphur is not used as a heat source,'' (page 5); Mobil ''was unable during verification to show how the company settled on {the specific BOE} value'' (page 5); and ''company officials reported that over the years a number of factors have been used in various management reports to value sulphur, and these values appear to be arbitrarily assigned'' (page 6). *See Verification of Cost of Production and Constructed Value: Mobil Oil Canada, Ltd.* (September 26, 1994). While the Department did not discuss the BOE methodology due to overriding problems with Mobil's response in the 1991/92 review, this does not effectively remove the cost verification report from the record, as Mobil seems to imply.

Third, Mobil stated at the hearing (*see* Hearing Transcript at page 109) that the Department did not send out a second cost supplemental questionnaire addressing Mobil's use of the BOE. We note that section 782(d) of the Act stipulates that the Department is obligated to ''promptly inform the person submitting the response of the nature of the deficiency'' in the event that a response to the initial request for information does not comply with the request. Additionally, the Department ''shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of investigations or reviews under this title.'' However, section 782(d) also stipulates that if a respondent submits further information in response to the deficiency and the Department finds that this further response is not satisfactory, then the Department may disregard all or part of the original and subsequent responses.

In this review, as the Department noted in the preliminary results notice, in response to the Department's September 3, 1996 request for supplemental information, Mobil submitted a response on September 25, 1996 based on an entirely different methodology, in which total plant costs (including production of gas, oil, and sulphur) were reported and then allocated to the production of subject merchandise. *See Preliminary Results* at 980 (emphasis added). This new methodology was necessary due to the fact that, in its initial cost response, Mobil used an estimated cost of manufacture (''COM'') based on an engineering estimate of sulphur loading costs at one plant, representing 5% of Mobil's sulphur production. However, Mobil could not prove that this estimate bore any relation to Mobil's actual costs as recorded in Mobil's cost accounting system. Moreover, the estimate only applied to 5% of Mobil's production of subject merchandise. *See Preliminary Results* at 980.

Nevertheless, the Department determined that Mobil's revised methodology, as presented in the September 25, 1996 response, was also deficient. Specifically, we noted in our Decision Memorandum of December 13, 1996 (at page 2) that the ''allocation methodology * * * did not verify, because the production unit conversion factor applied by Mobil in its response: (1) Does not appear to be a factor consistently applied by Mobil for internal purposes; (2) is not the same value as the factor used by an outside unit (such as the Alberta Government), and (3) converts sulphur production on the basis of its heat content, even though sulphur has no heating value.''

Therefore, Mobil's suggestion that the Department is obligated to send out further supplemental questionnaires when respondents have submitted unuseable and inadequate information in their initial and supplemental cost responses is contrary to section 782(d) of the statute.

This review operates, as do all others under the governing statute, under strict time limits. Given the Department's record statements about the BOE and the Department's specific pre-verification directions to Mobil to be prepared to ''discuss and support the conversion factor(s) used for BOE (barrel of oil equivalent) in your allocation of costs to sulphur'' (*see Cost Verification Outline,* page 5 (October 11, 1996), Mobil had ample notice that the Department would require Mobil to support the use of BOE in its allocation of costs.

Finally, the discovery of unreported sulphur cost centers alone renders Mobil's cost response unreliable, as does the above-mentioned problems with the BOE methodology. Therefore, the issue of the significance of the changes presented at the outset of verification is moot.

Comment 16

Mobil argues that its failure to disclose, prior to verification, that its accounting records contained limited information on sulphur costs does not justify application of adverse facts available. Mobil claims that its statement regarding the ability to track sulphur costs in its cost accounting system had been repeated from an earlier review (the 1991/92 review), while the individual preparing the response for this review was unaware that Mobil's cost accounting records had changed. Mobil believes this carelessness does not justify the treatment it received in the preliminary results for several reasons.

First, Mobil claims that it voluntarily disclosed the ''omission'' to the Department during the verification, demonstrating its cooperation, and that it is unlikely that the verification team would have discovered, on its own, the existence of these cost centers. Mobil cites, inter alia, *Stainless Steel Wire Rods from Brazil,* in which the Department applied ''second-tier'' best information available (BIA), after terminating a verification due to the revelation at the outset of verification that a significant portion of home market sales had been omitted. *See Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rods from Brazil,* 58 FR 68862, 68863 (December 29, 1993). Mobil asserts that the Department applied a cooperative BIA rate in that case because the respondent had volunteered the missing information. Thus, Mobil believes that the application of adverse facts available in this case conflicts with the Department's own determination that the voluntary nature of a disclosure demonstrates that a respondent is cooperative. Mobil also distinguishes this case from *Certain Cut-to-Length Carbon Steel Plate from Sweden,* in which Mobil claims that respondents in that case, unlike this one, made no effort to provide the Department with notice that it would be unable to perform a cost reconciliation. *See Preliminary Results of Antidumping Duty Administrative Review*; *Certain Cut-to-Length Carbon Steel Plate from Sweden,* 61 FR 51898 (October 4, 1996). Mobil also believes that the facts in this case are different from all other cases since 1995 in which the Department has applied total adverse facts available. Specifically, Mobil claims that it ''passed'' verification, since a number of cost items were ''successfully'' verified.

Second, Mobil claims that it was not to its advantage to hide the sulphur costs, since the average costs for the plants with sulphur-specific costs is allegedly lower than the average cost calculated using the BOE methodology. Mobil also maintains that it harmed itself by its ''omission'' and therefore cannot properly be considered uncooperative. Specifically, Mobil asserts that the data from the sulphur cost centers results in a lower average cost for the five plants in question than the average reported under the BOE methodology.

According to Mobil, the data for the plants with sulphur-specific costs contains sulphur production costs as well as handling costs, and therefore do not provide the information requested by the Department. Mobil claims that, for four of the five plants with sulphur cost centers, the data are not responsive to the Department's inquiry. Mobil claims that the titles of these cost centers make it clear that the information in the cost centers includes more than just sulphur handling costs, and that an examination of the individual accounts shows that they cannot be broken out between handling and processing.

Petitioners support the Department's application of adverse facts available, stating that the evidence shows that Mobil did not cooperate with the Department to the best of its ability.

Petitioners argue that Mobil's claim regarding the relative sulphur cost based on the data from the sulphur cost centers is without merit, as the information was not even verified by the Department.

Petitioners also argue that it cannot be readily discerned from the titles of the cost centers that they include more than sulphur handling costs.

Department's Position: Mobil has characterized its failure to disclose the fact that it kept records at five plants during the POR which included sulphur cost centers as an omission. We note, however, that the issue in *Stainless Steel Wire Rods from Brazil* was the exclusion of a portion of home market sales. The omission of a portion of information is qualitatively different than the representation of the non-existence of that type of information. For example, had Mobil provided sulphur cost center information for three of the five plants which kept sulphur-specific cost centers, the reference to *Stainless Steel Wire Rods from Brazil* might be more relevant. However, the repeated assertions that no such centers were kept, in light of the discovery at verification, go beyond what we believe can be considered an omission, and clearly demonstrate that Mobil did not cooperate to the best of its ability in this review.

Mobil has emphasized its ''voluntary'' revelation regarding the sulphur cost centers in arguing that the Department should not apply total adverse facts available. Mobil also argues that the Department would have been unlikely to discover the ''omission'' on its own. With regard to Mobil's ''voluntary'' disclosure, we note that Mobil in fact revealed that one facility kept sulphur cost centers during the POR. The other four were identified only upon further questioning from the Department. In fact, concerning the facility first identified by Mobil, Mobil stated that such a {sulphur cost} breakout was not available for its other facilities for the POR. *See* Cost Verification Report, pp. 7–8.

Furthermore, Mobil's assumption that the Department would have been unlikely to discover the omission on its own is unfounded. In the cost verification outline (at page 1), the Department specifically stated the following: ''We wish to draw your attention to the fact that, as your company has maintained that its cost accounting records, as kept in the ordinary course of business, do not provide for the submission of sulphur cost data in the form which the Department has requested, we will examine those documents which your company in fact keeps in the ordinary course of business to corroborate your claim.'' *See Letter to Mobil Oil Canada: Sales and Cost Verification,* October 11, 1996.

Mobil argues that it would have been in its interest to utilize the costs in the sulphur cost centers because they would have yielded a lower average cost. Such a claim is without merit, however, for several reasons. First, this assertion is based on unverified data not seen by the

Department until verification. The Department did not verify this data at verification because, as we noted in the preliminary results, it is a ''central tenet of Departmental practice that verification is not intended to be an opportunity for submitting new factual information.'' *See Preliminary Results* at 969–70. Second, to accept the data would have deprived the Department of the opportunity to properly analyze the information and receive clarifying and supplemental information on such data, which could affect the per unit costs. Finally, even assuming Mobil's calculations (as presented in Appendix F of its Case Brief) are correct and are based on accurate and appropriate figures, the data for two of the five facilities indicate a much higher cost of manufacturing than that reported by Mobil.

Whether the data in these cost centers contain sulphur processing costs, or can be divided between processing and handling costs, likewise remains unverified. As petitioners have noted, the titles for these cost centers do not by themselves prove the existence of costs other than sulphur handling costs. Finally, even assuming, arguendo, that there may be sulphur processing costs included with the handling costs, this would still provide a more sulphur-specific cost pool from which to perform some type of allocation.

Comment 17

Mobil argues that it had a ''good-faith belief'' that its responses were fully responsive to the Department's questionnaires.

Petitioners respond that Mobil's assertion that it was cooperative reflects its claim that because sulphur is a waste product (a claim about which petitioners take issue), it cannot report sulphur costs in the form and manner required by the Department. According to petitioners, even more important is that the record shows that Mobil did not make an effort to obtain these data, even though Mobil has information available to it to comply with the Department's requests.

Department's Position: Whether or not Mobil had a ''good-faith belief'' that its responses were fully responsive to the Department's questionnaires, Mobil has characterized its error as ''careless,'' that it could have been ''more diligent,'' and that it was inattentive in preparing the response. Additionally, as we noted in the preliminary results, Mobil stated at verification that it had not sought to ascertain whether the producing plants maintained sulphur cost centers. *See Preliminary Results* at 970.

The Department has made no pronouncement regarding Mobil's intentions in this review. Indeed, our application of total adverse facts available in this case is not based in any manner on any belief in this company's intentions. As we stated in the preliminary results, we determined that, under section 776(a)(2)(A) of the Act, Mobil failed to provide the Department with the requested cost information, and that such failure constituted a withholding of information within the Act's meaning. We further determined, under section 782(e), that the submitted cost data was not useable. Finally, we determined, as provided by section 776(b), that an adverse inference was warranted because Mobil failed to cooperate by not acting to the best of its ability to comply with requests for information. *See Preliminary Results* at 970–71. We do not question Mobil's intentions in making any of the above determinations.

Comment 18

Petitioners contend that the Department should assign a higher margin to Mobil as required by the Department's established practice.

First, petitioners assert that the application of the 7.17% rate applied in the preliminary results would reward Mobil for its failure to cooperate with the Department. According to petitioners, the statute only requires the Department to corroborate secondary information to the extent practicable. Petitioners note that the SAA (at 870) states that the ''fact that corroboration may not be practicable in a given circumstance will not prevent the agencies from applying an adverse inference.''

Second, petitioners argue that the 28.9% rate considered in the preliminary results can be corroborated, since the petitioners believe that the record shows that this rate was calculated in the LTFV investigation.

Third, petitioners point to several other higher margins which petitioners maintain are calculated rates from the 1970s.

Finally, petitioners state that the Department should apply the higher of the final rates calculated for Husky in the 1992/93 and 1993/94 reviews if that rate exceeds the other rates identified by petitioners.

Mobil argues that the Department has not abused its discretion in its application of the 7.17% rate as total adverse facts available. First, Mobil contends that the use of any costs on the record would lead to, at the most, a *de minimis* margin. Also, the application of any margin above *de minimis* prevents a respondent from becoming eligible for revocation. Therefore, any margin is punitive.

Second, Mobil argues against the application of the 28.9% rate, maintaining that it is Departmental policy to choose as facts available a rate calculated by the Commerce Department, not the Treasury Department. Moreover, Mobil contends that the evidence put forward by petitioners does not even prove that this rate was calculated by the Treasury Department.

Third, petitioners' suggested use of several other rates calculated for review periods in the 1970s is unsound, according to Mobil, because the record provides no details as to how those rates were calculated.

Fourth, Mobil contends that the record shows it has cooperated with the Department, and thus should not receive a rate higher than 7.17%.

Finally, Mobil argues that, in considering a rate to apply for the final results, the Department may not properly apply a rate that is itself based on best information available.

Department's Position: As the Department noted in the preliminary results notice, we were unable to corroborate the rate of 28.9% based on the Department's official records of this proceeding. This rate was used as a ''first-tier'' best information available (BIA) rate in the 1991/92 review. While we agree with petitioners that record evidence suggests that this rate stems from the original investigation, it is also true, as Mobil has noted, that there is no definitive evidence that this rate was calculated, and this of course precludes the existence of evidence detailing how it was calculated. Likewise, the proposed rates of 87.65% and 84.56% stem from review periods in the 1970s and the record also lacks information regarding how these were calculated. As respondents have noted, the Department has limited itself in the selection of BIA rates from past reviews to reviews conducted by the Commerce Department, because the records pertaining to reviews conducted by the Treasury Department are less complete. *See, e.g., Roller Chain, Other Than Bicycle, From Japan*, 57 FR 3745 (January 31, 1992); *Pulton Chain Co.* v. *United States* 17 CIT 1136 (CIT 1993).

Petitioners' discussion of the 75.19% rate from the period 2/1/74 to 11/30/80, in addition to suffering from the same limitations as those discussed above, is a rate from a preliminary results notice, and therefore cannot be considered corroborated since it does not reflect the Department's final calculations for that review period.

We agree with Mobil that, to the extent that any margin above *de minimis* precludes that respondent from becoming eligible for revocation, it may be disadvantageous to that respondent. However, it does not follow that the application of any above-*de minimis* rate is punitive, as an above-*de minimis* margin may still be lower than the margin assigned to the company in a previous review period.

We have applied as total adverse facts available the highest calculated margin from a previous review. Because the final rate in the 1992/93 rate for Husky is 40.38%, we have chosen this rate as Mobil's rate for the POR. This rate meets the criteria for corroboration established under section 776(c). Specifically, as noted in the preliminary results notice, ''to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period.'' *See Preliminary Results*, page 971.

Comment 19

Mobil argues that, if the Department concludes that an adverse inference is warranted, it should limit this adverse inference to cost of production and not to Mobil's total response. Mobil states that there are several alternatives in assigning a cost to Mobil's liquid sulphur, including the use of Husky's costs. Mobil states that its inadvertent error did not prevent the Department from verifying the cost information. Thus, according to Mobil, the Department's statement that its policy of applying total adverse facts available under these circumstances is meant to prevent a respondent from manipulating margin calculations by permitting the Department to verify only that information which the respondent wishes to use in its margin calculations is not applicable.

Petitioners assert that it is Departmental practice to reject a respondent's submitted information *in toto* where a respondent fails to provide reliable cost data.

Department's Position: While Mobil states that its ''inadvertent error'' did not prevent the Department from verifying the cost information, we do not agree that we were in a position to verify the cost information uncovered at verification. As we stated in the preliminary results notice, the Department could not verify this information because it met none of the criteria set forth in the Department's verification outline regarding the submission of new information. *See Preliminary Results* at 970. As these criteria were presented to Mobil prior to verification, Mobil had reason to believe that the Department would not accept such information at verification. Therefore, we have no grounds to conclude that the Department's policy of applying total adverse facts available in order to prevent a respondent from manipulating margin calculations by permitting the Department to verify only that information which the respondent wishes to use in its margin calculations is inapplicable in this case.

Furthermore, we agree with petitioners that it is Departmental practice to reject a respondent's submitted information *in toto* where a respondent fails to provide reliable cost data. For a full explanation of this policy, please refer to the preliminary results notice. *See Preliminary Results* at 970–71.

Nevertheless, we note that none of the alternatives suggested by Mobil in this case would appropriately serve as adverse facts available because none of them is adverse. *See Final Results of Antidumping Duty Administrative Review: Certain Cut-To-Length Carbon Steel from Sweden*, 62 FR 18396, 18402 (April 15, 1997).

Final Results of Reviews

As a result of our review of the comments received, we have changed the results from those presented in preliminary results of review. Therefore, we determine that the following margins exist as a result of our review:

Manufacturer/exporter	Time period	Margin (percent)
Husky Oil Ltd.	12/1/94–11/30/95	[1] 0.33
Mobil Oil Canada, Ltd.	12/1/94–11/30/95	[2] 40.38

[1] This is a *de minimis* rate.
[2] As described above, this total facts available rate is Husky's rate from the 1992/93 review period.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and normal value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service. Furthermore, the following cash deposit requirements will be effective upon publication of these final results for all shipments of this merchandise, entered or withdrawn from warehouse for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be the rates for those firms as stated above (except that if the rate for a particular product is *de minimis i.e.*, less than 0.5 percent, a cash deposit rate of zero will be required for that company); (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers will be the ''all others'' rate made effective by the final results of the 1993/94 administrative review of these orders (*see 1992/93 and 1993/94 Final Results*). These deposit requirements shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties. This notice serves as a reminder to parties subject to administrative protective orders (APOs)

of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. This administrative review and notice are in accordance with section 751(a)(1) of the Act 19 U.S.C. 1675(a)(1)) and section 353.22 of the Department's regulations.

Dated: July 7, 1997.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–18446 Filed 7–14–97; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–047]

Elemental Sulphur From Canada; Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative reviews.

SUMMARY: On August 30, 1996, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the administrative reviews of the antidumping duty finding on elemental sulphur from Canada. The reviews cover the periods December 1, 1992 through November 30, 1993, and December 1, 1993 through November 30, 1994. We gave interested parties an opportunity to comment on our preliminary results. Based upon our analysis of the comments received we have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: July 15, 1997.

FOR FURTHER INFORMATION CONTACT: Donald Little or Maureen Flannery, Antidumping/Countervailing Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1973, the Department of the Treasury published in the **Federal Register** (38 FR 34655) the antidumping finding on elemental sulphur from Canada. On November 26, 1993 and December 6, 1994, the Department published in the **Federal Register** notices of opportunity to request an administrative review of this antidumping finding for the periods December 1, 1992 through November 30, 1993 (58 FR 62326), and December 1, 1993 through November 30, 1994 (59 FR 62710), respectively.

With respect to the 1992/1993 administrative review, on December 30, 1993, Pennzoil Sulphur Company (Pennzoil), a domestic producer of elemental sulphur, requested that we conduct an administrative review of Alberta Energy Co., Ltd. (Alberta), Allied-Signal Inc. (Allied), Brimstone Export (Brimstone), Burza Resources (Burza), Fanchem, Husky Oil Ltd. (Husky), Mobil Oil Canada, Ltd. (Mobil), Norcen Energy Resources (Norcen), Petrosul International (Petrosul), Saratoga Processing Co., Ltd. (Saratoga), and Sulbow Minerals (Sulbow). On December 21, 1993, Petrosul requested revocation of the finding in part, with respect to itself. The review was initiated on January 18, 1994 (59 FR 2593).

With respect to the 1993/1994 administrative review, on December 29, 1994, Pennzoil requested that we conduct an administrative review of Alberta, Husky, Mobil, Norcen, and Petrosul. On December 28, 1994, Petrosul requested revocation of the finding, in part, with respect to itself, and, on December 30, 1994, Mobil requested an administrative review of its sales. The review was initiated on January 13, 1995 (60 FR 3193).

On August 30, 1996, the Department published in the **Federal Register** the preliminary results of these reviews of the antidumping finding on elemental sulphur from Canada (61 FR 45937). We held a public hearing on December 11, 1996. The Department has now conducted these reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

Imports covered by these reviews are shipments of elemental sulphur from Canada. This merchandise is classifiable under Harmonized Tariff Schedule (HTS) subheadings 2503.10.00, 2503.90.00, and 2802.00.00. Although the HTS subheadings are provided for convenience and for U.S. Customs purposes, the written description of the scope of this finding remains dispositive.

The periods of review are December 1, 1992 through November 30, 1993, and December 1, 1993 through November 30, 1994. The 1992/1993 review covers eleven companies, and the 1993/1994 review covers five companies.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994. Pursuant to section 291(a)(2)(B) of the Uruguay Round Agreements Act (URAA), the provisions of that Act apply only to reviews requested on or after January 1, 1995. Thus, although the 1993/1994 review was initiated after the effective date of the amendments pursuant to the URAA, those provisions do not apply to this review.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received case and rebuttal briefs from Pennzoil and Freeport-McMoRan Inc. (petitioners), Husky, and Mobil.

Comment 1

Husky argues that the Department incorrectly assigned all of the common costs for a particular Husky facility solely to liquid production when the majority of the work and the costs in that facility related to forming of sulphur for later sale. Husky argues that there are three ''direct'' functional units within this facility—remelt (remelting sulphur which has been poured to block), block (pouring sulphur on the ground when it cannot be sold) and forming (forming liquid sulphur into solid shapes). Husky asserts that the Department determined again in these reviews that of those three units, only the remelt and block units incur joint costs—i.e., costs applicable to the production of liquid sulphur. Husky argues that the ''common'' costs (e.g., cost associated with road maintenance) at the facility relate to the entire complex. Husky contends that those common costs cover all three direct functional units. Husky asserts that in its questionnaire responses in the 1992/93 and 1993/94 reviews, Husky defined all of the merchandise produced for this complex as formed sulphur. Husky contends that it was therefore unnecessary to split the common costs among the three direct functional units within the facility. Husky argues that if all of the costs, both direct and

common, were being allocated to the same product, the common cost at this facility did not need to be split by functional unit.

Husky argues that, in calculating the preliminary margin, the Department split Husky's submitted costs for the facility between liquid and formed sulphur. Husky contends that the Department correctly designated the direct cost centers as either joint or formed costs consistent with the structure of this facility and the same categories of costs incurred in another Husky facility. However, Husky argues that the Department erred by failing to allocate any common costs to formed sulphur. Husky argues that the common costs are not allocable solely to liquid, but are costs incurred to operate the three functional units. Husky asserts that allocating all of the common costs to liquid sulphur belies not only the fact that the majority of the common costs relate solely to forming the sulphur but also the Department's method of allocating the common costs at other Husky facilities. Husky argues that the Department should revise its calculation to (a) split the common costs among the direct units in this facility, and (b) allocate to liquid sulphur only the costs associated with the joint functional units.

Petitioners argue that Husky mischaracterizes the Department's treatment of the common costs at this facility, and that the Department properly treated the costs at this facility as costs common to the production of liquid and formed sulphur. Petitioners assert that the Department allocated the costs of this common cost center to liquid and formed sulphur equally on a per unit basis. Petitioners contend that the Department include the same per-unit amount of common costs in the cost of manufacturing (COM) of liquid and formed sulphur because it treated those as common costs incurred for both liquid and formed sulphur production, consistent with the Department's treatment of such costs in the 1991/92 review. Petitioners argue that the Department should reject Husky's argument that the Department should allocate the common costs to the other direct cost centers at this facility based on the costs in those cost centers.

Petitioners argue that under Husky's allocation method the per-unit COM for liquid sulphur would fall. Petitioners argue that this result would be distortive because the record shows that the cost incurred for handling and storing liquid sulphur are significant. Further, Petitioners assert that Husky incurs most if not all of these common costs regardless of whether this facility's sulphur is formed or sold in liquid form. Thus, Petitioners argue, the per-unit COM of liquid and formed sulphur should contain the same per-unit amount of these common costs based on the total costs divided by the volume of sulphur that is sold in either liquid or solid form.

Petitioners argue that, unlike the general facilities costs of the sulphur handling at another Husky facility, the common costs in this cost center are not merely indirect overhead costs incurred for the other cost centers. In addition, Petitioners contend that the sulphur handling at this other Husky facility has a larger number of separate direct cost centers than at this facility. Petitioners argue that the Department treated certain direct cost centers as common costs allocated equivalently to liquid and formed sulphur on a per-unit basis. Petitioners argue that the Husky facility that is the subject of this comment had rail facilities and liquid off-loading capability, but that Husky identified no separate cost centers for these operations at this facility. Petitioners contend that some or all of the direct costs associated with these facilities therefore must be recorded in the common cost center. Petitioners argue that these common costs should be properly treated as common costs included in the COM of liquid and formed sulphur on an equivalent per-unit basis.

Petitioners contend that Husky's assertions regarding the nature of this facility's cost centers are unsupported by the record because Husky failed to provide a description of each cost center at this facility and to identify the costs included in each cost center, as explicitly required by the supplemental cost questionnaire. Petitioners argue that the Department should reject Husky's argument that the Department should reallocate the common costs at this facility.

Department Position: We agree with Husky that the ''common'' costs for a particular facility should be allocated to all of the direct cost centers at that facility. For the preliminary results, common (general) costs for all facilities were allocated to sulphur based on the direct cost centers which relate to the functional units within the facility. While certain cost centers were considered joint or ''common'' at one Husky facility and allocated equivalently to liquid and formed sulphur on a per-unit basis, these cost centers contained direct expenses which were applicable to both liquid and formed sulphur. At the facility subject to this comment, it is appropriate to treat the costs in this ''common'' cost center as indirect. The other reported sulphur cost centers at this facility are direct; because this facility must incur common (indirect) expenses, it is reasonable to conclude that those indirect expenses are included in the ''common'' cost center. Therefore, we have treated these costs as general expenses and allocated them to all functional units of the facility based on the direct cost centers.

Comment 2

Husky argues that the Department significantly overstated the amount of depreciation applicable to the sulphur production at the facility discussed above by categorizing the ''common'' costs for the facility as direct costs. Husky asserts that, consistent with what it expected to be the Department's final decision in the 1991/92 review, in this review it provided a depreciation allocation based on direct costs. Husky argues that the Department accepted the depreciation figures submitted on a direct cost basis for Husky's other facilities; however, for this facility the Department altered Husky's submitted calculation, which Husky argues was entirely consistent with its calculations at its other facilities, by reclassifying the common costs for this facility from a common cost to a direct cost category.

Husky points out that it allocated depreciation on the basis of the direct costs incurred at each facility. Husky argues that, like the sulphur costs, the gas/oil costs factored into the allocation ratio were limited to the direct costs charged to the leaseholds and, accordingly, do not include the common costs associated with those functional units. Therefore, Husky argues, by adding the common cost for this facility to sulphur costs for purposes of the depreciation allocation without adding the common costs for the gas facilities to total costs, the Department significantly overstated the ratio and allocated a disproportionate share of the depreciation expense to sulphur.

Petitioners argue that, if the Department were to exclude the common sulphur handling costs at this facility as Husky argues, the percentages of depreciation allocated to the sulphur handling at this facility would be drastically reduced from those used in the preliminary results of these reviews. Petitioners argue that the Department's operating cost method for allocating facility-wide depreciation is based on the assumption that the relative operating expenses incurred in a particular part of a plant is a measure of the relative significance of the physical plant, and thus depreciation, for that part of the plant.

Petitioners argue that, under the depreciation allocation methodology adopted by the Department in the 1991/92 review, the Department included all sulphur handling costs, including indirect costs, in the calculation of relative amounts of plant-wide depreciation allocated to gas processing assets and sulphur handling assets. Petitioners assert that the Department should reject Husky's argument that without adding the common costs for gas facilities to total facilities costs for purposes of the depreciation allocation, the Department significantly overstated the ratio of direct sulphur expenses to direct facility-wide expenses and allocated a disproportionate share of depreciation expenses to sulphur. Petitioners contend that Husky failed to report liquid sulphur storage costs incurred at the gas processing facility after the point of sulphur recovery, and that a portion of the general facilities costs at that facility are therefore attributable to liquid sulphur storage. Petitioners argue that including these liquid storage costs and the associated general facilities costs in the calculation of depreciation would increase the depreciation attributable to the sulphur handling assets at this facility. Petitioners also argue that the absence of gas processing general facilities costs from the calculation of depreciation is due to Husky's failure to report those costs. Petitioners argue that this failure should not result in the exclusion of these common sulphur handling costs from the calculation of depreciation. Petitioners argue that excluding the common costs for this facility from the depreciation calculation rewards Husky for its failure to allocate depreciation by the methodology adopted by the Department in the 1991/92 review. Petitioners contend that Husky's characterization of the common costs of this facility as indirect costs is unsupported by the record, as Husky identified those costs as direct in its supplemental questionnaire responses. Petitioners argue that Husky failed to provide a description for each cost center or functional unit, and to identify the costs included in each. Petitioners contend that, in light of Husky's failure to provide this information, there is absolutely no basis for any adjustment of the Department's allocation of depreciation based on Husky's unsupported assertions.

Department Position: We agree with Husky. Consistent with the Department's practice in these reviews, Husky allocated depreciation based on direct costs charged to each functional unit at each facility. Husky treated these expenses as indirect in the cost calculation submitted to the Department. Absent any evidence on the record indicating that these expenses are direct, we believe it is reasonable to treat these common expenses as indirect. Accordingly, we did not include these expenses in the allocation of depreciation. We agree that including common costs for sulphur while excluding common costs for gas results in the allocation of a disproportionate share of depreciation expenses to sulphur. Therefore, we have not included the ''common'' cost center for this facility in the calculation of depreciation for these reviews.

Comment 3

Husky argues that the Department inadvertently included the block costs from one facility in the calculation of the costs of another Husky facility for the 1993/94 review. Husky argues that there is no basis to have done so. Husky argues that the Department must therefore deduct these expenses in the final results.

Petitioners argue that the Department determined in the preliminary results that ''[s]ince [this facility] poured sulphur to block during this review period, and did not report block storage costs, we have added to the COM for [this facility] the block storage costs and depreciation expense calculated for the [other facility].'' Petitioners argue that the record establishes that the Department's determination was entirely proper. Petitioners assert that block storage was not listed among the direct cost centers identified for the particular facility. Petitioners argue that the Department should not assume that a particular reported cost relates to pouring sulphur to block given Husky's failure to describe these costs as required by the Department's cost deficiency questionnaire. Petitioners argue that, accordingly, the Department should continue to include the block storage costs from the other facility in the cost calculation for this facility.

