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Friday
November 12, 1999

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WHERE: Office of the Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 7248 of November 8, 1999

Veterans Day, 1999

By the President of the United States of America

A Proclamation

Throughout U.S. history, Americans have kept a special place of honor in their hearts for our veterans; and for more than 70 years, we have set aside each November 11 to recognize the men and women who have so valiantly served America. On this day, we remember and pay tribute to the millions of patriots whose courage and sacrifice have secured our freedom—from those who suffered through the harsh winter at Valley Forge to those who preserved our Union on the battlefields of Gettysburg to those who turned back the tide of tyranny and hatred on the beaches of Normandy to those who have kept the peace and defended our values around the globe.

Since the first days of our independence, brave Americans have stepped forward to protect our country and promote our ideals. Some 48 million men and women from every corner of our country and from every walk of life have served in our Nation's Armed Forces, and 41 million of them have done so under hostile conditions. Their service often put them in harm's way, far from home and family, and too often it cost them their lives.

Time and again, America has called on her men and women in uniform to protect our national security, to advance our national interests, and to preserve our rights and freedoms. And time and again, our Armed Forces have responded by overcoming daunting challenges to achieve hard-fought victories. In battles that would determine our Nation's destiny, in wars that would decide the fate of the free world, in peacekeeping missions that would change forever the lives and futures of peoples fighting oppression, they have persevered in the face of adversity and have prevailed.

Such victories do not come easily. They exact a heavy toll in lives cut short, in families bereft, in human potential unfulfilled. It is a toll paid by the 25 million veterans still living among us, who every day carry with them the indelible memories of sacrifices made, battles fought, and comrades lost.

To pay tribute to those who have served in our Armed Forces, the Congress has provided (5 U.S.C. 6103(a)) that November 11 of each year shall be set aside as a legal public holiday to honor America's veterans. For all their sacrifices and for the peace, prosperity, and liberty their service has secured for us, our Nation owes our veterans a profound debt of gratitude. In commemorating this solemn day, we express our deep appreciation for the duties they have discharged.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim Thursday, November 11, 1999, as Veterans Day. I urge all Americans to honor our veterans through appropriate public ceremonies and private prayers. I call upon Federal, State, and local government officials to display the flag of the United States and to encourage and participate in patriotic activities in their communities. I invite civic and fraternal organizations, places of worship, schools, businesses, unions, and the media to support this national observance with suitable commemorative expressions and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of November, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 99–29761
Filed 11–10–99; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 64, No. 218
Friday, November 12, 1999

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

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

FEDERAL ELECTION COMMISSION

[Notice 1999–25]

11 CFR Parts 9003, 9004, 9008, 9032, 9033, 9034, 9035, and 9036

Public Financing of Presidential Primary and General Election Campaigns

AGENCY: Federal Election Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: On September 13, 1999, the Commission published the text of revised regulations governing publicly financed Presidential campaigns. 64 FR 49355. The Commission announces that certain of these revisions are effective as of November 12, 1999, while other revisions are effective as of June 1, 2000.

EFFECTIVE DATES: These rules are effective November 12, 1999, except for 11 CFR 9003.3 and 9034.4(e)(6)(i), which are effective June 1, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith, Assistant General Counsel, 999 E Street, NW, Washington, DC 20463, (202) 694–1650 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is announcing the effective date of revised regulations at 11 CFR 9003.3, 9003.5, 9004.4, 9004.9, 9008.7, 9008.14, 9008.52, 9008.53, 9032.11, 9033.11, 9034.4, 9034.5, 9035.1, 9036.1, and 9036.2. These regulations implement the provisions of the Presidential Election Campaign Fund Act, 26 U.S.C. 9001 *et seq.*, and the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031 *et seq.*, which establish eligibility requirements for Presidential candidates seeking public financing, and indicate how funds received under the public financing system may be spent. They also require the Commission to audit publicly financed campaigns and seek repayment where appropriate. These new rules address, *inter alia*, the pre-nomination formation of a General Election Legal and Compliance Fund (''GELAC''); transfers from a primary campaign committee to a GELAC; joint primary and GELAC solicitations; winding down costs; lost, misplaced or stolen items; disposition of capital assets; and receipts and disbursements of convention host committees

Sections 9009(c) and 9039(c) of Title 26, United States Code, require that any rules or regulations prescribed by the Commission to carry out the provisions of Title 26 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate thirty legislative days prior to final promulgation. These rules were transmitted to Congress on September 7, 1999. Thirty legislative days expired in the Senate and the House of Representatives on October 27, 1999.

Please note that the majority of these revisions will become effective on November 12, 1999. However, the revisions to 11 CFR 9003.3 and 9034.4(e)(6), dealing with GELAC solicitations, will take effect on June 1, 2000.

Announcement of Effective Date: Revised 11 CFR 9003.5, 9004.4, 9004.9, 9008.7, 9008.14, 9008.52, 9008.53, 9032.11, 9033.11, 9034.4(a), (b), and the introductory language to (e), 9034.5, 9035.1, 9036.1, and 9036.2, as published at 64 FR 49355 (September 13, 1999), are effective as of November 12, 1999. Revised 11 CFR 9003.3 and 9034.4(e)(6)(i), also published at 64 FR 49355, are effective as of June 1, 2000.

Dated: November 8, 1999.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 99–29554 Filed 11–10–99; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–365–AD; Amendment 39–11402; AD 99–23–06]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model SN–601 (Corvette) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Aerospatiale Model SN–601 (Corvette) series airplanes, that requires repetitive inspections, and repair if necessary, of the locking indication system of the drag strut jack on the main landing gear (MLG) to detect corrosion and damage resulting from its operation. This proposal also requires replacement of seals and backup rings with new parts. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the locking indication system of the drag strut jack on the MLG due to corrosion. Such corrosion could prevent the MLG from locking and result in the subsequent collapse of the MLG.

DATES: Effective December 17, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of December 17, 1999.

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: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601

Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

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 SN–601 (Corvette) series airplanes was published in the **Federal Register** on September 10, 1999 (64 FR 49113). That action proposed to require repetitive inspections, and repair if necessary, of the locking indication system of the drag strut jack on the main landing gear (MLG) to detect corrosion and damage resulting from its operation. That action also proposed to require replacement of seals and backup rings with new parts.

Comments

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

Conclusion

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

Cost Impact

The FAA estimates that 2 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the inspection, and that the average labor rate is $60 per work hour. The cost of required parts will be minimal. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $960, or $480 per airplane, per inspection cycle.

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

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–23–06 Aerospatiale: Amendment 39–11402. Docket 98–NM–365–AD.

Applicability: All Model SN–601 (Corvette) series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the locking indication system of the drag strut jack on the main landing gear (MLG) due to corrosion that could prevent the MLG from locking and result in the subsequent collapse of the MLG, accomplish the following:

(a) Within 3,600 flight hours or 36 months after the effective date of this AD, whichever occurs first, perform a detailed visual inspection to detect certain discrepancies of the locking indication system on the drag strut jack on the MLG, in accordance with Messier-Dowty Technical Instruction No. 20403, Issue 2, dated March 1998. Prior to reassembling the parts, replace all the seals and backup rings with new parts, in accordance with the Technical Instruction.

(1) If no corrosion is found on either plunger, prior to further flight, inspect for the free displacement of both plungers, in accordance with the Technical Instruction.

(i) If the displacement of both plungers is free without any hard points, repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 72 months.

(ii) If the displacement of either plunger is not free, prior to further flight, replace the plunger with a new plunger, in accordance with the Technical Instruction. Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 72 months.

(2) If corrosion is found on either plunger, prior to further flight, replace the plunger with a new plunger, in accordance with the Technical Instruction. Repeat the inspection thereafter at intervals not to exceed 72 months.

(3) If no corrosion, marking, binding, or peening is found on any disassembled part removed from the stacking, other than the plungers, repeat the inspection thereafter at intervals not to exceed 72 months.

(4) If any corrosion, marking, binding or peening is found on any disassembled parts removed from the stacking, other than the plungers, prior to further flight, replace the part with a new part, in accordance with the Technical Instruction. Repeat the inspection thereafter at intervals not to exceed 72 months.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, 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, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(d) The actions shall be done in accordance with Messier-Dowty Technical Instruction No. 20403, Issue 2, dated March 1998. 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.

Note 4: The subject of this AD is addressed in French airworthiness directive 98–179–021(B), dated May 6, 1998.

(e) This amendment becomes effective on December 17, 1999.

Issued in Renton, Washington, on October 28, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–28745 Filed 11–10–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–186–AD; Amendment 39–11404; AD 99–23–08]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes, and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes, and C–9 (military) airplanes, that requires a one-time general visual inspection to detect certain discrepancies in the wiring of the fuel quantity indicating system (FQIS) in the forward cargo compartment; and corrective actions, if necessary. This amendment is prompted by a report indicating that several discrepancies were found in the wiring of the FQIS due to maintenance or alteration practices. The actions specified by this AD are intended to prevent excessive electrical energy from entering the fuel tanks through the FQIS wiring, which could result in a potential ignition source in the fuel tanks.

DATES: Effective December 17, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of December 17, 1999.

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

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5245; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes, and C–9 (military) airplanes was published in the **Federal Register** on August 30, 1999 (64 FR 47144). That action proposed to require a one-time general visual inspection to detect certain discrepancies in the wiring of the fuel quantity indicating system (FQIS) in the forward cargo compartment; and corrective actions, if necessary.

Comments

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

Conclusion

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

Cost Impact

There are approximately 815 airplanes of the affected design in the worldwide fleet. The FAA estimates that 577 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $34,620, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–23–08 McDonnell Douglas: Amendment 39–11404. Docket 99–NM–186–AD.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes, and C–9 (military) airplanes; as listed in McDonnell Douglas Service Bulletin DC9–28–077, dated June 8, 1999; 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 (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent excessive electrical energy from entering the fuel tanks through the fuel quantity indicating system (FQIS) wiring, which could result in a potential ignition source in the fuel tanks, accomplish the following:

Inspection and Corrective Actions

(a) Within 18 months after the effective date of this AD, perform a one-time general visual inspection to detect discrepancies in the wiring of the FQIS in the area of the forward cargo compartment in accordance with McDonnell Douglas Service Bulletin DC9–28–077, dated June 8, 1999. If any discrepancy is detected, prior to further flight, perform the corrective actions specified in the service bulletin, except as provided in paragraph (b) of this AD.

Note 2: For the purposes of this AD, a general visual inspection is defined as ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being check.''

Reporting Requirement

(b) Where the service bulletin specifies to submit a report of inspection findings to Boeing: Within 10 days after accomplishing the inspection required by paragraph (a) of this AD, submit a report of the inspection results (both positive and negative findings) to the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712–4137; ATTN: Robert Baitoo; fax (562) 627–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Note 3: Accomplishment of the inspection, corrective action, and reporting in accordance with McDonnell Douglas All Operator Letter (AOL) 9–2584, dated February 19, 1999; and Interim DC–9 Forward Cargo Compartment FQIS Inspection and Information Procedure, Revision 1, dated February 11, 1999; is acceptable for compliance with the actions required by paragraphs (a) and (b) of this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(e) The actions shall be done in accordance with McDonnell Douglas Service

Bulletin DC9–28–077, dated June 8, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 17, 1999.

Issued in Renton, Washington, on October 28, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–28744 Filed 11–10–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–335–AD; Amendment 39–11401; AD 99–23–05]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Bombardier Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 series airplanes, that requires repetitive detailed visual inspections and high frequency eddy current inspections to detect cracking of the wing upper skin and ladder plates at over wing access panels between certain stations; and repair, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct fatigue cracking of the wing ladder plates, which, if not corrected, could reduce the structural integrity of the wing.

DATES: Effective December 17, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 17, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street,

Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

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

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 Bombardier Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 series airplanes was published in the Federal Register on September 3, 1999 (64 FR 48333). That action proposed to require repetitive detailed visual inspections and high frequency eddy current inspections to detect cracking of the wing upper skin and ladder plates at over wing access panels between certain stations; and repair, if necessary.

Comments

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

Conclusion

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

Cost Impact

The FAA estimates that 166 airplanes of U.S. registry will be affected by this AD, that it will take approximately 40 work hours per airplane to accomplish the inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $398,400, or $2,400 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–23–05 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–11401. Docket 98–NM–335–AD.

Applicability: All Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 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 (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the wing ladder plates, which if not corrected, could reduce the structural integrity of the wing, accomplish the following:

Inspection for DHC–8–100 and –300 Series Airplanes

(a) At the applicable compliance time listed in paragraph (a)(1), (a)(2), or (a)(3) of this AD, perform a detailed visual inspection to detect cracking of the skin and a high frequency eddy current (HFEC) inspection of the ladder plates at over wing access panels between station YW42.00 and YW171.20, in accordance with de Havilland Temporary Revision MTC–15, dated September 18, 1998, of the de Havilland Maintenance Program Manual PSM 1–8–7 TC (for Model DHC–8–100 series airplanes); or de Havilland Temporary Revision MTC 3–14, dated September 18, 1998, of the de Havilland Maintenance Program Manual PSM 1–83–7TC (for Model DHC–8–300 series airplanes); as applicable. Repeat the inspections thereafter at intervals not to exceed 10,000 flight cycles.

(1) For airplanes that have accumulated 5,000 or fewer total flight cycles as of the effective date of this AD, accomplish the inspection prior to the accumulation of 10,000 total flight cycles.

(2) For airplanes that have accumulated more than 5,000 total flight cycles, but fewer than 38,501 total flight cycles as of the effective date of this AD, accomplish the inspection prior to the accumulation of [5,522+(0.8955 × N Accumulated)] total cycles. ''N Accumulated'' is defined as the total number of flight cycles as of the effective date of this AD.

(3) For airplanes that have accumulated 38,501 or more total flight cycles as of the effective date of this AD, accomplish the inspection within 1,500 flight cycles after the effective date of this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Inspection for DHC–8–200 Series Airplanes

(b) At the applicable compliance time listed in paragraph (b)(1) or (b)(2) of this AD, perform a detailed visual inspection of the skin and an HFEC inspection to detect cracking of the ladder plates at over wing access panels between station YW42.00 and YW171.20, in accordance with de Havilland Temporary Revision MTC 2–14, dated September 18, 1998, of the de Havilland Maintenance Program Manual PSM 1–82–7TC. Repeat the inspections thereafter at intervals not to exceed 10,000 flight cycles.

(1) For airplanes that have accumulated 5,000 or fewer total flight cycles as of the effective date of this AD, accomplish the inspection prior to the accumulation of 10,000 total flight cycles.

(2) For airplanes that have accumulated more than 5,000 total flight cycles, but fewer than 38,501 total flight cycles as of the effective date of this AD, accomplish the inspection prior to the accumulation of [5,522+(0.8955 × N Accumulated)] total cycles, where ''N Accumulated'' is defined as the total number of flight cycles as of the effective date of this AD.

Repair

(c) If any crack is detected during any inspection required by this AD, prior to further flight, repair in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate; or the Transport Canada Civil Aviation (TCCA) (or its delegated agent). For a repair method to be approved by the Manager, New York ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(f) Except as provided by paragraph (c) of this AD, the actions shall be done in accordance with de Havilland Temporary Revision MTC–15, dated September 18, 1998, of the de Havilland Maintenance Program Manual PSM 1–8–7 TC; de Havilland Temporary Revision MTC 3–14, dated September 18, 1998, of the de Havilland Maintenance Program Manual PSM 1–83–7 TC; or de Havilland Temporary Revision MTC 2–14, dated September 18, 1998, of the de Havilland Maintenance Program Manual PSM 1–82–7 TC; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Canadian airworthiness directive CF–98–30, dated August 31, 1998.

(g) This amendment becomes effective on December 17, 1999.

Issued in Renton, Washington, on October 28, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–28746 Filed 11–10–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–106–AD; Amendment 39–11405; AD 99–23–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes, that requires modification of the electro-distributor for the nose wheel steering servo-control. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent uncommanded nose landing gear wheel rotation, due to defective seals in the wheel steering selector valve of the hydraulic control unit for the nose landing gear, which could result in reduced controllability of the airplane.

DATES: Effective December 17, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 17, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, 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: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus A319, A320, and A321 series airplanes was published in the **Federal Register** on June 28, 1999 (64 FR 34579). That action proposed to require modification of the electro-distributor for the nose wheel steering servo-control.

Comments

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 AD.

One commenter states that it is not affected by the proposed AD and therefore has no comments or objections.

One commenter states that it had previously decided to modify its airplanes in accordance with the proposed AD and is in the process of doing so now.

Request To Delete Spare Parts Restriction

One commenter supports the intent of the proposed AD, but has a concern with paragraph (b), which would require that spare parts be immediately subject to the proposed actions. In order to ensure compliance with the immediate deadline of paragraph (b) of the proposed AD, the commenter states it would have two major challenges. The first would be to issue special instructions to all of its maintenance personnel that the A320 nose landing gear (NLG) steering servo-control is a component that cannot be ''robbed'' from one aircraft to another during the course of the retrofit. The commenter states that its practice is to minimize the ''one-off'' special instructions to maintenance for human factors reasons. While it considers the likelihood of a robbed NLG steering servo-control from a pre-mod to a post-mod airplane to be remote, the commenter considers the inclusion of paragraph (b) of the

proposed AD would require special actions to prevent this. Secondly, the commenter considers the inclusion of paragraph (b) of the proposed AD to mandate immediately making all existing spare servo-controls unserviceable until they could be modified at a certified vendor repair station. The commenter believes that this could adversely affect the line spares situation and could adversely impact dispatch reliability. The commenter requests that paragraph (b) of the proposed AD be deleted.

The FAA does not concur. Removing an unsafe condition that already exists on an airplane necessarily involves performing maintenance on this airplane, and the FAA has provided a compliance time of 12 months for the required modification in order to minimize disruption of operations. On the other hand, prohibiting installation of spares that have been determined to create an unsafe condition does not require any additional maintenance activity; it simply requires use of one part rather than another. In general, once an unsafe condition has been determined to exist, it is the FAA's normal policy not to allow that condition to be introduced into the fleet. The availability of parts that the AD will require to be installed is an important consideration in the development of the technical information on which every AD is based is. When it is determined that safe parts are available to operators, it is the FAA's policy to prohibit installation of the unsafe parts after the effective date of the AD. The FAA is not aware of any specific problems with availability of parts or anticipated difficulties in accomplishing the modification required by this AD.

Further, the FAA considers that the period of time between publication of the final rule in the **Federal Register** and the effective date of the final rule (usually 30 days) is sufficient to provide operators with an opportunity to determine their immediate need for modified spares and to obtain them. Of course, in individual cases where this is not possible, every AD contains a provision that allows an operator to obtain an extension of compliance time based upon a specific showing of need. The FAA considers that this policy does increase safety and does not impose undue burdens on operators.

Request To Expand the Applicability of the Proposed AD

One commenter states that a similar steering control unit was installed on the first 80 Model A330 and A340 series airplanes and that these airplanes could also be susceptible to failure of the selector valve's external seals. Although there are currently no U.S.-registered airplanes, the commenter requests that the FAA require a similar modification on Model A330 and A340 series airplanes in case these airplanes are placed on the U.S. Register in the future.