Department Position: We disagree with Husky. The record shows that the facility in question incurred block storage costs. As noted by petitioners, we stated in the preliminary analysis memo that because block storage costs were not reported for the one facility, we used the block storage cost and depreciation allocated to block storage calculated for another Husky facility as best information available (BIA) and added it to the COM for the one facility for which Husky did not report block storage costs.

Comment 4

Husky argues that the Department's resort to BIA for a particular facility has no basis in fact or law. Husky contends that it explained in the 1991/92 review and subsequent reviews that, unlike its production at other facilities, sulphur formed at this facility was not actually produced by Husky. Husky argues that the sulphur at this facility is purchased from another company's gas production. Husky asserts that, in the 1991/92 review, it supplied the Department with all of its data from this facility and the Department refused to consider that data. Husky argues that the Department's decision to disregard its 1991/92 determination and impose BIA on Husky in these reviews was based in large part on the Department's mischaracterization of its prior decision to exclude that facility's costs. Husky contends that what the Department fails to mention in trying to distinguish 1991/92 from the reviews at issue here is that Husky did not base its reported costs at that facility in the 1991/92 review solely on its purchase price. Husky argues that it also provided the Department with lease statistics which Husky argues the Department was uninterested in using to account for that facility's costs. Husky argues that as it prepared questionnaire responses for the subsequent reviews, it had no reason to believe that the Department's position would change with regard to this facility, particularly when the facts did not.

Furthermore, Husky argues that, had the Department asked specifically for this facility's costs in these reviews, Husky would have provided whatever data was available, exactly as it had done in 1991/92. Husky asserts that the Department's request that Husky account for the costs of 90% of its production is not the same as a request for this particular facility's costs. Husky contends that the record in this case delineates clearly Husky's internal distinction between sulphur that is produced from Husky's own oil and gas and purchased sulphur. Husky argues that it is undisputed that purchased sulphur is not considered production by Husky in the normal course of business. Husky argues, ''[b]efore [Commerce] may find any non-compliance on the part of the parties to the proceeding, there must be a clear and adequate communication requesting the information.'' *Usinor Sacilor, Sollac, and GTS* v. *United States,* 872 F.Supp. 100, 1010 (CIT 1994). Husky argues that as a matter of law, therefore, the Department's failure to distinguish its rejection of Husky's data from this

particular facility in the prior review or, under the circumstances, to make its request for the identical data more precise, limits the Department's discretion to penalize Husky with BIA, cooperative or otherwise. Accordingly, Husky argues that, as in 1991/92, this facility should be excluded from the analysis.

Husky argues that even if the Department's request for this facility's costs had been clear, allocating the highest costs to this facility is not reasonable. Husky asserts that the Department's statutory mandate with respect to calculating costs and constructed value is to base those calculations on the actual costs incurred. Husky contends that this edict does not wane merely because a respondent fails to spell out every nuance of its costs. Husky argues that even if the Department resorts to cooperative BIA, the Department is not relieved of the obligation to make an inference reflective of the respondent's actual costs (*i.e.*, a neutral inference). Husky argues that assuming the Department did make a clear request for this facility's data in these reviews, the Department was by no means compelled to penalize Husky by allocating to this facility the highest costs of any of Husky's facilities. Husky argues that the Department should determine the weighted-average cost of Husky's other reported facilities and allocate that per-unit cost over the volume of sulphur which flows through this particular facility. Husky asserts that the Department would, at the very least, calculate a weighted-average cost reflective of the apparent differences in Husky's various facilities and Husky's actual costs.

Petitioners argue that, regardless of what occurred in the 1991/92 review, the Department clearly required Husky in this review to report costs at all facilities accounting for 90% of Husky's sulphur production. Petitioners contend that, as the Department found, Husky's submitted sulphur production volume data show that it was necessary to report this facility's cost to satisfy that requirement. Petitioners argue that this facility's sulphur is Husky production under any normal definition of production. Petitioners assert that Husky owns and operates the facility's sulphur handling facilities, and thus incurred sulphur production costs under the Department's methodology. Moreover, Petitioners argue, in the cost deficiency questionnaire, the Department specifically requested that Husky provide the 1994 operating statements for this facility. Petitioners assert that by requesting the operating statement for this facility, the Department not only clearly indicated that it considered costs at this facility necessary in this review, but that it required Husky to report those costs because this facility's operating statement contains sulphur handling costs.

Petitioners dispute Husky's claim that even if the Department's request for this facility's costs was not clear, assigning the highest COM calculated for any other Husky plant to this facility is not reasonable and the Department should instead base the cost at this facility on the weighted-average cost of the other Husky facilities. Petitioners argue that the Department's established practice is to use adverse BIA when a respondent fails to provide necessary and requested information; otherwise, respondents would have no incentive to provide information. Petitioners note that Husky cites the recent amendments to the statute for the proposition that the Department's statutory mandate with respect to calculating costs and constructed value is to base those calculations on the actual costs incurred. Petitioners argue that, in this case, Husky prevented the Department from calculating its cost of production and constructed value based on the actual costs Husky incurred by withholding its production costs at this facility. Furthermore, Petitioners assert that, in the recent amendments to the statute, Congress codified the Department's adverse BIA practice and added a provision that specifically permits the Department to make adverse inferences when a party fails to cooperate by withholding requested information, as Husky did in this review. Therefore, Petitioners argue, the Department should apply adverse BIA to determine costs at this facility.

Department Position: We disagree with Husky. It was appropriate for the Department to apply BIA to this particular facility because Husky failed to report costs for the facility. As the petitioner noted, we specifically asked for the operating statements for this facility in the supplemental cost questionnaire. We also asked for costs for facilities accounting for 90% of Husky's sulphur production. Although Husky purchased the sulphur from another company's gas production, the record shows that Husky owns and operates the sulphur handling facilities. As the Department determined in the 1991/92 review, the sulphur costs which should be reported are the sulphur handling costs (*i.e.*, those sulphur costs incurred after the sulphur recovery unit). Husky incurs these costs for the sales of its sulphur from this facility. Therefore, sulphur from this facility would be considered Husky production and the costs should have been reported as Husky reported the production volume from this facility. Because the costs from this facility were not used in a previous administrative review does not mean that Husky can unilaterally decide that such costs need not be reported in another administrative review of the same case, especially when Husky was requested specifically to report such costs.

We agree with petitioners that the COM applied to the production from this facility should be adverse since Husky did not report the required cost, but disagree that we should use the highest cost for each component of the COM from the other Husky facilities to determine the COM for this facility. Therefore, we have continued to apply the highest COM from a facility which was reported to this facility's production volume.

Comment 5

Husky argues that the costs of pouring liquid sulphur to block are not logically allocated to sulphur production. Husky argues that, in the preliminary decision in these reviews, the Department allocated sulphur block costs at a particular Husky facility over the total of the volume of sulphur poured to block and the volume of liquid and formed sulphur produced. Husky argues that the Department did not allocate sulphur handling costs over this same volume. Husky asserts that the Department ignored the block volumes in allocating the sulphur handling costs but then included block volumes in weight averaging the COM. Husky contends sulphur poured to block cannot be sulphur production for purposes of weighing costs if it is not production for purposes of allocating those costs. Husky argues that sulphur block is a cost associated with Husky's primary operations of oil and gas production. Husky argues that it pours sulphur to block to produce natural gas and/or oil. Husky argues that the costs incurred to pour sulphur to block are indistinguishable from costs incurred to convert corrosive hydrogen sulphide to elemental sulphur. Husky contends that, while the Department has said that Husky's block costs should be allocated to sulphur because Husky has the choice of either selling the liquid sulphur, forming it for overseas sale, or pouring it to block, Husky's only real choice is to sell the sulphur. Husky argues that if it does not sell the sulphur it must either cease natural gas or oil production or pour the resultant sulphur on the ground. Husky asserts

that the Department itself acknowledged in the prior review that ceasing gas/oil production is not a realistic choice.

Further, Husky argues that the fact that it maintains no inventory value for block sulphur and has not remelted significant volumes of block in years undermines the inference that Husky pours sulphur to block as a means of long-term storage. Husky contends that it pours to block as a means of disposal, the only means currently available to Canadian gas/oil producers. Husky argues that the Department's decision to allocate block costs to sulphur is further complicated by the fact that sulphur is not sold at many Canadian gas/oil facilities but instead poured to block as an unavoidable consequence of gas/oil production. Husky contends that sulphur handling facilities do not exist at some plants and the sulphur must be poured to block because it cannot be sold. Husky argues that for the Department to allocate block costs to sulphur at a plant that contains sulphur handling facilities, yet ignore block costs incurred at facilities where there are no sulphur handling facilities, is inconsistent with the Department's prior decision to make cost determinations on a company-wide basis. Husky argues that block cost is either a gas/oil cost or a sulphur cost, and that if a facility cannot allocate the cost over sulphur (because none is sold), the cost allocation methodology will invariably differ from facility to facility. Husky argues that, based on these inherent inconsistencies, the Department should eliminate the block cost from the sulphur cost and treat the cost as a cost of Husky's primary operation.

Petitioners argue that the Department unequivocally rejected Husky's argument that block storage costs should be associated with oil and natural gas production in the final results of the 1991/92 review. Petitioners argue that Husky has not raised any new arguments or cited new facts that would warrant reconsideration of this determination. Petitioners contend that, although Husky claims that it pours sulphur to block as a means of disposal, Husky has publicly acknowledged that its sulphur storage facilities are designed to enable it to stockpile sulphur for later sale. Petitioners contend that, in light of the foregoing, the Department should reject Husky's argument that its sulphur block storage costs should not be attributed to sulphur production.

Department Position: We disagree with Husky. Consistent with the Department's decision in the 1991/92 review, we determined that block costs are appropriate to include as part of the cost of producing sulphur. We stated, in the 1991/92 review, that:

> * * * inclusion of the direct operating and general facility costs related to sulphur block storage in CV is appropriate * * * all costs incurred after the liquid sulphur recovery unit relate to the production of sulphur. At this point in the production process, Husky has the choice of either selling the liquid sulphur, forming it for overseas sale, or pouring it to block for long-term storage. All of these choices relate to selling sulphur, either currently or in the future. Accordingly, we consider it appropriate to include, as part of the cost of producing sulphur, all costs incurred in the block storage lease.

Elemental Sulphur From Canada; Final Results of Antidumping Finding Administrative Review, 61 FR 8239 (March 4, 1996) (1991/92 Final)

Husky has not raised new arguments or presented new evidence that would warrant a reconsideration of this determination.

We disagree with Husky that the Department would be inconsistent with its decision to make cost determinations on a company-wide basis by including the block from some facilities and ignoring block costs from facilities which do not have sulphur handling facilities. Because sulphur poured to block must be remelted and then processed through either liquid or forming facilities before it can be sold, block sulphur is not considered finished production. We required Husky to account for at least 90 percent of its total production volume in reporting costs. A facility which does not have sulphur handling facilities and, therefore, does not produce sulphur for sale, would not be a facility Husky was required to report. Therefore, the Department would not be inconsistent because the weighted-average cost of manufacturing of sulphur would include the sulphur costs from facilities representing 90 percent of Husky's sulphur production as required.

Comment 6

Husky argues that if the sulphur poured to block is considered production, as the Department preliminarily decided in these reviews, it should be treated consistently. Husky contends that either sulphur poured to block must be considered a separate type of liquid sulphur, with only block costs allocated to the block production, or, at the very least, the total costs incurred for sulphur production at a particular facility must be allocated over total production, including the quantity of sulphur poured to block. Husky argues that, in its cost responses in the current reviews, it allocated the costs charged to the functional unit associated with block over the total sulphur handling throughput and block production. Husky maintains that the remaining costs were allocated over the sulphur handling throughput quantity to arrive at a single cost for marketable sulphur. Husky argues that it used the sulphur handling throughput quantity in the calculation of the weighted-average cost for all Husky-produced sulphur. Husky argues that because block sulphur does not flow through any units other than the sulphur block leasehold, it is in effect, a different product and accordingly Husky calculated a separate per-unit cost for this product. Husky argues that if block sulphur is to be considered production at all, it should be defined as a separate product with separate costs. Husky argues that, under that approach, only the costs of the lease associated with block costs would be charged to block sulphur. Husky contends that, if block sulphur is not treated as a separate liquid product, the Department must reallocate all costs over the block and sulphur handling throughput volumes. Husky contends that it is a well-established principle of accounting that costs increase when throughput decreases. Accordingly, Husky contends, if the block volume had been processed at the sulphur handling facility the cost would have decreased significantly. Husky argues that the Department's failure to allocate all sulphur production costs over the total of block volume and sulphur handling throughput volume and its decision to include the block volume in weight averaging the COM significantly distort the facility's actual costs and must be remedied.

Petitioners assert that, contrary to Husky's allegations, there is nothing inconsistent about the Department's treatment of block storage volume. Petitioners argue that it is the Department's longstanding practice to calculate the weighted-average COM based on the respondent's production volume at each facility whose costs are included in the weighted-average COM. Petitioners argue that the volume of liquid sulphur production at a plant is the volume of liquid sulphur produced, regardless of whether that sulphur is sold in liquid form, formed for the purpose of overseas shipments, or inventoried in block form for later sale. Petitioners contend that contrary to Husky's argument that block sulphur inventory is not marketable, the Department determined in the 1991/92 review that liquid sulphur poured to block has inventory value and that Husky has publicly acknowledged its

sulphur storage facilities are designed to enable it to stockpile sulphur for later sale. Accordingly, petitioners argue, the Department properly included block volume in its calculation of the weighted-average COM of Husky sulphur.

Petitioners argue that the Department calculated per-unit sulphur handling costs in a manner that is both logical and consistent with its longstanding practice. Petitioners assert that the Department calculated per-unit sulphur handling costs by dividing the total cost incurred at each sulphur handling leasehold by the quantity of sulphur passing through that leasehold. Petitioners assert that this approach properly recognizes that direct operating costs are a function of throughput. Petitioners contend that the record establishes that the sulphur poured to block passes exclusively through the sulphur block leasehold and does not pass through the other sulphur handling leaseholds. Petitioners argue that volumes that do not pass through the sulphur handling leaseholds cannot be included in the calculation of per-unit costs; to do so would artificially reduce Husky's per-unit sulphur handling costs. Petitioners argue that Husky's claim that per-unit direct operating costs at the various sulphur handling leaseholds would decrease if block volume were to pass through them is purely speculative. Petitioners assert that, as throughput increases, total operating costs will increase as well. More importantly, petitioners assert, if the Department were to adopt Husky's methodology and include the volume poured to block in calculating per-unit sulphur handling costs, the portion of sulphur handling costs allocated to block storage would never be included in the COM of sulphur. Petitioners argue that block sulphur is sold only after it is remelted and because the costs of the block storage are not included in the costs of remelting block sulphur, the portion of sulphur handling costs allocated to the quantity of sulphur poured to block would never be captured.

Petitioners contend that Husky's argument that the Department should treat block sulphur as a separate product would be directly inconsistent with the Department's treatment of block storage costs in the 1991/92 review. Petitioners assert that there is no legal or factual basis for treating block sulphur as a separate product. Petitioners contend that Husky's proposed treatment of block storage costs artificially reduces the COM of sulphur.

Department Position: We have determined that block storage costs are appropriately included in the cost of producing sulphur and that sulphur poured to block is not considered production. *See* our response to comment 5. Further, we do not consider sulphur poured to block to be a separate liquid sulphur product. Because we do not consider sulphur poured to block sulphur production, we have not included the volume of sulphur poured to block in allocating sulphur costs and weight-averaging the COM, and, therefore, have not allocated any sulphur costs to sulphur poured to block.

Comment 7

Petitioners argue that Husky's failure to report crucial data and to follow the Department's methodology in calculating the COM and constructed value (CV) of its sulphur requires the use of total BIA to establish Husky's margin. Petitioners contend that the statute requires the Department to use BIA ''whenever a party * * * refuses or is unable to produce information requested in a timely manner and in a form required, or otherwise significantly impedes an investigation.'' Section 776(c) of the Act.

Petitioners argue that, in view of the wholesale nature of Husky's failure to report required cost data and its general failure to follow the Department's methodology in calculating the COM and CV of its liquid and formed sulphur despite the Department's repeated explicit instructions to do so, the Department must resort to total (not partial) BIA for Husky. Petitioners assert that the Department applies partial BIA when a respondent's submission is deficient in limited or minor respects but as a whole is still considered reliable. Petitioners contend that the deficiencies in Husky's reported data are not limited or minor. First, petitioners argue that Husky failed to provide its production volume of liquid sulphur at all facilities, as required by the cost and supplemental cost questionnaires. Second, Husky did not provide the sulphur handling, storage and forming costs for the facilities accounting for 90% of its liquid and formed sulphur production. Third, Husky excluded the liquid sulphur handling costs at a particular facility from its weighted-average COM for liquid sulphur. Fourth, Husky did not include in its reported costs all of the sulphur production costs required by the Department's methodology, including costs associated with liquid storage at a particular facility. Fifth, Husky did not provide requested information to support the sulphur costs it elected to provide. Sixth, Husky did not follow the Department's methodology in allocating plant-wide depreciation expenses to sulphur and natural gas, and did not directly assign the cost of very significant sulphur handling assets to sulphur. Finally, Husky reported a COM for liquid sulphur that is based entirely on one particular facility. Petitioners argue that in such circumstances the Department does not apply partial BIA.

Petitioners argue that, in the 1993/94 review, Husky reported a weighted-average COM and a CV for liquid sulphur in this review which is less than the public CV reported in the 1991/92 review, which the Department adjusted upward.

Petitioners argue that Husky has not claimed its real sulphur production costs have decreased. Accordingly, petitioners assert, using the same methodology in this review as in the 1991/92 review should yield comparable CVs. Petitioners argue that Husky failed to even offer an explanation for the massive decrease in its reported costs in this review period. Petitioners argue that the enormous reduction in Husky's reported CV is in part attributable to identifiable fundamental deficiencies in Husky's reported data.

Petitioners argue that, in selecting total BIA, the Department applies its established two-tier methodology. When a respondent submits questionnaire responses but fails to provide the information in a timely fashion or in the form required, Husky notes, the Department will normally assign to that company the higher of (1) the highest rate ever applicable to that company from the less-than-fair-value investigation or a prior administrative review, or (2) the highest calculated rate in the current review for any respondent. Petitioners assert, however, that the Department is not constrained by this methodology, particularly when use of an alternate source is necessary to make adverse inferences sufficient to induce cooperation and ensure that the application of BIA does not reward noncompliance. Petitioners argue that the 1992/93 review presents such a case. Petitioners contend that applying the Department's sulphur cost methodology to the 1992/93 data reported by Husky, even without the costs Husky failed to provide, shows that the margin is dramatically higher than the highest rate previously assigned to Husky. Petitioners urge the Department to continue to apply its cost methodology to Husky for the final results, but as total BIA, making appropriate adverse inferences where Husky failed to provide requested information.

Petitioners assert that the Department only departs from its two-tier methodology in limited circumstances, *i.e.*, where the application of that methodology would reward a respondent's noncompliance and therefore would not induce cooperation. Petitioners assert that such circumstances are not present in the 1993/94 review and that the Department departed from its two-tier method in establishing what petitioners term a BIA margin for Husky in the preliminary results. Petitioners argue that, if the Department calculates a rate for Husky in the 1992/93 review which is at all reflective of the actual margin, that rate will be the highest for Husky in any current or any preceding segment of this proceeding. Therefore, petitioners claim, that rate will be the proper rate to assign to Husky in the 1993/94 review under the two-tier methodology, even if Husky is deemed to be a cooperative respondent in the 1993/94 period. Petitioners urge the Department to assign to Husky, for the 1993–94 period, the rate calculated for Husky for the 1992–93 period. Petitioners contend that responses in the 1993/94 review are at least as deficient as in the 1992/93 review yet the BIA margin in the 1993/94 review for Husky is less than one-third the margin for Husky in the 1992/93 review. Petitioners argue that Husky has no incentive to report its complete sulphur costs as required if the Department departs from its normal two-tier methodology and calculates a margin for Husky.

Husky argues that there is no basis for imposing any BIA penalties on Husky. Husky asserts that, as the Department recognized in preparing the preliminary decision, Husky provided more than sufficient data for calculating Husky's cost of production. Husky cites the preliminary results of these reviews where the Department stated, ''* * * we are able to calculate a margin for Husky in each review using data which has been provided * * *.'' Husky contends that petitioners' request that additional BIA be applied or total BIA replace Husky's verifiable responses has no basis in law. Husky asserts that it is well established that the Department will rely on information submitted by the respondent even if the Department must make small adjustments to the data. *See, e.g., Certain Fresh Cut Flowers from Mexico; Final Results of Antidumping Administrative Review,* 57 FR 19597 (1992); *Final Determination of Sales at Less Than Fair Value: Certain Small Business Telephone Systems and Subassemblies Thereof from Taiwan,* 54 FR 42543 (1989). Moreover, Husky notes that the Department has stated: ''in cases where the respondent has substantially cooperated with the Department * * *, we [the Department] do[es] not typically apply total BIA, but rather partial BIA to the particular deficiencies in a respondent's questionnaire response.'' *Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea; Final Results of Antidumping Administrative Review,* 61 FR 20216 (1996). Husky argues that it provided all data necessary for the Department's analysis and to the extent that data required the Department's adjustment, the Department had the requisite information.

Department Position: We agree with Husky that total BIA for Husky is not warranted. Husky has cooperated with the Department and provided sufficient information for the Department's analysis. In comments 8 though 12, we have discussed the particular deficiencies alleged by petitioners. The Department's two-tier methodology does not apply in cases where we are applying partial BIA to particular deficiencies in a respondent's questionnaire responses, and therefore is inapplicable here. Thus, there is no question of the Department departing from its standard two-tier methodology in this case. In those instances where sufficient information was not provided, we applied partial BIA.

Petitioners' comparison of Husky's public CV figure for 1991/92 with its CV for 1993/94 is irrelevant. Each review is based on the facts specific to that review, and it is not unreasonable to conclude that Husky's costs changed significantly from one period to the next.

Comment 8

Petitioners argue that the Department failed to account for sulphur general facilities costs in the calculation of depreciation expenses for Husky. Petitioners assert that in the 1991/92 review the Department included the general facilities costs assigned to sulphur and general facilities costs assigned to natural gas in the calculation of the relative amounts of plant-wide depreciation allocated to gas processing assets and sulphur handling assets. Petitioners argue that the Department failed to account for the sulphur general facilities costs in the calculation of depreciation expenses in the preliminary results. Petitioners argue that the department may have decided to depart from the 1991/92 methodology because Husky failed to report the general facilities costs it assigned to natural gas. Petitioners argue that this failure to report the natural gas general facilities costs should not result in the exclusion of the sulphur general facilities costs from the calculation of depreciation. Petitioners argue that the failure to account for the sulphur general facilities costs in the allocation of depreciation between sulphur and natural gas results in a misallocation of plant-wide depreciation expenses and rewards Husky for failure to provide the general facilities expense assigned to natural gas. Petitioners contend that this result runs contrary to the Department's BIA practice which holds that the application of BIA must be adverse and cannot reward a respondent for failing to provide requested information.

Husky argues that the exclusion of general facilities costs in the calculation of depreciation in no way distorts the allocated ratio. Husky contends that, because it does not maintain a separately identifiable depreciation expense for sulphur handling assets, it was necessary for Husky to allocate a portion of plant-wide depreciation expenses to sulphur. Husky maintains that for that reason, it allocated depreciation at all of its reported facilities on the basis of sales value and, alternatively, on the basis of direct operating costs. Husky asserts that the Department accepted Husky's cost-based allocation and then applied the ratio in its preliminary decision. Husky argues that petitioners suggest that the Department add the general facilities expenses allocated to sulphur to the total cost figure for sulphur handling and add no equivalent gas/oil general facilities expenses to the total cost figure for the gas/oil plant. Husky contends that petitioners suggest this as punishment for Husky's failure to provide general facilities expenses related solely to gas and oil. Husky contends that gas/oil costs were not requested or needed by the Department in this review and are not subject to this or any other dumping order. Husky maintains that it cannot be penalized for its interest in protecting information sensitive to its primary commercial operations and outside the scope of the Department's jurisdiction. Husky asserts that, as the Department verified in the 1991/92 review and Husky explained in detail in a separate letter to the Department, separate general facilities expenses are maintained for sulphur handling at one of Husky's facilities. Husky argues that the Department has no basis to knowingly distort the calculation of depreciation by adding a cost to the numerator (sulphur handling costs) without making a corresponding

adjustment to the denominator (plant-wide costs). Husky maintains that its exclusion of the general facilities expenses in the allocation does not distort the resultant ratio. Husky argues that it excluded general facilities expenses from both the total, plant-wide direct cost figure and from the sulphur direct cost total. Husky argues that its allocation is reasonable and undistorted.

Department Position: We agree with Husky. Excluding the general facilities expenses from the allocation of depreciation is not distortive and is reasonable. The general facilities expenses are indirect costs incurred to operate the plant which are not directly related to a particular function or product. When separate depreciation is not maintained for particular assets, using direct costs as the basis for the allocation of depreciation is reasonable. Even if we were to include indirect expenses in the allocation of depreciation, including the general facilities expenses related to sulphur handling while excluding general facilities expenses related to oil/gas from the calculation would be distortive. Therefore, we are continuing to use direct costs to allocate plant-wide depreciation for the final results.

Comment 9

Petitioners argue that the Department understated depreciation for a particular complex. Petitioners assert that Husky failed to report whether it records separate depreciation for sulphur assets at that complex, including sulphur handling and storage facilities at Facility X and the pipeline connecting the gas plant to the sulphur handling facility. Petitioners assert that, in the 1991/92 review, the Department determined that it is distortive for antidumping purposes not to assign sulphur handling costs to sulphur, even if the respondent does not assign these costs to sulphur in its normal accounting records.

Petitioners argue that, in light of this failure, the Department should conclude, in accordance with its BIA practice, that separate depreciation expenses are recorded. Petitioners contend that the correct amount of depreciation for the pipeline greatly exceeds the amount allocated by the Department and that such an allocation is distortive. Petitioners argue that, for the final results, the Department should recalculate the depreciation expenses for this complex by (1) reducing Husky's share of total depreciation at this complex by Husky's share of depreciation on the pipeline and (2) attributing Husky's share of depreciation on the pipeline exclusively to sulphur production.

Furthermore, petitioners argue that Husky failed to report liquid storage costs at this complex. Petitioners contend that as a result of this failure, less of the complex-wide depreciation expenses at this complex are being allocated to sulphur production than would be the case if Husky had reported these costs. Petitioners argue that the Department should require Husky to report the liquid storage costs at this facility and should include such costs in the sulphur costs used in allocating plant-wide depreciation and in its calculation of COM and CV of Husky's liquid and formed sulphur in the final results.

Husky argues that the Department overstated depreciation at this facility. Husky argues that petitioners assumes that Husky allocates a separate depreciation expense for sulphur handling at this facility in the normal course of business and should, therefore, not be permitted to allocate the cost. Husky asserts that it submitted actual costs to the Department and certified the reliability of that data to the Department. Husky argues that it clearly stated that ''[d]epreciation is not allocated to any products in the normal course of business.'' March 1, 1996 Husky Supplemental Questionnaire Response. Husky maintains that it cannot produce a separate depreciation expense for sulphur handling at this facility if one does not exist.

Husky contends that it has reported all of the costs associated with sulphur handling at this facility, including its portion of the sulphur pipeline. Husky argues that a newspaper article describing this facility generally, and cited by petitioner in support of its argument in no way substitutes for Husky's certified submissions of factual data. Husky asserts that the numbers that appear in that article are not recorded or in any way related to Husky's books and cannot be verified by the Department and that the Department cannot base Husky's depreciation expense on a newspaper article when Husky has provided actual data. Husky argues that the depreciation at that facility was actually overstated because the Department included certain indirect, general facilities expenses in the allocation of depreciation. Husky asserts that the Department should recalculate the expenses in accordance with the allocation in Husky's case brief and supplemental cost response. *See* comment 2.

Department Position: We agree with Husky. The record does not indicate that Husky maintains a separate depreciation expense for the sulphur handling facility at this particular facility. We agree with Husky that there is no basis in these reviews to use information from a newspaper article rather than information submitted by the respondent which is subject to verification. Therefore, it was appropriate for Husky to allocate depreciation to sulphur handling at this facility based on costs.

Comment 10

Petitioners argue that the Department failed to use appropriate BIA for the COM for a sulphur-producing facility for which Husky failed to report costs. Petitioners point out that the Department used the highest COM calculated for a facility for which Husky reported cost data and applied that COM to this facility. Petitioners contend that, under the Department's established practice the COM of sulphur produced at the facility for which Husky did not report costs is considered higher than the COM of sulphur produced at the facilities for which Husky elected to provide cost data. (Otherwise, petitioners assert, Husky would have reported cost data for this facility.)

Furthermore, petitioners argue, Husky incurred liquid loading and block storage costs (plus associated depreciation expenses) at the facility during the period of review (POR), and the COM calculated for the liquid sulphur facility which the Department used as BIA did not include amounts for these expenses. Petitioners argue that, accordingly, the Department improperly excluded costs that the record demonstrates were incurred at the facility in question. Petitioners assert that the Department has recognized that a calculated BIA margin may not exclude costs that the record shows the respondent incurred, citing the *Notice of Amended Preliminary Determinations of Sales at Less Than Fair Value: Antidumping Duty Investigations of Pure and Alloy Magnesium from The Russian Federation and Pure Magnesium from Ukraine*, 60 FR 7519, 7520 (February 8, 1995). Petitioners argue that, in light of the fact the COM for this facility is presumed to be higher than the calculated COMs and the fact that the calculated liquid sulphur COM used by the Department as BIA does not include the costs of liquid loading, block storage and associated depreciation expenses incurred at the facility, the Department should recalculate COM for this facility by using the highest costs on record for each component of the COM of liquid sulphur as calculated at other Husky facilities for the final results.

Husky argues that it did not ''elect'' facilities for which to report costs. Husky contends that it responded to the Department's request for costs accounting for 90% of Husky's production. Husky asserts that, based on the Department's lack of clarity regarding this facility and refusal to accept Husky's full and verifiable cost data at that facility in the 1991/92 review, Husky did not provide costs at that facility in this review. Husky argues that, given the confusion regarding the term ''production'' in this case and conflicting messages concerning the Department's interest in costs at this facility, there is no basis for inflating Husky's costs as petitioners suggest. Husky argues that the Department should reverse its decision to impose any BIA at this facility and to penalize Husky for confusion which Husky did not create.

Department Position: We disagree with petitioners and, in part, with Husky. Husky should have reported the costs for this facility. In the supplemental cost questionnaires of February 2, 1996, we stated that Husky must account for at least 90% of its total production volume in reporting its costs. Furthermore, in those supplemental cost questionnaires, we specifically asked Husky to provide the operating statements for this facility:

> Please provide the 1993 operating statements for [ ]. If no operating statements are prepared for the facilities, or if such statements do not exist, provide complete expense, revenue, and production data, and provide copies of all internal management reports showing revenues, expenses, and production volumes of all products manufactured by the facilities during 1993.

Supplemental Questionnaire Concerning the 1992/93 Administrative Review of the Antidumping Duty Finding on Elemental Sulphur from Canada, February 2, 1996. Language in the supplemental questionnaire for the 1993/94 period includes the same language, but requests information for 1994. The name of the facility under discussion in this comment appears in brackets in both questionnaires.

Furthermore, our decision not to use costs from this facility during the 1991/92 review period was based on the facts of that review, and in no way negates our requests for information regarding the facility in subsequent reviews, or precludes us from using the costs from that facility in future reviews. Further, use of the highest calculated COM from among facilities for which Husky reported costs is sufficiently adverse.

Comment 11

Petitioners argue that the Department should exclude the production costs from a certain Husky facility from the weighted-average COM for the final results. Petitioners assert that Husky 1) failed to report labor costs for the sulphur handling facility, and 2) did not state whether the total depreciation amount determined for this particular facility was allocated to particular sections in the normal course of business, so that the Department cannot determine whether Husky records separate depreciation for the sulphur handling facility. Petitioners argue that, by utilizing this facility's cost, the Department permits Husky to manipulate foreign market value by self-selecting the facilities for which it is willing to provide cost data. The inclusion of this facility in the calculation of weighted-average COM, petitioners argue, further rewards Husky's failure to provide cost data for the facility discussed in Comment 10.

Petitioners assert that, if the Department continues to include this facility's production costs in the calculation of the COM and CV of Husky's sulphur, it should adjust the reported production volume so that it reflects only Husky's share of the facility's production. Petitioners contend that, in the preliminary results calculations, the Department erred by using the total volume of liquid and formed sulphur sold at the facility, rather than Husky's share of total production, in its calculation of the weighted-average COM of Husky's liquid sulphur.

Husky argues that the costs at this particular facility are legitimate and relevant to these reviews. Husky contends that Petitioners have themselves pointed out that it is established Department practice to calculate a weighted-average COM for subject merchandise based on the respondent's costs at all plants producing the subject merchandise. Husky argues that the Department must reject what it characterizes as petitioners' attempt to manipulate the Department into inflating and distorting Husky's verifiable, weighted-average costs.

Department Position: We agree with Husky that it is the Department's practice to calculate a weighted-average COM for the subject merchandise based on the respondent's costs at all plants producing the subject merchandise. Therefore, we will continue to include costs from this facility in our calculation of the weighted-average cost of Husky's sulphur production. However, we agree with petitioners that, in calculating that weighted-average cost for the preliminary results, we erred in assigning to this facility a weight based on all sulphur production at the facility; for the final results, we have assigned it a weight based on Husky's share of sulphur production at the facility, as we have done with other facilities in our calculation.

Comment 12

Petitioners argue that the Department should make two adjustments to the calculation of Husky's general and administrative (G&A) expenses. First, the Department should exclude Husky's nonoperating income in its calculation of Husky's G&A expenses. Petitioners contend that Husky improperly offset its G&A expenses with nonoperating income which consists of rental income (for both review periods) and gains realized on the disposal of certain unidentified assets (for 1993/94). Petitioners assert that rental income represents income from a separate line of business and, in accordance with Department practice, should not be deducted from G&A expenses. Petitioners argue that, because there is no evidence on record that the gains realized on the disposal of certain assets were realized on the sale of sulphur assets and thus were linked to the production of subject merchandise, those gains should not be deducted from G&A.

Petitioners argue that Husky failed to explain why reducing its G&A expenses with non-operating income is appropriate. Petitioners contend that it is Department practice, which has been upheld by the Court of International Trade, to require respondents to bear the burden of proving their right to adjustments. *Koyo Seiko* v. *United States*, Ct. No. 93–08–00448, slip op. 95–171 (CIT 1995); *NSK, Ltd.* v. *United States*, 825 F. Supp. 315, 321 (CIT 1993).

In addition, petitioners contend that the Department improperly failed to include, in the calculation of G&A expenses for Husky, G&A expenses incurred by Husky on behalf of its parent, Husky Oil Operations Ltd. (HOOL).

Husky contends that the Department properly included Husky's nonoperating income in, and excluded certain G&A expenses from, the calculation of Husky's G&A expenses. Husky argues that it reported G&A expenses in this review in accordance with the Department's decision in the 1991/92 review. Husky contends that, in that review, the Department included the nonoperating income amount for rental

income, after verifying that associated expenses were included in the reported cost. Husky contends that the Department was not concerned with inclusion of the rental income, as can be seen from the public verification report in that review. Husky argues that petitioners' general discussion of Department practice disregards the Department's practice in this case, the most relevant of the Department's recent decisions.

Husky maintains that the Department also determined in the 1991/92 review that it was unnecessary for Husky to include in G&A the G&A expenses considered to be insignificant. Husky maintains that, contrary to petitioners' understanding, HOOL performs all sale related services for Husky, which is the corporate parent. Husky argues that, based on the Department's decision to exclude the G&A expense incurred by Husky, the corporate parent, in the prior review and the overall insignificance of the expense, the Department should reject petitioners' request to include it.

Department Position: We agree with Husky. For these reviews, Husky reported that these non-operating expenses were related to production. Because we have no evidence to the contrary, we have continued to include these items in the calculation of G&A.

Because sales of subject merchandise are handled by HOOL, a portion of G&A incurred by HOOL is relevant to sulphur production. The corporate parent, Husky, does not maintain its own personnel and the portion of Husky G&A expenses which are not incurred by a Husky subsidiary and which could be allocated to sales of all Husky merchandise including sulphur is not significant in these reviews. Therefore, we have continued to exclude the G&A incurred by Husky from the calculation of G&A allocated to sulphur.

Comment 13

Petitioners argue that the Department should include at least a portion of sulphur recovery costs in its calculation of the COM and CV of Husky's sulphur. Petitioners argue that the Department should require Husky to report the costs of sulphur recovery at each of the facilities for which it reported costs, in accordance with: (1) 19 U.S.C. section 1677b(e)(1)(A), which expressly requires that the cost of ''fabrication or other processing of any kind'' be included in CV; (2) generally accepted cost accounting principles, which require all post-split-off costs to be included in the cost of producing by-products; (3) the Department's practice in cases in which by-products are the subject merchandise, which requires that all-after separation costs be included in CV; (4) the Department's practice in cases in which by-products are not the subject merchandise, which requires that all after-separation costs be assigned to the by-product; (5) the Department's cost initiation memorandums in the 1992/93 and 1993/94 administrative reviews in which the Department included the cost of the ''sulphur plant'' (sulphur recovery unit) and ''plant supporting facilities'' (sulphur handling) in its calculation of the cost of producing sulphur; (6) record evidence that the sales values of sulphur and natural gas on a per metric ton basis were roughly equivalent from the mid-1980s through the early 1990s; and (7) the extensive record evidence that sulphur revenues were, and continue to be, important considerations in decisions to develop and operate major sour gas facilities.

Petitioners contend that, although the Department determined not to include all such costs in the COM and CV of sulphur in the 1991/92 administrative review, it did not consider whether a portion of sulphur recovery costs should be allocated to sulphur production. Petitioners argue that at least a portion of sulphur recovery costs should be allocated to sulphur production for the reasons enumerated above and because Husky made the decision to sell sulphur in both the home market and the United States during the POR and derived significant revenues from those sales. Accordingly, petitioners argue, the Department should require Husky to submit sulphur recovery cost data and include at least a portion of these costs in the COM and CV calculated for Husky for the final results.

Husky argues that petitioners suggest that the Department resurrect the most fundamental of all of the decisions made in the 1991/92 review—the split-off point for the sulphur by-product. Husky contends that, contrary to petitioners' allegations, the Department absolutely and unequivocally considered whether a portion of the sulphur recovery costs should be allocated to sulphur production in the 1991/92 review. Husky argues that the first half of the Department's decision in the 1991/92 review was that the only costs allocable to sulphur are those incurred subsequent to the split-off point, the point at which sulphur exits the sulphur recovery unit. Husky contends that petitioners have not supported and cannot support its position that costs incurred prior to the split-off point are in any way allocable to the sulphur by-product, particularly when the facts have not changed.

Department Position: We agree with Husky. In the 1991/92 review, we determined that sulphur is a by-product and that all costs incurred up to and including the sulphur recovery unit of the gas processing facility (the split-off point) are allocable solely to natural gas production. We determined that Husky must incur the costs in the sulphur recovery unit in order to refine natural gas. Only costs incurred after the liquid sulphur exits the sulphur recovery unit of the gas processing facility relate to the production of sulphur. *See 1991/92 Final* (Comment 3). The production process has not changed since the 1991/92 final, and petitioners have submitted no new information for the Department to reverse this issue. Therefore, consistent with the 1991/92 final we are not assigning any costs of the sulphur recovery unit to sulphur production.

Comment 14

Petitioners argue that the Department erred in using the weighted-average calculated cost for liquid and formed sulphur in this review as BIA for Husky's sales of powdered sulphur. Petitioners agree with the Department's determination, in the preliminary results of the 1992/93 review, that Husky failed to report the required cost data for powdered sulphur. Petitioners assert that the Department must presume, as BIA, that the margin on Husky's U.S. sales of powdered sulphur is higher than the margin on its sales for which it provided cost information. Petitioners argue that the Department should apply the highest non-aberrational margin calculated for any of Husky's sales during the period of review (POR) as BIA for each of Husky's U.S. sales of powdered sulphur.

Husky argues that it was unable to provide the sulphur cost data in its original sales response because the company which produced powdered sulphur was sold during the POR. Husky contends that it tried in good faith to gather the requested data and did not refuse to cooperate or significantly impede the proceeding. For this reason, Husky asserts that the Department is under no legal obligation to impose a more severe BIA rate for the powdered sulphur in question.

Department Position: We agree with Husky. Husky has cooperated with the Department in this review. The Department stated in *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders,* 60 FR 10900 (February 28, 1995), that:

In cases where the overall integrity of the questionnaire response warrants a calculated rate, but a firm failed to provide certain FMV information (*i.e.*, corresponding HM sales within the contemporaneous window or CV data for a few U.S. sales), we applied the second-tier BIA rate * * * and limited its application to the particular transactions involved. See *Final Results of Antidumping Administrative Reviews and Revocation in Part of the Antidumping Duty Order, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.*, 58 FR 39729, 39739 (July 26, 1993).

Accordingly, we applied, as partial BIA for the powdered sulphur transactions where Husky was unable to provide us with the requested information, the highest rate ever applicable to Husky in this or any previous review. Therefore, we have continued to apply Husky's calculated margin on sales of liquid and formed sulphur from this review as BIA.

Comment 15

Petitioners argue that Husky failed to provide required information regarding its property, plant and equipment writedowns. Petitioners note that the Department's supplemental cost questionnaire in the 1992/93 review specifically required Husky to state whether changes in expected future cash flows from sulphur reserves were taken into account in property, plant and equipment writedowns, and if so, to report these writedowns. Petitioners argue that Husky did not answer these questions based on the Department's finding in the Final Results of the 1991–1992 Administrative Review that such writedowns were inapplicable to sulphur. Petitioners allege that the Department's finding in the 1991/92 review that writedowns are for property, plant and equipment at the plant were inapplicable to sulphur is erroneous because the writedowns are for property, plant and equipment, at a particular plant, including the sulphur handling plant and equipment located after the point of recovery. Since all costs are incurred after the point of sulphur recovery at one particular plant, petitioners further argue that Husky should report any writedown of property, plant and equipment for the 1992/93 review.

Husky argues that property, plant and equipment writedown information is unnecessary to the Department's analysis. Husky contends that, since petitioners did not appeal the Department's decision to exclude the writedown in the 1991/92 review, when all the costs for the particular facility in question were reported, petitioners have no basis for its complaint in this review.

Department Position: We agree with Husky that writedowns are for property, plant and equipment at the plant are not necessary for our analysis. In the 1991/92 review, we excluded Husky's property, plant and equipment writedown from the calculated sulphur costs. In that review, we determined that ''since such costs are associated entirely with exploration and development of mineral reserves, we consider this type of writedown to be a cost incurred prior to the sulphur production split-off point. As such we consider these costs to be part of Husky's natural gas operations.'' *1991/92 Final.* There are no facts specific to these reviews that warrant our including a portion of property, plant and equipment writedown in the cost of sulphur. Therefore, we have continued to exclude the property, plant and equipment writedown for the calculation of COM.

Comment 16

Mobil argues that it supplied the information requested by the Department and that the Department cannot apply BIA simply because it lacks the information that it believes is necessary to calculate a margin, but which it never requested. Mobil argues that, in this case, it clearly supplied the Department with a complete set of data that fully answers the questions asked. Mobil states that it even went so far as to calculate two separate sets of cost data in an effort to comply with the Department's requirements. Mobil argues that should these complete responses for some reason had not satisfied the Department, then the Department had an obligation to ask subsequent questions or give Mobil notice that its response was deficient before resorting to BIA.

Mobil argues that, to the extent that the Department gave Mobil notice it had concerns about it response to the original questionnaire, Mobil responded by supplying the Department with alternative data. Mobil argues that the Department resorted to BIA without informing Mobil of any deficiencies in this second set of data, and, apparently without even considering it.

Mobil argues that the Department may not properly apply BIA when a respondent has provided all of the information requested. Mobil cites *Olympic Adhesives, Inc.* v. *United States,* (*Olympic Adhesives*) 899 F.2d 1565, 1574 (Fed. Cir. 1990), which states that section 1677e(b) ''clearly requires noncompliance with an information request before resort to the best information rule is justified * * *.'' and *Usinor Sacilor, Sollac, and GTS* v. *United States,* 872 F.Supp. 1000, 1010 (CIT 1994), which Mobil contends stated that the Department erred in applying BIA when respondent reported product codes according to actual yield strength, rather than industry standards, in absence of the explicit Department instructions. Mobil argues that this is true even if the Department discovers that it has not asked the right questions. Mobil cites *Olympic Adhesives,* 899 F.2d at 1574, which states that the Department ''may not properly conclude that resort to the best information rule is justified in circumstances where a questionnaire is sent and completely answered, just because the ITA concludes that the answers do not definitely resolve the overall issue presented.'' Mobil also cites to *Outokumpu Copper Rolled Prods. AB* v. *United States,* (*Outokumpu Copper*) 829 F. Supp. 1371, 1386 (CIT 1993).

Mobil argues that in *Outokumpu Copper* (829 F. Supp. At 1387), the Department attempted to resolve an apparent conflict in the record by asking a supplemental question, but did not specifically refer to the conflict nor request the respondent to clarify its responses. Mobil contends that, because the respondent's answer did not resolve the issue, the Department applied BIA. Mobil notes that the CIT reversed this decision based on the fact that the respondent had completely answered the question asked, stating that if Commerce desired an explanation of the alleged conflict, it should have expressly requested one. Mobil also cites to *Hussey Copper, Ltd* v. *United States,* 852 F. Supp. 1116, 1120 (CIT 1994), which Mobil contends argues that Commerce erred in rejecting respondent's constructed prices because the respondent had no reason to believe that its methodology was impermissible and the Department had never indicated during the review that the method was unacceptable.

Petitioners argue that Mobil failed to make a good faith effort to respond to the Department's cost questionnaires, and did not provide cost data that could possibly be used to calculate the COP and CV of its sulphur. Petitioners contend that in the preliminary results, the Department thoroughly considered the question of whether Mobil cooperated with the Department in this review and for a multitude of very good reasons determined that Mobil failed to provide a significant amount of requested information. Petitioners contend that Mobil's argument that it has been cooperative and has responded to the best of its ability is merely a reflection of the fundamental strategy that Mobil has pursued throughout this

proceeding. Petitioners contend that Mobil's strategy has been to claim that sulphur is a waste product and that, for that reason, Mobil does not maintain separate cost data for sulphur in its normal accounting system, and, therefore cannot report sulphur costs in a manner that would permit its actual sulphur COP and CV to be determined. Petitioners contend that this claim is false, that sulphur is a commercial product that is the source of substantial revenues to Mobil and other Canadian producers. Petitioners argue that Mobil has reported that it does not separately account for any of the joint products of natural gas production, including what it describes as its primary products such as oil, gas, condensates, and NGLs.

Petitioners argue that, if Mobil's accounting system does not routinely record sulphur cost data separately, that does not mean that Mobil does not have in its possession, or have access to, the information necessary to comply with the Department's information requests. Petitioners contend that, while it may be true that under Mobil's normal accounting system the costs of producing and handling sulphur are labeled as something other than sulphur costs or that sulphur costs are commingled with certain other costs of producing the joint products, Mobil somewhere has a record of, or access to, cost data for sulphur that could be used to provide the costs that the Department has determined are sulphur production costs. Petitioners argue that, despite this, Mobil has made no real effort to derive sulphur costs from the information that it does have or could obtain from the operators of its facilities.

Petitioners maintain that the record conclusively establishes that information sufficient to comply with the Department's requests was readily available to Mobil. Petitioners argue that Husky provided cost information for certain facilities, but that Mobil did not. Petitioners argue that, if sufficient data are available for facilities operated by parties other than Mobil to comply with the Department's requests, then Mobil also possesses sufficient information for facilities it owns and operates. Petitioners argue that Mobil admitted that its records contain full details of all costs incurred at the facility it owned and operated, including sulphur handling cost, yet failed to provide the required information for that facility. Petitioners contend that the record also reflects that where Mobil made even a limited effort to obtain requested data, it was successful. Petitioners cite, as an example, Mobil's ability to obtain estimates of sulphur forming cost for some sulphur-producing facilities it did not operate merely by making telephone calls to plant operators, and its ability to provide what Mobil described as liquid sulphur handling costs for certain facilities.

Petitioners contend that Mobil attempts to diminish the importance of its failure to report the information requested by the Department by claiming that the Department asked Mobil to report costs using a methodology tailored to Husky's accounting system. Petitioners maintain that, contrary to this claim, the questions asked by the Department were not tailored to Husky's accounting system; rather, during the 1991/92 review, the Department determined what it believed to be the proper methodology for calculating the COP and CV of sulphur. Petitioners argue that, in the final results of review of the 1991/92 review, the Department determined that the sulphur recovery unit must be included in the COM of sulphur, and that this methodology was reflected in the cost deficiency questionnaire sent to Mobil, which required these costs to be included in the reported COM of sulphur. Petitioners also argue that Husky, like Mobil, reported that it does not separately account for sulphur in its accounting system; however, petitioners argue, Husky, for the most part, broke out costs in the manner required by the questionnaire. Petitioners contend that the same data were available to Mobil, and that there is no evidence that Mobil made any attempt to obtain these data.

Petitioners maintain that Mobil is attempting to manipulate the outcome of this review by claiming that the Department can only use the sulphur cost data that it chose to report, which are unrepresentative, grossly understated, and allocated to sulphur using a patently wrong allocation method. Petitioners argue that the Department should reject this approach because, in circumstances such as these, it has been the Department's consistent practice to apply total BIA. Petitioner state that this case is analogous to *Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Reviews,* 60 FR 49569 (September 26, 1995), where the Department found respondents that had submitted multiple questionnaire responses to be uncooperative because answers to the Department's supplemental questionnaires were misleading, and significantly impeded the progress of the review.

Petitioners argue that this case is distinguishable from *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Reviews* 61 FR 13815 (March 28, 1996) (*Carbon Steel from Canada*). Petitioners contend that, unlike the respondent in *Carbon Steel from Canada,* Mobil provided costs that were unusable and severely understated, and that in *Carbon Steel from Canada*, the respondent had provided complete information for the mill producing the vast majority of the subject merchandise and supporting documentation for its reported costs. Petitioners contend that Mobil did not provide complete information for any facilities which produce Mobil-owned sulphur for sale, nor did it provide any supporting documentation for the costs that it chose to provide.

Petitioners argue that, contrary to Mobil's assertions that it answered the questions asked and provided usable data (*see* comments 18–23), Mobil did not provide useable cost data in either Appendix SQ–13 or Appendix SQ–11 of its supplemental response. Instead of complying with the Department's instruction that it report all costs incurred after sulphur recovery, Mobil reported what it described as the total operating costs (less those costs that could be clearly identified as costs incurred prior to the split-off point) incurred in the production of all products at each facility which produces ''marketable'' sulphur.

Petitioners claim that Mobil used an inappropriate methodology, the barrel of oil equivalent (BOE) methodology, to allocate a portion of the costs to liquid sulphur production. According to petitioners, Mobil's BOE methodology should not be used because the market value of sulphur derives from its value in fertilizer production rather than its thermal heat value. Petitioners state that, in the 1991/92 administrative review, the Department was unable to verify the basis for the BOE Mobil assigned to sulphur, and noted in the verification report that this methodology, ''might not be an appropriate basis for the allocation of joint costs.'' Petitioners cite Mobil's supplemental response where Mobil reported that it employs the BOE methodology to account for the appropriate volume of natural gas and oil reserves on a uniform basis. In the supplemental response, petitioners claim, Mobil specifically noted that sulphur is not usually included in the determination of reserve volumes, and that the only time that BOE is used for sulphur is in conjunction with equalization of sulphur volumes in a planning or performance management study. Petitioners further argue that Mobil's BOE method is not consistent

with Statement of Financial Accounting Standard Board (FAS) No. 19. In summary, petitioners claim that the allocation of costs to sulphur based on a BOE allocation factor is erroneous, understates the cost of producing sulphur, and therefore cannot be used to derive COM. Petitioners claim that Mobil was inconsistent in the application of the BOE methodology because it did not apply the BOE allocation factor to its total plant costs. Instead, Mobil applied the BOE factor to its total plant costs ''less those costs that could be clearly identified as costs incurred prior to the split-off point.'' Thus, petitioners argue, Mobil applied its artificially low BOE allocation factor only to the costs which the Department determined to be sulphur costs, and to certain other costs which Mobil could not identify as non-sulphur costs.

Petitioners further argue that Mobil made significant improper offsets to the costs reported in Appendix SQ–11 of the supplemental response. Petitioners note that, for some facilities, Mobil offset the reported plant costs with net income from ''contract services,'' and for other facilities, Mobil offset the reported costs by an amount for ''joint interest recoveries.'' Petitioners contend that Mobil provided no explanation of why such offsets are necessary and provided no support for the calculation of the cost data contained in Appendix SQ–11.

Department Position: We disagree with Mobil. Mobil did not provide the cost data we requested. In the original questionnaires, we specified that, if the subject merchandise were manufactured at more than one facility, the reported COM should be the weighted-average manufacturing cost from all facilities. Mobil responded that it provided the weighted-average COM of sulphur for all facilities which produced marketable sulphur. Mobil did not base the weighted-average COM in the original responses on costs from all its facilities which produced sulphur or even all facilities that produced marketable sulphur.

We further disagree with Mobil's claim that it provided the data requested by the Department in its response to the Department's supplemental cost questionnaire. (Any reference to question 11 of the Department's 1992/93 supplemental cost questionnaire also pertains to question 12 of the Department's 1993/94 supplemental cost questionnaire. Any reference to question 14 of the Department's 1992/93 supplemental cost questionnaire also pertains to question 15 of the Department's 1993/94 supplemental cost questionnaire.) In question 11 of our February 2, 1996 supplemental cost questionnaire, we requested that Mobil ''provide detailed worksheets breaking out costs for 1994 for producing and handling sulphur by cost center or functional cost area,'' to ''clearly describe how, for each facility, the costs in the worksheet were determined and identify the source of your numbers,'' and to ''include in the worksheets the costs before the allocation, explain what those costs represent, and clearly show the allocation factor used.'' We asked further that Mobil ''clearly explain the allocation methodology and the allocation base, and why you chose that methodology for your reported costs.'' *See* Mobil 1992/93 and 1993/94 supplemental cost questionnaires both dated February 2, 1996 at 2–3. In Appendix SQ–13 of Mobil's supplemental cost questionnaire responses, Mobil reported a single cost amount for each of the facilities for which it reported costs. The narrative explanation provided in the response states that the costs provided in that appendix were generally obtained from information provided by facility handlers, which indicates that these costs include forming, loading, and general facilities expenses.

First, we note that, in response to the questions regarding the supplemental cost questionnaires which Mobil raised at the meeting on February 8, 1996 with Department officials (*see* Memorandum from Karin Price to the File, dated February 20, 1996, ''Meeting and telephone conversation with counsel for Mobil Oil Canada, Ltd. in the 92/93 and 93/94 reviews of elemental sulphur from Canada'' (*Mobil Memorandum*)), the Department stated that Mobil should provide cost information as recorded in its records. However, we also requested that Mobil provide a statement received in the normal course of business from each facility which it does not operate, and explain how these statements were used to determine the reported sulphur costs. *See Mobil Memorandum*. Mobil did not provide any such statements, nor did it explain any attempts made to obtain such statements. We also requested, in question four of the supplemental cost questionnaires, that Mobil provide its operating statements for two specific facilities in each review. We requested that, if Mobil were unable to provide those operating statements, it alternatively provide complete expense, revenue, and production data and all internal management reports showing this information for all products manufactured by the facility. Mobil provided only the audited financial statement for one facility. However, Mobil is not the operator of that facility and did not provide a copy of any statements it received from that facility in the ordinary course of business. The financial statement did not include the detailed information that would normally be included on an operating statement. Furthermore, Mobil did not provide the detailed information we requested as an alternative to an operating statement.

Mobil responded that it did not have operating statements as contemplated by the Department for two owned and operated facilities specifically requested by the Department. Mobil prepared ''income statements'' for these facilities for the purposes of the supplemental cost questionnaire response. Mobil states on pages 6–7 of its supplemental cost questionnaire responses that the statements were prepared from information in the financial database used to prepare Appendix SQ–11 of the supplemental cost questionnaire responses, as well as from Mobil's audited financial statements. The information in the income statements indicates that Mobil has more detail regarding its costs for the two facilities than is provided in Appendix SQ–13.

We disagree with Mobil that the costs reported in Appendix SQ–13 should not have been broken out to the extent Mobil could do so. Appendix SQ–13 was provided in response to our request in question 14 of the supplemental cost questionnaire for an explanation of how the costs for each facility were weight averaged to determine the COM to provide worksheets showing the calculation. For the facilities for which Mobil reported liquid sulphur costs as well as formed sulphur costs, the total cost amount had to be split between liquid handling costs and forming costs. However, Mobil provided no explanation or detail as to how this was done.

Mobil has claimed in its briefs that the information necessary for the Department's margin calculations is alternatively provided in Appendix SQ–11. The Department requested that Mobil provide costs for its facilities accounting for at least 90 percent of its sulphur *production* volume. However, Mobil has only reported liquid sulphur costs for a few facilities which represent less than 90% of production. The information provided in Appendix SQ–11 shows that Mobil should also have included costs for several other of its facilities in order to provide costs corresponding to 90% of production, as requested by the Department.

The BOE methodology used to allocate costs to sulphur in Appendix SQ–11 is based on a relative energy

content and is generally used to equate *volumes* of oil and gas. Gas and oil are energy sources and therefore it is appropriate to use the BOE methodology to uniformly account for volumes of oil and gas reserves. Sulphur is not purchased for its heat or energy content and therefore an allocation based on BOE is not appropriate. Mobil also stated that it excluded certain costs that it determined were related to oil and gas. We cannot determine whether the costs reported in Appendix SQ–11 are representative of Mobil's sulphur production costs and which costs are included. Mobil stated, regarding the information in Appendix SQ–11, in a letter dated April 2, 1996, it was aware that ''the Department does not intend to use that information to calculate COP and CV.'' Therefore, we cannot rely upon the data in Appendix SQ–11 to calculate COP and CV in these reviews.

We further disagree with Mobil's claim that we had an obligation to ask subsequent questions if we were not satisfied with Mobil's responses. When a respondent has been asked for certain information in the questionnaire and sent a supplemental with more specific requests for data, and has not provided it, that response is deficient. Not only did the Department send the supplemental questionnaire to Mobil, Department officials met with Mobil and clarified what we wanted Mobil to report. *See Mobil Memorandum*.

We have found the deficiencies to be so extensive that Mobil's responses cannot be used to calculate a margin. Although Mobil states that it provided the information available to it in its records, it did not provide the operating statements requested to show how its reported costs were obtained. Mobil did not report costs for facilities accounting for 90 percent of production volume as requested. We are not able to determine if the data Mobil provided in Appendix SQ–11 is representative of sulphur handling costs. Mobil did not provide any support for the cost data provided in Appendix SQ–13. Therefore, we are continuing to apply total BIA to Mobil.

We have addressed the specific deficiencies we found with Mobil's cost questionnaire responses in comments 17–22 below.