The FAA acknowledges the commenter's concerns, and may consider additional rulemaking to address those concerns in the future on certain airplanes. However, until such final action is identified, the FAA considers it appropriate to proceed with issuance of this final rule. No change to the final rule is required.

Request To Require Examination of the Braking and Steering Control Unit

The same commenter also states that its investigation has revealed another feature of the steering system on Model A320 series airplanes that can contribute to uncommanded nosewheel rotation. The Braking and Steering Control Unit (BSCU), which positions the steering servo valve in response to steering orders on the ground, performs an automatic test of the nosewheel steering in flight after the landing gear is extended. If a sufficient disagreement between the commanded and actual steering position occurs during the test, the BSCU will attempt to deactivate the steering system by deenergizing the selector valve. However, failure of the selector valve can defeat this protection and cause uncommanded rotation of the nosewheels. Although the action proposed by the notice of proposed rulemaking (NPRM) will address failures of the selector valve's seals of Model A320 series airplanes, the commenter is concerned about the ability of the BSCU to deactivate steering control. Airbus has indicated to the commenter that it is considering a modification to the BSCU that will maintain the nose gear in the neutral position in flight.

The FAA infers that the commenter requests that a requirement to modify the BSCU be added to this final rule. The FAA does not concur. Because the suggested changes would alter the actions currently required by this AD, additional rulemaking would be required. Further, the BSCU modification described by the commenter is not currently available. The FAA finds that to delay this action until the modification is available would be inappropriate in light of the identified unsafe condition. No change to this final rule is necessary.

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 as proposed.

Cost Impact

The FAA estimates that 208 airplanes of U.S. registry will be affected by this AD, that it will take approximately 7 work hours per airplane to accomplish the modification, and that the average labor rate is $60 per work hour. Required parts will cost approximately $335 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $157,040, or $755 per airplane.

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

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:

99–23–09 Airbus Industrie: Amendment 39–11405. Docket 99–NM–106–AD.

Applicability: Model A319, A320, and A321 series airplanes; except those airplanes on which Airbus Modification 23740 was accomplished during production, and those airplanes on which Airbus Service Bulletin A320–32–1197, dated October 9, 1998, or Revision 01, dated February 11, 1999, has been accomplished; 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 (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded nose landing gear wheel rotation, due to defective seals in the wheel steering selector valve of the hydraulic control unit for the nose landing gear, which could result in reduced controllability of the airplane, accomplish the following:

Modification

(a) Within 12 months after the effective date of this AD, modify the electro-distributor for the nose wheel steering servo-control in accordance with Airbus Industrie Service Bulletin A320–32–1197, Revision 01, dated February 11, 1999.

Note 2: Airbus Service Bulletin A320–32–1197 references Messier-Bugatti Service Bulletin C24736–32–3166, dated December 4, 1998, as an additional source of service information for accomplishment of the modification.

Note 3: Replacement of the by-pass valve in accordance with Messier-Bugatti Service Bulletin C24736–32–3126, dated February 15, 1995, as revised by Change Notice Number 1, dated March 16, 1999, is considered acceptable for compliance with the action specified in paragraph (a) of this AD.

Spares

(b) As of the effective date of this AD, no person shall install a hydraulic control unit, part number C24736000 or C24736001, on any airplane, unless it has been modified in accordance with the actions required by paragraph (a) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, 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, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(e) The modification shall be done in accordance with Airbus Industrie Service Bulletin A320–32–1197, Revision 01, dated February 11, 1999. 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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, 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.

Note 5: The subject of this AD is addressed in French airworthiness directive 1999–124–129(B), dated March 24, 1999.

(f) This amendment becomes effective on December 17, 1999.

Issued in Renton, Washington, on November 1, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–29054 Filed 11–10–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–156–AD; Amendment 39–11406; AD 99–23–10]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model Hawker 1000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Raytheon Model Hawker 1000 series airplanes, that requires a visual inspection of the PS wire bundle, shielded wires going to fuel probe 'G,' and any other wire or wire bundle for chafing in the forward wing spar and forward ventral tank area; and corrective actions, if necessary. This amendment is prompted by reports indicating that, due to improper routing of a wire bundle, the wire bundle chafed against the forward ventral tank transfer/crossfeed valve, which caused an electrical short and resulted in failure of the landing light. The actions specified by this AD are intended to prevent a short circuit due to wire chafing, which can cause a fire in the ventral fuel tank area.

DATES: Effective December 17, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 17, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Philip Petty, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office,

1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4139; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Raytheon Model Hawker 1000 series airplanes was published in the **Federal Register** on August 20, 1999 (64 FR 45485). That action proposed to require a visual inspection of the PS wire bundle, shielded wires going to fuel probe 'G,' and any other wire or wire bundle for chafing in the forward wing spar and forward ventral tank area; and corrective actions, if necessary.

Comments

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

Conclusion

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

Cost Impact

There are approximately 91 airplanes of the affected design in the worldwide fleet. The FAA estimates that 39 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $2,340, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–23–10 Raytheon Aircraft Company (Formerly Beech): Amendment 39–11406. Docket 99–NM–156–AD.

Applicability: Model Hawker 1000 series airplanes, serial numbers 258151, 258159, and 259003 through 259052 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a short circuit due to wire chafing, which can cause a fire in the ventral fuel tank area, accomplish the following:

Inspection and Modification

(a) Within 50 flight hours after the effective date of this AD, perform a detailed visual inspection of the PS wire bundle coming from the bung 'DF' for chafing against the front ventral tank transfer/crossfeed actuator, in accordance with Raytheon Aircraft Service Bulletin SB 24–3201, dated October 1998.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) If no chafing is found, prior to further flight, ensure a minimum 0.25-inch clearance exists between the PS wire bundle and valve actuator; and install spiral wrap, as necessary; in accordance with the service bulletin.

(2) If any chafing is found on a 22, 20, 16, or 14 gauge (non-shielded) wire, prior to further flight, repair chafed wire by splicing the damaged section using MIL–S–81824/1 splices; ensure a minimum 0.25-inch clearance exists between the wire bundle and valve actuator; and install spiral wrap, as necessary; in accordance with the service bulletin.

(3) If any chafing is found on a 10 gauge wire, replace the entire wire with a new 10 gauge wire; ensure a minimum 0.25-inch clearance exists between the wire bundle and valve actuator; and install spiral wrap, as necessary; in accordance with the service bulletin.

(b) Within 50 flight hours after the effective date of this AD, perform a detailed visual inspection of the shielded wires going to the fuel probe 'G' for chafing against the wing transfer valve actuator and mounting screws, in accordance with Raytheon Aircraft Service Bulletin SB 24–3201, dated October 1998.

(1) If no chafing is found, prior to further flight, ensure a minimum 0.25-inch clearance exists between the wire bundle and valve actuator; and install spiral wrap, as necessary; in accordance with the service bulletin.

(2) If any chafing is found, prior to further flight, replace the entire shielded wire with a new shielded wire; ensure a minimum 0.25-inch clearance exists between the wire bundle and valve actuator; and install spiral wrap, as necessary; in accordance with the service bulletin.

(c) Within 50 flight hours after the effective date of this AD, perform a borescope inspection of the entire forward wing spar/forward ventral tank area for chafing of any other wire or wire bundle; and install spiral wrap, as necessary; in accordance with Raytheon Aircraft Service Bulletin SB 24–3201, dated October 1998.

(1) If no chafing is found, no further action is required by this AD.

(2) If any chafed wire or wire bundle is found, prior to further flight, repair in accordance with a method approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. For a repair method to be approved by the Manager, Wichita ACO, as required by this

paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(f) Except as provided by paragraph (c)(2) of this AD, the actions shall be done in accordance with Raytheon Aircraft Service Bulletin SB 24–3201, dated October 1998. 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 Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on December 17, 1999.

Issued in Renton, Washington, on November 1, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–29053 Filed 11–10–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–207–AD; Amendment 39–11411; AD 99–23–15]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 series airplanes, that requires replacement of a flight attendant panel and modification of its associated wiring. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent the disabling of the ''Fasten Seat Belt'' and ''No Smoking'' signs when they are required to be illuminated. Such disabling could result in the inability to instruct the passengers to extinguish their cigarettes and fasten their seat belts when required, which may contribute to passenger injury should a hard landing or in-flight turbulence be experienced.

DATES: Effective December 17, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 17, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. 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: Norman B. Martenson, Manager, International Branch, ANM–116, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes was published in the **Federal Register** on September 14, 1999 (64 FR 49752). That action proposed to require replacement of a flight attendant panel and modification of its associated wiring.

Comments

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

Conclusion

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

Cost Impact

The FAA estimates that 51 Model 328–100 series airplanes of U.S. registry will be affected by this AD, and that it will take approximately 1 work hour per airplane to accomplish the actions, at an average labor rate of $60 per work hour. Required parts will be supplied by the airplane manufacturer free of charge. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $3,060, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–23–15 Dornier Luftfahrt Gmbh: Amendment 39–11411. Docket 99–NM–207–AD.

Applicability: Model 328–100 series airplanes, serial numbers 3005 through 3093 inclusive and 3095 through 3111 inclusive; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To ensure that passengers are properly instructed to extinguish their cigarettes and fasten their seat belts when required, and to prevent consequent passenger injury should a hard landing or in-flight turbulence be experienced, accomplish the following:

Panel Replacement

(a) Within 120 days after the effective date of this AD, replace the existing flight attendant panel 19VE with a new or modified panel, part number 328–0100, Amendment D, and modify the wiring associated with it; in accordance with Dornier Service Bulletin SB–328–33–271, dated September 17, 1998.

Spares

(b) As of the effective date of this AD, no person shall install on any airplane a flight attendant panel 19VE, unless it has been modified in accordance with Dornier Service Bulletin SB–328–33–271, dated September 17, 1998.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, 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, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(e) The actions shall be done in accordance with Dornier Service Bulletin SB–328–33–271, dated September 17, 1998. 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 Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. 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.

Note 3: The subject of this AD is addressed in German airworthiness directive 1999–053, dated February 25, 1999.

(f) This amendment becomes effective on December 17, 1999.

Issued in Renton, Washington, on November 3, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–29326 Filed 11–10–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–184–AD; Amendment 39–11412; AD 99–23–16]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes, that requires repetitive detailed visual inspections to detect cracking of the vertical flange of the inboard Z-stiffeners of the centerline panel of the fuselage belly fairing; and corrective actions, if necessary. This amendment also provides for optional terminating action for the repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct fatigue cracking of the vertical flange of the inboard Z-stiffeners of the centerline panel of the fuselage belly fairing, which could result in reduced structural integrity of the belly fairing.

DATES: Effective December 17, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 17, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, 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: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A330 and A340 series airplanes was published in the **Federal Register** on September 10, 1999 (64 FR 49110). That action proposed to require repetitive detailed visual inspections to detect cracking of the vertical flange of the inboard Z-stiffeners of the centerline panel of the fuselage belly fairing; and corrective actions, if necessary. That action also proposed to provide for optional terminating action for the repetitive inspections.

Comments

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

One commenter, an operator, states that it will have the terminating modification incorporated prior to delivery of its airplanes.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $60 per airplane, per inspection cycle.

Should an operator elect to accomplish the optional terminating action provided by this AD, it would require approximately 7 work hours to accomplish the optional terminating action, at an average labor rate of $60 per work hour. Required parts would cost approximately $2,350 per airplane. Based on these figures, the cost impact of the optional terminating action is estimated to be $2,770 per airplane.

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:

99–23–16 Airbus Industrie: Amendment 39–11412. Docket 99–NM–184–AD.

Applicability: Model A330 and A340 series airplanes; except those airplanes on which Airbus Modification 42605, or Airbus Service Bulletin A330–53–3019 (for Model A330 series airplanes) or A340–53–4028 (for Model A340 series airplanes) has been accomplished; 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 (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the vertical flange of the inboard Z-stiffeners of the centerline panel of the fuselage belly fairing, which could result in reduced structural integrity of the belly fairing, accomplish the following:

Repetitive Detailed Visual Inspections

(a) Prior to the accumulation of 5,500 total flight cycles, or within 500 flight hours after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect cracking of the vertical flange of the inboard Z-stiffeners of the centerline panel of the fuselage belly fairing, in accordance with Airbus Service Bulletin A330–53–3020 (for Model A330 series airplanes) or A340–53–4029 (for Model A340 series airplanes); each dated November 30, 1995; as applicable.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required.''

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 5,500 flight cycles, until the requirements of paragraph (b) of this AD are accomplished.

Corrective Actions

(2) If any cracking is detected during any inspection required by this AD, prior to further flight, modify the vertical flange of both inboard Z-stiffeners of the centerline panel of the fuselage belly fairing and re-inspect the modified area to determine if cracking has been eliminated, in accordance with Airbus Service Bulletin A330–53–3019 (for Model A330 series airplanes) or A340–53–4028 (for Model A340 series airplanes); each dated November 30, 1995; as applicable.

(i) If all cracking is not eliminated after accomplishment of the modification, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(ii) If all cracking is eliminated after the accomplishment of the modification, no further action is required by this AD.

Optional Terminating Action

(b) Modification of the vertical flange of both inboard Z-stiffeners of the centerline panel of the fuselage belly fairing in accordance with Airbus Service Bulletin A330–53–3019 (for Model A330 series airplanes) or A340–53–4028 (for Model A340 series airplanes); each dated November 30, 1995; as applicable; constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199

of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The inspections and modification shall be done in accordance with Airbus Service Bulletin A330–53–3020, dated November 30, 1995; Airbus Service Bulletin A340–53–4029, dated November 30, 1995; Airbus Service Bulletin A330–53–3019, dated November 30, 1995; and Airbus Service Bulletin A340–53–4028, dated November 30, 1995; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, 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.

Note 4: The subject of this AD is addressed in French airworthiness directives 96–056–029 (B) and 96–057–042 (B); each dated March 13, 1996.

(f) This amendment becomes effective on December 17, 1999.

Issued in Renton, Washington, on November 3, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–29327 Filed 11–10–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–227–AD; Amendment 39–11409; AD 99–23–13]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 727–200 series airplanes, that requires repetitive inspections to detect cracks in certain areas between the upper and lower sills of the number 1 cargo door, and repair, if necessary. This amendment is prompted by reports indicating that fatigue cracks were found in certain structures adjacent to the number 1 cargo door cutout at the forward and aft doorway frames. The actions specified by this AD are intended to detect and correct such fatigue cracking, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

DATES: Effective December 17, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 17, 1999.

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

FOR FURTHER INFORMATION CONTACT: Walter Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2774; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 727–200 series airplanes was published in the **Federal Register** on July 15, 1998 (63 FR 38123). That action proposed to require repetitive inspections to detect cracks in certain areas between the upper and lower sills of the number 1 cargo door, and repair, if necessary.

Explanation of Changes Made to the Proposal

The FAA has revised this final rule to clarify the inspection requirement contained in the proposed AD. Whereas the proposal specified a close visual inspection, as recommended in Boeing Service Bulletin 727–53A0219, Revision 1, dated May 8, 1997, the FAA has revised this final rule to clarify that its intent is to require a detailed visual inspection. Additionally, a note has been added to the final rule to define that inspection.

In addition, in the notice of proposed rulemaking (NPRM), the FAA stated that this AD is considered interim action until final action is identified, at which time the FAA may consider further rulemaking. Since the issuance of the NPRM, the FAA has determined that no further action is required at this time. No modification to address the unsafe condition is currently available, and the FAA finds that the inspections required by this AD are adequate for continued safe operation.

Also, throughout the proposed rule, the FAA referred to Boeing Service Bulletin 727–53A0219, Revision 1, as an ''alert'' service bulletin. The reference to this service bulletin as an alert is erroneous. The original issue of the service bulletin is considered an alert service bulletin; however, the FAA does not consider Revision 1 an alert. Therefore, this final rule refers to Boeing Service Bulletin 727–53A0219, Revision 1, as ''the service bulletin.''

Comments

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 Allow Inspection of Each Frame Separately

One commenter states that it does not agree that a high frequency eddy current (HFEC) inspection of both forward and aft frames should be required within 3,000 flight cycles if a repair has only been accomplished on one frame or the other. The commenter makes no specific request; however, the FAA infers that the commenter is requesting to be allowed to inspect forward and aft frames at separate intervals, if only one of the frames has been repaired.

The FAA concurs with the commenter's request. There is no technical reason to require inspections of repaired and non-repaired frames at the same time. Therefore, the FAA has determined that it would be more appropriate to allow inspection of the forward or aft frame at the threshold corresponding to its configuration repaired or non-repaired rather than requiring that forward and aft frames both be inspected at the threshold for repaired structure if repair has been accomplished on one or the other. As proposed, paragraph (c) of this AD already allows for repeat inspections of repaired structure to be accomplished separately, at a different interval than non-repaired structure. Therefore, only paragraphs (a)(1), (a)(2), and (a)(3) of the final rule have been revised accordingly.

Request to Include Instructions for Inspection

One commenter requests that either the service bulletin or the proposed AD be revised to include instructions for the inspections to be performed at 3,000 flight cycles. The commenter states that

the service bulletin includes accomplishment instructions only for the inspections to be performed at 15,000 flight cycles.

The FAA partially concurs with the commenter's request. The FAA notes that the access requirements and instructions for the repetitive detailed visual inspections of the frame web are the same at both 3,000 and 15,000 flight cycles. (However, at the repetitive interval of 15,000 flight cycles, an HFEC inspection is also required.) The instructions for the detailed visual inspection (which, as stated previously, is identified in the service bulletin as a close visual inspection) and HFEC inspections are defined in the Accomplishment Instructions of the service bulletin, which references Figures 1, 2, and 3 for additional instructions. The FAA finds that clarification of the source of the access requirements and instructions for the detailed visual inspection is necessary. Therefore, paragraph (a) of this final rule has been revised to specify that the inspections are to be accomplished in accordance with the Accomplishment Instructions of the service bulletin.

Request to Revise Threshold for Initial Inspection of Repaired Airplanes

One commenter requests that paragraphs (a)(2) and (a)(3) of the proposed rule be revised to increase the threshold, for the initial inspection of airplanes on which repairs have been accomplished previously, from 3,000 to 30,000 flight cycles. The commenter substantiates its request by stating that cracking has not been detected on repaired structure on any airplane in its fleet.

The FAA does not concur with the commenter's request. The FAA has determined that repairs accomplished previously on the affected airplanes may not be adequate to ensure the safety of the airplane fleet. As explained in the Discussion section of the notice of proposed rulemaking (NPRM), cracking of repaired structure has been detected on several airplanes. In one case, cracking of repaired structure was detected prior to the accumulation of 3,000 flight cycles after the repair. Based on these data, the FAA has determined that 3,000 flight cycles represents an appropriate interval for affected airplanes to continue to operate safely. No change to the final rule is necessary in this regard.