Comment 17

Mobil argues that the Department did not request that it supply the cost of pouring sulphur to block as part of its sulphur handling costs. Mobil adds that, in any event, the plant cost data include block costs. Mobil asserts that the Department states that it had specifically requested that Mobil supply block costs in questions 11 and 14 of the 1992/93 supplemental cost questionnaire and in questions 12 and 15 of the 1993/94 supplemental cost questionnaire and that Mobil failed to do so. Mobil contends that the question 14 did not require Mobil to report its block costs. Furthermore, Mobil argues, the block costs were included in Mobil's response to question 11.

Mobil argues that in its cost response it reported sulphur handling costs as defined by the Department in the preliminary results of the 1991/92 review and the underlying memorandum which, Mobil argues, specifically excluded block costs. Mobil asserts that question 14 of the supplemental cost questionnaire first asked Mobil to explain how the costs from each facility were weight-averaged to determine the reported COM, and then indicated that the reported costs should include costs associated with pouring sulphur to block. Mobil argues that it met with Department officials because the costs it originally reported did not include block costs. Mobil contends that the Department told it not to recalculate its costs in response to the questionnaire, but simply to explain how the reported cost figure was calculated. Mobil states that it acknowledged in its supplemental response, filed a few weeks later, that it was aware that in the recently-released final results of the 1991/92 review, the Department had reversed its position on block costs; the Department decided that they should now be included. Mobil argues that it did not know how to apply this determination because it was made with respect to Husky, and because Mobil did not have time to ascertain block costs before the questionnaire due date. Accordingly, Mobil asserts, it indicated in its supplemental response that it needed guidance from the Department on how to treat block costs.

Furthermore, Mobil argues, in its initial response, omitting block costs was in full accordance with the Department's policy at the time. Mobil contends that the case analyst did not require Mobil to change its previously-submitted costs by adding block costs and that the Department failed to give Mobil any guidance as to how to comply with the Department's recent change regarding inclusion of block costs. Mobil contends that the Department may not apply BIA for failing to provide information that was never requested.

Mobil argues that block costs are included in the second set of cost data supplied by Mobil to the Department in response to question 11 of the supplemental cost questionnaire. Mobil argues that the reported costs under this alternative methodology include more costs than the Department requested. Mobil contends that the response to question 11 is fully responsive in that it reported the costs associated with producing and handling sulphur incurred after the point at which hydrogen sulphide is split off from the main gas stream. Mobil first explained that it accounts for costs on a facility, rather than a product basis and that, in any event, no costs were attributed to sulphur in its accounting system. Mobil contends that the only way to respond to the Department's request was to report all operating costs incurred at the facilities, including overhead, less those costs that could be clearly identified as costs incurred prior to the split-off point. Mobil asserts that it provided a detailed breakdown of costs, on a plant-by-plant basis, for all of its sulphur-producing plants.

Mobil argues that because its normal accounting system does not break out costs on a product-specific basis, Mobil allocated the costs between the various products produced at each plant by using the allocation basis that it routinely uses for internal purposes. Mobil argues that these costs include all of the costs specifically identified by the Department, including the costs for pouring sulphur straight to block. Mobil notes that these costs included a number of costs incurred before the split-off point. However, Mobil argues that it should not be penalized for supplying the Department with a conservative figure that represents an overstatement of cost.

Petitioners contend that the Department's supplemental cost questionnaire specifically and unambiguously required Mobil to report its block sulphur costs. Petitioners agree with the Department's determination in the preliminary results of these reviews that Mobil could not refuse to respond to a request for information based on a preliminary determination in a previous review. In response to Mobil's argument that the Department did not require the submission of new cost data in the supplemental response, petitioners claim that the language of the supplemental cost questionnaire clearly requires Mobil to report block sulphur costs.

Petitioners argue that the costs provided by Mobil in Appendix SQ–11 are not sufficient because they neither separately break out any of the costs associated with producing and handling sulphur, nor do they break out block sulphur costs.

Department Position: We disagree with Mobil. We specifically required in question 11 of the cost supplemental

questionnaire, that ''all costs after the split-off point in the joint production process for refining natural gas and elemental sulphur should be reported, such as costs associated with sulphur recovery, pouring sulphur straight to block, * * *.'' Question 14 of the supplemental cost questionnaire required that ''the reported cost of manufacturing should include costs * * * associated with pouring sulphur straight to block * * *.'' Regardless of Mobil's presumption that the Department excluded block costs in the preliminary results of the 1991/92 review, we required that block costs be included in the reported COM of these reviews. Despite the Department's request, Mobil presumed that the block costs were not necessary in these reviews because the final results of the 1991/92 review were still pending. That such costs were not used in the preliminary results of a previous administrative review does not mean that a respondent can unilaterally decide that such costs need not be reported in another administrative review of the same case, especially when it was specifically requested to report such costs. Mobil was required to be guided by the explicit language of the questionnaire to which it was responding.

While Mobil argues that it provided block costs in response to question 11 in Appendix SQ–11, it stated that the provided costs include a number of costs before the split-off point and it did not segregate any sulphur costs or indicate if and where block costs were reported. We disagree with Mobil that such costs are necessarily conservative and represent an overstatement because these costs were allocated using an inappropriate methodology. *See* response to comment 16.

Comment 18

Mobil argues that it provided production costs for at least 90% of its production. Mobil contends that in its original response, it reported the handling costs for as many plants as it could. Because Mobil did not operate the vast majority of facilities which produced sulphur Mobil owned (*i.e.*, owned but not operated facility), Mobil claims, it had to rely on its operators to gather this data. Mobil argues that it reported the handling costs to the best of its ability given the limitations imposed by the failure of each of the operators to cooperate. Mobil argues that the plant cost data provided by it in its supplemental cost response included sulphur handling costs for all of its production. Thus, Mobil argues, it fully responded to the Department's request for cost data for at least 90 percent of its sulphur production. Mobil argues that the Department ignored the alternative data in Appendix SQ–11.

Petitioners argue that Mobil failed to provide cost data for facilities that account for 90 percent of its production. Petitioners claim that, in reporting costs used to calculate COP and CV, Mobil based the COM of liquid sulphur on data from only a small number of self-selected facilities as contained in Appendix SQ–13. Petitioners assert that these plants account for much less than 90% of Mobil's production of liquid sulphur. While petitioners acknowledge that Appendix SQ–11 contains selected cost data for all of Mobil's facilities, they assert that this cost data is not sulphur production costs, but improperly allocated costs that understate the COM of Mobil's sulphur. Petitioners further note that Mobil was aware that the Department did not intend to use the data in Appendix SQ–11 to calculate the COP and CV of sulphur.

Department Position: We disagree with Mobil. Mobil did not report costs for its facilities accounting for 90% of its sulphur production in Appendix SQ–13. Appendix SQ–13 contains Mobil's reported weighted-average COM. Mobil provided only a single cost figure for each facility reported and did not breakdown or explain the figure or provide support documentation. While Mobil did report alternative information on all of its facilities in Appendix SQ–11, the data provided was not based on sulphur production costs. Mobil provided total facility costs and stated that it excluded certain costs that it determined were solely related to oil and gas. Mobil did not provide any support documentation or an explanation of what costs were provided. Therefore, we cannot determine whether the costs reported in Appendix SQ–11 are representative of Mobil's sulphur production costs and which costs are included. As noted in our response to comment 16, the submitted information in Appendix SQ–11 is not sufficient to calculate COP and CV.

Comment 19

Mobil argues that it provided a detailed breakdown of costs. Mobil argues that the Memorandum from Holly Kuga to Joseph Spetrini, ''Whether to Use Best Information Available for Husky Oil Ltd. and Mobil Oil Canada, Ltd. in the 1992/93 Administrative Review of Elemental Sulphur for Canada,'' dated June 4, 1996, and also Memorandum from Holly Kuga to Joseph Spetrini, ''Whether to Use Best Information Available for Husky Oil Ltd. and Mobil Oil Canada, Ltd. in the 1993/94 Administrative Review of Elemental Sulphur for Canada,'' dated June 4, 1996, (collectively, Decision memorandum) states that Mobil failed to provide a detailed breakdown of costs as requested in question 11 of the supplemental cost questionnaire, and notes that Appendix SQ–13 of Mobil's supplemental cost questionnaire listed a single cost amount for each plant. Mobil argues that the Department's reasoning is faulty for two reasons. First, Mobil argues, Appendix SQ–13 responded not to question 11, but to question 14, which simply required Mobil to explain how it had weight-averaged the costs from the different plants to arrive at the cost of production reported in the original response. Mobil contends that question did not ask for a detailed breakdown of costs.

Secondly, Mobil argues that it provided in Appendix SQ–11 a detailed, plant-by-plant breakdown of costs as the Department requested in question 11. In this question, the Department asked Mobil to provide all costs of sulphur incurred after the gas split-off point, including the cost of the sulphur recovery unit.

Mobil asserts that in its Decision Memorandum, the Department stated that it would not even consider Appendix SQ–11 on the grounds that it included costs in the sulphur recovery unit which the Department had decided should not be included in the cost of production. Mobil states that the Department accused Mobil of failing to provide a detailed breakdown of costs as requested in Question 11, and yet refused to consider Mobil's completely responsive answer on the grounds that it contained ''irrelevant'' costs.

Petitioners argue that Mobil failed to provide a detailed breakdown of costs as required in question 11 of the supplemental questionnaire. Petitioners assert that, although Mobil claims that the requested breakdown of costs was contained in Appendix SQ–11, this data does not satisfy the requirements of question 11 because it fails to identify any of the cost incurred in producing sulphur and it does not clearly describe how the costs were determined. Petitioner maintains that Mobil failed to provide any support for the cost data contained in Appendix SQ–11.

Department Position: We disagree with Mobil. Question 11 required Mobil to provide worksheets which were to include a ''description of each cost center or functional unit, and identify the costs included in each.'' As noted above in Comment 16, Appendix SQ–

11, which was provided in response to question 11, does not contain a breakdown of costs sufficient to determine where and how sulphur handling costs are included in the reported costs. We required Mobil to provide detailed worksheets breaking out costs for producing and handling sulphur by cost center and functional cost area. We also required Mobil to clearly describe how, for each facility, the costs in the worksheets were determined, and identify the source of the numbers and to clearly explain the allocation methodology and the allocation base, and why Mobil chose this methodology for reporting its cost. The data in SQ–11 does not satisfy the requirements of question 11. Appendix SQ–11 does not identify any of the costs incurred in producing sulphur nor does it describe how the costs were determined. Mobil also failed to provide any support for the cost data contained in Appendix SQ–11.

Our discussion of Appendix SQ–13 in the Decision Memorandum does not indicate that Appendix SQ–13 was provided in response to question 11. Mobil provided cost information in both Appendix SQ–11 and Appendix SQ–13. In question 14, we required Mobil to show how the worksheets provided in response to question 11 tie to the worksheets provided in response to question 14. Appendix SQ–13 was provided in response to question 14. Therefore, the response to question 14 should have tied to the worksheet provided in response to question 11. Based upon all of the above, the Department concluded that Mobil's response with respect to the requested cost breakout was seriously deficient.

Comment 20

Mobil points out that the Department stated in its Decision Memorandum that Mobil failed to provide statements from operators of the plants operated by parties other than Mobil and to explain how these were used to calculate the sulphur handling costs. Mobil argues that the statements from the operators used to determine the reported sulphur handling costs are in the record and that the underlying data was available for verification.

Mobil argues that in question 4 of the supplemental cost questionnaire, the Department asked Mobil to provide operating statements for two plants in each review, or, ''if no operating statements are prepared for the facilities * * * provide complete expense, revenue, and production data * * *.'' Mobil argues that it provided a copy of the audited financial statement for one of the plants, which Mobil believed to be responsive to the request for an operating statement. Mobil also asserts that it explained that since it did not prepare an operating statement for the other plant in the ordinary course of business, it had followed the alternative method specified in the question and prepared an income statement from the financial database used to generate Mobil's financial statements. Mobil argues that since the statement included complete expense, revenue, and production data, Mobil fully complied with the alternative specified in the questionnaire. The Decision Memorandum, Mobil asserts, merely states that Mobil had been requested to supply an operating statement, but ignored the fact that the Department had directed Mobil to provide expense, revenue, and production data in the event the operating statement did not exist. Mobil claims that the Department concluded that it could not rely on the income statement because it was not kept in the ordinary course of business.

Petitioners argue that Mobil failed to provide operating statements of its plants which were operated by parties other than Mobil, and failed to explain how costs of those plants were used to calculate its sulphur handling costs as required by the supplemental cost questionnaires. Petitioners contend that the Department clearly required Mobil to provide these operating statements, and Mobil offered no explanation for its failure to comply with the Department's requests.

Petitioners argue that Mobil failed to provide the operating statements for two of Mobil's plants in each review which were requested in question four of the Department's supplemental cost questionnaires. Petitioners argue question 4 stated that, if no operating statements were prepared, or such statements did not exist, Mobil was to provide complete expense, revenue, and production data, as well as internal management reports. Petitioners assert that the Department clarified this request by asking Mobil to provide statements received in the normal course of business. Petitioners contend that Mobil's submission of financial statements in lieu of operating statements for one of the two plants was unresponsive to the Department's request. Petitioners claim that the financial statements do not contain the majority of the requested information and Mobil offered no reason for the appropriateness of substituting financial statements for operating statements. Petitioners note that Mobil also did not submit revenue and production volume statements received in the normal course of business. For the second plant in both reviews, petitioners contend, Mobil did claim that operating statements were unavailable but submitted income statements which do not detail revenues and production volumes for the products produced at that plant. According to petitioners, these statements should not be relied upon because they were prepared solely for the purposes of this review rather than in the normal course of business.

Department Position: As noted in the *Mobil Memorandum*, we spoke with counsel for Mobil and clarified some specific questions about the cost supplemental questionnaire. We stated that:

> With regard to question 11 in the 92/93 review and 12 in the 93/94 review, * * * Mobil should include an explanation as to how the statements received from facilities where Mobil is not the operator were used to determine the reported sulphur costs, that the costs included in the reported sulphur costs should be identified, and that a sample statement from each facility should be submitted.''

Mobil Memorandum

Mobil did not provide the statements from each facility as requested or any other source documents in response to question 11. Mobil did not explain any attempts made to obtain such statements from each operator. While Mobil maintains that the alternative data to operating statements provided in response to question four is fully responsive, we do not agree that the financial statement and the ''income statements'' prepared for the supplemental cost responses sufficiently answered the Department's request for complete revenue, expense and production data for all products manufactured by the facilities.

Comment 21

Mobil claims that, by submitting the information provided in Appendix SQ–13 of its supplemental questionnaire response, it was fully responsive to question 14 of the Department's supplemental cost questionnaire. Question 14 also requested Mobil to ''separately identify the variable and fixed costs, as requested in questions 3.B.2 and 3.B.3 of the questionnaire.'' Mobil points out that it responded to this question by stating that it had weight-averaged the handling costs from the individual plants based on the quantity of sulphur produced and sold, and included a worksheet demonstrating the calculation. Further, Mobil states, it noted in its response that it was unable to segregate these costs into fixed and variable components as this information was unavailable to it.

Mobil claims that it then noted in its supplemental response that, because sulphur handling occurs when the sulphur is destined for sale, the cost of the entire operation should be considered to be variable.

Mobil argues that it answered the question as asked, yet the Department states that Mobil should have broken out its costs in more detail to the extent it could do so in the Decision Memorandum. Mobil argues that it cannot be given BIA for failing to provide information that was never requested. Mobil challenges the Department's claim in the Decision Memorandum that Mobil could have provided a more detailed response than that provided in Appendix SQ–13 based on the fact that Mobil prepared a detailed income statement for a particular plant in response to Question 4 of the supplemental cost questionnaire. Mobil argues that the income statement shows that it contains no detail of sulphur handling, because Mobil does not break out these costs in its accounting system.

Mobil argues that the Department was incorrect in stating in the Decision Memorandum that the forming costs reported in Appendix SQ–11 for each plant with forming facilities had been used to calculate the cost of formed sulphur in Appendix SQ–13. Thus, Mobil asserts, the Department was also incorrect in concluding that it was able to break out its sulphur costs to some extent. In fact, states Mobil, it used the information in Appendix 13 to include the forming costs separately in Appendix SQ–11. Mobil argues that, in the 1992/93 review, the reverse is true. Mobil added the forming costs from Appendix SQ–13 to Appendix SQ–11 to avoid double counting. Mobil argues that, in the 1993/94 review, the forming costs were not added.

Petitioners argue in support of the Department's use of BIA because Mobil's cost data contained in Appendix SQ–13 did not adequately respond to question 14 of the supplemental questionnaire. Petitioners note that questions 11 and 14 specifically required Mobil to report detailed information for the costs used to calculate the COP and CV of its sulphur. As a result of Mobil's failure to report its sulfur costs in the manner requested by the Department, petitioners claim that it is unclear what costs were included in the COMs reported in Appendix SQ–13. Petitioners argue that Mobil's response failed to include such major cost elements as block storage, liquid sulphur transfer, remelting, and depreciation. Petitioners contend that neither appendix provided an explanation for the calculation of per-unit costs reported in Appendix SQ–13.

Department Position: We agree with petitioners. Mobil reported a single cost for each of the facilities for which it reported costs in Appendix SQ–13. It is unclear what costs were included in the COMs reported in Appendix SQ–13. Also, for the facilities for which Mobil reported liquid sulphur costs as well as formed sulphur costs, the total costs amount had to be split between liquid handling costs and forming costs. Mobil provided no explanation or detail as to how this was done. Mobil stated in its response that it generally relied on information provided by facility operators, but did not explain what this information contained or provide any support. Therefore, we have no explanation for the calculation of per-unit costs reported in Appendix SQ–13 and cannot rely on this data.

Comment 22

Mobil argues that the Department may not penalize it for reporting its data in a manner that differs from typical cost accounting methods. Mobil argues that the decision to apply BIA appears to be a decision to penalize Mobil for failing to report sulphur handling costs in a manner that the Department would prefer. Mobil argues that, if the Department persists in applying BIA to a company that has reported its costs to the best of its ability, it is informing that company that it can never satisfy the Department and will always be subject to a BIA rate. Mobil argues that this conflicts with the Department's own stated policy, as well as judicial authority.

Mobil cites *Atlantic Sugar, Ltd.* v. *United States,* 744 F.2d 1556 (Fed. Cir. 1984), which involved an International Trade Commission (ITC) injury determination, where the Federal Circuit rejected an interpretation that would authorize agencies to impose particular accounting methods on companies according to agency needs. Mobil notes that the court stated:

> [I]t is inflating out of all proportion the importance of the laws with which the lower court deals to expect that business people and corporate accountants would keep their books with an eye to an obscure and wholly arbitrary statutory geographic region, which a relatively small Government agency might declare for the purposes of one antidumping injury investigation.

Id. At 1561. Mobil argues that the CIT similarly cautioned the Department against overextending its authority during investigations: ''Commerce's desire to obtain documentation should not fly in the face of established business practice, and should not be transformed into a do-or-die requirement,'' citing *Industrial Quimica del Nalon, S.A.* v. *United States,* 15 CIT 240, 244 (CIT 1991).

Mobil argues that the Department itself has acknowledged that it cannot penalize a respondent for failing to maintain business records in a particular manner or for using an allocation method that the Department subsequently rejects. Mobil argues that in a case closely analogous to this one, *Carbon Steel Plate from Canada* (61 FR at 13815), at comment 7, the Department accepted the respondent's reported costs for one production location as a proxy for costs at another production location. Mobil argues that the respondent, like Mobil, did not maintain records that would enable it to calculate the actual cost of producing the subject merchandise at each of its plants. Mobil argues that the Department accepted costs from one plant as a surrogate for total costs based on three factors that are also present in this case: (1) the nature of the respondent's accounting system prevented more detailed reporting; (2) the Department verified the respondent's inability to provide more specific costs; and (3) the respondent's alternative methodology was a conservative estimate of costs. In addition, Mobil argues that the Department accepted respondent's allocation of indirect selling expenses because the respondent did not maintain records of the actual indirect selling expenses of each of its markets as a matter of normal business procedure. Mobil also cites *Smith-Corona Group* v. *United States* 713 F. 2d 1568, 1580 (Fed. Cir. 1983), in which, it argues, the Department properly accepted respondent's allocation of rebates based on actual figures when the company did not maintain records directly tying each rebate to a particular sale; *Zenith Elecs. Corp.* v. *United States,* No. 90–07–00339, slip-op. 94–148 (CIT 1994), in which, it argues, the Department properly declined to adopt petitioners adverse allocation methodology for discounts given that the respondent reported the information in the best manner it could, given its accounting system; *Final Results of Antidumping Duty Administrative Review; Certain Cold-Rolled Carbon Steel Flat Products from Germany,* 60 FR 65264 (December 19, 1995), in which, it argues, the Department accepted respondent's data because the necessary records were not maintained; *Final Determination of Sales at Less than Fair Value: High Capacity Pagers from Japan,* 48 FR 28682 (June 23,

1983), in which, it argues, the Department allowed an adjustment for technical services, including certain allocated costs, because they were reasonably calculated and actual data were not kept as ordinary business records.

Mobil argues that a decision to resort to BIA is even less justifiable when the respondent, recognizing the limitations of its accounting system, provides the Department with alternative data or methodologies. Mobil cites *Federal-Mogul Corp.* v. *United States,* 918 F. Supp. 386, 410 (CIT 1996) (citing *Allied-Signal Aerospace Co.* v. *United States* 996 F. 2d 1185, 1193 (Fed. Cir. 1993)), and notes that the CIT stated that the Department may not resort to BIA by ignoring certain data, which the respondent had provided as an alternative reporting method, simply because it does not like it.

Petitioners argue that, in light of the fundamental deficiencies in the data provided by Mobil, the Department properly relied on total BIA to establish Mobil's margin in the preliminary results. Petitioners argue that, in addition, the Department properly recognized that Mobil had in its possession or had access to information sufficient to comply with the Department's requests for information and to calculate COM of its sulphur in accordance with the methodology adopted by the Department in the 1991/92 review. Petitioners conclude that the Department should assign to Mobil, as BIA, the highest rate ever assigned to Mobil in this proceeding.

Department's Position: We disagree with Mobil that we have penalized it for not keeping its books in the manner we would prefer. As detailed in the Decision Memorandum and discussed in comment 16, Mobil did not provide operating statements, block storage sulphur costs, any support or explanation of the costs included in the reported COM and did not report the costs for the percentage of production volume requested. These were items (1) that Mobil could have provided to the Department or (2) if they were unable to provide them, for which Mobil should have explained why it could not respond sufficiently to the Department's requests. Mobil did not explain or document what steps were taken to obtain sulphur production costs and support documents from each facility. Mobil did not explain or detail the costs included nor provide support for the reported COM. In light of these deficiencies, it is appropriate to apply BIA to Mobil.

Comment 23

Mobil argues that the Department should not reject Mobil's responses and resort to BIA without conducting verification. Mobil argues that if the Department's decision is not an effort to penalize Mobil for not maintaining more detailed cost records, then it must be based on a belief that Mobil's accounting system contains more detail than it has supplied. Mobil argues that it has clearly and repeatedly explained that its cost system does not allow it to respond to the Department's standard questionnaire in the detail required. Mobil argues that the Department verified during the 1991/92 review that Mobil's cost accounting system differs significantly from the systems the Department normally encounters. Mobil argues that as a result of the cost verification by the Office of Accounting, the Department concluded that ''[t]he cost accounting details included in both of the company's submissions were limited primarily by the constraints of Mobil's accounting system,'' and that the system ''does not allow for the level of detail contemplated by the Department's suggested format.'' (Cost of Production and Constructed Value Verification Report, 1991/92 Administrative Review (September 27, 1994) at 6.) Mobil argues that in this review the Department appears to have ignored the findings of its own cost analysts and concluded that Mobil's accounting system has more detail than Mobil has divulged. Mobil argues that the Department has no basis for this assumption. Mobil argues that each of its submissions is accompanied by sworn statements that attest to the completeness and accuracy of the information. Mobil argues that the Department's own verifications support its statements. Mobil argues that, if the Department were somehow convinced that Mobil's assertions were false or that the facts had changed substantially, the Department could have verified the information. Mobil asserts that the Department declined its suggestion that the Department verify Mobil 1993/94 response concurrently with the verification of the 1994/95 response.

Mobil argues that it was informed that the Department would prefer to address Mobil's unique cost situation in the 1994/95 review. Mobil argues that the verification of its cost system in the 1994/95 review will come too late to rectify the results of this review. Mobil contends that, if the Department persists in applying BIA in the final results of the 1993/94 review, it will be subjected to unjustifiably high antidumping duty cash deposit rates. Mobil also argues, that improperly applying BIA to Mobil may unfairly delay Mobil's ability to qualify for revocation of the order. Mobil argues that, by declining to conduct verification, the Department failed to follow its regular practice of first providing a respondent with an opportunity to satisfy the Department that it has provided complete responses before resorting to BIA. Mobil cites *Rautaruukki Oy* v. *United States,* No. 93–09–00560, slip-op. 95–56 (CIT 1995) (quoting International Trade Administration Revisions to 19 CFR Part 353, 54 FR 12742, 12766 (March 28, 1989)), in which the CIT stated ''prior to resorting to best information available, the Department as a matter of practice often * * * permits a respondent to correct a deficiency during the verification process * * *.'' Mobil argues that because the Department did not verify Mobil's responses, Mobil was never given the opportunity to demonstrate that its responses were complete even though it was available at all times during the course of this review for verification.

Petitioners argue that the Department should not verify Mobil's cost responses. Petitioners argue that, as set forth in detail in Section II.A., the record conclusively establishes that information sufficient to comply with the Department's information requests was available to Mobil. Petitioners argue that the record also establishes that Mobil made no real effort to supply this information, and that there is no need to verify what the record already establishes. Petitioners contend that, as a matter of law, the Department has no obligation to verify the unrepresentative and understated sulphur cost data that Mobil chose to report, because those cost data cannot be used to calculate the COP and CV of Mobil's sulphur. Petitioners argue that the Department has routinely canceled verification in instances where a respondent has not provided usable cost data in its questionnaire responses, and that the Department has already verified that Mobil misreported its forming costs at one of its sulphur producing facilities.

Department's Position: We agree with petitioners, in part. We do not necessarily verify respondents' information in each administrative review. Furthermore, the purpose of verification is to verify the information submitted to the Department in questionnaire responses. It is not an opportunity for respondents to submit additional information. While we often will permit, at the beginning of verification, minor corrections to the response that were found in preparing for verification, verification is not an

opportunity to correct for deficiencies in the questionnaire responses. If, as in the present case, we find prior to verification that the information is so deficient that we would not be able to use it, then we do not proceed with verification. To do otherwise would be a waste of resources. *See* for example, *Chrome-plated Lug Nuts From Taiwan; Preliminary Results of Antidumping Duty Administrative Review and Termination in Part,* July 8, 1996 (61 FR 35725), where two companies informed us prior to verification that we would not be able to reconcile data. Because we found prior to verification that Mobil had not adequately responded to our requests for information, it was not appropriate to verify the deficient information. Regarding Mobil's comments about the 1994/95 review, we treat each segment of the proceeding separately. Our decision not to verify in the 1993/94 review was based on the information on the record for that review. Issues arising in the 1994/95 review will be considered based on what is on the record of that review.

Comment 24

Mobil argues that the Department improperly applied total, rather than partial, BIA. Mobil argues that it is the Department's practice to apply partial BIA when a respondent's submitted information is deficient in only limited respects, and cites as an example, *Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland cement* v. *United States,* 865 F. Supp. 857, 863 (CIT 1994), aff'd on other grounds, 68 F 3d 487 (Fed. Cir. 1995). Mobil contends that the Department generally accepts a respondent's U.S. sales data, even if the cost data is found to be deficient, and cites as examples, *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Dynamic Random Memory Semiconductors of One Megabit and Above from the Republic of Korea,* 57 FR 49066 (October 29, 1992); *Final Results of Antidumping Duty Administrative Review and Revocation, in part of the Antidumping Duty Order: Certain Cut Flowers from Colombia* 56 FR 50554 (October 7, 1991), in which the Department stated, ''While continuing to use the verified sales portion of their response, BIA was only used for that portion of the response which was unverifiable.''); and *Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review,* 59 FR 42806, (August 19, 1994) (comment 1), in which, Mobil argues, the Department accepted portions of respondent's cost response that were not deficient, and noted that some of the areas of concern were related to the methodology used, rather that the accuracy of the submitted data. Thus, Mobil argues, the Department's decision to reject Mobil's sales data is inexplicable given that it apparently found no deficiencies in Mobil's sales response. Mobil further argues that the Department found Mobil to be cooperative and yet still applied total BIA. Mobil argues that, if the Department finds Mobil's cost data to be deficient, despite the fact that it is complete, it should at least use Mobil's U.S. sales data in calculating a margin.

Mobil notes that the Department issued a preliminary determination in *Certain Cut-to-Length Carbon Steel Plate from Sweden; Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 51898 (October 4, 1996) (*Steel from Sweden*), in which Mobil argues the Department decided to apply total BIA because of deficiencies in the cost data, even though the sales data was verified. Mobil contends that the Department noted that there were no alternative sets of cost data for the Department to use. Mobil argues that, in this case, the Department has several alternatives, including petitioners' data as adjusted by the Department to initiate the sales-below-cost allegation; Mobil's verified 1991/92 cost data (adjusted for inflation), which the Department verified; and Husky's reported liquid sulphur cost. Thus, Mobil argues, the factors that necessitated total BIA in *Steel from Sweden* are not present in Mobil's case.

Petitioners disagree with Mobil. Petitioners argue that, as set forth in Section II.A., Mobil deliberately withheld a substantial amount of requested information from the Department and has attempted to manipulate the outcome of this review by arguing that the Department must use the cost data it chose to report which, as set forth in Section II.B., are unrepresentative, understated, and allocated to sulphur using a patently wrong allocation method. Petitioners argue that it is consistent with the statute and Department practice to apply total BIA to Mobil in these circumstances. Furthermore, petitioners argue, it is Department practice to reject a respondent's submitted information *in toto* where a respondent fails to provide reliable cost data. Petitioners contend that the Department has recognized that if it were to utilize a respondent's sales information when a respondent fails to provide usable cost information, respondents would be in a position to manipulate the outcome of reviews by supplying only that information which the respondent wants the Department to use in its margin calculations.