Request for Justification of Inspection Threshold

One commenter requests that the FAA provide justification for the inspection threshold stated in paragraph (a)(2) of the proposed rule. The commenter states that paragraph (a)(2) requires an inspection within 3,000 flight cycles after repair, and remarks that, ''It does not seem logical to require HFEC within 3,000 cycles from repair and then repeat at 15,000 cycle intervals.'' The commenter requests that paragraph (a)(2) be revised to require repetitive inspections at 3,000 flight cycle intervals and HFEC inspections at 15,000 flight cycles.

The FAA does not concur. The FAA finds that the commenter misunderstands the inspection threshold stated in paragraph (a)(2) of the proposed rule. That paragraph requires that airplanes on which a repair in accordance with the service bulletin has been accomplished be inspected within 3,000 flight cycles after the effective date of this AD, not after the installation of the repair, as the commenter suggests. As discussed previously, the FAA has determined that repairs accomplished previously on the affected airplanes may not be adequate to ensure the safety of the airplane fleet. The FAA finds that a compliance time of 3,000 flight cycles after the effective date of this AD will provide operators with enough time to inspect repaired structure while still ensuring that any cracks are detected in a timely manner. No change to the final rule is necessary in this regard.

Request to Remove Requirements for FAA Approval of Repairs and Inspections

Two commenters request that the inspection methods and intervals for repaired airplanes be the same as those specified in the service bulletin for non-repaired airplanes. Along with this, the commenters request the removal of the requirement to obtain FAA-approval of certain repairs and repetitive inspections from paragraphs (a)(3), (b)(2), and (c)(2) of the proposed AD. The commenters contend that it would be cost prohibitive to survey and evaluate their entire fleets for previous repairs, and to coordinate repair and inspection methods and intervals with Boeing and the FAA. One of the commenters further states that it is impractical to require operators to develop special inspection methods for each repair, and that inspection criteria for any repair should be defined in the service bulletin or proposed AD, and should be generic enough to apply to any repair that might exist in the area. One of the commenters also states that the requirements for approval of inspections and methods proposed in the NPRM were not mentioned in the service bulletin.

The FAA does not concur with the commenters' request. As discussed previously, the FAA has determined that repairs accomplished previously on the affected airplanes may not be adequate to ensure the safety of the fleet of airplanes. As stated in the Discussion section of the NPRM, at least one incident has been reported in which a previously repaired aft frame web and frame inner chord were found completely severed. Therefore, the FAA finds that the affected airplanes, including those on which repairs have been accomplished previously, must be inspected as proposed in the NPRM.

The FAA also notes that the proposed method and inspection intervals are the same as those specified in paragraph IV (''Appendix'') of the service bulletin, except when the repair was accomplished in accordance with a method approved by Boeing. (As stated in the ''Differences Between Proposed Rule and Relevant Alert Service Bulletin'' section of the proposal, although the service bulletin specifies that the manufacturer be contacted for disposition of certain repair conditions, this AD requires repair of those conditions to be accomplished in accordance with a method approved by the FAA.) Because a method of repair obtained from Boeing is not defined in the service bulletin, it is unknown if the inspection procedures specified in the service bulletin are sufficient to adequately ensure the safety of the affected airplanes.

With regard to the commenters' contentions that developing special inspection methods for each repair will be cost prohibitive, the FAA finds that the commenters' concerns are based on repairs for large areas of damage. The FAA has determined that it is not possible to specify generic repair and inspection methods in the service bulletin or in the AD for large areas of damage. Such repairs would be unique because of the amount of damage that could occur. However, the FAA anticipates that there should be few initial cases of extensive damage for which FAA approval will be required, and after the initial inspections, the repetitive inspections are intended to detect any damage (i.e., cracking), before it becomes extensive. No change to the final rule is necessary in this regard.

Request to Increase Repetitive Inspection Interval

One commenter requests that the proposed rule be revised to delete the requirement in paragraph (c)(1) to perform an HFEC inspection of repaired structure within 3,000 flight cycles. The commenter states that it does not expect

that cracking would occur within 3,000 flight cycles after the installation of that repair, and remarks, as stated previously, that, ''It does not seem logical to require HFEC within 3,000 cycles from repair and then repeat at 15,000 cycle intervals.''

The FAA does not concur with the commenter's request. As discussed in the NPRM, there is concern that repairs accomplished previously on the affected airplanes may not be adequate to ensure the safety of the airplane fleet. The FAA finds that a threshold of 3,000 flight cycles after accomplishment of the repair provides operators adequate time to inspect repaired structure and ensures that any cracking will be detected in a timely manner. No change to the final rule is necessary in this regard.

Request to Revise Accomplishment Instructions

Two commenters request that the proposed rule be revised to explain that removal of certain parts (including attachment hardware and seal retainer) is not necessary for accomplishment of the close visual inspection. One commenter requests that the proposed AD be revised to include a **NOTE** to this effect. That commenter justifies its request by stating that removal of certain parts is not necessary to visually inspect the frame. The other commenter expresses concern that accomplishing the procedures associated with removing the seal retainer—*e.g.,* drilling fasteners through the frame, scraping sealant and paint finishes from the frame—every 3,000 flight cycles would increase the probability of manmade damage to the structure. The commenter states that an inspection program in which the seal retainer and cargo liner are not required to be removed should have about the same damage tolerance rating as the inspection program proposed in the NPRM, at about half the cost. The same commenter also suggests that the repetitive inspection interval for the HFEC inspection could be reduced from 15,000 to 6,000 flight cycles to account for not removing such parts during the visual inspections.

The FAA does not concur with the commenters' requests. The FAA has determined that cracking may initiate under the seal retainer and around the number 6 door stop. The FAA finds that to gain access to the web area to perform the detailed visual inspections, it is necessary to remove the same parts that are removed for the detailed and HFEC inspections of the doorway cutout frame webs, inner and outer chords, bear strap, and skin panel.

With regard to the commenter's concern about increasing the risk of structural damage, the FAA acknowledges that such removal of parts does increase the risk of manmade damage. However, the risk of such manmade damage must be balanced with the necessity to detect and correct operational damage such as that the inspections associated with this AD is intended to detect. In this case, the manufacturer's recommendation, as contained in the service bulletin, is for the removal of the seal retainer and the cargo liner. In consideration of the manufacturer's recommendation, as well as the nature and location of known cracking, the FAA has determined that it is necessary to remove such parts for the detailed visual and HFEC inspections.

With regard to the commenter's assertion that an inspection program that doesn't require removal of the seal retainer and cargo liner ''should'' have the same damage tolerance rating as the inspection program proposed in the NPRM, the FAA finds that the commenter provides no technical justification for such a claim. However, should the commenter develop an inspection procedure that can be shown to provide an adequate level of safety, the commenter may apply for approval of an alternative method of compliance in accordance with paragraph (d) of this AD.

No change to the final rule is necessary in this regard.

Request to Allow Credit for Inspections Accomplished Previously

Two commenters request that credit be given for inspections performed previously. The commenters state that the actions specified in the proposed AD have been accomplished prior to the effective date of this AD. One of the commenters specifically requests that the compliance time for the initial inspection be extended from 3,000 flight cycles after the effective date of this AD to 4,000 flight cycles after the effective date of this AD, if inspections have been accomplished in accordance with Boeing Service Bulletin 727–53A0219, Revision 1, dated May 8, 1997. The commenter justifies its request by stating that it has found no crack on any affected airplane in its fleet. The commenter's rationale is that accomplishing the inspection at the threshold proposed in the NPRM would be very costly because it would impact the operator's normal maintenance schedules.

The FAA does not concur that a change to the final rule is necessary to give credit for work accomplished previously. With regard to inspections accomplished prior to the effective date of this AD, operators are always given credit for work accomplished previously, by means of the phrase in the compliance section of the AD that reads ''required as indicated, unless accomplished previously.''

The FAA does not concur with the commenter's request for an extension of the compliance time from 3,000 to 4,000 flight cycles after the effective date of this AD. The FAA has determined that an interval of 4,000 flight cycles would not address the identified unsafe condition in a timely manner. Though the commenter has not found cracking on any airplanes in its fleet, other operators have. The FAA finds the proposed compliance time of 3,000 flight cycles for initiating the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety. No change to the final rule is necessary in this regard.

Request to Revise Supplemental Structural Inspection Document (SSID)

One commenter, who otherwise supports the proposed rule, notes that the area subject to the proposed inspections is already subject to inspections in accordance with AD 98–11–03, amendment 39–10530 (63 FR 27455, May 19, 1998), which is the Supplemental Structural Inspection Program (SSIP) AD. The commenter therefore requests that the inspection be deleted from the SSIP.

The FAA finds that no change to the final rule is necessary in this regard. Boeing, not the FAA, is responsible for revisions to the SSID. However, the FAA will suggest to Boeing that, in the next revision to the SSID, the inspections required by this AD should be deleted from the SSID, and the service bulletin referenced by this AD should be added to Section 9 of the SSID, as provided for by the SSIP.

Request to Simplify the Format of the AD

One commenter requests that the proposed rule be revised to simplify the format. The commenter provided an example of how the proposed AD could be simplified; however, no justification is given for the commenter's request.

The FAA does not concur with the commenter's request. The FAA infers from the comment that the commenter finds the format of the proposed AD difficult to follow. The FAA acknowledges that there are certain complexities to the AD. However, as described in the preamble of the NPRM,

this AD differs from the service bulletin only in the fact that repair of certain conditions would be required to be accomplished in accordance with the method approved by the FAA rather than the manufacturer. This AD is intended to ensure that cracking is detected in a timely manner on both repaired and unrepaired airplanes. Based on the reports of cracking that the FAA has received, which were described in the preamble of the proposed rule, the FAA finds that the commenter's proposed format would not ensure that any cracking would be detected in a timely manner. No change to the final rule is necessary in this regard.

Request to Revise Cost Impact

One commenter, who otherwise supports the proposed rule, requests that the cost of necessary repairs be included in the cost impact of the proposed AD. The commenter states that the cost impact does not include the time required to install repairs if cracking is found during an inspection.

The FAA does not concur with the commenter's request. The cost impact of the AD is limited only to the cost of actions actually required by the rule. It does not consider the costs of ''on condition'' actions (that is, actions taken to correct an unsafe condition if found), because those actions would be required to be accomplished, regardless of AD direction, in order to correct an unsafe condition identified in an airplane and to ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations. No change to the final rule is necessary in this regard.

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 described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,100 airplanes of the affected design in the worldwide fleet. The FAA estimates that 770 airplanes of U.S. registry will be affected by this AD, that it will take approximately 60 work hours per airplane to accomplish the required inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspections required by this AD on U.S. operators is estimated to be $2,772,000, or $3,600 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–23–13 Boeing: Amendment 39–11409. Docket 97–NM–227–AD.

Applicability: All Model 727–200 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 (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking between the upper and lower sills of the number 1 cargo door, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane, accomplish the following:

Initial Inspection

(a) Perform a detailed visual inspection or a high frequency eddy current (HFEC) inspection (as applicable) to detect cracks in the forward and aft frames (web, inner chord, and outer chord), bear strap, and fuselage skin between the upper and lower sills of the number 1 cargo door at BS 560 and BS 620. Accomplish the inspection at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) For any forward or aft frame (web, inner chord, and outer chord), bear strap, or fuselage skin that has not been repaired in accordance with Boeing Service Bulletin 727–53A0219, Revision 1, dated May 8, 1997: Inspect prior to the accumulation of 30,000 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later, in accordance with the Accomplishment Instructions of the service bulletin.

(2) For any forward or aft frame (web, inner chord, and outer chord) that has been repaired in accordance with Boeing Service Bulletin 727–53A0219, Revision 1, dated May 8, 1997: Inspect within 3,000 flight cycles after the effective date of this AD, in accordance with the Accomplishment Instructions of the service bulletin.

(3) For any bear strap, fuselage skin, or a combination of the frame web and chord (inner or outer) on either the forward or aft frame that has been repaired in accordance with Boeing Service Bulletin 727–53A0219, Revision 1, dated May 8, 1997: Inspect within 3,000 flight cycles after the effective date of this AD, in accordance with a method

approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note 3: Where there are differences between this AD and the referenced service bulletin, the AD prevails.

Note 4: The inspections specified in paragraph (a)(3) of this AD are not defined in the service bulletin.

Repetitive Inspections

(b) If no crack is detected during any inspection required by paragraph (a) of this AD, accomplish paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) For any forward or aft frame (web, inner chord, and outer chord), bear strap, or fuselage skin identified in paragraphs (a)(1) and (a)(2) of this AD: Repeat the detailed visual and HFEC inspections required by paragraph (a) of this AD thereafter at the times specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this AD.

(i) Repeat the detailed visual inspection of the frame web at intervals not to exceed 3,000 flight cycles.

(ii) Repeat the detailed visual and HFEC inspections (as applicable) of the frame web, frame inner and outer chords, bear strap, and fuselage skin thereafter at intervals not to exceed 15,000 flight cycles.

(2) For any bear strap, fuselage skin, or a combination of the frame web and chord (inner or outer) on either the forward or aft frame identified in paragraph (a)(3) of this AD: Repeat the inspections of the repaired bear strap, fuselage skin, or combination of a repaired frame web and chord (inner or outer) thereafter at intervals not to exceed those approved by the Manager, Seattle ACO.

Repair

(c) If any crack is detected during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish paragraph (c)(1) or (c)(2) of this AD, as applicable.

(1) For any crack detected in the frame web, inner chord, or outer chord: Repair in accordance with Boeing Service Bulletin 727–53A0219, Revision 1, dated May 8, 1997. Prior to the accumulation of 3,000 flight cycles after accomplishment of the repair, accomplish the detailed visual and HFEC inspections specified in paragraph (a) of this AD. Repeat the detailed visual inspection of the frame web thereafter at intervals not to exceed 3,000 flight cycles. Repeat the detailed visual and HFEC inspections (as applicable) of the frame web, inner chord, and outer chord thereafter at intervals not to exceed 15,000 flight cycles.

(2) For any crack detected in the fuselage skin, bear strap, or a combination of the frame web and chord (inner or outer): Repair and perform repetitive inspections in accordance with both a method and repetitive inspection interval approved by the Manager, Seattle ACO.

Note 5: The repairs and inspections specified in paragraph (c)(2) of this AD are not defined in the service bulletin.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

Incorporation by Reference

(f) Except as provided by paragraphs (a)(3), (b)(2), and (c)(2) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 727–53A0219, Revision 1, dated May 8, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on December 17, 1999.

Issued in Renton, Washington, on November 3, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–29329 Filed 11–10–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–110–AD; Amendment 39–11408; AD 99–23–12]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Dornier Model 328–100 series airplanes, that requires repetitive inspections to detect damage and discrepancies of various control cables and certain fairleads/swivel guides for the autopilot, elevator, rudder, aileron, and engine; and corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the pilot's control cables for the autopilot, elevator, rudder, aileron, and engine, which could result in reduced controllability of the airplane.

DATES: Effective December 17, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 17, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. 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: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

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 Dornier Model 328–100 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on February 26, 1999 (64 FR 9453). That action proposed to require repetitive inspections for chafing of various control cables, and replacement of any chafed cable with a serviceable cable. That action also proposed to expand the areas to be inspected to detect damage and discrepancies, and provide for corrective action, if necessary; add a requirement for repetitive inspections of certain fairleads/swivel guides to detect damage and other discrepancies, and corrective action, if necessary; and extend the compliance time for the initial inspections.

Comments

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

Request To Extend Inspection Interval

One commenter requests that the proposed AD be revised to require repetitive inspections at intervals of 3,000 flight hours rather than 1,500 flight hours. The commenter states that its inspection results normally reveal cable or cable run wear close to limits, but rarely are any cable strands found to be broken. The commenter states that with these results, and with the conservatism that the manufacturer has incorporated into the maintenance manual, a 3,000-flight-hour interval is justified.

The FAA does not concur. The proposed inspection interval is based on the manufacturer's review of in-service data. The manufacturer has advised the FAA that it is assessing the validity of extending the inspection interval to 3,000 flight hours based on laboratory testing and additional in-service experience, but does not yet recommend such an extension. Based on this information, the FAA has determined that the current inspection interval of 1,500 flight hours is appropriate. No change is made to the AD.

Modifications Available for Extension of Inspection Interval

One commenter, the manufacturer, advises the FAA that certain technical solutions are in place that would allow the inspection interval in the supplemental NPRM to be extended from 1,500 flight hours to 4,000 flight hours. These technical solutions are provided in four service bulletins, described below.

- Dornier Service Bulletin SB–328–76–152, which describes procedures for modification of the fairleads in the wing/nacelle firewall.
- Dornier Service Bulletin SB–328–76–168, which describes procedures for modification of the mounting brackets of the control cable pulleys in the pulley box.
- Dornier Service Bulletin SB–328–27–253, which describes procedures for installation of improved fairleads at frames 15 and 19.
- Honeywell Service Bulletin 4005842–22–3, which describes procedures for introduction of improved autopilot servo drums.

The commenter states that incorporation of these service bulletins would allow alignment of the inspection intervals imposed by Dornier Alert Service Bulletin ASB–328–00–011, Revision 1, dated June 5, 1996, to each ''C'' check interval of 4,000 flight hours, in accordance with Dornier's recently revised Maintenance Review Board (MRB) documents. Dornier Alert Service Bulletin ASB–328–00–011, Revision 1, was cited in this supplemental NPRM as the appropriate source of service information for accomplishing the required actions.

The FAA infers that the commenter is requesting that the AD be revised to allow for an extension of the inspection interval if an operator chooses to accomplish the modifications in the four service bulletins previously described. The FAA does not concur. The commenter did not provide substantiating data to indicate that accomplishment of the modifications constitutes an acceptable method that would allow extension of the inspection interval. Dornier has since advised the FAA that Service Bulletin ASB–328–00–011 is in the process of revision to reference the modifications and provide details of the interval extension. Since the service bulletin revision is not currently available, the FAA does not consider it appropriate to further delay issuance of this final rule while awaiting information regarding the acceptability of the modifications as a means of extending the inspection intervals. However, once such a method is available and approved, operators may request approval of an alternative method of compliance to allow accomplishment of the modifications as a method that would allow extension of the inspection intervals required by this AD.

Request To Include Terminating Action

The same commenter advises the FAA of technical solutions currently under development that would provide terminating action to the requirements of the supplemental NPRM. Three new Dornier Service Bulletins, SB–328–27–290, SB–328–27–291, and SB–328–27–292, when issued, will describe procedures for further improvements to prevent autopilot cable chafing. The commenter requests an additional 60 days to submit the related technical data for consideration to be included in the final rule. Including these actions in the AD would provide a terminating action for operators and would eliminate the need for future AD revisions.

The FAA does not concur. At the time the comment was submitted, the commenter expected that these service bulletins would be issued by June 1999. After further discussions with Dornier, the FAA has been advised that the three new service bulletins have not yet been issued. Due to problems with availability of materials, the estimated date of issuance for the service bulletins is now December 1999. In light of this information, the FAA does not consider it appropriate to further delay issuance of the final rule. Once these service bulletins are available and approved, operators may request approval of an alternative method of compliance to allow accomplishment of the modifications as a terminating action for the repetitive inspection requirements of this AD. No change is made to the final rule.