Department's Position: We disagree with Mobil. Our determination to apply total BIA in this case, rather than partial BIA, is proper and in accordance with both the Department's stated practice in this area, and the law effective for these reviews. *See Final Determination of Sales at Less Than Fair Value: Grain-Oriented Electrical Steel From Italy,* 59 FR 33952 (July 1, 1994) (''The rejection of a respondent's questionnaire responses *in toto* and use of BIA is appropriate and consistent with past practice in instances where a respondent has failed to provide verifiable COP information.'' (Citing as examples of past practice *Final Determination of Sales At Less Than Fair Value: Certain Forged Stainless Steel Flanges From Taiwan,* 58 FR 68859 (December 29, 1993) and *Final Determination of Sales At Less Than Fair Value: Certain Hot-Rolled Lead & Bismuth Carbon Steel Products From France,* 58 FR 6203 (January 27, 1993).))

Where the Department determines that parts of a respondent's submitted cost data are reliable, BIA ''plugs'' may be used to fill in gaps created by missing or unreliable data. In the present case, however, Mobil's cost response was found to have extensive deficiencies rendering the entire cost response unusable. *See* comments 16 and 18 above. Therefore, in accordance with the Department's practice, we have applied cooperative total BIA to Mobil in these reviews.

Contrary to Mobil's contention, *Silicon Metal From Brazil* is consistent with the above practice. In that case, the Department stated that, while there were areas in which the costs were not appropriately quantified, ''we have not found these deficiencies to be so significant or pervasive as to call into question the accuracy of the entire [cost] response.'' (59 FR 42806, 42807; August 19, 1994). Accordingly, in that case the Department relied on BIA only ''in the instances where [it] found insufficient verification support.'' *Id.* at 42807. For the cost in general, the Department used the respondent's data in reaching the final results in that review. *Id.* Similarly, in *DRAMs From Korea,* cited by Mobil, the Department once again relied on BIA only for those portions of the cost response found to have ''insufficient verification support''. *DRAMs From Korea,* 54 FR 15467,15471 (March 23, 1993). For the methodological issues, where appropriate, ''the costs were recalculated to quantify or value that particular cost element.'' *Id.* By contrast, in the present case, we do not have

usable cost data for Mobil. Without such data, the Department cannot calculate an appropriate foreign market value (FMV), and thus cannot perform sales comparisons. *See also, Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta From Turkey,* 61 FR 30309, 30312 (June 14, 1996).

Furthermore, even if the Department were to contemplate use of an alternative to total BIA in this situation, we note that no appropriate alternative data is available to use as BIA for FMV in this case. Mobil suggests that the Department use as BIA the company's reported costs for the previous period,—*i.e.,* the 1991/92 review. However, in past cases, the Department has specifically rejected this type of application even under both the new statutory provisions concerning the basis for the use of facts available enacted through the URAA, and the pre-URAA provisions. For example, in *Steel From Sweden,* the case cited by Mobil, the Department not only rejected the respondent's entire cost database, but further rejected application of any alternative to total facts available. In applying total facts available, the Department specifically rejected use of actual costs from a previous review because ''[i]f the Department were to rely on such data, a respondent would have no incentive to report its costs once it was satisfied with the verified costs from a particular review period.'' *Steel From Sweden,* 62 FR 18396 (April 15, 1997). The same concern is also present in the instant case. In this type of application, manipulation of either the U.S. price or the FMV component of the margin calculation has the potential to have a dramatic impact on the dumping margin.

Mobil's other suggested alternatives—*i.e.,* petitioners' data used in its below-cost allegation, or, alternatively, another respondent's CV data reported in the present reviews, would also be inappropriate. The cost data submitted by petitioners in these reviews is not public data and is therefore not available for consideration as BIA. With respect to applying another respondent's CV data, it would not be appropriate to use the ranged public CV data submitted by Husky as BIA in this case. First, for that part of Husky's cost data that was applied and adjusted by the Department in calculating COM and CV in these reviews, no ranged public data were reported. Second, the reported public CV is an unadjusted figure which cannot properly reflect CV without further adjustment. Husky's public cost and production data lacks the proper detail to make appropriate adjustments to the public CV figure. Accordingly, no appropriate public data would be available for consideration as BIA in this case.

Comment 25

Mobil argues that, even if the Department's decision to apply BIA is correct, its decision to apply a BIA rate that is itself based on partial BIA cannot be supported. Mobil argues that, although the Department has discretion in its choice of BIA, the CIT cautioned in *National Steel Corp.* v. *United States, 913 F. Supp. 593, 597 (CIT 1996) (National Steel*) (citing *Rhone Poulenc, Inc.* v. *United States,* 899 F.2d 1185, 1191 (Fed. Cir. 1990)) that it must exercise that discretion in light of the ''Basic requirement of the BIA rule * * * to determine margins as accurately as possible.'' Mobil also cites to *National Steel* 870 F. Supp. 1130, 1136 (CIT 1994) (quoting Manifattura Emmepi S.p.A. v. United States 799 F. Supp. 110, 115 (CIT 1992)), in which the CIT stated that there must be a ''rational relationship * * * between the 'data chosen and the matter to which they are to apply.' '' Mobil contends that in *National Steel,* the court found that the Department's choice of BIA might have been aberrant based on the fact that a significant portion of the respondent's sales had margins well below the selected rate.

Mobil argues that, in this case, the Department's decision to base Mobil's BIA rate on Husky's rate, which, it argues, is itself based, to a significant extent, on BIA, violates the Department's own consistent policy of using another respondent's rate only if that rate is a non-BIA rate. Mobil argues that, in the 1991/92 review in this case, the Department rejected the petitioners' suggestion that the Department apply to Mobil, as a BIA rate, the rate applied to Petrosul, since the latter was itself a BIA rate. Mobil also cites *Roller Chain, Other Than Bicycle, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews* 57 FR 3745 (January 31, 1992) in which it argues the Department selected, as BIA, the highest non-BIA rate of any firm in a prior review; *Roller Chain Other Than Bicycle, from Japan: Final Results of Antidumping Duty Administrative Review,* 57 FR 43697 (September 22, 1992), in which it notes that the BIA rate remained unchanged in the final results; *Drycleaning Machinery from Germany; Final Results of Antidumping Duty Administrative Review,* 56 FR 66838 (December 26, 1991), in which it argues, as BIA, the Department chose another respondent's non-BIA rate; *Final Results of Antidumping Duty Administrative Review and Revocation, in part of the Antidumping Duty Order: Certain Cut Flowers from Colombia,* 56 FR 50554 (Comment 6) (October 7, 1991), in which it argues, as BIA for non-responding firms, the Department chose the highest non-BIA rate from any review; and *Saha Thai Steel Pipe Co.* v. *United States,* 828 F. Supp. 57, 63 (CIT 1993), in which the CIT stated, ''In selecting the BIA rate for a given subsidy program, Commerce asserts its practice is to select the highest published non-BIA rate for the identical program in the same country.''

Mobil argues that, contrary to the Department's own stated practice, as upheld by the CIT, the Department has simply applied the rate chosen for Husky which itself is partially based on BIA. Mobil argues that this is clearly improper.

Mobil argues that the standards that govern the Department's choice of BIA are now more stringent as a result of the dictates of the 1994 Antidumping Code (Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994), and argues that the code makes it clear that the Department must have some rational basis in its choice of BIA. Mobil notes that paragraph 7 in Annex II of the Code establishes the standards that govern the choice of BIA, and, Mobil argues, cautions the administering authority to exercise its discretion to use BIA with ''special circumspection.'' Mobil argues, that to ensure that some rational basis exists between the choice of BIA and the respondent's actual antidumping margin, the Code directs the authority to check the information used to support its choice of BIA with information from other independent sources, ''such as published price lists, official import statistics and customs returns, and from the information obtained from other interested paries during the investigation.'' Mobil argues that, based on these criteria, the Department would not be able to support its choice of BIA in Mobil's case because it has not even attempted to choose a BIA based on information that the Department perceives to be the best alternative to Mobil's own reported costs.

Petitioners argue that the application of Husky's rate to Mobil, as BIA, is fully consistent with Department practice. Petitioners argue that Husky's rate is a calculated rate in this review, and that the fact that certain elements of Husky's costs were based on BIA does not alter this fact. Petitioners argue that there have been numerous instances where the Department has used rates that were, in part, based on BIA to establish a total BIA rate for another company, and that indeed, a significant percentage of the

rates calculated by the Department have an element of BIA in them. Petitioners maintain that Mobil's argument that it would be inconsistent with Department practice to apply Husky's rate to Mobil, as BIA, should be rejected.

Department's Position: We disagree with Mobil. It is the Department's long-standing practice to use partial BIA with respect to a respondent and apply that rate, as BIA, to other firms who have failed to provide adequate responses. In this case, Husky's rate is a calculated rate, and, therefore, is appropriate as BIA for Mobil. We also disagree with Mobil that we have not exercised caution in choosing the rate. We have followed the law and have chosen a rate that is consistent with Department practice. As we stated in the preliminary results notice for these reviews, the applicable statute and regulations are as they existed on December 31, 1994. These reviews are not subject to the 1994 Antidumping Code and therefore it does not apply. Accordingly, the Department's established second-tier BIA practice in this case is required by the law applicable in these reviews. Therefore, for these final results, as BIA, we have continued to apply Husky's rate to Mobil.

Final Results of the Reviews

As a result of our reviews, we finally determine that the following margins exist for the periods December 1, 1992 through November 30, 1993, and December 1, 1993 through November 30, 1994:

Manufacturer/exporter	Time period	Margin[5] (percent)
Alberta Energy Co., Ltd	12/1/92–11/30/93	[1] 5.56
	12/1/93–11/30/94	[1] 5.56
Allied-Signal Inc	12/1/92–11/30/93	[2] 40.38
Brimstone Export	12/1/92–11/30/93	[2] 40.38
Burza Resources	12/1/92–11/30/93	[2] 40.38
Fanchem	12/1/92–11/30/93	[2] 40.38
Husky Oil Ltd	12/1/92–11/30/93	40.38
	12/1/93–11/30/94	3.38
Mobil Oil Canada, Ltd	12/1/92–11/30/93	[3] 40.38
	12/1/93–11/30/94	[3] 40.38
Norcen Energy Resources	12/1/92–11/30/93	[2] 40.38
	12/1/93–11/30/94	[4] 40.38
Petrosul International	12/1/92–11/30/93	[2] 40.38
	12/1/93–11/30/94	[2] 40.38
Saratoga Processing Co., Ltd	12/1/92–11/30/93	[4] 28.90
Sulbow Minerals	12/1/92–11/30/93	[2] 40.38

[1] No shipments or sales subject to this review. The firm has no individual rate from any segment of this proceeding. As a result, the firm will be subject to the ''all others'' rate.
[2] Non-cooperative total BIA rate.
[3] Cooperative total BIA rate.
[4] No shipments to the United States during the period of review. Rate is the rate established during the immediately preceding administrative review.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and FMV may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of these final results of administrative review for all shipments of elemental sulphur from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) the cash deposit rates for the reviewed companies will be those rates established in the final results of the most recent review in which the company was involved; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in either of these reviews, a prior review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous review, or the LTFV investigation, the cash deposit rate will be the ''new shipper'' rate of 5.56 percent established in the first review conducted by the Department in which a ''new shipper'' rate was established. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CR 353.34(d)(1). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 7, 1997.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 97–18445 Filed 7–14–97; 8:45 am]

BILLING CODE 3510–DS–P

federal register

Tuesday
July 15, 1997

Part III

Environmental Protection Agency

Certain Chemicals; Premanufacture Notices

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51860; FRL–5721–8]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from February 1, 1997 to February 28, 1997.

ADDRESSES: Written comments, identified by the document control number ''[OPPTS–51860]'' and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by following the instructions under SUPPLEMENTARY INFORMATION. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

The official record for this notice, as well as the public version, has been established for this notice under docket control number ''[OPPTS–51860]'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfifdential Information Center (NCIC), Rm. NEM-B607, 401 M St., SW., Washington, DC 20460. The official record is located at the address in ''ADDRESSES''.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number [OPPTS–51860]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 93 Premanufacture Notices Received From: 02/01/97 to 02/28/97

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–97–0336	02/03/97	05/04/97	Westvaco Corporation	(S) Modified rosin resin for lithographic inks	(G) Fatty acids, tall-oil, phenol modified polymer with bisphenol a, formaldehyde, maleic anhydride, rosin, tall oil and pentaerythritol
P–97–0337	02/03/97	05/04/97	Westvaco Corporation	(S) Hydrocarbon tesin for lithographic inks	(G) Rosin modified fatty acids, tall-oil, polymer with glycerol, petroleum naphtha, maleic anhydride and petroleum distillates
P–97–0355	02/03/97	04/28/97	CBI	(G) Ink ribbon component	(G) Aryl-aliphatic copolyester resin
P–97–0356	02/04/97	05/05/97	CBI	(G) UV catalyst	(S) Iodonium, [4-(1-methylethyl) phenyl] (4-methylphenyl)-, tetrakis (pentafluorophenyl) borate (1-) (9ci)
P–97–0357	02/05/97	05/06/97	Ciba-Geigy Corporation	(S) Dispersing agent for dyes	(G) Methylene bridged naphthalene sulfonic acid, sodium salt
P–97–0358	02/04/97	05/06/97	Hoechst Celanese	(S) Crosslinking agent	(S) 2-Propenamide, *N*-(1-hydroxy-2,2-dimethoxyethyl)-
P–97–0359	02/05/97	05/06/97	CBI	(S) Resin for printing inks	(G) Modified hydrocarbon resin
P–97–0360	02/05/97	05/06/97	CBI	(S) Resin for printing inks	(G) Modified hydrocarbon resin
P–97–0361	02/05/97	05/06/97	CBI	(S) Resin for printing inks	(G) Modified hydrocarbon resin
P–97–0362	02/05/97	05/06/97	CBI	(S) Resin for printing inks	(G) Modified hydrocarbon resin
P–97–0363	02/05/97	05/06/97	CBI	(S) Resin for printing inks	(G) Modified hydrocarbon resin
P–97–0364	02/05/97	05/06/97	CBI	(S) Resin for printing inks	(G) Modified hydrocarbon resin
P–97–0365	02/04/97	04/29/97	Amfine Chemical Corporation	(S) Plasticizer for polyl [vinyl chloride]	(G) Hexanedioic acid, polymer with diols and a monohydric alcohol
P–97–0366	02/06/97	05/07/97	CBI	(S) Demulsifier for crude oil emulsion; demulsifier for refined petroleum hydrocarbons	(G) Propylene axide, polymer with alkylphenol, formaldehyde and alkenoic acids
P–97–0367	02/06/97	05/07/97	CBI	(S) Demulsifier for crude oil emulsion; demulsifier for refined petroleum hydrocarbons	(G) Ethylene oxide, polymer with propylene oxide, alkylphenol, formaldehyde and alkenoic acids
P–97–0368	02/06/97	05/07/97	CBI	(S) Demulsifier for crude oil emulsion; demulsifier for refined petroleum hydrocarbons	(G) Ethylene oxide, polymer with propylene oxide, mixed alkyl phenols, formaldehyde and alkenoic acids
P–97–0369	02/04/97	05/05/97	Betzdearborn, Inc	(G) Polyaminoamide prepolymer intermediate	(G) Polyamino amide
P–97–0370	02/05/97	05/06/97	CBI	(G) Solvent	(G) Propionic acid methyl ester
P–97–0371	02/06/97	05/07/97	Reichhold Cemicals, Inc	(G) Open, non-dispersive, UV-curable adhesive	(G) Aromatic urethane acrylate
P–97–0372	02/07/97	05/08/97	Eastman Chemical Company	(G) Ink vehicle	(G) Substituted styrene acrylate imine polymer
P–97–0373	02/07/97	05/08/97	CBI	(G) Open, non-dispersive (coating material)	(G) Aliphatic polyisocyanate
P–97–0374	02/06/97	05/07/97	Betzdearborn, Inc	(G) Industrial paper process treatment, open dispersive use	(G) Polyaminoamide
P–97–0375	02/06/97	05/07/97	Betzdearborn, Inc	(G) Industrial paper process treatment, open dispersive use	(G) Polyaminoamide
P–97–0376	02/11/97	05/12/97	Eastman Chemical Company	(G) Intermediate for ink vehicle	(G) Substituted styrene acrylate polymer
P–97–0377	02/10/97	05/11/97	CBI	(S) Used in the manufacture of lubrication oil additives and corrosion prevention products	(G) Alkyl benzene sulfonic acid
P–97–0378	02/10/97	05/11/97	CBI	(S) Used in the manufacture of lubrication oil additives	(G) Alkyl benzene sulfonic acid, barium salt
P–97–0379	02/10/97	05/11/97	CBI	(S) Lubrication oil additives for gasoline and diesel engines	(G) Alkyl benzene sulfonic acid, calcium salt
P–97–0380	02/10/97	05/11/97	CBI	(S) Used in the manufacture of lubrication oil additives and corrosion resistive coating	(G) Alkyl benzene sulfonic acid, magnesium salt
P–97–0381	02/10/97	05/11/97	CBI	(S) Additive used in the formulating a ''soluble oil'' base to be used in formulating a water based cutting oil; an intermediate used in production of a barium salt	(G) Alkyl benzene sulfonic acid, sodium salt
P–97–0382	02/11/97	05/12/97	Wacker Silicones Corporation	(S) Durability enhancer for polishes and protectants	(G) Aminoalkyl-functional polydimethylsiloxane
P–97–0383	02/11/97	05/12/97	Dystar L.P.	(S) Dyestuff for polyester	(G) *N,N* nitro-substituted)azophenyl]-substituted amine
P–97–0384	02/12/97	05/13/97	CBI	(G) Infra red absorber	(G) Aryl substituted sulfonated copper phthalocyanine
P–97–0385	02/12/97	05/13/97	Henkel Corporation	(G) Dispersant for coating	(G) Polycarboxylate polymer
P–97–0386	02/14/97	05/15/97	Dupont	(G) Film and coating applications	(G) Polyvinyl fluoride copolymer

I. 93 Premanufacture Notices Received From: 02/01/97 to 02/28/97—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–97–0387	02/18/97	05/19/97	H.B. Fuller Company	(S) Paper coating and saturation	(G) Polyether, polyurethane polymer
P–97–0388	02/18/97	05/19/97	CBI	(G) Intermediate for coating	(G) Polyurethane resin
P–97–0389	02/18/97	05/19/97	CBI	(G) Intermediate for coating	(G) Polyurethane resin
P–97–0390	02/18/97	05/19/97	CBI	(G) Intermediate for coating	(G) Polyurethane resin
P–97–0391	02/18/97	05/19/97	CBI	(G) Intermediate for coating	(G) Polyurethane resin
P–97–0392	02/18/97	05/19/97	CBI	(G) Intermediate for coating	(G) Polyurethane/acrylic grafted copolymer
P–97–0393	02/18/97	05/19/97	CBI	(G) Intermediate for coating	(G) Polyurethane/acrylic grafted copolymer
P–97–0394	02/18/97	05/19/97	CBI	(G) Intermediate for coating	(G) Polyurethane/acrylic grafted copolymer
P–97–0395	02/18/97	05/19/97	CBI	(G) Intermediate for coating	(G) Polyurethane/acrylic grafted copolymer
P–97–0396	02/18/97	05/19/97	CBI	(G) Intermediate for coating	(G) Polyurethane/acrylic grafted copolymer
P–97–0397	02/18/97	05/19/97	CBI	(G) Intermediate for coating	(G) Polyurethane/acrylic grafted copolymer
P–97–0398	02/18/97	05/19/97	CBI	(G) Binder for printing inks	(G) Modified bisphenol a epoxy acrylate
P–97–0399	02/18/97	05/19/97	3M Company	(S) Chemical intermediate	(G) Poly epochloro hydrin nono-ol
P–97–0400	02/18/97	05/19/97	CBI	(S) Dye used in the manufacture of photoresist; raw material used in the manufacture of anti-reflective coatings	(G) Polycyclic acrylic copolymer
P–97–0401	02/18/97	05/19/97	3M Company	(G) Propellant additive	(G) Glycidyl azide polymer
P–97–0402	02/19/97	05/20/97	Arizona Chemical	(S) Hot melt adhesives	(G) Modified pentaerythritol ester of rosin
P–97–0403	02/19/97	05/20/97	Arizona Chemical	(S) Hot melt adhesives	(G) Modified pentaerythritol ester of rosin
P–97–0404	02/19/97	05/20/97	Arizona Chemical	(S) Hot melt adhesives	(G) Modified pentaerythritol ester of rosin
P–97–0405	02/19/97	05/20/97	CBI	(G) Coating of metal substrates	(G) Epoxy acrylate polymer, amine salt
P–97–0406	02/19/97	05/20/97	NA Industries, Inc.	(G) Additive for electroplating	(G) Polyimine
P–97–0407	02/24/97	05/25/97	The Polyset Company, Inc	(S) Microelectronics resin	(S) Polymer of: 1,1,3,3-tetramethyl-1,3-bis [2-(7-oxabicyclo[4.1.0]hept-3-yl) ethyl]disiloxane
P–97–0408	02/21/97	05/22/97	CBI	(G) Ingredient for use in consumer products; highly dispersive use	(G) Fatty acid ester
P–97–0409	02/24/97	05/25/97	Ciba Geigy Corporation, textile products division	(S) Reactive dye for cellulose fiber	(G) 2,7-naphthalenedisulfonic acid, 4-amino-5-hydroxy-6-[[2-methoxy-5-methyl-4-[[2-substituted-4-[[2-(sulfoxyethyl)] sulfonyl]phenyl]azo]phenyl] azo]-3-[[4-[[2-(sulfoxethyl)]sulfonyl]phenyl]azo]-, sodium salt
P–97–0410	02/24/97	05/25/97	Wacker Silicones Corporation	(S) Paint additive; ink additive	(G) Polyethyleneglycol-, functional branched poly(alkyl) siloxanes
P–97–0411	02/20/97	05/21/97	Dow Corning	(S) Crosslinker for silicone elastomers	(G) Hydrogen functional siloxane
P–97–0413	02/20/97	05/21/97	Dow Corning	(S) Crosslinker for silicone elastomers	(G) Hydrogen functional siloxane
P–97–0414	02/20/97	05/21/97	Dow Corning	(S) Crosslinker for silicone elastomers	(G) Hydrogen functional siloxane
P–97–0415	02/20/97	05/21/97	Isk Biotech Corporation	(S) Raw materials for manufacture of a pesticide active ingredient	(S) 2-Thiazolidinone
P–97–0416	02/20/97	05/21/97	CBI	(G) Non-disperive use	(G) Amino epoxy silane
P–97–0417	02/24/97	05/25/97	Octel America, Inc	(S) Gasoline/diesel/fuel additive	(G) Potassium salt of polyolefin acid
P–97–0418	02/20/97	05/21/97	The C.P. Hall Company	(S) Emollient; solvent; carrier; plasticizer; lubricant	(S) 2-butyloctyl benzoate
P–97–0419	02/20/97	05/21/97	CBI	(S) Emollient; lubricant; plasticizer; solvent	(S) 2-Hexyldecyl benzoate
P–97–0420	02/24/97	05/25/97	CBI	(S) Intermediate in a chemical synthesis	(G) Benzenesulfonic acid, 2-[3.6-bis(heteropolycyclic)- 9*H* em-9-yl]-
P–97–0421	02/25/97	05/26/97	Givaudan-Roure Corporation	(G) Highly dispersive use	(G) Alkenoic acid ester
P–97–0422	02/26/97	05/27/97	CBI	(G) Solvent for ink	(G) Glycol ether
P–97–0423	02/24/97	05/25/97	Air Products and Chemicals Inc	(S) Carbon source for steel production	(S) Distrillation residues of toluenediamine; benzene, 1-methyl-2,4 (or 2,6)-dinitro-, hydrogenated, distn. residues
P–97–0424	02/25/97	05/26/97	Eastman Chemical Company	(G) Intermediate for latex	(G) Substituted styrene acrylate polymer
P–97–0425	02/25/97	05/26/97	Eastman Chemical Company	(G) Printing ink vehicle	(G) Substituted styrene acrylate imine polymer
P–97–0426	02/20/97	05/21/97	CBI	(G) Lubricant	(G) Hydrogenated alpha-methylstyrene trimer
P–97–0427	02/25/97	05/26/97	CBI	(S) Dispersing/sequestering agent	(G) Polyamide
P–97–0428	02/25/97	05/26/97	CBI	(S) Intermediate for organic synthesis	(G) Aromatic carbamate
P–97–0429	02/26/97	05/27/97	CBI	(S) Pesticide to be used in a compounded PVC for wire and cable application	(S) Decanedioic acid, diisodecyl ester

I. 93 Premanufacture Notices Received From: 02/01/97 to 02/28/97—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–97–0430	02/28/97	05/29/97	S.C. Johnson & Son, Inc	(G) Open, non-dispersive use	(G) Acrylic emulsion polymer
P–97–0431	02/28/97	05/29/97	S.C. Johnson & Son, Inc	(G) Open, non-dispersive use	(G) Acrylic emulsion polymer
P–97–0432	02/28/97	05/29/97	S.C. Johnson & Son, Inc	(G) Open, non-dispersive use	(G) Acrylic emulsion polymer
P–97–0433	02/28/97	05/29/97	S.C. Johnson & Son, Inc	(G) Open, non-dispersive use	(G) Acrylic emulsion polymer
P–97–0434	02/24/97	05/25/97	Angus Chemical Company	(S) Buffer for biological applications	(S) 1,4-piperazine diethanesulfonic acid, mono potassium salt
P–97–0435	02/24/97	05/25/97	Angus Chemical Company	(S) Buffer for biological applications	(S) 1,4-piperazine diethanesulfonic acid, disodium salt
P–97–0436	02/24/97	05/25/97	Angus Chemical Company	(S) Buffer for biological applications	(S) 1,4-piperazine diethanesulfonic acid, dipotassium salt
P–97–0437	02/20/97	05/21/97	CBI	(G) Intermediate	(G) Hydrogenated methyl amine esters
P–97–0438	02/24/97	05/25/97	CBI	(G) Ink component	(G) Fumarated-rosin ester, polymer with cyclo alkadiene
P–97–0439	02/27/97	05/28/97	Ciba Specialty Chemical Company	(S) Reactive dye for wool	(G) Diamino-3,5-bis-4- (2-sulfoxyethylsulfonyl phenylazo) benzenesulfonic acid, sodium salt
P–97–0440	02/27/97	05/28/97	Witco Chemical Corporation	(S) Epoxy curing agent	(S) Fatty acids, tall-oil, reaction products with bisphenol A, epichlorohydrin and triethylene tetramine
P–97–0441	02/27/97	05/28/97	Witco Chemical Corporation	(S) Epoxy curing agent	(S) Fatty acids, tall-oil, reaction products with bisphenol A, glycidyl ether, epichlohydrin and triethlene tetramine
P–97–0442	02/27/97	05/28/97	Witco Chemical Corporation	(S) Epoxy curing agent	(S) Fatty acids, tall-oil, reaction products with bisphenol A, epichlohydrin, glycidyl tolyl ether and triethylene tetramine
P–97–0443	02/27/97	05/28/97	E. I. du Pont de Nemours & Company	(G) Destructive use-intermediate	(G) Hydrochloro fluoroalkene
P–97–0444	02/27/97	05/28/97	Ciba Specialty Chemical Corporation	(S) Reactive dye for wool	(G) 2,7-naphthalenedisulfonic acid, 5-[[4-chloro-6- (substituted amino)-1,3,5-triazin-2-yl] amino]-3-[[5-[(2,3-dibromo-1-oxopropyl) amino]-2-sulfophenyl] azo]4-hydroxy-, sodium salt
P–97–0445	02/28/97	05/29/97	Arizona Chemical	(G) Adhesives	(G) Pentaerythritol ester of tall oil fractions
P–97–0446	02/28/97	05/29/97	CBI	(S) Automotive coatings	(G) Hydroxy functional methacrylic copolymer
P–97–0447	02/28/97	05/29/97	CBI	(S) Automotive coatings	(G) Hydroxy functional methacrylic copolymer
P–97–0448	02/28/97	05/29/97	Chemrex Inc	(G) Adhesive	(G) Prepolymer based on MDI
P–97–0449	02/28/97	05/29/97	CBI	(G) Industrial coating binder component	(G) Urethane acrylate
P–97–0450	02/28/97	05/29/97	3M Company	(S) Chemical intermediate	(G) Substituted phenol
P–97–0451	02/28/97	05/29/97	3M Company	(S) Chemical intermediate	(G) Substituted phenol
P–97–0452	02/28/97	05/29/97	3M Company	(S) Monomer	(G) Substitutued phenyl acrylate
P–97–0453	02/28/97	05/29/97	3M Company	(S) Monomer	(G) Substituted phenyl acrylate
P–97–0454	02/28/97	05/29/97	Wapotec International Inc	(S) Precursor of pesticides; oxidizer in presence of C_{12}; oxidizer in cosmetics; oxidizer in sanitizers; oxidizer in swimming pools	(S) Chlorous acid, sodium salt, reaction product with hydrogen peroxide and sulfuric acid

II. 42 Notices of Commencement Received From: 02/01/97 to 02/28/97

Case No.	Received Date	Commencement/Import Date	Chemical
P–93–1129	02/04/97	01/23/97	(G) Triethylamine salt of a polyether, polyurethane polymer
P–94–0252	02/24/97	01/31/97	(G) Polyalkoxyalkane
P–94–1163	02/13/97	01/28/97	(S) A polymer of: styrene; para-methyl styrene
P–94–1417	02/14/97	02/07/97	(G) Fatty alkanolamide
P–95–0114	02/24/97	01/25/97	(G) Substituted triazolo pyrimidine
P–95–0545	02/12/97	01/07/97	(S) A polymer of: acrylonitrile; methacrylonitrile; iso-bornyl methacrylate; ethyleneglycol dimethacrylate; 2,2-azo bisiso butylonitrile
P–95–1030	02/13/97	01/12/97	(G) Orthoxylene compound
P–95–1386	02/04/97	01/24/97	(G) Modified diphenyl methane diisocyanate

II. 42 Notices of Commencement Received From: 02/01/97 to 02/28/97—Continued

Case No.	Received Date	Commencement/Import Date	Chemical
P–96–0335	02/20/97	01/14/97	(G) Aliphatic amine
P–96–0679	02/19/97	01/22/97	(S) Poly(oxy-1,2-ethanediyl),alpha, alpha -1,6-hexane diylbis[omega-[(1-oxo-2-propenyl) oxy]-
P–96–0680	02/26/97	01/29/97	(S) Poly(oxy(methyl-1,2-ethanediyl)],alpha, alpha C′-1,6-hexanediylbis[omega-[(1-oxo-2-propenyl)oxy]-
P–96–0700	02/04/97	01/22/97	(G) Polyurethane resin, *N,N*-dimethylethano]amine salt
P–96–0803	02/06/97	01/20/97	(G) Organic formate
P–96–1012	02/12/97	01/16/97	(G) Amino-substituted-carbopolycycle, reaction product with sodium polysulfide, oxidized
P–96–1096	02/28/97	02/24/97	(G) Hindered amine light stabilizer
P–96–1140	02/11/97	01/02/97	(G) Polyester polyurethane
P–96–1160	02/03/97	01/20/97	(G) Fatty acids, C_{18}-unsaturated dimers, polymers with ethylene diamine, tall-oil fatty acids, a dibasic acid and diamines
P–96–1314	02/24/97	01/24/97	(G) Fatty acid, amide
P–96–1336	02/04/97	12/31/96	(S) 2-butenoic acid, 1,3-dimethylbutyl ester
P–96–1457	02/06/97	01/10/97	(G) Metal complexed polyazo dye
P–96–1468	02/11/97	02/03/97	(G) Cycloaliphatic olefin distillate streams polymerized with aromatic olefin streams, unsaturated fatty acids, unsaturated oils, and rosin
P–96–1470	02/24/97	02/05/97	(G) Cycloaliphatic olefin distillate streams polymerized with aromatic olefin streams, vegetable oil fatty acid, unsaturated oils and rosin
P–96–1471	02/24/97	01/31/97	(G) Cycloaliphatic olefin distillate streams polymerized with aromatic olefin streams, vegetable oil fatty acid, and rosin
P–96–1502	02/12/97	02/05/97	(G) Substituted alkane anhilide
P–96–1580	02/04/97	01/16/97	(G) Amine sulfonate monomer
P–96–1597	02/26/97	02/19/97	(G) Polyamide
P–96–1678	02/19/97	01/17/97	(G) Chlorinated polypropylene grafted on an acrylic polymer
P–96–1686	02/19/97	01/25/97	(G) Organic bentonite
P–96–1689	02/19/97	01/25/97	(G) Acryl styrene random copolymer
P–96–1699	02/03/97	01/15/97	(G) Epoxy polyamine adduct
P–96–1717	02/04/97	01/21/97	(G) Glycolysis produc of polyurethane foam
P–96–1718	02/06/97	01/21/97	(G) Glycolysis product of polyurethane foam
P–97–0018	02/03/97	01/09/97	(G) Acrylic emulsion polymer
P–97–0020	02/03/97	01/09/97	(G) Acrylic emulsion polymer
P–97–0024	02/03/97	01/09/97	(G) Acrylic emulsion polymer
P–97–0026	02/03/97	01/09/97	(G) Acrylic emulsion polymer
P–97–0039	02/27/97	01/31/97	(G) Strontium-dysprosium-europium aluminate
P–97–0048	02/19/97	01/23/97	(G) Substituted alkylphenyl oxypolyoxy ethylene
P–97–0050	02/26/97	02/18/97	(G) Derivative of substituted dimethylamine
P–97–0068	02/21/97	02/19/97	(G) Blocked, adipic acid based diisocyanate prepolymer
P–97–0075	02/24/97	02/13/97	(S) Hexanedioic acid, mixed esters with C_{10}–rich C_9–C_{11} isoalcohol, and trimethylol propane
P–97–0080	02/03/97	01/22/97	(S) Amides, castor oil, hydrogenated, ethoxylated, *N,N* C′-ethylenebis-

List of Subjects

Environmental protection, Premanufacture notices.

Dated: June 30, 1997.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–18564 Filed 7–14–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51861; FRL–5721–9]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from March 1, 1997 to March 31, 1997.

ADDRESSES: Written comments, identified by the document control number ''[OPPTS–51861]'' and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51861]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found

under ''SUPPLEMENTARY INFORMATION'' of this document.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number ''[OPPTS–51861]'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

oppt.ncic@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 notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ''ADDRESSES'' at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 76 Premanufacture Notices Received From: 03/01/97 to 03/31/97

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–97–0455	03/03/97	06/01/97	Mitsubishi Gas Chemical America, Inc.	(G) Lubricant oil	(S) Fatty acids, C_{4-24}-branched, 2,2-dimethyl-1,3-propanediyl ester
P–97–0456	03/03/97	06/01/97	CBI	(S) Raw material used in the manfacture of anti-reflective coatings	(G) Polycyclic acrylic terpolymer
P–97–0457	03/03/97	06/01/97	Unichema North America	(G) Dispersive use and open non-dispersive use	(S) Fatty acid, C_{14-18} and C_{16-18}-unsaturated, reaction products with C_{18}-unsaturated fatty acid dimers and trimethylol propane
P–97–0458	03/04/97	06/02/97	CBI	(G) Coatings binder	(G) Salt of a vegetable oil fatty acid modified alkyd
P–97–0459	03/04/97	06/02/97	CBI	(G) Polymeric co-curative for use in or with unsaturated polyester/co-monomer blends	(G) Epoxy ester with bisphenol a polymer
P–97–0460	03/04/97	06/02/97	CBI	(S) Industrial coating formulations	(G) Organo silane ester

I. 76 Premanufacture Notices Received From: 03/01/97 to 03/31/97—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–97–0461	03/06/97	06/04/97	CBI	(S) Coating fluid ingredient for printing plates	(G) Hetero moncyclyloxy, amino tetra methyl- and 2-amino ethanesulfonic acid reaction products with ethylene-maleic anhydride polymer, sodium salts
P–97–0462	03/06/97	06/04/97	CBI	(G) Plasticizer	(G) Phthalic anhydride, polymer with diethylene glycol, aliphatic alcohols esters
P–97–0463	03/05/97	06/03/97	CBI	(G) Polymer additive	(G) Multi ester acid
P–97–0464	03/05/97	06/03/97	CBI	(G) Polymer additive	(G) Multi ester acid
P–97–0465	03/05/97	06/03/97	CBI	(G) Coating resin intermediate	(G) Sodium salt doil ester
P–97–0466	03/11/97	06/09/97	CBI	(G) Polymer for gels	(S) Polymer of: 2-propenoic acid, 2-methyl-, 2-isocyanatoethyl- ester; methyl methacrylate; dimethyl-2,2 ′-azoisobutyrate
P–97–0467	03/11/97	06/09/97	CBI	(G) Intermediate	(G) Hydrogenated methyl amine ester
P–97–0468	03/11/97	06/09/97	CBI	(G) Intermediate	(G) Substituted polyphosphonic acid
P–97–0469	03/11/97	06/09/97	Albemarle Corporation	(G) Destructive use	(G) Organo aluminum halide
P–97–0470	03/11/97	06/09/97	CBI	(G) Open, non-dispersive use	(G) Alkyd polymer
P–97–0471	03/12/97	06/10/97	Landec Labs, Inc.	(S) Polymer for accelerating thermoset curing	(G) Cobalt functional alkyl acrylate copolymer
P–97–0472	03/11/97	06/09/97	Cerestar USA, Inc	(S) Base material for the manufacture of DAS; mono-or dinitrate; drugs-base material for the manufacture of dad dimethyl ether	(S)D-Glucuitol 1,4,:3,6-dion hydro
P–97–0473	03/10/97	06/08/97	CBI	(G) Open, non-dispersive (resin)	(G) Aqueous polyester polyurethane dispersion
P–97–0474	03/10/97	06/08/97	CBI	(G) Component of a sealant adhesive	(G) Polyester polyurethane
P–97–0475	03/11/97	06/09/97	CBI	(G) Processing aid	(G) Salt of a substituted polyphosphonic acid
P–97–0476	03/11/97	06/09/97	CBI	(G) Processing aid	(G) Salt of a substituted polyphosphonic acid
P–97–0477	03/11/97	06/09/97	CBI	(G) Processing aid	(G) Salt of a substituted polyphosphonic acid
P–97–0478	03/11/97	06/09/97	CBI	(G) Processing aid	(G) Salt of a substituted polyphosphonic acid
P–97–0479	03/11/97	06/09/97	CBI	(G) Processing aid	(G) Salt of a substituted polyphosphonic acid
P–97–0480	03/12/97	06/10/97	Engelhard Corporation	(S) Organic pigment colorant for industrial coatings	(G) Mono azo yellow pigment
P–97–0481	03/12/97	06/10/97	Dic Trading (USA) Inc	(G) Adhesives	(G) Polyester polyurethane
P–97–0482	03/13/97	06/11/97	CBI	(G) Monomer	(S) Fatty acids, $C_{10–13}$-branched, vinyl esters
P–97–0483	03/06/97	06/04/97	CBI	(G) Petroleum additive	(G) Amine functionalized copolymer
P–97–0484	03/17/97	06/15/97	CBI	(G) Catalyst	(G) Complex mixed metal oxide
P–97–0485	03/17/97	06/15/97	CBI	(G) Catalyst	(G) Complex mixed metal oxide
P–97–0486	03/19/97	06/17/97	Alox Corporation	(S) Lubricant additive, cleaner additive, corrosion inhibitor additive	(S) Poly (oxy-1,2-ethanediyl), alpha-undecyl-omega-hydroxy-, phosphate
P–97–0487	03/20/97	06/18/97	Shin-Etsu Silicones of America, Inc	(S) Coating material	(G) Acrylate siloxane copolymer
P–97–0488	03/20/97	07/17/97	CBI	(G) Open, non-dispersive use	(G) Acrylic polymer
P–97–0489	03/20/97	07/17/97	CBI	(G) Open,non-dispersive use	(G) Acrylic polymer
P–97–0490	03/20/97	07/17/97	CBI	(G) Open, non-dispersive use	(G) Acrylic polymer
P–97–0491	03/20/97	07/17/97	CBI	(G) Open,non-dispersive use	(G) Acrylic polymer
P–97–0492	03/20/97	07/17/97	CBI	(G) Open,non-dispersive use	(G) Acrylic polymer
P–97–0493	03/21/97	07/17/97	Henkel Corporation	(G) Textile antistat intermidiate	(G) Alkyl phosphate ester
P–97–0494	03/21/97	07/17/97	CBI	(S) Plasticizer to be used in compounded PVC for wire and cable application	(S) Decanedioic acid, diisodecyl ester
P–97–0495	03/21/97	07/17/97	CBI	(S) Plasticizer to be used in compounded PVC for wire and cable application	(S) Decanedioic acid, di-isoalkyl esters, C_{10}–rich
P–97–0496	03/21/97	07/17/97	Henkel Corporation	(G) Textile antistat	(G) Alkyl phosphate ester salt
P–97–0497	03/20/97	07/17/97	Monsanto Company	(G) Spin finish for industrial polyamide fibers	(G) Thiodipropanoic acid,esters with alkoxylated alkanol
P–97–0498	03/20/97	07/17/97	Monsanto Company	(G) Spin finish for industrial polyamide fibers	(G) Thiodipropanoic acid,esters with alkanol
P–97–0499	03/25/97	07/17/97	Ciba-Geigy Corporation	(S) Photoinitiator for photopolymerizable systems	(G) Phosphine oxide derivative

I. 76 Premanufacture Notices Received From: 03/01/97 to 03/31/97—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–97–0500	03/25/97	07/17/97	Cytec Iindustries	(S) Crosslinker for industrial coatings	(S) Page 4 or1,3,5-triazine-1,3,5(2*h*,4*h*,6*h*)-tripapoanoic acid,2,4,6-trioxo-(9ci) page 5 if 4 isn't there
P–97–0501	03/20/97	07/17/97	CBI	(G) Dispersant, an open, non-dispersive use	(G) Acrylic polymer
P–97–0502	03/20/97	07/17/97	CBI	(G) Coating additives	(G) Long chain amide/ester
P–97–0503	03/20/97	07/17/97	Nipa Hardwicke Inc	(G)Agricultural product intermediate	(G) Haloarrylalkenyl carboxylic acid
P–97–0504	03/20/97	07/17/97	Nipa Hardwicke Inc	(S) Agricultural product intermediate, pharmaceutical product intermediate	(G) Haloaromatic aldehyde
P–97–0505	03/20/97	07/17/97	Nipa Hardwicke Inc	(S) Agricultural product intermediate	(G) Haloarylalkyl carboxylic acid
P–97–0506	03/20/97	07/17/97	Nipa Hardwicke Inc	(G) Agricultural production intermediate	(G) Haloarylalkyl carboxylic acid chloride
P–97–0507	03/20/97	07/17/97	Nipa Hardwicke Inc	(S) Agricultural product intermediate	(G) Haloarylalkyl ketone
P–97–0508	03/20/97	07/17/97	Nipa Hardwicke Inc	(S) Agricultural product intermediate	(G) Haloarylalkyl ketoester
P–97–0509	07/17/97	CBI	(S) Intermediate for the production of polyether polyols	(G) Polyether polyol, salt of	
P–97–0510	03/20/97	07/17/97	CBI	(S) Intermediate for the production of polyether polyols	(G) Polyether polyol, salt of
P–97–0511	03/20/97	07/17/97	CBI	(S) Intermediate for the production of polyether polyols	(G) Polyether polyol, salt of
P–97–0512	03/20/97	07/17/97	CBI	(S) Intermediate for the production of polyether polyols	(G) Polyether polyol, salt of
P–97–0513	03/20/97	07/17/97	CBI	(S) Intermediate for the production of polyether polyols	(G) Polyether polyol, salt of
P–97–0514	03/20/97	07/17/97	CBI	(S) Intermediate for the production of polyether polyols	(G) Polyether polyol, salt of
P–97–0515	03/20/97	07/17/97	CBI	(G)Component of coating with open use	(G) Acetoacetate polyol
P–97–0516	03/20/97	07/17/97	CBI	(G)Component of coating with open use	(G) Acetoacetate polyol
P–97–0517	03/20/97	07/17/97	CBI	(G)Component of coating with open use	(G) Acetoacetate polyol
P–97–0518	03/20/97	07/17/97	CBI	(G)Component of coating with open use	(G) Acetoacetate polyol
P–97–0519	03/20/97	07/17/97	CBI	(G) Open, non-dispersive (resin)	(G) Poyester resin
P–97–0520	03/25/97	07/17/97	E. I. du Pont de Nemours	(G) Semi conductor cleaning solvent	(S) 1,3-dimethyl-2-piperidinone
P–97–0521	03/25/97	07/17/97	E. I. du Pont de Nemours	(G) Semiconductor cleaning solvent	(S) 1,5-dimethyl-2-piperidinone
P–97–0522	03/25/97	07/17/97	CBI	(G) Adhesives for open non-dispersive use	(G) Polyurethane polymer
P–97–0523	03/25/97	07/17/97	Percy International Ltd.	(S) Sole binder or modifying resin used in the manufacture of coatings for wood, plastic and leather/fabric	(S) Polymer of: diol specified on attachment 5a, P–88–0227; 1,1-methylenebis[4-isocyanatocyclohexane]; dimethylol proprionic acid; triethylame; 2-methyl-1,5 pentane diamine
P–97–0524	03/25/97	07/17/97	Huls America Inc	(G) Hot melt adhesive	(G) Polyurthane adhesive
P–97–0526	03/31/97	06/29/97	Ciba Specialty Chemicals Corporation	(G) Anthracene intermediate	(G) 2-anthracenesulfonic acid, 1-amino-9,10-dihydro-9,10-dioxo-4-[[3-substituted phenyl]amino]-
P–97–0527	03/31/97	06/29/97	3M Company	(G) Adhesive	(S) 1,3-benzenedicarboxylic acid, polymer with 1,4-benzene dicarboxylic acid, butanediol,2,2-dimethyl-1,3-propanediol, dodecanedioic acid,1,2-ethanediol,hexanedioic acid,1,6-hexanediol,a-hydro-*W*-hydroxypoly[oxy(methyl-1,2-ethanediyl)],1,3-isobenzofurandione,1,1′-methylenebis[4-isocyanato benzene] and 2,2′-oxy bis[ethanol]
P–97–0528	03/31/97	06/29/97	3M Company	(G) Adhesive	(G) Polyurethane copolymer

II. 57 Notices of Commencement Received From: 03/01/97 to 03/31/97

Case No.	Received Date	Commencement/Import Date	Chemical
P–94–1069	03/18/94	03/26/97	(G) Modified acrylate methylacrylate polymer
P–94–1202	03/26/94	03/19/97	(G) Diglycidylether, polymer with epoxy
P–94–1936	93/30/94	03/19/97	(G) Amine modified polysiloxane
P–94–2157	06/31/94	03/07/97	(G) Acrylate copolymer
P–95–0144	03/11/97	01/28/97	(S) [Phosphinylidynetris (oxy) tris [3-aminopropyl-2-hydroxy-*N,N*-dimethyl-*N*-C_{6-18}-alkyl] trichlorides
P–95–1477	03/10/96	02/11/97	(G) Polyurethane dispersion
P–96–0271	03/18/97	02/28/97	(G) Isobutyric acid cyclic ester
P–96–0284	03/25/97	03/20/97	(G) Saturated polyester
P–96–0345	03/25/97	03/19/97	(G) Aromatic isocyanate prepolymer
P–96–0413	03/31/97	03/13/97	(G) Modified styrene acrylate polymer
P–96–0767	03/19/97	03/02/97	(G) Substituted pyridine azo substituted phenyl
P–96–0768	03/25/97	02/26/97	(G) Aceto acrylated polyether
P–96–773	03/19/97	03/02/97	(G) Substituted pyridiene substituted phenyl
P–96–1099	03/31/97	03/10/97	(S) Fatty acids, C_{16}–C_{18} polymers with glycol glycidyl neodecanate malic anhydride phthalic, 3,5,5-trimethyl anoic acid, and trimethyl propane
P–96–1218	03/25/97	03/10/97	(G) Salt of halo-substituted benzenamine
P–96–1323	03/04/97	02/13/97	(G) Acid capped castor oil
P–96–1469	03/14/97	03/02/97	(G) Cycloalkylaliphatic distilate polymerized with aromatic olefin stream, vegetable oil fatty acid, and rosin
P–96–1546	03/04/97	02/19/97	(G) Polyester polyol
P–96–1582	03/04/97	02/19/97	(G) Chloro substituted alkene
P–96–1583	03/04/97	02/20/97	(G) Aminoamide
P–96–1608	03/19/97	02/10/97	(G) Polyamidoamine resin
P–96–1609	03/19/97	02/11/97	(G) Polyamidoamine-epichlorohydrin resin
P–96–1719	03/24/97	03/10/97	(G) Organo functional silane polymer
P–97–0007	03/31/97	03/25/97	(G) Polyether polyol
P–97–0014	03/18/97	02/25/97	(G) Substituted triazole pyridine carbonitrile amino
P–97–0036	03/04/97	02/18/97	(G) Heterocyclic metal complex with aromatic rings having aliphatic substituted
P–97–0041	03/28/97	02/17/97	(S) Fatty acids, coco, polymers with adipic acid, pentaerythritol, stearic acid and tall oil fatty acids
P–97–0055	03/04/97	02/14/97	(G) Pyrazole azo dye
P–97–0067	03/18/97	03/03/97	(G) Modified polyol
P–97–0109	03/25/97	03/07/97	(G) Epoxy functionalized acrylic resin
P–97–0113	03/27/97	03/18/97	(G) Tetrapolymer latex of butylmethacrylate, butylacrylate and substituted styrene
P–97–0143	03/26/97	03/14/97	(G) Modified acrylic resin
P–97–0144	03/26/97	03/14/97	(G) Modified acrylic resin
P–87–0145	03/26/97	03/14/97	(G) Storage derivative
P–97–0172	03/25/97	03/14/97	(G) Polyester polymer
P–97–0174	03/31/97	03/16/97	(G) Acrylic polymer
P–97–0286	03/25/97	03/17/97	(G) Vinyl acrylate copolymer
lP–97–0191	03/28/97	03/11/97	(G) Urea derivaties
P–97–0232	03/26/97	02/24/97	(S) Polymer of: styrene methacrylic acid; laurylmethacrylate; E-caproladone 2-4 hydroxethyl; acrylate; ter; butylperoxyl 3,5,5-trimethylhexanoate

List of Subjects

Environmental protection, Premanufacture notices.

Dated: June 30, 1997.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–18561 Filed 7–14–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51862; FRL–5726–8]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from April 1, 1997 to April 30, 1997.

ADDRESSES: Written comments, identified by the document control number ''[OPPTS–51862]'' and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by following the instructions under SUPPLEMENTARY INFORMATION. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

The official record for this notice, as well as the public version, has been established for this notice under docket control number ''[OPPTS–51862]'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460. The official record is located at the address in ''ADDRESSES''.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number [OPPTS–51861]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

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For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 100 Premanufacture Notices Received From: 04/01/97 to 04/30/97

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–97–0530	04/01/97	06/29/97	Ciba-geigy corporation, textile products division	(G) Textile dye	(G) 2-anthracenesulfonic acid, 1-amino-9,10-dihydro-9,10-dioxo-4-[[3-substituted phenyl]amino]-, compound with substituted amine] (1:1)
P–97–0531	04/02/97	07/01/97	CBI	(G) Open non-dispersive (resin)	(G) Unsaturated aliphatic urethane acrylate resin
P–97–0532	04/02/97	07/01/97	CBI	(G) Open, non-dispersive (coating material)	(G) Aliphatic polyisocycanate
P–97–0533	04/02/97	07/01/97	CBI	(S) Fiber reactive dye for the coloration of textile cotton and cellulosic	(G) Naphthalene disulfonic acid-sulfophenyl-triazine-azo-sodium salt derivative
P–97–0534	04/02/97	07/01/97	3m Company	(G) Chemical intermediate	(S) Hydrofluoric acid, reaction products with 4-methyl morpholine

I. 100 Premanufacture Notices Received From: 04/01/97 to 04/30/97—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–97–0535	04/02/97	07/01/97	CBI	(G) Open non-dispersive (resin)	(G) Acrylated urethane
P–97–0536	04/02/97	07/01/97	CBI	(G) Open non-dispersive (resin)	(G) Acrylated urethane
P–97–0537	04/02/97	07/19/97	Eastman Chemical Company	(G) Textile size	(G) Copolyester-ether
P–97–0538	04/02/97	07/01/97	CBI	(S) Lubricant additive	(G) Alkyl polyamines
P–97–0539	04/02/97	07/01/97	CBI	(G) Destructive use	(G) Acrylic polymer
P–97–0540	04/02/97	07/01/97	CBI	(G) Open, non-dispersive use	(G) Acrylic polymer, anionic salt
P–97–0541	04/02/97	07/01/97	Reichhold Chemicals Inc	(G) Hot melt adhesive	(G) Polyurethane adhesive
P–97–0542	04/03/97	07/01/97	CBI	(G) Cleaner ingredient	(G) Heteromonocycle, 4-methyl-4-substituted-, methylsulfate
P–97–0543	04/03/97	07/01/97	CBI	(G) Cleaner ingredient	(G) Heteromonocycle, 4-methyl-4-substituted-, methylsulfate
P–97–0544	04/04/97	07/01/97	CBI	(G) Open, non-dispersive use	(G) Hydroxy functional oligomer
P–97–0545	04/08/97	07/01/97	Reichhold Chemicals Inc	(G) Uv curable resin	(G) Epoxy acrylate ester
P–97–0546	04/08/97	07/01/97	Amoco Corporation	(S) Polymer for improved gas barrier in muilt-layer application	(G) Polyester copolymer
P–97–0547	04/08/97	07/01/97	Amoco Corporation	(S) Polymer for improved gas barrier in muilt-layer application	(G) Polyester copolymer
P–97–0548	04/04/97	07/01/97	CBI	(G) Component in polyurethane adhesive	(G) Polyurethane prepolymer
P–97–0549	04/08/97	07/01/97	CBI	(S) Raw material used in the manufacture of photoresists	(G) Cresylic novolak resin
P–97–0550	04/08/97	07/01/97	Dow Corning	(S) Ink additive; coating additive	(G) Acrylated silicones glycol copolymer
P–97–0551	04/07/97	07/01/97	Alox Corporation	(S) Lubricant additive; cleaner additive; corrosion inhibitor additive	(G) Alkyl phosphites
P–97–0552	04/08/97	07/01/97	Cerdec Corporation; Drakenfeld Products	(G) Glass enamel additive	(G) Metal ester
P–97–0553	04/08/97	07/01/97	Cerdec Corporation; Drakenfeld Products	(G) Glass enamel additive	(G) Metal ester
P–97–0554	04/02/97	07/01/97	CBI	(G) Additive for foam extinguishing agents	(G) Amphoteric perfluoropolymer
P–97–0555	04/02/97	07/01/97	CBI	(G) Intermediate in manufacture of perfluorochemicals	(G) Perfluoroamido amine
P–97–0556	04/02/97	07/01/97	CBI	(G) Intermediate in manufacture of perfluorochemicals	(G) Fluorinated ester
P–97–0557	04/10/97	07/01/97	CBI	(G) Intermediate for polymeric colorants	(G) Amine ethoxylated
P–97–0558	04/08/97	07/01/97	CBI	(G) Intermediate for polymeric colorants	(G) Alkoxylated phthalimide
P–97–0559	04/10/97	07/01/97	CBI	(G) Colorants for plastics	(G) Chromophore substituted polyoxyalkylene
P–97–0560	04/08/97	07/01/97	CBI	(G) Chemical intermediate	(G) Quaternary ammonium chloride intermediate
P–97–0561	04/15/97	07/20/97	CBI	(S) Leather furniture retanning; automotive upholsery retanning; leather shoe uppers retanning; tanning/retanning leather for garments	(G) Modified whey
P–97–0562	04/11/97	07/20/97	CBI	(G) Additive, open, non-dispersive use	(G) Fatty acids, unsaturated, reaction products with unsaturated, heterocycle and ethoxylated alkylamine
P–97–0563	04/11/97	07/20/97	CBI	(G) Additive, open, non-dispersive use	(G) Fatty acids, unsaturated, reaction products with unsaturated, heterocycle and ethoxylated alkylamine
P–97–0564	04/14/97	07/20/97	Dow Corning	(G) Inhibitor	(G) Alkoxysilane
P–97–0565	04/14/97	07/20/97	CBI	(G) Oil field treatment additive	(G) Poly carboxylic acid, sodium salt
P–97–0566	04/10/97	07/20/97	AKZO Nobel Resins	(S) Resin used to manufacture industrial coatings	(S) Polymer of: butyl acrylate; methacrylic acid, 2-[1-oxa-4-azaspiro-[4.5]; dec-4-yl]ethyl ester; hydroxypropyl acrylate; 2–2 ′ azobis[2-methylbutyro nitrile]
P–97–0567	04/15/97	07/20/97	CBI	(G) Open, non-dispersive use	(G) Aluminum salicylate
P–97–0568	04/15/97	07/20/97	CBI	(G) Processing aid	(G) Alkoxysilane derivative
P–97–0569	04/15/97	07/20/97	CBI	(G) Dye	(G) Sodium salt of substituted copper phthaloxyanine derivative