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 as proposed.

Cost Impact

The FAA estimates that 51 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $18,360, or $360 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–23–12 Dornier Luftfahrt GmbH: Amendment 39–11408. Docket 96–NM–110–AD.

Applicability: All Model 328–100 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 (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the pilot's control cables for the autopilot, elevator, rudder, aileron, and engine, which could result in reduced controllability of the airplane, accomplish the following:

Inspections and Corrective Actions

(a) Prior to the accumulation of 3,000 total flight hours, or within 200 flight hours after the effective date of this AD, whichever occurs later: Perform detailed visual inspections to detect damage (extensive wear and broken wires) and discrepancies (incorrect installation and misalignment) of the control cables and fairleads/swivel guides for the autopilot, elevator, rudder, aileron, and engine; as applicable; in accordance with Dornier Alert Service Bulletin ASB–328–00–011, Revision 1, dated June 5, 1996. Repeat the inspections thereafter at intervals not to exceed 1,500 flight hours.

(1) If any damage is found that exceeds the limits specified in the alert service bulletin, prior to further flight, replace the damaged cable with a new or serviceable cable, in accordance with the alert service bulletin.

(2) If any discrepancy is found, prior to further flight, perform applicable corrective actions, in accordance with the alert service bulletin.

Tension Adjustment of Control Cables

(b) Concurrent with the initial inspection required by paragraph (a) of this AD, perform a one-time adjustment of the tension in the autopilot control cables, in accordance with Dornier Alert Service Bulletin ASB–328–00–011, Revision 1, dated June 5, 1996.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, 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, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(e) The actions shall be done in accordance with Dornier Alert Service Bulletin ASB–328–00–011, Revision 1, dated June 5, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. 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.

Note 3: The subject of this AD is addressed in German airworthiness directive 96–001/2, dated August 15, 1996.

(f) This amendment becomes effective on December 17, 1999.

Issued in Renton, Washington, on November 3, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–29330 Filed 11–10–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–328–AD; Amendment 39–11418; AD 99–23–22]

RIN 2120–AA64

Airworthiness Directives; Various Transport Category Airplanes Equipped With Mode "C" Transponder(s) With Single Gillham Code Altitude Input

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to various transport category airplanes equipped With certain Mode "C" transponder(s) with single Gillham code altitude input. This action requires repetitive tests to detect discrepancies of the Mode "C" transponder(s), air data computer, and certain wiring connections; and corrective actions, if necessary. This amendment is prompted by reports that, during level flight, the Traffic Alert Collision Avoidance System (TCAS II) issued false advisories that directed the flightcrew to change course and either climb or descend. The actions specified in this AD are intended to prevent such false advisories due to inaccurate airplane altitude reporting, which could result in the flightcrew deviating the airplane from its assigned flight path and a possible mid-air collision.

DATES: Effective November 29, 1999.

Comments for inclusion in the Rules Docket must be received on or before January 11, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–328–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Information pertaining to this amendment may be obtained from or examined at the FAA, Transport Airplane Directorate, 1601 Lind Ave, SW., Renton, Washington 98055–4056.

FOR FURTHER INFORMATION CONTACT: Peter Skaves, Aerospace Engineer, Airplane and Flight Crew Interface Branch, ANM–111, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2795; fax (425) 227–1320.

SUPPLEMENTARY INFORMATION: The FAA has received reports of eleven incidents involving certain transport category airplanes equipped with Mode ''C'' transponder(s) with single Gillham code altitude input. These reports indicate that, during level flight, the TCAS II issued false advisories that directed the flightcrew to change course and either climb or descend. These instances all involved communication between airplanes with the TCAS II and airplanes having the Mode ''C'' transponder(s). The airplanes having the Mode ''C'' transponders are predominantly older, out-of-production transport category airplanes. In at least one instance, the Gillham wiring connection was determined to have failed, resulting in inaccurate altitude reporting by the Mode ''C'' transponder. There are three primary sources of failure that could lead to inaccurate airplane altitude reporting: the Mode ''C'' transponder(s), air data computer, and Gillham wiring connections. The exact cause of the failures is unknown at this time. Such inaccurate altitude reporting and consequent false TCAS II advisories, if not prevented, could result in the flightcrew deviating the airplane from its assigned flight path and a possible mid-air collision.

Additional Considerations

The FAA also has received information regarding inaccurate altitude reporting on airplanes equipped with TCAS II and Mode ''S'' transponders. Following one incident involving reduction of separation between two airplanes equipped with TCAS II and Mode ''S'' transponders, the Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, issued British airworthiness directive 001–08–99. The British airworthiness directive applies to airplanes equipped with any Mode ''S'' transponder connected to a TCAS II system with Gillham altitude format, and requires repetitive tests of certain Mode ''S'' transponder systems to detect discrepancies, and corrective action, if necessary.

FAA's Determinations

Based on the numerous incidents involving airplanes equipped with TCAS II and Mode ''C'' transponders, the FAA considers that immediate action is required to address the unsafe condition identified previously. Since the exact cause of the failures leading to inaccurate altitude reporting is unknown, the FAA finds it necessary to obtain and evaluate additional information, and to require corrective actions in the interim until final action can be identified. In addition, the CAA has kept the FAA informed of its actions regarding the Mode ''S'' transponders. The FAA is in the process of reviewing the information from the CAA, and is considering separate rulemaking action to address those airplanes having Mode ''S'' transponders.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of the same type design, this AD is being issued to prevent inaccurate airplane altitude reporting and false TCAS II advisories, which could result in the flightcrew deviating the airplane from its assigned flight path and a possible mid-air collision. This AD requires repetitive tests to detect discrepancies of the Mode ''C'' transponder(s), air data computer, and certain wiring connections; and corrective actions, if necessary. The actions are required to be accomplished in accordance with the procedures specified in the applicable component maintenance manuals and wiring diagrams contained in the airplane maintenance manuals.

This AD also requires that operators report all inspection results (positive or negative) to the FAA.

Interim Action

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

Determination of Rule's Effective Date

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–328–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the

Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–23–22 Transport Category Airplanes: Amendment 39–11418. Docket 99–NM–328–AD.

Applicability: Transport category airplanes, certificated in any category, equipped with any Mode ''C'' transponder with single Gillham code altitude input, including, but not limited to, the transponder part numbers listed below. A Mode ''C'' transponder with single Gillham code altitude input is defined as any Mode ''C'' transponder meeting Aeronautical Radio, Inc. (ARINC) 572 specification.

Mode ''C'' Transponder Part Numbers:

Rockwell Collins: 622–2224–001, 622–2224–003, 522–2703–001, 522–2703–011, 787–6211–001, 787–6211–002

Bendix: 066–1056–00, 066–1056–01, 066–1123–00, 2041599–6508

Wilcox: 97637–201, 97637–301

IFF: APX–100, APX–101

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent false Traffic Alert Collision Avoidance System (TCAS II) advisories due to inaccurate airplane altitude reporting, which could result in the flightcrew deviating the airplane from its assigned flight path and a possible mid-air collision, accomplish the following:

Repetitive Tests

(a) Within 45 days after the effective date of this AD: Perform the test procedures specified in paragraphs (a)(1) through (a)(9) of this AD to detect any discrepancies of the Mode ''C'' transponder(s), air data computer (ADC), or Gillham wiring connections, in accordance with the applicable ADC and Mode ''C'' transponder component maintenance manuals and airplane maintenance manual. Repeat the test procedures thereafter at intervals not to exceed 45 days.

(1) Connect an air data test set to the Captain's (No. 1) Pitot/Static system.

(2) In the airplane flight deck, select Mode ''C'' transponder (1), or left Mode ''C'' transponder, depending on airplane flight deck configuration, and select ADC source (1).

(3) Select the air data test set to the following altitude reporting values: 1,000 feet; 4,100 feet; 15,700 feet; and 31,000 feet.

(4) For each selected altitude, verify that the Mode ''C'' altitude reporting is within tolerance (+/−125 feet), and record the altitude output as follows: 1,000 feet (+/−125 feet); 4,100 feet (+/−125 feet); 15,700 (+/−125 feet); and 31,000 feet (+/−125 feet).

(5) In the airplane flight deck, select ADC source (2) and repeat paragraphs (a)(3) and (a)(4) of this AD.

(6) In the airplane flight deck, select Mode ''C'' transponder (2), or the right Mode ''C'' transponder, depending on airplane flight deck configuration, select ADC source (1), and repeat paragraphs (a)(3) and (a)(4) of this AD.

(7) In the airplane flight deck, select ADC source (2) and repeat paragraphs (a)(3) and (a)(4) of this AD.

(8) Connect an air data test set to the Captain's (No. 2) Pitot/Static system.

(9) Repeat paragraphs (a)(2) through (a)(7) of this AD.

Note 2: The tests required by paragraph (a) of this AD examine the three primary sources of inaccurate airplane altitude reporting. These three sources are: ADC's, Mode ''C'' transponders, and the Gillham wiring connections between the ADC and Mode ''C'' transponder.

Corrective Actions

(b) If any discrepancy is detected during any test required by paragraph (a) of this AD: Prior to further flight, repair in accordance with the applicable ADC and Mode ''C'' transponder component maintenance manual and airplane maintenance manual. If the repair information is not available in the applicable manual, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Reporting Requirement

(c) Within 10 days after accomplishing the initial and repetitive tests required by paragraph (a) of this AD, submit a report of the inspection and test results (both positive and negative findings) to: Peter Skaves, Aerospace Engineer, Airplane and Flight Crew Interface Branch, ANM–111, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1320. The test results must include the Mode ''C'' transponder(s) and ADC part number(s), and must specify if any discrepancies of the Gillham wiring connections were detected, and if corrective action was required. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance

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

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

Special Flight Permits

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

(f) This amendment becomes effective on November 29, 1999.

Issued in Renton, Washington, on November 4, 1999.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–29472 Filed 11–10–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–205–AD; Amendment 39–11410; AD 99–23–14]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A310, and A300–600 Series Airplane

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A300, series airplanes, that currently requires certain changes to the procedures in the Airplane Flight Manual (AFM) related to operation of the emergency lighting system. This action requires modification of the emergency lighting system and a revision to the AFM to ensure the preservation of the airplane batteries. This action also provides, for certain airplanes, terminating action for the existing AFM revision, and replacement with a different AFM revision. This action also expands the applicability to

include certain model A310 and A300–600 series airplanes. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to ensure that the emergency lighting is available for evacuation in an emergency situation.

DATES: Effective December 17, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 17, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), TransportAirplane 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: Norman B. Martenson, Manager, International Branch, ANM–116, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 88–18–01, amendment 39–5998 (53 FR 30975, August 17, 1988), which is applicable to certain Airbus Model A300 series airplanes, was published in the **Federal Register** on September 13, 1999 (64 FR 49420). That action proposed to continue to require certain changes to the Model A300 Airplane Flight Manual (AFM). That action also proposed to require modification of the emergency lighting system and a revision to the AFM procedures. That action also provides, for certain airplanes, terminating action for the existing AFM revision, and replacement with a different AFM revision. That action also proposed to expand the applicability to include certain Model A310 and A300–600 series airplanes.

Comments

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

Conclusion

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

Cost Impact

There are approximately 157 airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 88–18–01, and retained in this AD, take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $60 per airplane.

The modification that is required in this AD action will take approximately 18 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $500 per airplane. Based on these figures, the cost impact of the required modification of this AD on U.S. operators is estimated to be $248,060, or $1,580 per airplane.

The AFM revision that is required in this AD action will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AFM revision of this AD on U.S. operators is estimated to be $9,420, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–5998 (53 FR 30975, August 17, 1988), and by adding a new airworthiness directive (AD), amendment 39–11410, to read as follows:

99–23–14 Airbus Industrie: Amendment 39–11410. Docket 98–NM–205–AD. Supersedes AD 88–18–01, Amendment 39–5998.

Applicability: Model A300 and A310 series airplanes, except those on which Airbus Modification 10002 has been accomplished; and Model A300–600 series airplanes, except those on which Airbus Modification 7738 or 10002 has been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the emergency lighting is available for evacuation in an emergency situation, accomplish the following:

Restatement of Requirements of AD 88–18–01, Amendment 39–5998

AFM Revision

(a) For Model A300 series airplanes (excluding Model A300–600 series airplanes): Within 10 days after September 2, 1988 (the effective date of AD 88–18–01, amendment 39–5998), the following procedures must be applied and a copy of this AD or the changes indicated below must be inserted in the appropriate Section of the Airplane Flight Manual (AFM), as indicated below:

(1) This sentence is to be inserted facing 3–02–00 page 11: ''EMERGENCY PROCEDURES—DITCHING When ditching, the MIN CABIN LT selector (if installed) must be switched ON.''

(2) This sentence is to be inserted facing 3–02–00 page 12: ''EMERGENCY PROCEDURES—EMERGENCY EVACUATION When the procedure EMERGENCY EVACUATION is applied, the EMER EXIT LT selector must be selected 'ON' after parking brake is ON.''

(3) This sentence is to be inserted facing 4–03–00 page 1: ''NORMAL PROCEDURES—TAXI Prior to push back, the MIN CABIN LT selector (if installed) must be switched 'ON' and remain ON until gear retraction.''

(4) This sentence is to be inserted facing 4–03–00 page 4: ''NORMAL PROCEDURES—LANDING Before landing, the MIN CABIN LT selector (if installed) must be switched 'ON' and should remain ON until engine shutdown or until parked.''

New Requirements of This AD

Modification

(b) For all airplanes: Within 6 months after the effective date of this AD, modify the emergency lighting system, in accordance with the applicable service bulletin specified in paragraph (b)(1), (b)(2), (b)(3), or (b)(4), of this AD.

(1) For Model A300 series airplanes: Airbus Service Bulletin A300–33–0119, dated March 1, 1993.

(2) For Model A310 series airplanes: Airbus Service Bulletin A310–33–2025, dated March 1, 1993.

(3) For Model A300–600 series airplanes listed in Airbus Service Bulletin A300–33–6013, dated March 30, 1989: Airbus Service Bulletin A300–33–6013, dated March 30, 1989.

(4) For Model A300–600 series airplanes listed in Airbus Service Bulletin A300–33–6020, dated March 1, 1993: Airbus Service Bulletin A300–33–6020, dated March 1, 1993.

AFM Revisions

(c) Prior to further flight following accomplishment of the modification required by paragraph (b) of this AD: Revise the FAA-approved Airplane Flight Manual (AFM) by adding the temporary revision (TR) specified in paragraph (c)(1), (c)(2), or (c)(3), as applicable, of this AD.

(1) For Model A300 series airplanes: Insert AFM TR 3.02.00/7. After accomplishment of the modification required by paragraph (b) of this AD, the TR required by paragraph (a) of this AD may be removed [paragraph (a) applies to Model A300 series airplanes only].

(2) For Model A310 series airplanes: Insert AFM TR 3.02.00/8.

(3) For Model A300–600 series airplanes: Insert AFM TR 3.02.00/11.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Incorporation by Reference

(f) The actions shall be done in accordance with Airbus Service Bulletin A300–33–0119, dated March 1, 1993; Airbus Service Bulletin A310–33–2025, dated March 1, 1993; Airbus Service Bulletin A300–33–6013, dated March 30, 1989; Airbus Service Bulletin A300–33–6020, dated March 1, 1993; Airplane Flight Manual Temporary Revision 3.02.00/7 (undated); Airplane Flight Manual Temporary Revision 3.02.00/8 (undated); Airplane Flight Manual Temporary Revision 3.02.00/11 (undated); as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, 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.

Note 3: The subject of this AD is addressed in French airworthiness directive 89–107–096(B)R4, dated August 13, 1997.

(g) This amendment becomes effective on December 17, 1999.

Issued in Renton, Washington, on November 3, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–29328 Filed 11–10–99; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33–7645A]

RIN 3235–AH21

Rule 701—Exempt Offerings Pursuant to Compensatory Arrangements; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to final rules adopted in Release No. 33–7645 (February 25, 1999), which were published in the **Federal Register** on Monday, March 8, 1999 (64 FR 11095). The rules relate to the manner of calculating the amount of the exempt offerings pursuant to Rule 701.

EFFECTIVE DATE: November 5, 1999.

FOR FURTHER INFORMATION CONTACT: Richard K. Wulff, Office of Small Business, Division of Corporation Finance at (202) 942–2950.

SUPPLEMENTARY INFORMATION: In connection with the adoption of rules relating to the Rule 701 exemption for compensatory benefit plans, on February 25, 1999 the Commission adopted provisions to determine the available amount of securities subject to the exemption. Because of inaccuracy in the language within the adopting release, a different way of making such calculations appears in the Code of Federal Regulations than that approved by the Commission. The correction removes a typographical error and also deletes the reference to the necessity of only making calculations based upon an annual balance sheet. The original intention was to permit calculations to be made on the basis of interim balance sheets as long as they were no older than the issuer's most recent fiscal year end.

List of Subjects in 17 CFR Part 230

Reporting and recordkeeping requirements, Securities.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

Accordingly, 17 CFR part 230 is corrected by making the following correcting amendments:

1. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–24, 80a–28,

80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

§ 230.701 [Amended]

2. In § 230.701, revise the phrase '' are or derive'' to read ''or derive'' in the last sentence of the introductory text of paragraph (c).

3. In § 230.701, revise the phrase ''most recent annual balance sheet date'' to read ''most recent balance sheet date'' in paragraphs (d)(2)(ii) and (d)(2)(iii).

Dated: November 5, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–29530 Filed 11–10–99; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301, and 602

[TD 8841]

RIN 1545–AU99

Return of Partnership Income

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations revising the partnership filing requirement. These regulations reflect changes to the law made by the Taxpayer Relief Act of 1997 (TRA). All partnerships required to file partnership returns, including certain foreign partnerships, are affected by these regulations.

DATES: *Effective Dates:* These regulations are effective January 1, 2000, except that § 1.6031(a)–1(b)(3) is effective January 1, 2001.

Applicability Dates: For dates of applicability, see §§ 1.6031(a)–1(f) and 1.6063–1(c)(2).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Martin Schaffer, 202–622–3070; concerning foreign partnerships, Guy A. Bracuti, 202–622–3860 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1583. The collection of information in these final regulations is in § 1.6031(a)–1. This information is required to enable the IRS to verify that a taxpayer is reporting the correct amount of income or gain or claiming the correct amount of losses, deductions, or credits from that taxpayer's interest in the partnership.

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

The burden is reflected in the burden estimate of Form 1065.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the

Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FS:FP, Washington, DC 20224, and

Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

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

Background

On January 26, 1998, the IRS and Treasury published in the **Federal Register** (63 FR 3677) proposed amendments to the regulations (REG–209322–82) under sections 6031 and 6063 of the Internal Revenue Code (Code). These amendments were designed, in part, to reflect changes made to section 6031 of the Code by section 1141 of TRA, Public Law 105–34 (111 Stat. 788). Written comments responding to these proposed regulations were received. No public hearing was requested or held. After consideration of all the comments, the proposed regulations under sections 6031 and 6063 of the Code are adopted as revised by this Treasury decision, and the current final regulations under section 6031 of the Code are removed.