I. 100 Premanufacture Notices Received From: 04/01/97 to 04/30/97—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–97–0570	04/16/97	07/20/97	CBI	(G) Additive, open, non-dispersive use	(G) Acrylic ester copolymer with dimethylamino groups
P–97–0571	04/10/97	07/20/97	CBI	(G) Resin coating	(G) Polyester acrylate
P–97–0572	04/15/97	07/14/97	CBI	(G) Polymer for gels	(S) 2-propenoic acid, 2-methyl-2-isocyanatoethyl ester, polymer with methyl 2-methyl-2-propenoate
P–97–0573	04/17/97	07/16/97	Dystar L.P.	(S) Liquid formulation of disperse dye for coloration of polyester fabrics	(G) Substituted dichloro benzothiazole
P–97–0574	04/17/97	07/16/97	Dystar L.P.	(S) Liquid formulation of disperse dye for coloration of polyester fabrics	(G) Substituted dichloro benzothiazole
P–97–0575	04/15/97	07/07/97	Hercules Incorporated	(G) Papermaking chemical, non-dispersive use	(G) Copolymer of tetra alkyl ammonium chloride and dialkylammonium chloride
P–97–0576	04/18/97	07/17/97	CBI	(S) Raw material used in the manufacture of photoresists	(G) Diazo aromatic ester
P–97–0577	04/18/97	07/17/97	Ciba Specialty Chemical Company	(S) Reactive dye for cellulose, black reactive dye for cellulose orange	(G) Dbenzenesulfonic acid, diamino-3-[4-2-sulfoxyethyl sulfonyl)phenylazo]-5-[4-(2-sulfoxyethyl sulfonyl)-sulfophenylazo]-sodium-potassium salt
P–97–0578	04/21/97	07/20/97	CBI	(S) Organic synthesis intermediate	(G) 3-carbomoyl-4-[3-substituted-phenylazo]-1-phenyl-5-pyrazolone
P–97–0579	04/16/97	07/15/97	Nicca U.S.A., Inc	(S) Sensitizer of label grade direct thermal paper	(S) Benzene, 1,2-bis(phenylmethyl)
P–97–0580	04/18/97	07/17/97	Shin-Etsu Silicones of America, Inc	(S) Ingredient for plastic resins	(S) Polymer of: siloxanes and silicones, 3-[2-aminoethyl)amino]propyl me, di-me; oxirane, (butoxymethyl)-, polymer with methyloxirane and oxirane
P–97–0581	04/21/97	07/20/97	Amfine Chemical Corporation	(S) Plasticizer for poly [vinyl chloride]	(G) Hexanedioic acid, polymer with diols and a monohydric alcohol
P–97–0582	04/22/97	07/21/97	Dystar L.P.	(S) Powder and liquid formulation of dyestuff for textile coloration	(G) Substituted heteroaromatic-2-[[4-(dimethylamino)phenyl]azo]-3-methyl-, salt
P–97–0583	04/22/97	07/21/97	Dystar L.P.	(S) Powder and liquid formulation of dyestuff for textile coloration	(G) Substituted heteroaromatic-2-[[4-(dimethylamino)phenyl]azo]-3-methyl-, salt
P–97–0584	04/18/97	07/20/97	Reichhold Chemicals Inc	(G) Hot melt adhesive	(G) Polyurethane adhesive
P–97–0585	04/18/97	07/17/97	Albright & Wilson Americas	(S) Flame retardants used in textile processing	(S) Amines, hydrogenated tallow alkyl, reaction products with tetrakis (hydroxymethyl) phosphonium chloride and urea
P–97–0586	04/21/97	07/20/97	Reichhold Chemicals Inc	(G) Hot melt adhesive	(G) Polyurethane adhesive
P–97–0587	04/21/97	07/20/97	Reichhold Chemicals Inc	(G) Hot melt adhesive	(G) Polyurethane adhesive
P–97–0588	04/23/97	07/22/97	Mitsubishi Chemical America, Inc	(S) Raw material for manufacturing urethane alkyd and polyester resins	(S) Butanoic acid, 2,2-bis(hydroxymethyl)-
P–97–0589	04/23/97	07/22/97	CBI	(G) Open, non-dispersive (pigment derivative)	(G) Phthalimidomethyl pigment derivative
P–97–0590	04/24/97	07/23/97	Shell Chemical Company	(S) Binder for 100% solids, adhesives and sealants; binder for 100% solids and water become coating	(S) 1,3-butadiene, 2-methyl-, polymer with 1,3 butadiene, hydrogenated, oxidized
P–97–0591	04/23/97	07/22/97	The C.P. Hall Company	(S) Emollient; lubricant; plasticizer; solvent	(S) 1-Decanol, 2-hexyl-, benzoate
P–97–0592	04/23/97	07/22/97	The C.P. Hall Company	(S) Emollient; lubricant; plasticizer; solvent	(S) 1-Octanol, 2-butyl-, benzoate
P–97–0593	04/23/97	07/22/97	E.I. duPont de Nemours & Company, Inc	(G) Destructive use- intermediate	(G) Hydrofluoro chloroalkene
P–97–0594	04/24/97	07/23/97	The Dow Chemical Company	(G) Paper sizing	(G) Salt of ethylene acrylic acid copolymer
P–97–0595	04/24/97	07/23/97	The Dow Chemical Company	(G) Paper sizing	(G) Salt of ethylene acrylic acid copolymer
P–97–0596	04/24/97	07/23/97	The Dow Chemical Company	(G) Paper sizing	(G) Salt of ethylene acrylic acid copolymer
P–97–0597	04/24/97	07/23/97	The Dow Chemical Company	(G) Paper sizing	(G) Salt of ethylene acrylic acid copolymer

I. 100 Premanufacture Notices Received From: 04/01/97 to 04/30/97—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–97–0598	04/24/97	07/23/97	Fairmount Chemical Company, Inc	(G) The chemical substance will be used at a site of another processor contained use. formulation range 3-8% by weight	(G) Bis-(4-azido-2-benzylidene sodium sulfonate)-cyclopentanone
P–97–0599	04/28/97	07/27/97	CBI	(G) Additive, open, non-dispersive use	(G) Polyoxyalkylene polyester urethane block copolymer
P–97–0600	04/28/97	07/27/97	CBI	(G) Additive, open, non-dispersive use	(G) Polyoxyalkylene polyester urethane block copolymer
P–97–0601	04/28/97	07/27/97	CBI	(G) Additive, open, non-dispersive use	(G) Polyoxyalkylene polyester urethane block copolymer
P–97–0602	04/28/97	07/27/97	CBI	(G) Additive, open, non-dispersive use	(G) Polyoxyalkylene polyester urethane block copolymer
P–97–0603	04/28/97	07/27/97	CBI	(G) Additive, open, non-dispersive use	(G) Polyoxyalkylene polyester urethane block copolymer
P–97–0604	04/28/97	07/27/97	CBI	(G) Additive, open, non-dispersive use	(G) Polyoxyalkylene polyester urethane block copolymer
P–97–0605	04/28/97	07/27/97	CBI	(G) Additive, open, non-dispersive use	(G) Polyoxyalkylene polyester urethane block copolymer
P–97–0606	04/28/97	07/27/97	CBI	(G) Additive, open, non-dispersive use	(G) Polyoxyalkylene polyester urethane block copolymer
P–97–0607	04/25/97	07/24/97	Spies Hecker, Inc.	(S) Binder for car repair paints	(S) 1,4-cyclohexanedicarboxylic acid, polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, 3-hydroxy-2-(hydroxymethyl)-2-methylpropanoic acid and 5-isocyanato-1-(isocyanatomethl)-1,3,3-trimethylcyclohexane, 3,3,5-trimethyl hexanoate, compound with 2-(dimethylamino)ethanol
P–97–0608	04/25/97	07/24/97	3M Company	(S) Cleaning solvent; bearer medium; heat transfer fluid; process medium	(S) A) propane, 2-(ethoxydifuromethyl)-1,1,2,2,3,3,4,4,4-hetafluoro-; b)butane, 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluoro
P–97–0609	04/23/97	07/22/97	CBI	(G) Plasticizer, solvent	(G) Polycarboxylic acid ester *A*
P–97–0610	04/23/97	07/22/97	CBI	(G) Plasticizer, solvent	(G) Polycarboxylic acid ester*B*
P–97–0611	04/29/97	07/28/97	PCR Incorporated, a Division of Harris Specialty Chemicals, Inc	(S) Intermediate for chemical snthesis	(G) Alkoxysilane
P–97–0612	04/29/97	07/28/97	PCR Incorporated, a Division of Harris Specialty Chemicals, Inc	(S) Intermediate for chemical snthesis	(G) Alkoxysilane
P–97–0613	04/29/97	07/28/97	CBI	(G) Release coatings	(G) Organofunctional silicone silsesquioxane copolymer
P–97–0614	04/28/97	07/27/97	CBI	(G) Open, non-dispersive use	(G) Polyester resin
P–97–0615	04/29/97	07/28/97	CBI	(G) Coating and adhesives for open non-dispersive use	(G) Polurethane prepolymer
P–97–0616	04/29/97	07/28/97	CBI	(G) Lubricant additive	(G) Alkarylamine
P–97–0617	04/29/97	07/28/97	CBI	(G) Synthetic lubricant base stock	(G) Polyol ester
P–97–0618	04/30/97	07/29/97	CBI	(G) Colorant for inks and paints	(G) Isophthalic acid polymer with akanolamine, benzoic acid and modifier
P–97–0619	04/30/97	07/29/97	Mitsubishi Gas Chemical America, Inc	(S) Epoxy curing agent	(S) Phenol, 4,4 ′-(1-methylethylidene)bis-, polymer with (chloromethyl) oxirane and 1,3-cyclohexanedimethanamine
P–97–0620	04/30/97	07/29/97	H.B. Fuller Company	(S) Fabric adhesive	(G) Isocyanate-terminate polyether polyester polymer
P–97–0621	04/30/97	07/29/97	H.B. Fuller Company	(S) Fabric adhesive	(G) Isocyanate-terminate polyether polyester polymer
P–97–0622	04/30/97	07/29/97	H.B. Fuller Company	(S) Adhesive for cooling tower parts	(G) Isocyanate-terminate polyether polyester polymer
P–97–0623	04/30/97	07/29/97	H.B. Fuller Company	(S) Adhesive for cooling tower parts	(G) Isocyanate-terminate polyether polyester polymer
P–97–0624	04/30/97	07/29/97	H.B. Fuller Company	(S) Adhesive for nonwovens	(G) Isocyanate-terminate polyether polyester polymer
P–97–0625	04/30/97	07/29/97	H.B. Fuller Company	(S) Adhesive for nonwovens	(G) Isocyanate-terminate polyether polyester polymer

I. 100 Premanufacture Notices Received From: 04/01/97 to 04/30/97—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–97–0626	05/01/97	07/29/97	CBI	(S) Laminating adhesive for the industrial laminates	(G) Polyurethane polymer
P–97–0627	05/01/97	07/30/97	CBI	(G) The product will be used as an additive in stain resistant coatings in fabrics and textiles	(G) Organooxy functional polyoxyalkylene siloxane
P–97–0628	05/01/97	07/30/97	CBI	(G) The product will be used as an additive in stain resistant coatings for fabrics and textiles	(G) Organooxy functional polyoxy alkylene siloxane
P–97–0629	05/01/97	07/30/97	CBI	(G) The product will be used as an additive in stain resistant coatings in fabrics and textiles	(G) Organooxy functional polyoxyalkylene siloxane

II. 64 Notices of Commencement Received From: 04/01/97 to 04/30/97

Case No.	Received Date	Commencement/Import Date	Chemical
P–93–0873	04/29/97	04/23/97	(G) Polyester isocyanate prepolymer
P–93–1247	04/14/97	03/19/97	(G) Modified polyester resin
P–93–1248	04/14/97	03/19/97	(G) Modified polyester resin
P–94–1207	04/29/97	04/12/97	(G) Adduct of a polymeric isocyanate and an amino silane
P–94–2056	04/21/97	03/10/97	(G) Modified polyacrylamide
P–94–2166	04/02/97	10/10/96	(S) Sodium perthiocarbonate
P–95–0079	04/15/97	04/02/97	(G) Isomer mixture of oxabicycloalkane, alkyl-1-(trialkyl-cycloalkene
P–95–0549	04/01/97	03/10/97	(S) Dibutoxyproxy propyl adipate
P–95–0605	04/18/97	03/18/97	(G) Trifunctional ketoximino silane
P–95–0606	04/21/97	03/21/97	(G) Trifunctional ketoximino silane
P–95–0642	04/25/97	04/19/97	(G) Acrylic polymer
P–95–1282	04/23/97	03/25/97	(G) Diazo pigment
P–95–2077	04/02/97	03/05/97	(G) Polyglycol carbonate; aliphatic polyether glycol carbonate; polyethylene glycol carbonic acid esters; alkoxy polyalkyleneoxy carbonic acid esters
P–96–0046	04/29/97	04/12/97	(G) Organo metallic compound
P–96–0092	04/16/97	03/27/97	(G) Complex reaction product of 1,4-benzenediol, 2-(1,1,3,3-tetramethylbutyl)-and bis(dimethylamino substituted)carbomono cycle
P–96–0111	04/15/97	04/07/97	(G) Polyalphaolefins
P–96–0231	04/14/97	01/23/97	(G) Acrylic acid ester copolymer, polyoxyethylene modified
P–96–0289	04/22/97	04/07/97	(G) Polyester polyoyl
P–96–0326	04/17/97	03/20/97	(G) Halophenyl substituted triazolinone (benzotriazole)
P–96–0599	04/25/97	04/20/97	(G) 5-substituted hexanamide
P–96–0763	04/15/97	04/08/97	(G) Acrylate functionalized polyester
P–96–0765	04/07/97	04/01/97	(G) Mono and di-amine/acid salt carboxylates
P–96–0832	04/22/97	04/07/97	(G) Polyacrylate containing hydroxyl groups
P–96–0996	04/15/97	04/07/97	(G) Branched alkanes
P–96–0997	04/15/97	04/07/97	(G) Branched alkanes
P–96–0998	04/15/97	04/07/97	(G) Branched alkanes
P–96–0999	04/15/97	04/07/97	(G) Branched alkanes
P–96–1028	04/23/97	03/25/97	(S) 1,3-isobenzofurandione, hexahydro-, polymer with 2,2-bis(hydroxymethyl)- 1,3-propanediol, 3, 3, 5-trimethyl hexanoate
P–96–1041	04/10/97	03/14/97	(G) 2-propenoic acid, 2-methyl, oxiranylmethyl, polymer with ethenylbenzene, alkyl methacrylates, 2,2′-thiobis [ethanol]-quaternized, lactate (salt)
P–96–1110	04/15/97	03/24/97	(G) Benzenesulfonic acid amino triazinyl amino alkyl substituted dioxazine compound
P–96–1177	04/08/97	03/23/97	(G) Metal salt
P–96–1250	04/29/97	04/11/97	(G) Keto heterocycle
P–96–1251	04/29/97	04/11/97	(G) Keto heterocycle
P–96–1462	04/24/97	04/03/97	(G) Unsaturated polyester
P–96–1483	04/22/97	04/14/97	(S) Phenol, polymer with ethenylbenzene and (1-methylethenyl) benzene
P–96–1574	04/23/97	04/08/97	(S) 1,3-benzenedicarboxylic acid, polymer with 1,4-cyclohexanedicarboxylic acid, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, hexanedioic acid, 1,6-hexanediol and 1,3-isobenzofurandione
P–96–1599	04/21/97	03/26/97	(G) Organosilane ester
P–96–1628	04/08/97	03/14/97	(G) Methacrylate copolymer
P–96–1656	04/29/97	04/10/97	(G) Phenolic modified rosin ester
P–96–1692	04/15/97	03/27/97	(G) Phenylene imino 1,3,5-triazine substituted naphthalenedisulfonic azo compound
P–96–1701	04/15/97	03/21/97	(S) Polymer of: fatty acids, C_{18}-unsaturated dimers; poly(tetrahydrofuran) bis(3-aminoporopyl)ether; amines, C_{36}-alkylened-
P–97–0052	04/15/97	03/31/97	(G) Substituted phenyl azo substituted naphthalene azo substituted phenyl amino triazinyl amino substituted phenyl compound
P–97–0056	04/25/97	03/31/97	(S) Phosphoric trichloride, reaction products with bisphenol a and phenol

II. 64 Notices of Commencement Received From: 04/01/97 to 04/30/97—Continued

Case No.	Received Date	Commencement/Import Date	Chemical
P–97–0098	04/08/97	03/17/97	(G) Alkali salt of copolymer of an alpha-olefin with an unsaturated dicarboxylic acid
P–97–0100	04/15/97	03/18/97	(G) Benzenesulfonic acid, substituted with [[1-ethyl-1,6-dihyroxy-2-hydroxy-4-methyl]oxo]-[(4-amino-6-chloro-1,3,5-triazin-2-yl)amino]-[[4-[[2-(sulfooxy)ethyl]sulfonyl]phenyl]azo]-, sodium salt
P–97–0114	04/08/97	03/24/97	(S) Polymer of: allyl methacrylate; ethylene glycol dimethacrylate; 2,2 azobis (2,4 dimethylvaleronitrile)
P–97–0117	04/15/97	03/18/97	(G) Naphthalenesulfonic acid, substituted with [[5-[(4-amino-6-chloro-1,3,5-triazin-2-yl)]amino-sulfo-[[4-[[2-(sulfooxy)ethyl]sulfonyl]phenyl]azo]phenyl]azo]-4-hydroxy-, sodium salt
P–97–0131	04/10/97	04/06/97	(S) 2,7-naphthalenedisulfonic acid, 4-amino-3-[[4′-[[2-amino-4-[(3-butoxy-2-hydroxypropyl)amino]phenyl]azo]-3,3′-dimethyl [1,1′-biphenyl]-4-y]azo]-5-hydroxy-6-(phenylazo)-,disodium salt
P–97–0133	04/02/97	03/24/97	(S) 1,3-Benzenediol coupled with diazotized dimethyl benzeneamine and diazotized 4-dodecyl benzeneamine
P–97–0135	04/01/97	03/26/97	(G) Polyester diol
P–97–0142	04/15/97	08/12/83	(S) Ferrate (3-), aqua[*N,N*-bis(carboxymethyl)glycinato (3-)-*N*,O][*N,N*-bis (carboxymethyl)glycinato (3-)-*N,O,O′*]-trisodium
P–97–0150	04/04/97	04/01/86	(G) Moisture cure urethane
P–97–0193	04/10/97	04/06/97	(S) 2,7-naphthalenedisulfonic acid, 4-amino-5-hydroxy-, couples with diazotized 4-butylbenzenamine, diazotized 4,4′-cyclohexylidenebis [benzenamine] and *M*-phenylenediamine, sodium salt
P–97–0215	04/10/97	04/06/97	(S) Benzenemethanaminium, *N*-butyl-*n*-[4-[[4-[butyl[(3-sulfophenyl) methyl]amino]-2-methylphenyl][4-[(4-ethoxyphenyl)amino] phenyl]methylene]-3-methyl-2,5-cyclohexadien-1-ylidene]-3-sulfo-, inner salt, monosodium salt
P–97–0265	04/24/97	04/24/72	(G) Poly(ester-ether)
P–97–0270	04/25/97	04/17/97	(G) Modified polyester resin
P–97–0271	04/29/97	04/15/88	(G) Moisture cure urethane
P–97–0280	04/25/97	04/17/97	(G) Modified alkyd resin

List of Subjects

Environmental protection, Premanufacture notices.

Dated: June 30, 1997.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 97–18562 Filed 7–14–97; 8:45 am]

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federal register

Tuesday
July 15, 1997

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 187

Fees for Providing Production Certification-Related Services Outside the United States; Proposed Rule

Proposed Advisory Circular 187–XX, Aircraft Certification Service Fees for Providing Production Certification-Related Services Outside the United States; Notice

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 187

[Docket No. 28967; Notice No. 97–11]

RIN 2120–AG14

Fees for Providing Production Certification-Related Services Outside the United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to establish fees by voluntary agreement for production certification-related services pertaining to aeronautical products manufactured or assembled outside the United States (U.S.). In addition, the NPRM outlines the methodology for determining the fees, describes how and when the FAA would provide these services, and describes the method for payment of fees. This proposed action, if adopted, would allow the FAA to recover certain costs in providing requested production certification-related services abroad and help to ensure that such services are provided in a responsive and timely manner.

DATES: Comments must be received on or before August 14, 1997.

ADDRESSES: Comments on this proposal may be delivered or mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28967, Room 915G, 800 Independence Avenue, SW., Washington, DC 20591. Comments submitted must be marked: ''Docket No. 28967.'' Comments may also be sent electronically to the following Internet address 9–nprm–cmts@faa.dot.gov. Comments may be examined in Room 915G on weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ramona L. Johnson, Aircraft Certification Service, AIR–200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone: (202) 267–8361.

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. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposal in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments must reference the regulatory docket or notice number and be submitted in triplicate to the Rules Docket address identified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before proceeding with this proposed rulemaking. Late-filed comments will be considered to the extent practicable. The proposals contained in this notice may be changed as a result of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a pre-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 28967.'' The postcard will be date stamped and mailed to the commenter.

Availability of NPRMs

This document may be downloaded from the FAA regulations section of the FedWorld electronic bulletin board (telephone: 703–321–3339), the **Federal Register's** electronic bulletin board (telephone: 202–512–1661).

Internet users may access the FAA's web page at http://www.faa.gov or the **Federal Register** web page at http://www.access.gpo.gov/su__docs to download recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must reference the notice number or docket number of this NPRM.

Persons interested in being placed on the mailing list for future NPRMs should request a copy of Advisory Circular (AC) No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure. This document can be obtained from the FAA Office of Rulemaking.

Background

Under Title 49 U.S.C. Section 44701, the FAA is responsible for the regulation and promotion of safety of flight. Title 49 U.S.C. Section 44704(b) authorizes the FAA Administrator to issue production certificates. Section 44704(b) provides, in part, that:

> The Administrator shall issue a production certificate authorizing the production of a duplicate of any aircraft, aircraft engine, propeller, or appliance for which a type certificate has been issued when the Administrator finds the duplicate will conform to the certificate. On receiving an application, the Administrator shall inspect, and may require testing * * *.

The production certification-related services that the FAA provides to fulfill its statutory responsibilities may be generally described as follows:

1. Processing applications for the following: production under a type certificate only, production under an approved production inspection system, production under a production certificate or extension of a production certificate, production under a technical standard order authorization, and production under a parts manufacturer approval. The processing of applications includes a review of data, response to the applicant, and evaluation of the applicant's further responses as necessary.
2. Certificate management of the manufacturing facility quality assurance system.
3. Witnessing tests and performing conformity inspections of articles.
4. Managing designees.
5. Investigating incidents, accidents, allegations and other unusual circumstances.

These FAA services are provided to Production Approval Holders (PAH). A person who holds a parts manufacturer approval (PMA), a Technical Standard Order (TSO) authorization, or a production certificate (PC), or who holds a type certificate (TC) and produces under that TC, is referred to as a PAH. The regulatory services provided to a PAH include: initial PAH qualification, ongoing PAH and supplier surveillance, designee management, conformity inspections; as well as initial PAH qualification and ongoing surveillance for production certificate extensions outside the U.S. The specialists who perform these functions on behalf of the FAA are Aviation Safety Inspectors, Aviation Safety Engineers, and Flight Test Pilots.

Currently, the FAA performs production certification-related services both domestically and internationally. It does not issue production approvals

outside of the U.S. However, in some international situations, the FAA allows PAH use of suppliers outside the U.S. if parts or sub-assemblies can be 100% inspected by the PAH upon their receipt in the U.S. or if parts or subassemblies are produced under a PAM's supplier control system that has been accepted by the FAA. Under certain circumstances, production outside the U.S. of complex parts, subassemblies, or products is approved by the FAA on a case-by-case basis.

PAHs who choose to perform manufacturing outside the U.S. receive significant and special benefits as a result of FAA's international production oversight. By using manufacturing facilities located outside the U.S., a PAH may benefit through lower labor costs, may increase its market share, or may reap other benefits. Further, since it is FAA's responsibility to prescribe and enforce standards in the interest of safety for the design, materials, workmanship, construction, and performance of civil aeronautical products, the FAA's oversight of manufacturing facilities located outside the U.S. helps assure public confidence in the products and parts manufactured there.

The Need for Rulemaking

Globalization of the aircraft manufacturing industry increases the challenges to the FAA in carrying out its statutory mandate to ensure that safety and airworthiness standards for civil aircraft are being met during manufacture.

To be more competitive, production approval holders are requesting approval from the FAA to expand their activities, to use more facilities around the world, and to manufacture more complex subassemblies, including complete aircraft.

Limited resources make it difficult for the FAA to support these initiatives as international ventures by U.S. aircraft manufacturers become more diverse and complex. Congress recognized the impact of FAA's resource limitations in the Federal Aviation Administration Authorization Act of 1994, P.L. 103–305 (108 State. 1569). As stated in Conference Report No. 103–677 on H.R. 2739:

> Safety regulatory efforts to keep pace with the trend of globalization can be hampered by resource constraints * * * the Aircraft Certification Service should be able to offset expenditures made in support of aircraft or airline safety regulatory programs of both U.S. and foreign owned companies outside the United States.

Therefore, in passing PL 103–305, Congress permitted the FAA to recover its costs ''to provide safety regulatory services abroad in a more responsive and timely manner.''

In addition, under Title V of the Independent Offices of Appropriations Act of 1952 (IOAA), 31 U.S.C. 9701, the FAA is authorized to establish a fair and equitable system for recovering the cost for any service, such as the issuance of a certificate, that provides a special benefit to an individual beyond those that accrue to the general public. Title 31 U.S.C. 9701(a) provides, in part, as follows:

> It is the sense of the Congress that each service or thing of value provided by an agency (except a mixed-ownership Government corporation) to a person (except a person on official business of the United States Government) is to be self-sustaining to the extent possible.

Title 31 U.S.C. 9701(b) further provides:

> The head of each Federal agency (except a mixed-ownership Government corporation) may prescribe regulations establishing the charge for a service or thing of value provided by the agency. Regulations prescribed by the heads of executive agencies shall be as uniform as practicable. Each charge shall be—
> (1) Fair; and
> (2) Based on—
> (A) The costs to the Government;
> (B) The value of the service or thing to the recipient;
> (C) Public policy or interest served; and
> (D) Other relevant facts.

The Proposed Rule

If adopted, the proposed rule allows PAHs to enter into a voluntary agreement with the FAA for the provision of production certification-related services outside the U.S. on mutually agreed terms and conditions. This would include PAHs who elect to use organizations or facilities outside the U.S. to manufacture, assemble, or test, aeronautical products, after the effective date of a final rule. Since not all members of the domestic aerospace industry choose to use organizations or facilities outside the U.S., FAA oversight of these activities outside of the U.S. is above and beyond the oversight services regularly provided to PAHs.

An agreement for services between the PAHs and FAA for production certification-related services for products manufactured, assembled, or tested outside the U.S. would allow the FAA to provide services upon request in a more responsive and timely manner. By charging for its services outside the U.S., the FAA would be able to support more complex manufacturing activities and provide acceptance of parts, sub-assemblies, and products that would otherwise need to be disassembled when received in the U.S. Under this proposal, when production certification-related services are requested and provided outside the U.S., no duplication of FAA work or reinspection of parts is anticipated, except as otherwise required of domestic manufactured parts during the PAH receiving inspection process.

Guidelines for Cost Recovery

The FAA has developed this proposed rule consistent with the IOAA and with the Office of Management and Budget's (OMB) Circular A–25, entitled ''User Charges.''

FAA fees may be assessed to persons who are recipients of special benefits conferred by FAA's production certification-related services outside the U.S. These special benefits would include services: (1) Rendered at the request of an applicant; (2) for the issuance of a required production approval; and (3) to assist an applicant or certificate holder in complying with its regulatory obligations.

The FAA has determined that all services associated with the issuance, amendment, or inspection of a production certificate or approval as detailed in this NPRM would be subject to cost recovery. All direct and indirect costs incurred by the FAA in providing special benefits outside of the U.S. would be recovered. Each fee would not exceed the FAA's cost in providing the service to the recipient. Calculation of agency costs would be performed as accurately as is reasonable and practical, and would be based on the specific expenses identified to the smallest practical unit.

To determine the smallest practical unit for the various FAA services covered, a letter of application would be made by the PAH to the FAA requesting FAA production certification-related services outside the U.S. The proposed application procedure would apply to any PAH; i.e., holders or applicants for production under a type certificate only, under an approved production inspection system, under a production certificate or extension of a production certificate, under a technical standard order authorization, or under a parts manufacturer approval. Based on the details provided in the application, the FAA would determine the cost and terms of providing the requested services to the PAH outside the U.S. and detail those costs to the applicant. The applicant would then request the provision of those services from FAA.

Methodolgy for Fee Determination and Collection

Fee Determination

The FAA proposes to recover the full cost associated with providing production certification-related services outside of the U.S. Costs to be recovered include personnel compensation and benefits (PC&B), travel and transportation costs, and other agency costs.

PC&B: For the purpose of these computations, average PC&B rates for participating Aircraft Certification Service employees would be charged per activity. PC&B charges would reflect the actual hours spent participating in the activity as well as preparatory time, travel time, and the time spent on follow-up activities.

Travel and transportation costs: These charges would include all costs pertaining to domestic, local, and international transport of persons and equipment. These costs may include fares, vehicle rental fees, mileage payment, and any expenses related to transportation such as baggage transfer, insurance for equipment during transport, and communications. FAA personnel would adhere to all U.S. Government travel regulations.

Fees would be charged for lodging, meals, and incidental expenses in accordance with U.S. Government per diem rates, rules, and regulations. Incidental expenses include fees, tips, and other authorized expenses.

Other agency costs: Also included in these computations would be other direct costs; for example, all printing and reproduction services, supplies and materials purchased for the activity, conference room rental, and other activity-related expenses. An additional percentage charge, as established by the FAA in accordance with OMB Circular A–25, would be added to the total cost of this activity to compensate for agency overhead.

The Aircraft Certification Service of the FAA maintains a data system to which employees submit periodic records identifying the number of work hours used to provide service to customers. Travel vouchers are also submitted and audited. This data would be maintained for each applicant and project. The Aircraft Certification Service tracks work hour records quarterly to determine the costs associated with providing its services. This information would be used in assessing and adjusting fees. In this manner, the FAA would be able to assure applicants that they are paying only for expenses incurred in connection with services provided to that specific applicant.

Fee Collection

All charges would be estimated and agreed upon between the FAA and the applicant before the FAA provides services outside the U.S.

Under the proposal, payment would be made to the FAA in advance for all production certification-related activities scheduled during the upcoming 12-month period unless a shorter period is mutually agreeable between the PAH and the FAA. The amounts set forth in the cost estimate would be adjusted to recover the FAA's full costs. If cost are expected to exceed the estimate by more than 10 percent, notification would be made to the applicant as soon as possible. No services would be provided until the FAA receives the full estimated payment for the entire upcoming year. As activities are completed the full costs of the activities would be charged against the advance account. Any remaining funds would either be returned or applied to future activities as requested by the applicant.

Payment for services rendered by the FAA would be in the form of a check, money order, draft, or wire transfer, and would be payable in U.S. currency to the FAA and drawn on a U.S. bank. Bank processing fees would also be added to the fees charged to the applicants, where such processing fees are charged to the U.S. Government.

In any case where an applicant has failed to pay the agreed fee for FAA services, the FAA may suspend or deny any application for service and may suspend or revoke any production-related approval granted.

In accordance with the agreement that would be signed by the FAA and the applicant (Appendix C(d)(3)), this arrangement may be terminated at any time by either party by providing 60 days written notice to the other party. Any such termination would allow the FAA and additional 120 days to close out its activities.

If this proposal is adopted, the FAA will issue an Advisory Circular further detailing the requirements of the application. A notice of availability will be published concurrently with this NPRM.

Section-by-Section Discussion of the Proposals

This NPRM contains proposals to amend sections of 14 CFR part 187.