Explanation of Revisions and Summary of Comments

A. General Filing Requirements for Foreign Partnerships

Section 6031(a) of the Code requires every partnership to file a partnership return. However, section 6031(e) of the Code provides that a foreign partnership is not required to file a return for a taxable year unless during that year it derives gross income from sources within the United States (U.S.-source income) or has gross income that is effectively connected with the conduct of a trade or business within the United States (ECI).

Consistent with section 6031(e) of the Code, the proposed regulations generally required a foreign partnership to file a return under section 6031 of the Code if it had either U.S.-source income or ECI. This general rule is adopted without change in the final regulations.

B. Exceptions to General Filing Requirements

Under the proposed regulations, a foreign partnership that had no ECI, and that otherwise was required to file a partnership return only because it had U.S.-source income, was exempt from the requirement to file a partnership return if: (i) No United States person had a direct or indirect interest in the partnership; (ii) the U.S.-source income was either fixed or determinable annual or periodical income described in § 1.1441–2(b) or other amounts subject to withholding described in § 1.1441–2(c); (iii) Forms 1042 and 1042–S were filed with respect to all such gross income by the partnership, or by another withholding agent (or agents) if the partnership was not required to file such forms; and (iv) the tax liability of the partners with respect to such gross income was fully satisfied by the withholding of tax at source. Most of the written comments received with respect to the proposed regulations requested that the IRS and Treasury modify this proposed exception to the foreign partnership filing requirement.

In response to these comments, the final regulations liberalize the exceptions in certain instances for foreign partnerships that have U.S.-source income but no ECI. The changes are designed to reduce duplicative filing requirements where other information reporting and withholding requirements provide adequate protection for the tax system and to recognize that where there is de minimis ownership in a foreign partnership by U.S. partners, the return filing requirements should not be invoked merely because the partnership earns any amount of U.S.-source income.

The final regulations contain three rules that modify the reporting obligations of certain foreign partnerships that have no ECI. These modified reporting rules, with the exception of the de minimis exception, are applicable for partnership taxable years beginning after December 31, 2000, because they are dependent on rules contained in §§ 1.1441–5(c) and 1.1461–1, which will be applicable only after December 31, 2000. See Notice 99–27 (1999–20 I.R.B. 75). The de minimis

exception, however, will be effective for partnership taxable years beginning after December 31, 1999, the general effective date of these regulations.

The modified reporting rules contain some common requirements. None of these rules will apply to a withholding foreign partnership (as defined in § 1.1441–5(c)(2)(i)). Also, with the exception of the de minimis rule, the modified reporting rules will apply only when one or more withholding agents file the required Forms 1042 and 1042–S and pay the associated withholding tax.

The first modified reporting rule is the de minimis exception. This rule provides that a foreign partnership (other than a withholding foreign partnership, as defined in § 1.1441–5(c)(2)(i)) with $20,000 or less of U.S.-source income and no ECI is required to file a partnership return only if one percent or more of any item of partnership gain, loss, deduction, or credit is allocable in the aggregate to direct U.S. partners.

The second modified reporting rule, which also was contained in the proposed regulations, provides that a foreign partnership with U.S.-source income but no ECI and no U.S. partners is not required to file a partnership return. Under the third rule, a foreign partnership with U.S.-source income and one or more U.S. partners but no ECI must file a partnership return. However, such a partnership need file Schedules K–1 only for its direct U.S. partners and for its passthrough partners through which U.S. partners hold an interest in the foreign partnership.

The final regulations do not require a foreign partnership to provide Schedules K–1 for foreign partners deriving U.S.-source income that is not ECI, because the foreign partners are subject to information reporting on Forms 1042–S under the rules contained in §§ 1.1441–5(c) and 1.1461–1 of the regulations. These rules generally subject the foreign partners, and not the partnership, to an information reporting regime with respect to U.S.-source income (that is not ECI) paid to a foreign partnership. To the extent that information returns are not required for foreign partners under section 1461 of the Code, the IRS and Treasury have determined that reporting under section 6031 of the Code is unnecessary as long as the foreign partnership has no ECI. Accordingly, a foreign partnership with no ECI need not report on a Schedule K–1 a foreign partner's allocable share of items of income, including U.S.-source gains that are not subject to Form 1042–S reporting, deposit interest under section 871(i) of the Code, and interest or OID on short-term obligations under section 871(g) of the Code.

In contrast to the rule for U.S.-source income, the exception to Schedule K–1 reporting does not apply to a foreign partner's allocable share of ECI. Under the information reporting rules in §§ 1.1441–5(c)(1)(ii)(B) and 1.1461–1(c) of the regulations, ECI must be reported to a foreign partnership rather than to the foreign partners directly. In addition, because ECI is subject to tax on a net basis, a foreign partnership must provide a foreign partner's allocable share of other items of partnership income, gain, loss, or deduction to properly calculate the net taxable income. Therefore, if a foreign partnership has ECI, it must file a complete partnership return (with Schedules K–1 for all partners) reflecting all items of partnership income, gain, loss, deduction, and credit.

C. Partners That Are Controlled Foreign Corporations

One commentator suggested that a foreign partnership should not have to file under section 6031 of the Code if it has no direct U.S. partners and its only U.S.-source income is bank deposit interest under section 871(i) of the Code. The exception to the filing requirement in § 1.6031(a)–1(b)(2) of the proposed regulations did not apply to foreign partnerships with direct or indirect U.S. partners. Thus, according to the commentator, this exception did not apply to a common, nonabusive situation in which a controlled foreign corporation (CFC) is a partner in a foreign partnership whose only U.S.-source income is interest earned on a U.S. bank account. (Foreign partners do not owe U.S. tax on this interest income; see section 871(i) of the Code and § 1.1441–2(a) of the regulations (final sentence). In addition, a U.S. person who controls a CFC must report such income on Form 5471; see § 1.6038–2.)

The term indirect interest was not defined in the proposed regulations. Thus, whether a U.S. shareholder of a CFC partner held an indirect interest in the foreign partnership was not clear. These final regulations define the term *United States partner* as any U.S. person owning a direct or indirect interest in the foreign partnership. An indirect interest is defined as any interest held through one or more passthrough partners (as defined in section 6231(a)(9) of the Code). A passthrough partner is a partnership, estate, trust, S corporation, nominee, or other similar person. Because a CFC is not a passthrough partner, the U.S. shareholder of a CFC has no indirect interest in the foreign partnership under these final regulations. Accordingly, a partnership with no ECI need not file a return solely as a result of having a CFC partner.

D. Responsibility To Ensure Filing of Forms 1042 and 1042–S and Payment of Associated Tax

As stated above, a foreign partnership may avail itself of the modified filing requirements in § 1.6031(a)–1(b)(3) of these regulations, for partnership taxable years beginning after December 31, 2000, only if it or another withholding agent actually files the Forms 1042 and 1042–S and pays the associated tax. A commentator suggested that a foreign partnership with no withholding responsibility should not have the burden of ensuring that another withholding agent has properly filed Forms 1042–S in order to invoke the modified filing requirements.

Where a withholding agent fails to withhold (and to file the requisite forms) with respect to a partner in a foreign partnership, the Service might be unable to assess and collect the proper tax without information from a partnership return. A partnership return provides the Service with the name of the foreign partner and the amount subject to withholding. Accordingly, these final regulations do not adopt the comment.

While this comment is not adopted, certain relief still may be available. Each person who has control, receipt, custody, or payment of an amount subject to withholding is a withholding agent and is responsible for withholding tax and filing Forms 1042 and 1042–S. Generally, a foreign partnership is a withholding agent and must withhold tax and file the requisite forms. Under § 1.1461–1(b) and (c), one withholding agent among several may be relieved of its responsibility to withhold if another withholding agent withholds tax and files the proper returns. However, § 1.1441–5(c)(3)(v) augments this rule by deeming a foreign partnership (other than a withholding foreign partnership as defined in § 1.1441–5(c)(2)(i)) to have satisfied its withholding responsibilities for an amount with respect to a partner to the extent that the partner's distributive share of the payment can be reliably associated with a withholding certificate described in § 1.1441–5(c)(3)(iii) pertaining to the partner that the partnership has furnished to a withholding agent, and the partnership does not know or has no reason to know that the correct amount has not been withheld. These final regulations do not alter the result under § 1.1441–5(c)(3)(v). In addition, if a foreign

partnership reasonably relies on a modified filing requirement under these regulations, but the modification is inapplicable because no party has satisfied withholding responsibilities, the partnership should be able to show that its failure to file a partnership return was due to reasonable cause for purposes of section 6698 of the Code if the foreign partnership is deemed to have satisfied its withholding responsibilities under § 1.1441–5(c)(3)(v).

E. Partnership Level Elections Under Section 703 of the Code

A commentator suggested that an abbreviated return should be permitted where a foreign partnership would be exempt from the filing requirement but for a partnership level election under section 703 of the Code. These final regulations clarify that a return filed solely to make an election under section 703 of the Code need contain only information identifying the partnership and the type of election. In general, such a return is not considered to be a return filed under section 6031(a) of the Code. Therefore, a return filed solely to make an election is not a partnership return for purposes of section 6501 (regarding the statute of limitations) and sections 6231(a)(1)(A) and 6233 (regarding the partnership audit rules) of the Code.

Section 1.6031(a)–1(b)(3)(ii) of the proposed regulations provided that a return filed by or for a foreign partnership to make a section 703 election must be signed by each partner who was a partner at the time of election or by any partner who was authorized (under local law or the partnership's organizational documents) to make the election and who represented having such authority under penalties of perjury. A commentator suggested that the signature requirement for returns filed solely to make a partnership level election should be restricted to partners who are U.S. persons or are owned directly or indirectly by U.S. persons. These final regulations do not adopt this comment but maintain the signature requirement as proposed. Cf. § 301.7701–3(c)(2) setting forth the same signature requirement for entity classification elections.

F. Electing Out of Subchapter K Under Section 761 of the Code

A commentator suggested that the final regulations should provide a default rule under which a foreign partnership with no direct U.S. partners that is eligible to elect out of subchapter K of the Code would be deemed to have elected exclusion. Under § 1.6031(a)–1(c)(2) of the proposed regulations, a partnership that was deemed to have elected exclusion from subchapter K, as specified in § 1.761–2(b)(2)(ii), would be exempt from the partnership filing requirement. According to the commentator, for joint ventures in which all the direct owners are foreign, it is often difficult to clearly demonstrate an intention to exclude the entity from U.S. partnership treatment, as required by the section 761 regulations. To avoid inconsistency with the requirements for deemed exclusion under section 761 of the Code, these final regulations maintain the rule as proposed.

Special Analyses

It has been determined that these regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the regulations would reduce (rather than increase) the number of small entities that are required to file a partnership return. Specifically, the regulations eliminate the filing requirements for certain foreign partnerships that are fully subject to withholding in order to prevent duplicative filing requirements. In addition to eliminating the filing requirements in these circumstances, for ease of reference, the regulations update and restate the general requirements to file a partnership return as set forth in existing regulations. Because these regulations do not impose any new reporting requirements that are not imposed by the existing regulations, and the only significant modification of the existing regulations is to eliminate the filing requirement for certain foreign partnerships, the regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information: The principal authors of these regulations are Martin Schäffer, Office of Assistant Chief Counsel (Passthroughs and Special Industries), and Guy A. Bracuti, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 301, and 602 are amended as follows:

PART 1—INCOME TAXES

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

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

Section 1.6031(a)–1 also issued under 26 U.S.C. 6031. * * *

§ 1.6031–1 [Removed]

Par. 2. Section 1.6031–1 is removed.

Par. 3. Section 1.6031(a)–1 is added to read as follows:

§ 1.6031(a)–1 Return of partnership income.

(a) *Domestic partnerships*—(1) *Return required.* Except as provided in paragraphs (a)(3) and (c) of this section, every domestic partnership must file a return of partnership income under section 6031 (partnership return) for each taxable year on the form prescribed for the partnership return. The partnership return must be filed for the taxable year of the partnership regardless of the taxable years of the partners. For taxable years of a partnership and of a partner, see section 706 and § 1.706–1. For the rules governing partnership statements to partners and nominees, see § 1.6031(b)–1T.

(2) *Content of return.* The partnership return must contain the information required by the prescribed form and the accompanying instructions.

(3) *Special rule.* A partnership that has no income, deductions, or credits

for federal income tax purposes for a taxable year is not required to file a partnership return for that year.

(4) *Failure to file.* For the consequences of a failure to comply with the requirements of section 6031(a) and this paragraph (a), see sections 6229(a), 6231(f), 6698, and 7203.

(b) *Foreign partnerships*—(1) *General rule.* A foreign partnership is not required to file a partnership return, if the foreign partnership does not have gross income that is (or is treated as) effectively connected with the conduct of a trade or business within the United States (ECI) and does not have gross income (including gains) derived from sources within the United States (U.S.-source income). Except as provided in paragraphs (b)(2) and (3) of this section, a foreign partnership that has ECI or has U.S.-source income that is not ECI must file a partnership return for its taxable year in accordance with the rules for domestic partnerships in paragraph (a) of this section.

(2) *Foreign partnerships with de minimis U.S.-source income and de minimis U.S. partners.* A foreign partnership (other than a withholding foreign partnership, as defined in § 1.1441–5(c)(2)(i)) that has $20,000 or less of U.S.-source income and has no ECI during its taxable year is not required to file a partnership return if, at no time during the partnership taxable year, one percent or more of any item of partnership income, gain, loss, deduction, or credit is allocable in the aggregate to direct United States partners. The United States partners must directly report their shares of the allocable items of partnership income, gain, loss, deduction, and credit.

(3) *Filing obligations for certain other foreign partnerships with no ECI*—(i) *General requirements for modified filing obligations.* A foreign partnership will be subject to the modified filing obligations in paragraphs (b)(3)(ii) and (iii) of this section if, in addition to satisfying the requirements contained in paragraphs (b)(3)(ii) and (iii) of this section—

(A) The partnership is not a withholding foreign partnership as defined in § 1.1441–5(c)(2)(i);

(B) Forms 1042 and 1042–S are filed by the partnership with respect to the amounts subject to reporting under § 1.1461–1(b) and (c), unless the partnership is not required to file such returns under § 1.1461–1(b)(2) and (c)(4), in which case Forms 1042 and 1042–S must be filed by another withholding agent or agents; and

(C) The tax liability of the partners withrespect to such amounts has been fully satisfied by the withholding of tax at the source, if applicable, under chapter 3 of the Internal Revenue Code.

(ii) *Foreign partnerships with U.S.-source income but no U.S. partners.* A foreign partnership that has U.S.-source income is not required to file a partnership return if the partnership has no ECI and no United States partners at any time during the partnership's taxable year.

(iii) *Foreign partnerships with U.S.-source income and U.S. partners.* Except as provided in paragraph (b)(2) of this section, a foreign partnership with one or more United States partners that has U.S.-source income but no ECI must file a partnership return. However, such a foreign partnership need not file Statements of Partner's Share of Income, Credit, Deduction, etc. (Schedules K–1) for any partners other than its direct United States partners and its passthrough partners (whether U.S. or foreign) through which United States partners hold an interest in the foreign partnership. Schedules K–1 that are not excepted from filing under this paragraph (b)(3)(iii) must contain the same information required of a domestic partnership filing under paragraph (a) of this section.

(4) *Information or returns required of partners who are United States persons*—(i) *In general.* If a United States person is a partner in a partnership that is not required to file a partnership return, the district director or director of the relevant service center may require that person to render the statements or provide the information necessary to verify the accuracy of the reporting by that person of any items of partnership income, gain, loss, deduction, or credit.

(ii) *Controlled foreign partnerships.* Certain United States persons who are partners in a foreign partnership controlled (within the meaning of section 6038(e)(1)) by United States persons may be required to provide information with respect to the partnership under section 6038.

(5) *Certain partnership elections.* For a partnership that is not otherwise required to file a partnership return, if an election that can only be made by the partnership under section 703 (affecting the computation of taxable income derived from a partnership) is to be made by or for the partnership, a return on the form prescribed for the partnership return must be filed for the partnership. Unless otherwise provided in the form or the accompanying instructions, a return filed solely to make an election need only contain a written statement citing paragraph (b)(5)(ii) of this section, listing the name and address of the partnership making the election, and clearly identifying the specific election being made. A return filed under paragraph (b)(5)(ii) of this section solely to make an election is not a partnership return. Thus, such a return is not a return filed under section 6031(a) for purposes of sections 6501 (except regarding the specific election issue), 6231(a)(1)(A), and 6233. The return must be signed by—

(i) Each partner that is a partner in the partnership at the time the election is made; or

(ii) Any partner of the partnership who is authorized (under local law or the partnership's organizational documents) to make the election and who represents to having such authorization under penalties of perjury.

(6) *Exclusion for certain organizations.* The return requirement of section 6031 and this section does not apply to the International Telecommunications Satellite Organization, the International Maritime Satellite Organization, or any organization that is a successor of either.

(c) *Partnerships excluded from the application of subchapter K of the Internal Revenue Code*—(1) *Wholly excluded*—(i) *Year of election.* An eligible partnership as described in § 1.761–2(a) that elects to be excluded from all the provisions of subchapter K of chapter 1 of the Internal Revenue Code in the manner specified by § 1.761–2(b)(2)(i) must timely file the form prescribed for the partnership return for the taxable year for which the election is made. In lieu of the information otherwise required, the return must contain or be accompanied by the information required by § 1.761–2(b)(2)(i).

(ii) *Subsequent years.* Except as otherwise provided in paragraph (c)(1)(i) of this section, an eligible partnership that elects to be wholly excluded from the application of subchapter K is not required to file a partnership return.

(2) *Deemed excluded.* An eligible partnership that is deemed to have elected exclusion from the application of subchapter K beginning with its first taxable year, as specified in § 1.761–2(b)(2)(ii), is not required to file a partnership return.

(d) *Definitions*—(1) *Partnership.* For the meaning of the term partnership, see § 1.761–1(a).

(2) *United States person.* In applying this section, a United States person is a person described in section 7701(a)(30); the government of the United States, a State, or the District of Columbia (including an agency or instrumentality thereof); or a corporation created or organized in Guam, the Commonwealth

of Northern Mariana Islands, the U.S. Virgin Islands, and American Samoa, if the requirements of section 881(b)(1)(A), (B), and (C) are met for such corporation. The term does not include an alien individual who is a resident of Puerto Rico, Guam, the Commonwealth of Northern Mariana Islands, the U.S. Virgin Islands, or American Samoa, as determined under § 301.7701(b)–1(d) of this chapter.

(3) *United States partner.* In applying this section, a United States partner is any United States person who holds a direct or indirect interest in the partnership.

(4) *Indirect interest.* An indirect interest is any interest held through one or more passthrough partners, as defined in section 6231(a)(9).

(e) *Procedural requirements*—(1) *Place for filing.* The return of a partnership must be filed with the service center prescribed in the relevant IRS revenue procedure, publication, form, or instructions to the form (see § 601.601(d)(2)).

(2) *Time for filing.* The return of a partnership must be filed on or before the fifteenth day of the fourth month following the close of the taxable year of the partnership.

(3) *Magnetic media filing.* For magnetic media filing requirements with respect to partnerships, see section 6011(e)(2) and the regulations thereunder.

(f) *Effective dates.* This section applies to taxable years of a partnership beginning after December 31, 1999, except that paragraph (b)(3) of this section applies to taxable years of a foreign partnership beginning after December 31, 2000.

Par. 4. Section 1.6063–1 is amended by adding paragraph (c) to read as follows:

§ 1.6063–1 Signing of returns, statements, and other documents made by partnerships.

* * * * *

(c) *Certain partnership elections*—(1) *In general.* For rules regarding the authority of a partner to sign a partnership return filed solely for the purpose of making certain partnership level elections, see § 1.6031(a)–1(b)(5)(ii).

(2) *Effective date.* Paragraph (c) of this section applies to taxable years of a partnership beginning after December 31, 1999.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 5. The authority citation for part 301 continues to read in part as follows:

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

§ 301.6031–1 [Removed]

Par. 6. Section 301.6031–1 is removed.

Par. 7. Section 301.6031(a)–1 is added to read as follows:

§ 301.6031(a)–1 Return of partnership income.

For provisions relating to the requirement of returns of partnership income, see § 1.6031(a)–1 of this chapter.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 9. In § 602.101, paragraph (b) is amended by removing the entry ''1.6031–1'' from the table and adding a new entry in numerical order to the table to read as follows:

§ 602.101 OMB control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.6031(a)–1	1545–1583
* * * * *	

Bob Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: October 29, 1999.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 99–29084 Filed 11–10–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8843]

RIN 1545–AW14

Partnership Returns Required on Magnetic Media

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the requirements for filing partnership returns on magnetic media. These regulations reflect changes to the law made by the Taxpayer Relief Act of 1997. These regulations affect partnerships with more than 100 partners.

DATES: *Effective Date:* These regulations are effective January 1, 2000.

Applicability Date: These regulations apply to partnership returns for taxable years ending on or after December 31, 2000. However, the regulations will not apply to electing large partnership returns under section 775 or partnership returns with foreign addresses for taxable years ending before January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Bridget E. Finkenaur, (202) 622-4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Regulations on Procedure and Administration (26 CFR part 301) relating to filing partnership returns on magnetic media under section 6011(e)(2). In addition, this document contains conforming amendments to the Regulations on Procedure and Administration (26 CFR part 301) relating to information reporting penalties under section 6721.

A notice of proposed rulemaking (REG–102023–98) was published in the **Federal Register** (63 FR 56878) on October 23, 1998. The public hearing scheduled for January 13, 1999, was canceled in the **Federal Register** (64 FR 1148) on January 8, 1998. No public hearing was requested or held. Two written comments were received. After consideration of the comments, the proposed regulations are adopted as modified by this Treasury decision. The comments are discussed below.

Explanation of Revisions and Summary of Comments

Both commentators requested that the IRS and the Treasury Department postpone the effective date of the regulations. The commentators were concerned that, given the various manners and formats that nominees use to submit partner information to publicly traded partnerships, these partnerships would be unable to create computer programs that would reformat the partner information in time to file their 1999 tax returns on magnetic media. In addition, partnerships required to file their returns on magnetic media beginning in 2000 will be focusing their computer resources on ensuring that their computer systems are year 2000 compliant. The commentators suggested that the effective date of the regulations be postponed to take into account these programming considerations.

In considering these comments, the IRS and the Treasury Department have decided to postpone the general effective date of the regulations for one year. This will allow partnerships additional time to develop systems that accommodate IRS processing requirements and integrate third party information while not interfering with efforts to ensure year 2000 compliance. Therefore, the final regulations are generally effective for taxable years ending on or after December 31, 2000. However, the effective date for electing large partnerships and partnerships using foreign addresses on their Series 1065 forms remains the same as the proposed regulations. Accordingly, electing large partnerships and partnerships using foreign addresses will not be required to file their returns on magnetic media for taxable years ending before January 1, 2001.

Although the general effective date of the regulations has been postponed, on March 15, 2000, the IRS will begin accepting partnership returns for taxable years ending on or after December 31, 1999, on magnetic media. The magnetic media filing of partnership returns for taxable years ending before December 31, 2000, is voluntary; partnerships will not be penalized for submitting a partnership return on paper for taxable years ending before this date. However, partnerships with the capability of submitting their partnership tax returns on magnetic media are encouraged to do so.

Partnerships with 100 or fewer partners also may voluntarily submit partnership returns on magnetic media beginning on March 15, 2000. These regulations do not require partnerships with 100 or fewer partners to file their returns on magnetic media; therefore, such partnerships will not be penalized for their failure to do so. In addition, partnerships with 100 or fewer partners participating in the magnetic media filing program may discontinue their participation at any time.

One commentator suggested that the IRS and the Treasury Department publish regulations under section 6031(c) to require nominees holding partnership interests to submit partner information to partnerships in the same manner and format that the IRS requires partnerships to file their returns under § 301.6011–3 of the regulations. However, by postponing the effective date, it is anticipated that partnerships and nominees will have adequate time to establish satisfactory guidelines for sharing information. Accordingly, this comment has not been adopted by the final regulations.

Finally, one commentator asked whether fiscal year and short year returns will be required to be filed on magnetic media by the general effective date. Again, because the IRS and the Treasury Department have postponed the general effective date for one year, it is anticipated that partnerships will be able to meet the systems requirements set forth in IRS revenue procedures and other published guidance by the effective date. However, due to issues relating to creation of the system for accepting returns on magnetic media, the IRS will not be able to accept fiscal and short year returns prior to the general effective date. Therefore, partnerships that use a fiscal year and partnerships that must file a short year return may not voluntarily file their returns on magnetic media before January 1, 2001.

As indicated in the preamble to the proposed regulations, although the regulations define magnetic media broadly, the Service currently plans, in prescribed procedures for participation in the mandatory magnetic media filing program, to require partnerships with more than 100 partners to file their partnership returns electronically.

Special Analyses

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

Drafting Information: The principal author of these regulations is Bridget E. Finkenaur, Office of the Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in the development of these regulations.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read in part as follows:

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

Section 301.6011–3 also issued under 26 U.S.C. 6011; * * *

Par. 2. Section 301.6011–3 is added to read as follows:

§ 301.6011–3 Required use of magnetic media for partnership returns.

(a) *Partnership returns required on magnetic media.* If a partnership with more than 100 partners is required to file a partnership return pursuant to § 1.6031(a)–1 of this chapter, the information required by the applicable forms and schedules must be filed on magnetic media, except as otherwise provided in paragraph (b) of this section. Returns filed on magnetic media must be made in accordance with applicable revenue procedures or publications. In prescribing revenue procedures or publications, the Commissioner may determine that partnerships will be required to use any one form of magnetic media filing. For example, the Commissioner may determine that partnerships with more than 100 partners must file their partnership returns electronically. In filing its return, a partnership must register to participate in the magnetic media filing program in the manner prescribed by the Internal Revenue Service in applicable revenue procedures or publications.

(b) *Waiver.* The Commissioner may waive the requirements of this section if hardship is shown in a request for waiver filed in accordance with this paragraph (b). A determination of hardship will be based upon all of the facts and circumstances. One factor in determining hardship will be the reasonableness of the incremental cost to the partnership of complying with the magnetic media filing requirements. Other factors, such as equipment breakdowns or destruction of magnetic media filing equipment, also may be considered. A request for waiver must be made in accordance with applicable revenue procedures or publications. The waiver will specify the type of partnership return and the period to which it applies. The waiver will also be subject to such terms and conditions

regarding the method of filing as may be prescribed by the Commissioner.

(c) *Failure to file.* If a partnership fails to file a partnership return on magnetic media in the manner required and when required to do so by this section, the partnership will be deemed to have failed to file the return in the manner prescribed for purposes of the information return penalty under section 6721. See § 301.6724–1(c)(3) for rules regarding the waiver of penalties for undue economic hardship relating to filing returns on magnetic media.

(d) *Meaning of terms.* The following definitions apply for purposes of this section:

(1) *Magnetic media.* The term *magnetic media* means any magnetic media permitted under applicable regulations, revenue procedures, or publications. These generally include magnetic tape, tape cartridge, and diskette, as well as other media (such as electronic filing) specifically permitted under the applicable regulations, procedures, or publications.

(2) *Partnership.* The term *partnership* means a partnership as defined in § 1.761–1(a) of this chapter.

(3) *Partner.* The term *partner* means a member of a partnership as defined in section 7701(a)(2).

(4) *Partnership return.* The term *partnership return* means a form in Series 1065 (including Form 1065, U.S. Partnership Return of Income, and Form 1065–B, U.S. Return of Income for Electing Large Partnerships), along with the corresponding Schedules K–1 and all other related forms and schedules that are required to be attached to the Series 1065 form.

(5) *Partnerships with more than 100 partners.* A partnership has more than 100 partners if, over the course of the partnership's taxable year, the partnership had more than 100 partners, regardless of whether a partner was a partner for the entire year or whether the partnership had over 100 partners on any particular day in the year. For purposes of this paragraph (d)(5), however, only those persons having a direct interest in the partnership must be considered partners for purposes of determining the number of partners during the partnership's taxable year.

(e) *Examples.* The following examples illustrate the provisions of paragraph (d)(5) of this section. In the examples, the partnerships utilize the calendar year, and the taxable year in question is 2000:

Example 1. Partnership P had five general partners and 90 limited partners on January 1, 2000. On March 15, 2000, 10 more limited partners acquired an interest in P. On September 29, 2000, the 10 newest partners sold their individual partnership interests to C, a corporation which was one of the original 90 limited partners. On December 31, 2000, P had the same five general partners and 90 limited partners it had on January 1, 2000. P had a total of 105 partners over the course of partnership taxable year 2000. Therefore, P must file its 2000 partnership return on magnetic media.

Example 2. Partnership Q is a general partnership that had 95 partners on January 1, 2000. On March 15, 2000, 10 partners sold their individual partnership interests to corporation D, which was not previously a partner in Q. On September 29, 2000, corporation D sold one-half of its partnership interest in equal shares to five individuals, who were not previously partners in Q. On December 31, 2000, Q had a total of 91 partners, and on no date in the year did Q have more than 100 partners. Over the course of the year, however, Q had 101 partners. Therefore, Q must file its 2000 partnership return on magnetic media.

Example 3. Partnership G is a general partnership with 100 partners on January 1, 2000. There are no new partners added to G in 2000. One of G's partners, A, is a partnership with 53 partners. A is one partner, regardless of the number of partners A has. Therefore, G has 100 partners and is not required to file its 2000 partnership return on magnetic media.

(f) *Effective date.* In general, this section applies to partnership returns for taxable years ending on or after December 31, 2000. However, electing large partnerships under section 775 and partnerships using foreign addresses on their Series 1065 forms are not required to file using magnetic media for taxable years ending before January 1, 2001.

Par. 3. Section 301.6721–1 is amended by removing the third, fourth, and fifth sentences of paragraph (a)(2)(ii) and adding four sentences in their place to read as follows:

§ 301.6721–1 Failure to file correct information returns.

(a) * * *

(2) * * *

(ii) * * * However, no penalty is imposed under paragraph (a)(1) of this section solely by reason of any failure to comply with the requirements of section 6011(e)(2), except to the extent that such a failure occurs with respect to more than 250 information returns (the 250-threshold requirement) or in the case of a partnership with more than 100 partners, more than 100 information returns (the 100-threshold requirement) (collectively, the threshold requirements). Each Schedule K–1 considered in applying the 100-threshold requirement will be treated as a separate information return. These threshold requirements apply separately to each type of information return required to be filed. Further, these threshold requirements apply separately to original and corrected returns. * * *

* * * * *

Approved: October 29, 1999.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 99–29087 Filed 11–10–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1917 and 1918

Office of Management and Budget (OMB) Control Numbers Assigned Under the Paperwork Reduction Act of 1995

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is notifying the public that the Office of Management and Budget (OMB) recently approved a number of information collection requirements in OSHA's regulations on Marine Terminals and Safety and Health Regulations for Longshoring. OSHA requested OMB approval for these requirements under the Paperwork Reduction Act of 1995. The Agency is now publishing the control numbers assigned by OMB to the approved requirements, as well as their expiration dates, in new sections of the regulations in table format.

EFFECTIVE DATE: November 12, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Bielaski, Office of Regulatory Analysis, Directorate of Policy, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3627; 200 Constitution Avenue, NW., Washington, DC 20210; telephone: 202–693–2444; FAX: 202–693–1641.

SUPPLEMENTARY INFORMATION:

I. Background

OSHA has a number of provisions in its occupational safety and health standards that require employers to collect or prepare information. The Paperwork Reduction Act of 1995 specifies that the Office of Management and Budget (OMB) must approve these information collection requirements at least once every three years; the Agency cannot impose a penalty on employers

for violating collection of information requirements unless these requirements have OMB approval. When OMB approves collection of information requirements, it assigns them control numbers and expiration dates. The Agency must then notify the public of OMB's approval of the information collection requirements by publishing the assigned control numbers and expiration dates.

In the past, OSHA listed the OMB control numbers and expiration dates in 29 CFR parts 1917 (Marine Terminals) and 1918 (Safety and Health Regulations for Longshoring) by printing them at the end of each section or subpart in which they appeared. However, to make the collection of information requirements easily accessible and readily identifiable, OSHA is adding new sections to 29 CFR parts 1917 and 1918 that provide the expiration dates, as well as a list of the sections and paragraphs containing these requirements and their OMB control numbers.

II. Exemption From Notice-and-Comment Rulemaking

OSHA has determined that it is not necessary to provide for public notice and comment on this action under either section 4 of the Administrative Procedures Act (5 U.S.C. 553) or under section 6(b) of the Occupational Safety and Health Act (29 U.S.C. 655(b)) because this action does not affect the substantive requirements or coverage of the affected standards. Accordingly, this document does not modify or revoke existing rights or obligations, nor does it establish new ones. With this action, the Agency is only providing information to the public. OSHA, therefore, concludes that rulemaking within the meaning of 5 U.S.C. 553(b)(3)(B) is unnecessary and that, consistent with 29 CFR 1911.5, good cause exists for dispensing with the public-comment provisions of section 6(b) of the Occupational Safety and Health Act of 1970.

III. Exemption From the Requirement To Delay the Effective Date

OSHA finds that this final rule provides control numbers and expiration dates that will be helpful to the regulated community in determining the status of existing information collection requirements, and that this final rule accomplishes this purpose without increasing employer burden or decreasing employee protection. Therefore, the Agency concludes that, consistent with 5 U.S.C. 553(d)(3) and 29 CFR 1911.5, good cause exists for making this final rule effective upon publication in the **Federal Register**.

IV. Authority

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is Secs. 4, 6(b), and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657), Sec. 41 of the Longshore and Harbor Workers' Act (33 U.S.C. 941), the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 6–96 (62 FR 111), as applicable; and 29 CFR 1911.5.

List of Subjects

29 CFR Part 1917

Hazardous substances, Longshore and harbor workers, Occupational safety and health, Reporting and recordkeeping requirements.

12 CFR Part 1918

Freight, Hazardous substances, Longshore and harbor workers, Occupational safety and health, Reporting and recordkeeping requirements, Vessels.

Signed at Washington, DC this 20th day of October 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

OSHA amends 29 CFR parts 1917 and 1918 as follows:

PART 1917—MARINE TERMINALS

1. The authority citation for part 1917 is revised to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 6–96 (62 FR 111), as applicable; and 29 CFR part 1911.

Section 1917.28 also issued under 5 U.S.C. 553.

Section 1917.29 also issued under Sec. 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (49 U.S.C. 1801–1819 and 5 U.S.C. 553).

2. The heading of subpart A is revised to read as follows:

Subpart A—General Provisions

3. Section 1917.4 is added to subpart A to read as follows:

§ 1917.4 OMB control numbers under the Paperwork Reduction Act.

The following list identifies the 29 CFR citations for sections or paragraphs in this part that contain a collection of information requirement approved by the Office of Management and Budget (OMB). The list also provides the control number assigned by OMB to each approved requirement; control number 1218–0196 expires on May 31, 2002 and control number 1218–0003 expires on July 31, 2001. The list follows:

29 CFR citation	OMB control number.
1917.17(n)	1218–0196
1917.17(o)	1218–0196
1917.23(b)(1)	1218–0196
1917.23(b)(2)	1218–0196
1917.23(d)(4)	1218–0196
1917.24(b)	1218–0196
1917.24(d)	1218–0196
1917.25(a)	1218–0196
1917.25(b)	1218–0196
1917.25(c)	1218–0196
1917.25(f)	1218–0196
1917.26(d)(7)	1218–0196
1917.30(a)(1)	1218–0196
1917.30(a)(5)(iii)	1218–0196
1917.42(b)(1)	1218–0196
1917.42(b)(4)	1218–0196
1917.42(c)(1)	1218–0196
1917.42(d)(1)	1218–0196
1917.42(g)(3)	1218–0003
1917.42(h)(1)	1218–0196
1917.42(h)(4)	1218–0003
1917.42(h)(5)	1218–0196
1917.44(e)	1218–0196
1917.44(h)	1218–0196
1917.45(f)(1)(i)	1218–0196
1917.45(f)(4)(iv)	1218–0196
1917.45(f)(6)	1218–0196
1917.45(g)(2)	1218–0196
1917.45(g)(3)(iii)	1218–0196
1917.45(g)(8)	1218–0196
1917.45(k)(1)	1218–0196
1917.45(k)(4)	1218–0196
1917.46(a)(1)(v)	1218–0196
1917.50(c)(1)	1218–0003
1917.50(c)(3)	1218–0003
1917.50(c)(4)(i)	1218–0003
1917.50(c)(5)(ii)	1218–0003
1917.50(c)(5)(iii)	1218–0003
1917.50(e)	1218–0003
1917.50(g)(1)	1218–0003
1917.50(h)	1218–0003
1917.71(a)	1218–0196
1917.71(b)(2)(i)	1218–0196
1917.71(b)(2)(ii)	1218–0196
1917.71(b)(6)(ii)	1218–0196
1917.71(f)(4)	1218–0196
1917.111(b)	1218–0196
1917.113	1218–0196
1917.115(c)	1218–0196
1917.116(e)	1218–0196
1917.116(g)	1218–0196
1917.117(a)	1218–0196
1917.117(b)	1218–0196
1917.117(d)	1218–0196
1917.117(e)	1218–0196
1917.117(f)	1218–0196
1917.117(l)	1218–0196
1917.118(e)(4)(i)	1218–0196
1917.119(e)	1218–0196
1917.122(a)	1218–0196
1917.122(b)	1218–0196
1917.128(b)(1)–(b)(4)	1218–0196
1917.151(e)(5)	1218–0196

29 CFR citation	OMB control number.
1917.152(d)(2)(v)	1218–0196
1917.152(d)(2)(vi)	1218–0196

Subpart C—Cargo Handling Gear and Equipment

§ 1917.50 [Amended]

4. In § 1917.50, the OMB parenthetical at the end of the section is removed.

PART 1918—SAFETY AND HEALTH REGULATIONS FOR LONGSHORING

1. The authority citation for part 1918 is revised to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 6–96 (62 FR 111), as applicable; and 29 CFR part 1911.