Section 187.15 Payment of Fees

The FAA proposes to amend § 187.15 to reference all fees under part 187. In addition, charges would be made for banking services if they are necessary to expedite the deposit of funds to the U.S. Government.

Section 187.17 Failure by Applicant To Pay Prescribed Fees

The FAA proposes to add a new § 187.17 that would detail FAA actions in the event the applicant fails to pay the fee agreed to for FAA services. The proposed actions range from not processing the application to suspending or revoking any approval granted outside the U.S.

Appendix C to Part 187—Fees for Providing Production Certification-Related Services Outside the United States

The FAA proposes to add a new Appendix C to part 187 that would contain the following:

1. The methodology for the calculation of fees for production certification-related services outside the U.S. that are performed by the FAA.
2. The applicability to certain manufacturers.
3. Definitions of terms associated with these fees: ''manufacturing facility,'' ''production certification-related services,'' ''supplier facility,'' and ''U.S. production approval holder.''
4. The process for obtaining FAA production certification-related services outside the U.S.
5. The manner in which the FAA would review fees to ensure that the fees will not exceed the full cost of providing the service.

International Compatibility

The FAA has reviewed corresponding International Civil Aviation Organization international standards and recommended practices and Joint Aviation Authorities requirements and has identified no comparable requirements applicable to this proposed rule.

Paperwork Reduction Act

In this NPRM, proposed part 187, Appendix C contains information collection requirements (basically application requirements). As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d), the FAA has submitted a copy of these proposed sections to the Office of Management and Budget (OMB) for its review.

The information to be collected is needed to allow the FAA to understand the scope of production activities outside the U.S. that are envisioned by an applicant.

The total annual reporting and recordkeeping burden on all the PAHs

is estimated to be 1,800 to 2,000 hours and is broken down as follows:

Preparation of the letter of application identifying the company, the proposed location of manufacturing, a general description of the product to be manufactured and the manufacturing activities to be performed, estimated start and end dates, as well as unique requirements (estimated at 2 to 20 hours for each application).

It is estimated that this proposal would affect 90 to 100 production approval holders annually.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 1235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for Federal Aviation Administration. These comments should reflect whether the proposed collection is necessary; whether the agency's estimate of the burden is accurate; how the quality, utility, and clarity of the information to be collected can be enhanced; and how the burden of the collection can be minimized. A copy of the comments also should be submitted to the FAA Rules Docket.

OMB is required to make a decision concerning the collection of information contained in this NPRM between 30 and 60 days after publication in the **Federal Register**. Thererfore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the NPRM.

Regulatory Evaluation Summary

Proposed changes to federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify the costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this proposed rule: (1) Would generate benefits that justify its costs and is a non-significant regulatory action as defined in the Executive Order; (2) is non-significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; and (4) would not constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

This proposed rule would not impose any additional costs on any members of society other than those requesting FAA production certification-related services for manufacturing facilities and suppliers located outside the United States. The proposed rule would allow the FAA to recover its full costs for providing certification-related services requested by the users.

The FAA proposes to charge a fee to recover its costs for production certification-related services provided to all PAHs: (1) Who elect to use manufacturing facilities outside the U.S. and are not currently receiving FAA services; or (2) who elect to expand their current manufacturing facilities outside the U.S. or expand their current manufacturing work outside the U.S.

As stated, actual fees to be charged as a result of this rulemaking will be those fees necessary for the FAA to recover its full costs. Since the FAA is not able at this time to state precisely what those fees will be, it is, for the purpose of this proposal, assuming a wide range from $80.00 to $200.00 per hour. The FAA estimates that if it would charge an hourly rate of $80, the first year fees would total about $2.876 million and if it would charge an hourly rate of $200, the first year fees would total about $5.468 million. Due to an anticipated increase in the number of requests for FAA production certification-related services outside the U.S., these annual fees would increase to between $4.211 million (based on $80 an hour fee) and $8.006 million (based on a $200 an hour fee) in the fifth year, after which they would remain stable.

The primary potential benefit would be that the proposed rule may make it easier for PAHs to use organizations, facilities, and suppliers outside the U.S. to: (1) Take advantage of lower manufacturing costs; and (2) fulfill certain aircraft purchasing agreements that require a PAH to produce a percentage of the aircraft within the purchasing country.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a proposed rule is expected to have a significant (positive or negative) economic impact on a substantial number of small entities.

The proposed rule would primarily affect PAHs and their facilities and suppliers located outside the U.S. Although some small U.S. companies may be indirectly affected, the FAA has determined that the proposed rule would not have a significant impact on a substantial number of small entities.

International Trade Impact

The globalization of aircraft manufacturing has increased competition among manufacturers. In order for PAHs to remain competitive, they need to have the flexibility to compete on an equal footing with their competitors located around the world. Further, many overseas purchasers of PAH products (particularly aircraft) now require that some percentage of the product be produced in their own country.

The proposal would provide PAHs with more timely FAA service in approving products manufactured outside the U.S. Consequently, it should have a favorable competitive impact on PAHs. However, charging a fee for the FAA's production certification-related services outside the U.S. may raise slightly the costs of using a facility outside the U.S. The FAA does not anticipate that the fee would be a significant deterrent to a PAH's decision regarding whether or not to use a facility or supplier outside the U.S.

Nevertheless, the proposal would reduce the PAHs' costs to use facilities and suppliers outside the U.S. because the increased coordination between the FAA and PAHs would result in reducing the costs currently associated with FAA delays in performing the necessary production certification-related services at a facility or supplier located outside the U.S.

The effect of the anticipated cost reduction could be twofold. First, any increased purchases of products made at facilities outside the U.S. may result in a corresponding reduction in the purchases of those products made in U.S. facilities, if there were to be no subsequent overall increase in the number of aircraft and aircraft engines manufactured. Second, using a less expensive facility and supplier located outside the U.S. could produce a less expensive U.S. aircraft, potentially resulting in new orders or an increase in existing orders. The net effect could be an overall increase in the amount of aircraft products manufactured within the U.S.

Therefore, although the proposed rule may adversely affect some domestic product manufacturers, it could also positively affect other domestic product manufacturers. The FAA anticipates

that the overall effect would be to encourage international trade and to provide a mechanism that may assist U.S. civil aviation industry.

Federalism Implications

The proposed regulations 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.

Unfunded Mandates Reform Act

This proposed rule does not contain any Federal intergovernmental or private sector mandate because all fees are entered into by voluntary agreement. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Conclusion

For the reasons discussed above, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposal would be nonsignificant under Executive Order 12866, Regulatory Planning and Review, issued October 4 1993. In addition, the FAA certifies that this proposal, if adopted, would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) and Order DOT 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations, of May 22, 1980. Further, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 would not apply to this proposal. An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and International Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects in 14 CFR Part 187

Administrative practice and procedures, Air transportation.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 187 of Title 14, Code of Federal Regulations (14 CFR part 187) as follows:

PART 187—FEES

1. The authority citation for part 187 continues to read as follows:

Authority: 31 U.S.C. 9701; 49 U.S.C. 106(g), 106(m), 40104–40105, 40109, 40113–40114, 44702.

2. Section 187.15 (a) and (b) are revised to read as follows:

§ 187.15 Payment of fees.

(a) The fees of this part are payable to the Federal Aviation Administration by check, money order, wire transfer, or draft, payable in U.S. currency and drawn on a U.S. bank prior to the provision of any service under this part.

(b) Applicants for the FAA services provided under this part shall pay any bank processing charges on fees collected under this part, when such charges are assessed on U.S. Government.

* * * * *

3. Section 187.17 is added to read as follows:

§ 187.17 Failure by applicant to pay prescribed fees.

If an applicant fails to pay fees agreed to under Appendix C of this part, the FAA may suspend or deny any application for service and may suspend or revoke any production certification-related approval granted.

4. Appendix C is added to read as follows:

Appendix C to Part 187—Fees for Production Certification-Related Services Performed Outside the United States

(a) *Purpose.* This appendix describes the methodology for the calculation of fees for production certification-related services outside the U.S. that are performed by the FAA.

(b) *Applicability.* This appendix applies to production approval holders who elect to use manufacturing facilities or supplier facilities located outside the U.S. to manufacture or assemble aeronautical products after [effective date of the final rule].

(c) *Definitions.* For the purpose of this appendix, the following definitions apply:

Manufacturing facility means a place where production of a complete aircraft, aircraft engine, propeller, component, or appliance is performed.

Production certification-related service means a service associated with initial production approval holder qualification; ongoing production approval holder and supplier surveillance; designee management; initial production approval holder qualification and ongoing surveillance for production certificate extensions outside the U.S.; conformity inspections; and witnessing of tests.

Supplier facility means a place where production of a part, component, or subassembly is performed for a production approval holder.

U.S. production approval holder means a person who holds an FAA approval for production under type certificate only, an FAA approval for production under an approved production inspection system, a production certificate, a technical standard order authorization, or a parts manufacturer approval.

(d) Procedural requirements. (1) Applicants must apply for FAA services provided outside the U.S. by a letter of application to the FAA detailing the particular services required from the FAA.

(2) The FAA will notify the applicant in writing of the estimated cost and schedule to provide the services.

(3) The applicant will review the estimated costs and schedule of services. If the applicant agrees with the estimated costs and schedule of services, the applicant will propose to the FAA that the services be provided. If the FAA agrees, a written agreement will be executed between the applicant and the FAA.

(4) The applicant must provide advance payment for each 12-month period of requested FAA service unless a shorter period is agreed to between the production approval holder and FAA.

(e) Fee determination. (1) Fees for FAA production certification-related services will consist of: personnel compensation and benefit (PC&B) for each participating FAA employee, actual travel and transportation expenses incurred in providing the service, other agency costs and an overhead percentage.

(2) Fees will be determined on a case-by-case basis according to the following general formula:

$W_1H_1+W_2H_2$ etc., +T+O

where:

W_1H_1=hourly PC&B rate for employee 1, times estimated hours

W_2H_2=hourly PC&B rate for employee 2, etc., times estimated hours

T=estimated travel and transportation expenses

O=other agency costs related to each activity including overhead.

(3) In no event will the applicant be charged more than the full FAA costs of providing production certification-related services.

(4) If the full FAA costs vary from the estimated fees by more than 10 percent, written notice by the FAA will be given to the applicant as soon as possible.

(5) If FAA costs exceed the prepaid fees, the applicant will be required to pay the difference prior to receiving further services. If the prepaid fees exceed the FAA costs, the applicant may elect to apply the balance to future agreements or receive a refund.

(f) Fees will be reviewed by the FAA each year, at the beginning of the fiscal year, and adjusted either upward or downward in order to reflect the current costs of performing production certification-related services outside the U.S.

(1) Notice of any change to the elements of the fee formula will be published in the **Federal Register**.

(2) Notice of any change to the methodology and other changes for the fees will be published in the **Federal Register**.

Issued in Washington, DC, on July 9, 1997.

Thomas E. McSweeny,

Director, Aircraft Certification Service.

[FR Doc. 97–18520 Filed 7–14–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 187–XX, Aircraft Certification Service Fees for Providing Production Certification-Related Services Outside the United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of proposed Advisory Circular (AC) 187–XX, Aircraft Certification Service Fees for Providing Production Certification-related Services Outside the United States, for review and comments. Elsewhere in this edition of the **Federal Register,** the FAA has issued a Notice of Proposed Rulemaking (NPRM), Fees for Providing Production Certification-related Services Outside the United States, which proposes to add an Appendix C to part 187 of Title 14 of the Code of Federal Regulation. The NPRM proposes to establish fees by voluntary agreement for production certification-related services pertaining to aeronautical products manufactured or assembled outside the United States. This proposed AC 187–XX provides information for determining compliance with part 187, proposed Appendix C.

DATES: Comments submitted must be identified by the name of the AC 187–XX, project number 96–009, and be received by August 14, 1997.

ADDRESSES: Copies of the proposed AC 187–XX can be obtained from and comments may be returned to: Federal Aviation Administration, Aircraft Certification Service, Production and Airworthiness Certification Division, AIR–200, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: David Broughton, AIR–230, Policy, Evaluation, and Analysis Branch, Room 815, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 10591, (202) 267–9575.

SUPPLEMENTARY INFORMATION:

Background

The global manufacture of aircraft, aircraft engines, propellers, appliances, and parts thereof has presented the FAA with challenges to ensure that safety and airworthiness standards for U.S. products are met worldwide. As defined in part 187, proposed Appendix C, a production approval holder (PAH) means a person who holds: An approval to produce under an approved production inspection system (APIS), a production certificate (PC) (to include PC extensions), a Technical Standard Order (TSO) authorization, a Parts Manufacturer Approval (PMA) or who holds a Type Certificate (TC) only and produces under that TC. The FAA has allowed U.S. production approval holders (PAH's), to use manufacturing facilities outside the United States under certain conditions. These approvals are currently limited to certain parts/sub-assemblies that are inspected when received in the United States by the PAH or when the PAH has established and implemented a supplier control system. In addition, more complex production work outside the United States has been allowed on a case-by-case basis.

To be more competitive, U.S. PAH's are requesting approval from the FAA to expand their manufacturing activities to use more suppliers; and to manufacture more complex sub-assemblies, including complete aircraft outside the United States.

Part 187 establishes fees for providing certification services to all PAH's who elect to use manufacturing or supplier facilities outside the United States.

As outlined in a January 1994 report, ''The Clinton Administration's Initiative to Promote a Strong Competitive Aviation Industry,'' the United States seeks to expand commercial opportunities for U.S. aircraft manufacturers in the global marketplace. Accordingly, there is a need to ensure that U.S. aerospace firms are not disadvantaged in global competition and to foster a climate where U.S. companies can continue to participate as technology and marketing leaders. Limited financial/human resources make it difficult for the FAA to support these goals as international ventures by U.S. aircraft manufacturers become more diverse and complex.

The U.S. Congress recognized the impact of these limited resources in its consideration of the Federal Aviation Administration Authorization Act of 1994, PL 103–305 (108 Jurisdiction 1569). As stated in Conference Report No. 103–677 on H.R. 2739, ''Safety regulatory efforts to keep pace with the trend of globalization can be hampered by resource constraints * * * the Aircraft Certification Service should be able to offset expenditures made in support of aircraft or airline safety regulatory programs of both U.S. and foreign owned companies outside the United States.''

Comments Invited

Interested persons are invited to comment on the proposed AC 187–XX listed in this notice by submitting such written data, views, or arguments as they desire. Comments received on the proposed AC may be examined before and after the comment closing date in Room 815, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays, except Federal holiday, between 8:30 a.m. and 4:30 p.m. By separate notice, in this edition of the **Federal Register**, the FAA is also inviting interested persons to comment on the NPRM. The FAA will consider comments from this notice and comments received on the NPRM in deciding the nature of final action of each.

Issued in Washington, DC, on July 9, 1997.

Michael J. Dreikorn,

Acting Manager, Production and Airworthiness Certification Division.

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Federal Register

Vol. 62, No. 135

Tuesday, July 15, 1997

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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**

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FEDERAL REGISTER PAGES AND DATES, JULY

35337–35658 1
35659–35946 2
35947–36198 3
36199–36446 7
36447–36644 8
36645–36964 9
36965–37124 10
37125–37484 11
37485–37706 14
37707–38014 15

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6641 (See Proclamation 7011) 35909
6763 (See Proclamation 7011) 35909
7011 35909
12721 (See EO 13054) 36965

Executive Orders:
12852 (Amended by EO 13053) 39945
13052 35659
13053 39945
13054 36965

5 CFR

7201 36447

Proposed Rules:
880 35693

7 CFR

2 37485
300 36967
301 ..... 36645, 36976
318 36967
455 ..... 35661, 35662
456 35666
457 ..... 35662, 35666
946 36199
981 ..... 37485, 37488
985 36646
1006 36650
1137 35947
1220 37488
1381 36651
1437 36978

Proposed Rules:
29 35452
301 37159
450 37000
457 37000
920 ..... 36231, 36743
930 36020
981 36233
985 36236
1011 ..... 36022, 37524
1137 37524
1944 36467

8 CFR

316 36447

9 CFR

77 37125

10 CFR

Proposed Rules:
430 36024
451 36025

11 CFR

104 35670

12 CFR

338 36201
790 37126
902 35948

Proposed Rules:
9 36746
202 37166
250 37744
303 37748
325 37748
326 37748
327 37748
346 37748
347 37748
351 37748
362 37748

13 CFR

123 35337

14 CFR

39 ..... 35670, 35950, 35951, 35953, 35956, 35957, 35959, 36448, 36652, 36978, 37127, 37128, 37130, 37707, 37710
71 35894

Proposed Rules:
25 37124
39 ..... 35696, 35698, 35700, 35702, 35704, 35706, 35708, 35709, 35711, 36240, 36747, 37170, 37778, 37788, 37798, 37808
71 ..... 35713, 37172
187 38008
401 36027
411 36027
413 36027
415 36027
417 36027
440 36028

15 CFR

922 ..... 35338, 36655

Proposed Rules:
30 36242
922 37818

16 CFR

601 35586
1000 36450
1017 36450

17 CFR

200 36450
228 36450
229 36450
230 36450
232 36450

239.....35338, 36450
240.....35338, 36450
249.....35338
260.....36450
269.....35338
Proposed Rules:
232.....36467
240.....36467
249.....36467

18 CFR

35.....36657
381.....36981

19 CFR

101.....37131
122.....37131
Proposed Rules:
101.....37526

20 CFR

416.....36460
Proposed Rules:
702.....35715

21 CFR

165.....36460
178.....36982
520.....37711, 37712
522.....37713
Proposed Rules:
Ch. I.....36243
101.....36749
1308.....37004

22 CFR

126.....37133

24 CFR

586.....37478
Proposed Rules:
201.....36194
202.....36194
207.....35716
251.....35716
252.....35716
255.....35716
266.....35716
950.....35718
953.....35718
955.....35718
1000.....35718
1003.....35718
1005.....35718

26 CFR

1.....35673, 37490
31.....37490
40.....37490
54.....35904
602.....35904
Proposed Rules:
1 .....35752, 35755, 37818, 37819
301.....37819

28 CFR

17.....36984
32.....37713

29 CFR

1600.....36447
1650.....36447
1926.....37134
2200.....35961
2203.....35961
2204.....35961
2520.....36205
2590.....35904
4000.....36993
4001.....35342
4007.....36663
4010.....36993
4011.....36993
4043.....36993
4044.....37717
4071.....36993
4302.....36993

30 CFR

256.....36995
902.....35342
946.....35964
Proposed Rules:
206.....36030
250.....37819
935.....36248

31 CFR

285.....36205
Proposed Rules:
103.....36475

32 CFR

176.....35343
286.....35351
706.....37719

33 CFR

27.....35385
100 .....35387, 35388, 35390, 35391
144.....35392
155.....37134
165 .....35392, 35393, 35394, 35395, 35396, 35398, 335398, 35399, 35400, 35401, 35402, 35403, 35405, 35680, 35968, 37135
Proposed Rules:
84.....36037
117.....35453

34 CFR

222.....35406
685.....35602

37 CFR

201.....35420
202.....35420
203.....35420

38 CFR

1.....35969
3 .....35421, 35969, 35970
9.....35969
21.....35423
Proposed Rules:
19.....36038
21.....35454, 35464
36.....37824

39 CFR

3001.....35424

40 CFR

9.....37720
52 .....35441, 35681, 36212, 36214, 37136, 37138, 37494, 37506, 37510, 37722, 37724
60.....36664
62.....36995
63.....36460, 37720
70.....37514
81.....35972
180 .....35683, 36665, 36671, 36678, 36684, 36691, 37516
268.....37694
281.....36698
300 .....35441, 35689, 35974, 36997, 37522
721.....35689, 35690
Proposed Rules:
52 .....35756, 36249, 37007, 37172, 37175, 37526, 37527, 37832
60.....36948
62.....37008
70.....36039, 37533
80.....37338
82.....36428
141.....36100
142.....36100
180.....35760
186.....35760
260.....37183
261.....37183
273.....37183
799.....37833

42 CFR

67.....37124

44 CFR

65.....37727
67.....37729
Proposed Rules:
67.....37834

45 CFR

146.....35904
148.....35904

46 CFR

109.....35392
159.....35392
160.....35392
199.....35392
295.....37733

47 CFR

Ch. I.....36216
1.....37408
59.....36998
64.....35974
68.....36463
73 .....36226, 36227, 36699, 36700, 36701, 36678, 36684, 36691, 37144, 37145, 37522
Proposed Rules:
Ch. I.....36752
52.....36476
68.....36476
73 .....36250, 36756, 37008
80.....37533

48 CFR

235.....37146
243.....37146
252.....37146, 37147
1514.....37148
1515.....37148
1552.....37148
1803.....36704
1804.....36704
1807.....36704
1809.....36704
1813.....36704
1815.....36704
1816.....36704
1819.....36704
1822.....36704
1824.....36704
1825.....36704
1827.....36704
1832.....36704
1836.....36704
1837.....36704
1839.....36704
1842.....36227, 37335
1844.....36704
1845.....36704
1852.....36704
1853.....36704
1870.....36704
Proposed Rules:
4.....36250
7.....36250
8.....36250
12.....37874
14.....37874
15.....36250, 37874
16.....36250
17.....36250
19.....37874
22.....36250
27.....36250
28.....36250
31.....35900, 36250
32.....36250
33.....37874
35.....36250
42.....36250
43.....36250
44.....36250
45.....36250
46.....35900
49.....36250
51.....36250
52 .....35900, 36250, 37847
53.....36250, 37847
245.....37185
252.....37185
9903.....37654

49 CFR

173.....37149
193.....36465
355.....37150
382.....37150
383.....37150
384.....37150
389.....37150
391.....37150
392.....37150
531.....37153
1002.....35692
1180.....35692
Proposed Rules:
192.....37008
195.....37008
213.....36138
385.....36039
571.....36251
594.....37847
1002.....36477
1181.....36480
1182.....36477, 36480
1186.....36480
1187.....36477
1188.....36477, 36480

50 CFR

17.....36481, 36482
285.....35447, 36998
648 .....36704, 36738, 37154, 37741
660.....35450, 36228
679 .....36018, 36739, 36740, 36741, 37157, 37523

Proposed Rules:

17.....35762, 37852
285 .....36040, 36739, 36872
600.....35468
622.....35774
679.....37860

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 JULY 15, 1997

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Polymer and resin production facilities (Group IV); correction; published 7-15-97

Air quality implementation plans; approval and promulgation; various States:
- Minnesota
  - Correction; published 7-15-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:
- New drug applications—
  - Moxidectin tablets; published 7-15-97
  - Pyrantel pamoate suspension; published 7-15-97
  - Sulfaquinoxaline drinking water; published 7-15-97
- Sponsor name and address changes—
  - Phoenix Scientific, Inc.; published 7-15-97

Food for human consumption:
- Food labeling—
  - Iron-containing supplements and drugs; warning statements and unit-dose packaging requirements; correction; published 3-31-97

JUSTICE DEPARTMENT

Justice Programs Office

Public safety officers' death and disability benefits:
- Federal law enforcement dependents assistance program; published 7-15-97

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Cessna Aircraft Co.; published 7-9-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Almonds grown in California; comments due by 7-22-97; published 7-7-97

Perishable Agricultural Commodities Act; implementation:
- Electronic transmissions as ordinary and usual billing or invoice statements; comments due by 7-21-97; published 6-20-97

Spearmint oil produced in Far West; comments due by 7-22-97; published 7-7-97

AGRICULTURE DEPARTMENT

Agricultural Research Service

National Arboretum use; fee schedule; comments due by 7-21-97; published 6-19-97

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Loan and purchase programs:
- Livestock indemnity program; comments due by 7-24-97; published 6-24-97

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Crop insurance regulations:
- Canning and processing tomatoes; comments due by 7-23-97; published 6-23-97

AGRICULTURE DEPARTMENT

Rural Utilities Service

Electric loans:
- Long-range financial forecasts; comments due by 7-21-97; published 5-20-97

COMMERCE DEPARTMENT

Acquisition regulations:
- Empowerment contracting; guidelines; comments due by 7-21-97; published 5-20-97

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- West Coast States and Western Pacific fisheries—
  - Pacific Coast groundfish; comments due by 7-22-97; published 7-7-97

COMMODITY FUTURES TRADING COMMISSION

Commodity option transactions:
- Enumerated agricultural commodities; trade options; comments due by 7-24-97; published 6-9-97

DEFENSE DEPARTMENT

Civilian health and medical program of uniformed services (CHAMPUS):
- TRICARE retiree dental program; comments due by 7-24-97; published 6-24-97

EDUCATION DEPARTMENT

Protection of human subjects; additional protections for children involved in research activities; comments due by 7-21-97; published 5-22-97

ENVIRONMENTAL PROTECTION AGENCY

Acquisition regulations:
- Profit or fee calculations; comments due by 7-21-97; published 5-21-97

Clean Air Act:
- Acid rain program—
  - Early reduction credits; comments due by 7-24-97; published 6-24-97
  - Early reduction credits; phase II; comments due by 7-24-97; published 6-24-97

Hazardous waste program authorizations:
- Maine; comments due by 7-24-97; published 6-24-97

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Cyclanilide; comments due by 7-22-97; published 5-23-97
- Pendimethalin; comments due by 7-22-97; published 5-23-97

Superfund program:
- National oil and hazardous substances contingency plan—
  - National priorities list update; comments due by 7-21-97; published 6-19-97
  - National priorities list update; comments due by 7-23-97; published 6-23-97
  - National priorities list update; comments due by 7-23-97; published 6-23-97

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Toll free service access codes; vanity numbers; comments due by 7-21-97; published 7-8-97

Freedom of Information Act: implementation; comments due by 7-25-97; published 6-25-97

Frequency allocations and radio treaty matters:
- Equipment Authorization process; simplification, deregulation, and electronic filing of applications; comments due by 7-21-97; published 5-5-97

Television broadcasting:
- Cable Television Consumer Protection and Competition Act of 1992—
  - Indecent programming on leased access and public, educational, and governmental access channels; cable operators policies; comments due by 7-22-97; published 5-23-97

FEDERAL RESERVE SYSTEM

Collection of checks and other items from Federal Reserve banks and Fedwire funds transfers (Regulation J):
- Single funds accounts; comments due by 7-21-97; published 5-20-97

Freedom of Information Act; implementation; comments due by 7-25-97; published 6-10-97

GENERAL SERVICES ADMINISTRATION

Federal property management:
- Public buildings and space—
  - Reimbursable work authorizations; pricing practices; comments due by 7-21-97; published 5-22-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:
- Fluoroquinolones and glycopeptides; extralabel use prohibition; comments due by 7-21-97; published 5-22-97
- New drug applications—
  - Investigational use; adequate and well-controlled studies; comments due by 7-22-97; published 5-8-97

Food additives:
- Adjuvants, production aids, and sanitizers—

Polyethyleneglycol akyl(C10-C12) ether sulfosuccinate, etc.; comments due by 7-24-97; published 6-24-97

INTERIOR DEPARTMENT

Land Management Bureau

Federal regulatory review:

Coal management; comments due by 7-21-97; published 5-20-97

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Baker's larkspur and yellow larkspur; comments due by 7-21-97; published 6-19-97

Migratory bird hunting:

Annual hunting regulations and Indian tribal proposal requests; comments due by 7-25-97; published 3-13-97

INTERIOR DEPARTMENT

Minerals Management Service

Royalty management:

Federal leases; natural gas valuation regulations; amendments; withdrawn; supplemental information comment request; comments due by 7-23-97; published 6-10-97

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Immigration:

Polish and Hungarian parolees; status adjustment; comments due by 7-22-97; published 5-23-97

JUSTICE DEPARTMENT

Bankruptcy Reform Acts of 1978 and 1994:

Panel and standing trustees; suspension and removal procedures; comments due by 7-22-97; published 5-23-97

Radiation Exposure Compensation Act; claims:

Evidentiary requirements; definitions and number of claims filed; comments due by 7-22-97; published 5-23-97

NUCLEAR REGULATORY COMMISSION

Radioactive material packaging and transportation:

Vitrified high-level waste; comments due by 7-22-97; published 5-8-97

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Practice and procedure:

E-Z Trial pilot program implementation and simplified proceedings for adjudicative process; rules revision; comments due by 7-24-97; published 6-24-97

PERSONNEL MANAGEMENT OFFICE

Pay administration:

Holiday pay for prevailing rate employees, premium pay for nonappropriated fund wage employees, etc.; comments due by 7-22-97; published 5-23-97

RAILROAD RETIREMENT BOARD

Railroad Retirement Act:

Family relationships and social security overall minimum guarantee provision; stepchild annuity eligibility requirements; comments due by 7-21-97; published 5-22-97

SOCIAL SECURITY ADMINISTRATION

Supplemental security income:

Overpayment recovery by offset of Federal income tax refund; comments due by 7-23-97; published 6-23-97

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:

Michigan; comments due by 7-21-97; published 5-22-97

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Aviat Aircraft Inc.; comments due by 7-25-97; published 5-30-97

Bell; comments due by 7-21-97; published 5-20-97

Boeing; comments due by 7-21-97; published 6-25-97

Bombardier; comments due by 7-21-97; published 5-22-97

Fokker; comments due by 7-21-97; published 6-10-97

Raytheon; comments due by 7-25-97; published 5-29-97

Class E airspace; comments due by 7-22-97; published 6-13-97

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety systems:

Occupant crash protection—

Child restraint systems; air bag warning label on rear-facing child seats; modification; comments due by 7-21-97; published 6-4-97

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Alcohol, tobacco, and other excise taxes:

Persons acquiring firearms; residency requirements; cross reference; comments due by 7-21-97; published 4-21-97

Persons acquiring firearms; residency requirements; comments due by 7-21-97; published 4-21-97

TREASURY DEPARTMENT

Fiscal Service

Debt Collection Improvement Act of 1996; debt collection authorities:

Collection of delinquent nontax debt owed to Federal Government; tax refund offset payments; comments due by 7-25-97; published 6-25-97