Section 1918.90 also issued under 5 U.S.C. 553.

Section 1918.100 also issued under Sec. 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (49 U.S.C. 1801–1819 and 5 U.S.C. 553).

2. The heading for subpart A is revised to read as follows:

Subpart A—General Provisions

3. New § 1918.4 is added to subpart A to read as follows:

§ 1918.4 OMB control numbers under the Paperwork Reduction Act.

The following list identifies the 29 CFR citations for sections or paragraphs in this part that contain a collection of information requirement approved by the Office of Management and Budget (OMB). The list also provides the control number assigned by OMB to each approved requirement; control number 1218–0196 expires on May 31, 2002 and control number 1218–0003 expires on July 31, 2001. The list follows:

29 CFR citation	OMB control No.
1918.22(g)	1218–0196
1918.24(i)(1)	1218–0196
1918.61(b)(2)	1218–0196
1918.61(c)	1218–0196
1918.61(f)(1)	1218–0003
1918.61(f)(2)	1218–0003
1918.61(g)	1218–0003
1918.61(h)	1218–0003
1918.61(i)	1218–0003
1918.62(b)(1)	1218–0196
1918.62(b)(5)	1218–0196
1918.62(c)(1)	1218–0196
1918.62(d)(1)	1218–0196
1918.62(g)(3)	1218–0196
1918.62(g)(4)	1218–0196
1918.62(h)(1)	1218–0196
1918.62(h)(3)(ii)	1218–0196
1918.62(h)(4)	1218–0196
1918.64(k)(1)	1218–0196
1918.64(k)(2)	1218–0196
1918.65(b)(1)	1218–0196
1918.66(a)(2)	1218–0196
1918.66(a)(8)	1218–0196
1918.66(a)(9)	1218–0196
1918.66(a)(11)	1218–0196
1918.66(a)(15)	1218–0196
1918.66(d)(2)	1218–0196
1918.66(d)(4)	1218–0196
1918.66(f)(1)(v)	1218–0196
1918.85(a)	1218–0196
1918.85(b)(4)(ii)	1218–0196
1918.85(k)(13)	1218–0196
1918.86(b)	1218–0196
1918.86(e)	1218–0196
1918.86(g)	1218–0196
1918.86(h)	1218–0196
1918.93(b)	1218–0196
1918.93(d)(4)	1218–0196
1918.94(c)	1218–0196
1918.96(e)(2)	1218–0196
1918.97(d)(7)	1218–0196
1918.100(a)	1218–0196
1918.100(e)(3)	1218–0196

[FR Doc. 99–28335 Filed 11–10–99; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–074–FOR]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; correction.

SUMMARY: This notice corrects OSM's decision on an amendment submitted by the State of West Virginia as a modification to its permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSM published its decision on the provision in the October 4, 1995, **Federal Register** (60 FR 51900). The decision being corrected concerns bond forfeiture, and specifically concerns the liability for reclamation costs that are in excess of the amount of bond forfeited. This correction is intended to comply with the decision of the United States District Court for the Southern District of West Virginia in *Cat Run Coal Co.* v. *Babbitt*, No. 2: 95–1063 (S.D. W.Va. Aug. 8, 1996).

EFFECTIVE DATE: November 12, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

Background

In a series of three letters dated June 28, 1993, and July 30, 1993 (Administrative Record Numbers WV–888, WV–889, and WV–893), the West Virginia Division of Environmental Protection (WVDEP) submitted an amendment to its approved permanent regulatory program. The amendment included numerous revisions to the West Virginia Surface Coal Mining and Reclamation Act, and the West Virginia Surface Mining Reclamation Regulations (CSR 38–2–1 *et seq.*). OSM grouped the proposed revisions that concern reclamation bonding into one amendment that was approved, with exceptions, in the October 4, 1995, **Federal Register** (60 FR 51900). In that notice, OSM approved an amendment to CSR 38–2–12.4.e. concerning the forfeiture of reclamation bonds. Specifically, subsection 12.4.e. concerns the liability for reclamation costs that are in excess of the amount of bond forfeited. The provision that OSM approved provided, in part, that ''[t]he operator, permittee, or other responsible party shall be liable for all costs in excess of the amount forfeited.''

Need for Correction

On August 8, 1996, the Court in *Cat Run Coal Co.* v. *Babbitt* vacated OSM's decision to approve CSR 38–2–12.4.e. Specifically, the Court vacated OSM's approval of the phrase ''other responsible party,'' because it determined that the approval violated the notice and comment requirements of the Administrative Procedure Act (APA), 5 U.S.C. 500 *et seq.*, as well as the APA requirement to ''adopt a concise general statement of * * * [the rule's] basis and purpose.'' *Cat Run*, Slip op. at 9 through 15. The Court also found that OSM failed to ascertain the precise meaning and scope of the term ''other responsible parties,'' and that, as a result, could not reach a reasoned and informed conclusion as to whether the proposal was consistent with SMCRA. Slip op. at 12 through 14. Finally, the Court found that CSR 38–2.12.4.e. was inconsistent with SMCRA's objective of internalizing the liability for reclamation of surface coal mining operations, because it purported to hold parties other than surface coal mining permittees and operators liable for reclamation costs in excess of site specific reclamation performance bond

amounts. Slip op. at 15 through 20. Consequently, we are amending our approval of CSR 38–2–12.4.e. to show that the phrase ''other responsible party'' is not approved. In addition, we are requiring that CSR 38-2–12.4.e. be amended to delete the phrase ''other responsible party.''

The Federal regulations at 30 CFR 948.15 codifying decisions concerning the West Virginia program are being amended to implement this revised decision. After the October 4, 1995, publication of the final rule notice containing our approval of CSR 38–2–12.4.e., the format of the codification section at 30 CFR 948.15 was changed from individual paragraphs to a summary table. Therefore, the correction will have the following effect in the summary table at 30 CFR 948.15. In the table at 30 CFR 948.15, for the ''Original amendment submission date'' of June 28, 1993, and ''date of final publication'' of October 4, 1995 and February 21, 1996, the ''Citation/description'' section of the approved provisions will be revised to exclude from the approval of CSR 38–2–12.4.e. the phrase ''other responsible party.''

Administrative Procedure Act

The Administrative Procedure Act provides exceptions to its notice and public comment procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures in this case. Good cause exists because this rule merely removes regulations already declared void by the Court. Therefore, opportunity for prior comment is unnecessary and we are issuing this regulation as a final rule.

In addition, under 5 U.S.C. 553(d)(3), we find good cause for dispensing with the 30-day delay in the effective date of this final rule because we are merely removing a provision already declared void by the court.

Dated: October 22, 1999.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 948 is amended as set forth below:

PART 948—WEST VIRGINIA

1. The authority citation for Part 948 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 948.15 is amended in the table by revising the entry with the ''Date of Final Publication'' of October 4, 1995, February 21, 1996, to read as follows:

§ 948.15 Approval of West Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
June 28, 1993	October 4, 1995, February 21, 1996.	WV Code 22–1–4 through –8; 22–2; 22–3–3, –5, –7, –8, –9, a, –11(a), (g), –12, –13, –15, –17, –18, –19, –22, –26, –28, –40; 22B–1–4 through –12; 22B–3–4; 22B–4; CSR 38–2–1.2, –2, –3.1(o), .4, .6, .7, .8, .12, .14, .15, .16, .25, .26, .27(a), .28, .29, .30, .31(a), .32, .33, .34, –4, .1(a), .2 through .12, –5.2, .4, .5, –6, .3(b), .6, .8, –8.1,–9, –11.1 through .7, –12.2, .3, .4(a), (2)(B), (c) through (e) except the words ''other responsible party'' at (e) are not approved, .5, –13, –14.5, .8, .11, .12, .14, .15, .17, .18, .19, –15.2, –16.2, –17, –18.3, –20.1, .2, .4 through .7, –22; 38–2C–4, –5, –8.2, –10.1, –11.1; 38–2D–4.4(b), –6.3(a), –8.7(a).
*	*	*

3. Section 948.16 is amended by adding new paragraph (jjjj), to read as follows:

§ 948.16 Required regulatory program amendments.

* * * * *

(jjjj) By January 11, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to remove the words ''other responsible party'' at CSR 38–2–12.4.e.

[FR Doc. 99–29581 Filed 11–10–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–081–FOR]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing its approval, with certain exceptions, of an amendment to the West Virginia permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment revises the West Virginia Code to create the Office of Explosives and Blasting, and adds and amends sections of the West Virginia Code concerning blasting. The amendment is intended to improve the operational efficiency of the State program.

EFFECTIVE DATE: November 12, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION

I. Background on the West Virginia Program
II. Submission of the Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the West Virginia Program

On January 21, 1981, the Secretary of the Interior conditionally approved the West Virginia program. You can find

background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of the approval in the January 21, 1981, Federal Register (46 FR 5915–5956). You can find later actions concerning the West Virginia program and previous amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Submission of the Amendment

By letter dated March 25, 1999 (Administrative Record Number WV–1119), the West Virginia Division of Environmental Protection (WVDEP) submitted an amendment to the West Virginia program pursuant to 30 CFR 732.17. The amendment concerns changes to Chapter 22 Article 3 (§ 22–3) and § 22–1 of the West Virginia Code as contained in West Virginia Senate Bill (SB) 681. The amendment also creates the Office of Explosives and Blasting within the WVDEP, and adds and amends sections of the West Virginia Code concerning blasting. By letter dated April 1, 1999 (Administrative Record Number WV–1121), the WVDEP notified us that the West Virginia Governor signed SB–681, and provided a copy of the signed bill. We reviewed the amendment, and provided the WVDEP with our comments at a meeting on July 19, 1999 (Administrative Record Number WV–1136). The WVDEP responded to our comments in a letter dated August 10, 1999 (Administrative Record Number WV–1137).

We announced receipt of the proposed amendment in the April 20, 1999, **Federal Register** (64 FR 19327), invited public comment, and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on May 20, 1999. No one requested an opportunity to speak at a public hearing, so none was held. We reopened the public comment period on October 8, 1999 (64 FR 54845), to provide an opportunity for the public to review and comment on the information provided to us by the WVDEP at the July 19, 1999, meeting. The comment period closed on October 25, 1999.

III. Director's Findings

Following, according to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the proposed amendment. Any revisions that we do not specifically discuss below concern nonsubstantive wording changes or revised paragraph notations to reflect organizational changes that result from this amendment.

1. § 22–1–7 Offices Within the Division; Continuation of the Office of Water Resources

New section 22–1–7(a)(7) is added to provide that the director shall maintain the office of explosives and blasting, which is charged, at a minimum, with administering and enforcing, under the supervision of the director, the provisions of 22–3A, concerning the office of explosives and blasting.

There is no direct counterpart to this provision in SMCRA or the Federal regulations. Nevertheless, we find that the provision does not render the West Virginia program less stringent than SMCRA nor less effective than the Federal regulations.

2. § 22–3–13 General Environmental Protection Performance Standards for Surface Mining; Variances

(A) W.Va. Code 22–3–13(a) is amended to change the phrase ''* * * and other requirements as the director promulgates'' to read ''* * * and other requirements set forth in legislative rules proposed by the director.'' We find that this amendment is substantively identical to SMCRA at section 515(a). Further, this amendment clarifies the manner in which the director of the WVDEP must promulgate requirements under this provision.

(B) W.Va. Code 22–3–13(b)(3), concerning approximate original contour, is amended by changing the words ''The director shall promulgate rules governing variances * * *'' to read, ''The director shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, governing variances. * * *'' We find that this amendment clarifies the manner in which the director of the WVDEP must promulgate regulations under this provision, and is not inconsistent with SMCRA at section 515.

(C) W.Va. Code 22–3–13(b)(15)(A): Paragraph (A), which concerns the general performance standard for providing advance written notice to local governments and residents of the planned blasting schedule, has been deleted. However, the State has added a new article 3A, which concerns the new Office of Explosives and Blasting. New section 22–3A–4(a)(8) provides that the office of explosives and blasting shall propose rules that shall include provisions for requiring mining operators to provide adequate advance written notice of the proposed blasting schedule. Such notice shall be made to local governments, owners and occupants living within the distances prescribed in section 22–3–13a(a). New section 22–3A–4(a)(5) provides that the office of explosives and blasting shall propose rules that shall provide a procedure to warn of impending blasting to the owners or occupants adjoining the blasting area. In addition, the currently approved West Virginia regulations at Code of State Regulations (CSR) 38–2–6.3.a. provide for public notice of blasting operations. These blasting schedule notice requirements are applicable to both surface and underground mining operations. CSR 38–2–6.3.a. requires the operator to publish a blasting schedule in a newspaper of general circulation in the county of the proposed permit area and copies of the schedule must be distributed by certified mail to local governments, public utilities and each resident within ½ mile of the blasting site. Finally, the State regulations at CSR 38–2–6.5.b. concerning safety precautions provide that a warning signal audible to a range of ½ mile from the blast site shall be given before each blast. Consequently, we find that the audible warning signal requirements at CSR 38–2–6.5.b. satisfy the daily notice requirement under section 515(b)(15)(A) of SMCRA. Therefore, we find that the deletion of § 22–3–13(b)(15)(A) does not render the West Virginia program less stringent than SMCRA at section 515(b)(15)(A), and can be approved.

(D) W.Va. Code 22–3–13(b)(15)(C): Paragraph (C), which concerns the general performance standard for limiting the size, type, and frequency of blasting to prevent injury to persons and damage to property and the environment has been deleted. Concurrently, the State has added a new article 3A, which creates the Office of Explosives and Blasting. New section 22–3A–4(a)(6) provides that the office of explosives and blasting shall propose rules that shall include a procedure to limit the type of explosives and detonating equipment, as well as size, type, and frequency of blasts based upon the physical conditions of the site to prevent injury to persons and damage to property and the environment. When promulgated, the new regulations required by 22–3A–4(a)(6) should provide a replacement for the deleted requirement at section 22–3–13(b)(15)(C). However, during our review of this amendment, we were concerned that in the meantime, the deletion of the performance standard at section 22–3–13(b)(15)(C) may leave a gap in the West Virginia program and render it less stringent than SMCRA at section 515(b)(15)(C). In response to our concern, the WVDEP stated in a letter dated August 10, 1999 (Administrative

Record Number WV–1137) that the deletion does not leave a gap in the West Virginia program. Specifically, the WVDEP stated that the blasting provisions at CSR 38–2–6.5.a. continue to apply and provide that blasting shall be conducted in such a way so as to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course channel, or availability of surface or groundwater outside the permit area. The WVDEP also added that there are specific limitations on blast design contained in CSR 38–2–6.4 and 6.5 which in effect limit the explosives and type of blast. These regulations remain in effect under the authority of W.Va. Code sections 22–3–2(b)(1) and (2), and 22–3–2(c)(1), (3), and (5). Finally, the WVDEP acknowledged that re-inserting the deleted language at section 22–3–13(b)(15)(C) would remove any uncertainty relative to the authority of WVDEP to protect the public from the effects of blasting.

Therefore, we are approving the deletion of section 22–3–13(b)(15)(C) with the understanding that, as explained by the WVDEP, the West Virginia program regulations at CSR 38–2–6.5.a. and CSR 38–2–6.4 and 6.5 continue in effect and provide the protection afforded by the deleted provision. In addition, we encourage West Virginia to re-insert the deleted section 22–3–13(b)(15)(C) in the W.Va. Code.

(E) W.Va. Code 22–3–13(b)(15)(D) concerning blaster certification, now re-lettered as paragraph (B), is amended by deleting the word ''director'' and adding in its place the words ''office of explosives and blasting.'' We find that this amendment does not render the West Virginia program less stringent than SMCRA section 515(b)(15)(D) and can be approved.

(F) W.Va. Code 22–3–13(b)(15)(E), concerning the right to request a pre-blast survey, has been deleted. However, the State has added a new article 3A, which concerns the new Office of Explosives and Blasting. New section 22–3A–4(a)(2) provides that the office of explosives and blasting shall propose rules that shall provide specific minimum requirements for pre-blast surveys, as set forth in new section 22–3–13a concerning pre-blast survey requirements. This new section contains many of the requirements contained in section 22–3–13(b)(15)(E). Please note in Finding 3, however, that we are not approving new section 22–3–13a in its entirety. Nevertheless, the approved West Virginia program currently contains counterparts to the deleted requirements at CSR 38–2–6.8.a.1. and 38–2–6.8.a.3. Therefore, we find the deletion of section 22–3–13(b)(15)(E) does not render the West Virginia program less stringent than section 515(b)(15)(E) of SMCRA.

(G) W.Va. Code 22–3–13(b)(21) is amended by providing that the spoil may be placed outside the permit area if the director finds the placing of spoil material outside the permit area will result in environmental benefits. The change proposed by the State is a non-substantive change and, therefore, our approval is not needed. We note that the approved State regulations at CSR 38–2–14.14.c. currently limit the placement of excess spoil to another permitted area or to an approved project conducted under the Abandoned Mine Land Program. Therefore, section 22–3–13(b)(21) remains no less stringent than sections 515(b)(21) and 515(b)(22)(B) of SMCRA.

(H) W.Va. Code 22–3–13(e), concerning variances from approximate original contour, is amended by changing the words, ''The director may promulgate rules * * *'' to read ''The director may propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, that permit variances from approximate original contour * * *.'' We find that this amendment clarifies the manner in which the director of the WVDEP must promulgate regulations under this provision, and is not inconsistent with SMCRA at section 515(e)(5). Furthermore, to implement these requirements, the State has promulgated existing rules at CSR 38–2–14.12 to govern the approval of steep slope mining variances from approximate original contour.

(I) W.Va. Code 22–3–13(f) concerning coal mine waste piles is amended to provide that the director shall propose rules for legislative approval, rather than promulgate rules. We find that this amendment clarifies the manner in which the director of the WVDEP must promulgate regulations under this provision, and is not inconsistent with SMCRA at section 515(f).

3. § 22–3–13a Pre-blast Survey Requirements

(A) This section is all new. Section 22–3–13a(a) provides that at least 30 days before blasting, the following notifications shall be made in writing to all owners and occupants of man-made dwellings or structures that the operator or designee will perform pre-blast surveys: (1) for surface mining operations less than 200 acres in a single permitted area or less than 300 acres of contiguous or nearly contiguous area of two or more permitted areas, the notifications shall be to all owners and occupants within five tenths of a mile of the permitted area or areas; (2) for all other surface mining operations, the required notifications shall be to all owners or occupants within five tenths of a mile of the permitted area or areas, or seven tenths of a mile of the proposed blasting site, whichever is greater. For operations described at section 22–3–13a(a)(1), the requirements of subsection 22–3–13a(a) are substantively identical to and therefore no less stringent than SMCRA at section 515(b)(15)(E) concerning pre-blast surveys. For operations described at section 22–3–13a(a)(2), the requirements of subsection 22–3–13(a) provide for more stringent blasting controls of surface coal mining operations than do the provisions of SMCRA section 515(b)(15)(E), and are, therefore, not inconsistent with section 515(b)(15)(E).

(B) Section 22–3–13a(b) adds a requirement that operators who have already made pre-blast surveys prior to the effective date of section 13a, and who otherwise would have been subject to the requirements of section 22–3–13a(a)(2) shall notify owners and occupants within seven tenths of a mile of the blasting site of the right to request a pre-blast survey, unless a written waiver is executed in accordance with section 22–3–13(c). Any such additional surveys must be performed within ninety days of the effective date of this section. We find that section 22–3–13a(b) provides for more stringent blasting controls of surface coal mining operations than do the provisions of SMCRA section 515(b)(15)(E), and it is, therefore, not inconsistent with section 515(b)(15)(E).

(C) Section 22–3–13a(c) provides for the written waiver of the right to a pre-blast survey. This section also provides that if access to conduct a pre-blast survey is denied and a waiver is not provided, or to the extent that access to any portion of the structure, underground water supply or well is impossible or impractical under the circumstances, the pre-blast survey shall indicate that access was refused, impossible or impractical. The operator or designee shall execute a sworn affidavit explaining the reasons and circumstances surrounding the refusals. The office of explosives and blasting shall not determine the pre-blast survey to be incomplete because it indicates that access was refused, impossible, or impractical. The operator shall send copies of all written waivers and affidavits to the office of explosives and blasting.

Neither SMCRA nor the Federal regulations contains counterparts to the

proposed provisions for waivers of pre-blasting surveys, or the provisions concerning the impossibility or impracticality of access to conduct a survey. We find, however, that since a pre-blasting survey must be requested by an owner or occupant, that the waiving of such a survey in writing by an owner or occupant is not inconsistent with the pre-blast survey requirements of SMCRA at section 515(b)(15)(E). In addition, we find the proposed provisions concerning the impossibility or impracticality of access to be reasonable, and not inconsistent with the pre-blasting survey requirements of SMCRA at section 515(b)(15)(E), and no less effective than the Federal regulations at 30 CFR 816/817.62(b) and (c).

(D) Section 22–3–13a(d) provides that if a pre-blast survey was waived by the owner and the property sold, the new owner may request a pre-blast survey from the operator. While this subsection has no precise Federal counterpart, we find it to be consistent with the pre-blast survey requirements of SMCRA at section 515(b)(15)(E).

(E) Section 22–3–13a(e) provides that an owner may request from the operator a pre-blast survey on structures constructed after the original pre-blast survey. While this subsection has no direct Federal counterpart, we find it to be consistent with the pre-blast survey requirements of SMCRA at section 515(b)(15)(E).

(F) Section 22–3–13a(f) provides for the information that a pre-blast survey must contain. Such information must include: The names, addresses or description of the location of the structure and the names, addresses and telephone numbers of the owner and residents of the structure, as well as the structure number from the permit blasting map; the current home insurer of the owner and residents of the structure; the names, addresses and telephone numbers of the surface mining operator, as well as the permit number; the current general liability insurer of the surface mining operator; the name, address and telephone number of the person or firm conducting the survey, as well as the name of the current general liability insurer of that person or firm; the date of the pre-blast survey and the date the survey was mailed or delivered to the office of explosives and blasting; a general description of the structure and its appurtenances; a general description of the survey methods; written documentation and drawings, videos or photos of the pre-blast defects, other physical conditions, and unusual or substandard construction of all structures, appurtenances and water sources which could be affected by blasting; written documentation of the type of water supply; a description of any portion of the structure and appurtenances not documented or photographed and the reasons; the signature of the person performing the survey; and any other information required by rule. While this subsection has no precise Federal counterpart, we find it to be consistent with the pre-blast survey requirements of SMCRA at section 515(b)(15)(E) and the Federal regulations at 30 CFR 816/817.62.

(G) Section 22–3–13a(g) provides that pre-blast surveys shall be submitted to the office of explosives and blasting at least 15 days prior to the start of any ''production blasting.'' The office shall review each survey for form and completeness only, and notify the operator of any deficiencies. The office shall notify the owner and occupant of the location and availability of the pre-blast survey, and provide a copy upon request.

Our first interpretation of this provision was that pre-blast surveys would only be provided for ''production blasting.'' This would render the West Virginia program less effective than the Federal regulations at 30 CFR 816.61(a) and 817.61(a) and (b) which provide that the Federal blasting provisions at 30 CFR 816/817.61 through 816/817.68 apply to all surface blasting activities, including surface blasting incident to underground coal mining. In response to our concern, the WVDEP clarified that the intent of this provision is to single out ''production blasting'' and to require that such blasting requires the submittal of the pre-blast survey to the office of explosives and blasting at least 15 days prior to the commencement of ''production blasting.'' Other blasting (construction blasting) operations, the WVDEP explained, must still comply with the pre-blast survey requirements at CSR 38–2–6.8.a.4. which provide that surveys requested more than 10 days before the planned initiation of blasting shall be completed before blasting operations begin. In effect, the pre-blast survey requirement for ''production blasting'' is a higher standard than that which is applied to other blasting operations.

The proposed provision also requires that the office of explosives and blasting shall provide a copy of the pre-blast survey to the owner and/or occupant upon request. However, the Federal regulations at 30 CFR 816/817.62(d) provide that a copy of the pre-blast survey report be provided to the owner or occupant, even if the owner or occupant does not specifically request a copy. Therefore, the words ''upon request'' render the West Virginia program less effective than the Federal regulations at 30 CFR 816/817.62(d) and cannot be approved.

We are approving this provision with the understanding that, as explained by the WVDEP, the time limits for submittal of pre-blast surveys at CSR 38–2–6.8.a.4. continue to apply to all blasting other than ''production blasting.'' However, the words ''upon request'' are not approved. In addition, we are requiring that the State amend its program to remove the words ''upon request'' from subsection (g), or otherwise amend its program to require that a copy of the pre-blast survey be provided to the owner and/or occupant even if the owner or occupant does not specifically request a copy. In addition, we are only approving this provision to the extent that the State continues to implement CSR 38–2–6.8.a.5. to allow any person who disagrees with the survey to file a detailed description of the areas of disagreement.

(H) Section 22–3–13a(h) provides that the operator shall file notice of the pre-blast survey or waiver in the office of the county clerk of the county commission of the county where the man-made dwelling or structure is located to notify the public that the pre-blast survey has been conducted or waived. The office of explosives and blasting shall prescribe the form to be used. While this subsection has no precise Federal counterparts, we find that it is not inconsistent with SMCRA section 515(b)(15)(E) concerning pre-blast surveys and can, therefore, be approved.

(I) Section 22–3–13a(i) provides that the chief of the office of explosives and blasting shall propose rules for legislative approval in accordance with Article 29A–3 of the State Code, dealing with pre-blast survey requirements and setting the qualifications for individuals and firms performing pre-blast surveys. We find this provision to be consistent with SMCRA section 515(b)(15)(E) concerning pre-blast surveys and that it can be approved.

(J) Section 22–3–13a(j) provides that the provisions of section 22–3–13a shall not apply to underground coal mining operations, and the extraction of minerals by underground mining methods or the surface impacts of the underground mining methods. Except as discussed below, we find that this provision is consistent with SMCRA section 515(b)(15)(E) and the Federal regulations at 30 CFR 816/817.62 which provide for pre-blast surveys only for surface mining operations and for surface blasting activities incident to

underground coal mining. At subsection 22–3–13a(j)(2) the phrase ''or the surface impacts of the underground mining methods'' renders the West Virginia program less effective than the Federal regulations at 30 CFR 817.61(a). 30 CFR 817.61(a) provides that the Federal blasting provisions at 30 CFR 817.61 through 817.68 apply to surface blasting activities incident to underground coal mining, including, but not limited to, initial rounds of slopes and shafts. Consequently, the proposed exclusion of the surface impacts of the underground mining methods from the requirements of section 22–3–13a renders the West Virginia program less effective than the Federal regulations. Therefore, we are approving this provision, except for the phrase ''or the surface impacts of the underground mining methods'' at section 22–3–13a(j)(2), which is not approved. In addition, we are requiring the State to amend its program to remove this phrase or otherwise amend its program to clarify that the surface blasting impacts of underground mining operations are subject to the requirements of 22–3–13a.

4. § 22–3–22a Blasting Restrictions; Site Specific Blasting Design Requirement

(A) This is a new section. Section 22–3–22a(a) provides that for this section, the term ''production blasting'' means blasting that removes the overburden to expose underlying coal seams and shall not include construction blasting. There is no counterpart to this definition in SMCRA or the Federal regulations. We find, however, that the definition is not inconsistent with the blasting requirements in SMCRA at section 515(b)(15) nor the Federal regulations concerning blasting at 30 CFR 816/817.61–816/817.68 and can be approved.

(B) Section 22–3–22a(b) provides that for this section, the term ''construction blasting'' means blasting to develop haul roads, mine access roads, coal preparation plants, drainage structures, or underground coal mine sites and shall not include production blasting. There is no counterpart to this definition in SMCRA or the Federal regulations. We find, however, that the definition is not inconsistent with the blasting requirements in SMCRA at section 515(b)(15) nor the Federal regulations concerning blasting at 30 CFR 816/817.61–816/817.68 and can be approved.

(C) Section 22–3–22a(c) provides that for this section, the term ''protected structure'' means any of the following that are outside the permit area: an occupied dwelling, a temporarily unoccupied dwelling which has been occupied within the past ninety days, a public building, a structure for commercial purposes, a school, a church, a community or institutional building, a public park or a water well. There is no counterpart to this definition in SMCRA or the Federal regulations. We find, however, that the definition is not inconsistent with the blasting requirements in SMCRA at section 515(b)(15) nor the Federal regulations concerning blasting at 30 CFR 816/817.61–816/817.68 and can be approved.

(D) Section 22–3–22a(d) provides that ''production blasting'' is prohibited within 300 feet of a protected structure or within 100 feet of a cemetery. This provision has no precise Federal counterpart. However, section 522(e)(5) of SMCRA prohibits surface coal mining operations, except those with valid existing rights (VER), from being conducted within 300 feet of any occupied dwelling, unless waived by the owner, or within 300 feet of any public building, school, church, community or institutional building, or public park, or within 100 feet of a cemetery. The West Virginia counterpart to section 522(e)(5) is at W.Va. Code section 22–3–22(d)(4). Upon initial review of this provision, we were concerned that because the new prohibitions were limited to production blasting, they implicitly negated the mining prohibitions contained in W.Va. Code section 22–3–22(d)(4), with respect to construction blasting. In response to our concern, the WVDEP explained that section 22–3–22(d)(4) of the W.Va. Code remains in effect for all blasting operations. New section 22–3–22a(d) is intended to prohibit ''production blasting,'' despite a showing of VER, within 300 feet of a protected structure or 100 feet of a cemetery. In other words, operators possessing VER are exempt from the prohibitions of section 22–3–22(d)(4), but they are not exempt from the production blasting prohibitions of section 22–3–22a(d). Therefore, we are approving this provision with the understanding that, as explained by the WVDEP, the prohibitions contained in W.Va Code 22–3–22(d)(4) continue to apply to all blasting operations.

(E) Section 22–3–22a(e) provides that blasting within 1,000 feet of a protected structure shall have a site specific blast design approved by the Office of Explosives and Blasting. The design shall limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts to do the following: (1) Prevent injury to persons; (2) prevent damage to property outside the permit area; (3) prevent adverse impacts on any underground mine; (4) prevent change in the course, channel or availability of ground or surface water outside the permit area; and (5) reduce dust outside the permit area. This provision also provides that in developing the blasting plan, consideration be given to such items as the physical condition, type and quality of construction of the protected structure, current use of the protected structure, and the concerns of the owner or occupant living in the protected structure. In its letter of August 10, 1999, the WVDEP clarified that section 22–3–22a(e) requires a site-specific blast design and not the generic blast design in the Federal rules. If the site-specific design is waived, then a blast design plan in accordance with CSR 38–2–6.5.g. must be submitted. However, the requirements of CSR 38–2–6.5.g.3 must be met with respect to all blast designs, whether they be site specific or generic. These requirements are also contained in the Federal regulations at 30 CFR 816/817.61(d)(3), and require that the blast design contain sketches of the drill patterns, delay patterns and decking, indicate the type and amount of explosives to be used, and contain a discussion of the design factors to be used to protect the public and meet applicable blasting regulatory limitations. Since the requirements of section 6.5.g.3. are not specifically included in W.Va. Code section 22–3–22a(e), we are approving it only to the extent that all blast designs, site specific and generic, comply with section 6.5.g.3. Otherwise, we find this provision to be not inconsistent with SMCRA section 515(b)(15)(C) which concerns the prevention of injury to persons and damage to property, and no less effective than the requirements of 30 CFR 816/817.67(a) and the 1,000-foot blast design standard at 30 CFR 816/817.61(d). We also recommend that the State remove the phrase ''in the blasting schedule'' at the end of the sentence or include the word ''identified'' before the phrase to clarify the intent of this provision.

(F) Section 22–3–22a(f) provides for the waiver in writing of the blasting prohibition within 300 feet, or the site specific restriction within 1000 feet. The operator shall send copies of all waivers to the Office of Explosives and Blasting. Waivers shall be valid during the life of the permit and renewals, and shall be enforceable against any subsequent owners or occupants of the protected structure. There is no direct counterpart to this provision in SMCRA or the Federal regulations. However, SMCRA

section 522(e)(5) prohibits surface coal mining operations, except those with VER, from being conducted within 300 feet of any occupied dwelling, unless waived by the owner, or within 300 feet of any public building, school, church, community or institutional building, or public park, or within 100 feet of a cemetery.

In response to our concern, the WVDEP explained that this provision, as well as the production blasting prohibition contained in section 22–3–22a(d), are in addition to the mining prohibitions contained in SMCRA section 522(e)(5) and its West Virginia program counterpart at section 22–3–22(d)(4) of the W.Va. Code. In other words, operators who propose to conduct production blasting within 300 feet of a protected structure or within 100 feet of a cemetery must not only possess VER, or, with respect to occupied dwellings, obtain a waiver from the owner in accordance with W.Va. Code section 22–3–22(d)(4), but must also obtain a specific waiver of the new production blasting prohibitions contained in W.Va. Code section 22–3–22a(d). Waivers granted by owners of occupied dwellings to the general prohibition on mining at W.Va. Code section 22–3–22(d)(4) are not enforceable against subsequent owners, unless the subsequent owners have actual or constructive knowledge of the waivers, in accordance with 30 CFR 761.11(e). However, waivers granted under 22–3–22a(f) are enforceable against all subsequent owners and occupants, including those without actual or constructive knowledge of the existence of the waivers.

As stated above, the prohibition on production blasting contained in section 22–3–22a(d) is in addition to and does not supersede the mining prohibitions contained in W.Va. Code 22–3–22(d)(4). As such, it is a more stringent land use or environmental control or regulation than is contained in SMCRA, and is therefore not inconsistent with SMCRA. *See* SMCRA section 505(b), 30 U.S.C. 1255(b). West Virginia is free to allow waivers of more stringent requirements as it sees fit. Therefore, the waiver at Section 22–3–22a(f) of the blasting prohibition at Section 22–3–22a(d) is approved.

As discussed above in Finding 4(E), if a waiver of the site specific restriction within 1000 feet of a protected structure is obtained, then a blast design plan in accordance with CSR 38–2–6.5.g. must be submitted. However, both site specific and generic blast designs must comply with CSR 38–2–6.5.g.3. With this condition, therefore, the allowance of the waiver at Section 22–3–22a(f) of the site specific blast design requirement at Section 22–3–22a(e) does not render the West Virginia program less effective than the Federal regulations at 30 CFR 816/817.61(d) and can be approved.

(G) Section 22–3–22a(g) provides that section 22–3–22a does not apply to: (1) underground coal mining operations; (2) the surface operations and surface impacts incident to an underground coal mine; and (3) the extraction of minerals by underground mining methods or the surface impacts of the underground mining methods. Section 22–3–22a(g) further provides that nothing in section 22–3–22a shall exempt any coal mining operation from the general performance standards contained in Section 22–3–13 and any implementing rules. Since the requirements of section 22–3–22a are in addition to those contained in the approved program, and do not supersede any of those requirements, we find that the exemptions contained in section 22–3–22a(g) do not render the State's program inconsistent with SMCRA section 515(b)(15), or the Federal regulations at 30 CFR 817.61(a).

5. § 22–3–23(c) Release of Bond or Deposits

Subsection 22–3–23(c)(3) concerning final bond release is amended to add a paragraph which provides that notwithstanding the bond release scheduling provisions of subdivisions (1), (2) and (3) of this subsection 22–3–23(c), if the operator completes the backfilling and reclamation in accordance with an approved post-mining land use plan that has been approved by the division of environmental protection and accepted by a local or regional economic development or planning agency for the county or region in which the operation is located, provisions for sound future maintenance are assured by the local or regional economic development or planning agency, and the quality of any untreated postmining water discharge complies with applicable water quality criteria for bond release, the director may release the entire amount of said bond or deposit. The director shall propose rules for legislative approval in accordance with the provisions of article three, chapter 29a of the W.Va. Code, to govern a bond release pursuant to the terms of this paragraph.

The new language added to this subdivision appears to allow the total release of the performance bond despite the bond release scheduling provisions of section 22–3–23(c)(1), (2), and (3). Such release could only take place if both backfilling and reclamation have been achieved in accordance with an approved post-mining land use plan. Further, the post-mining land use plan must have been approved by the WVDEP and accepted by a local or regional economic development or planning agency for the county or region in which the operation is located. In addition, provisions for sound future maintenance must be assured by the local or regional economic development or planning agency, and the quality of any untreated postmining water discharge must comply with applicable water quality criteria for bond release.

SMCRA at section 509(a) provides that before a permit is issued, the applicant must file a bond for performance, that is conditional upon the faithful performance of all the requirements of SMCRA and the permit. SMCRA at section 509(b) provides that liability under the bond shall be for the duration of the surface coal mining and reclamation operation and for a period coincident with the operator's responsibility for revegetation requirements in section 515 of SMCRA. SMCRA at section 515(b)(20) provides that the operation shall assume the responsibility for successful revegetation for a period of five years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with section 515(b)(19) concerning the establishment of a diverse, effective and permanent vegetative cover. Despite these revegetation requirements and the bond release provisions of section 519(c) of SMCRA and the Federal regulations at 30 CFR 800.40(c), the proposed provision appears to authorize the release of a performance bond prior to the end of the revegetation responsibility period. Since neither SMCRA nor the Federal regulations provide for exemptions to the bond release provisions, the proposed amendment, to the extent that it conflicts with the existing bond release requirements at Section 22–3–23 and CSR 38–2–12.2 would render the West Virginia program less stringent than SMCRA at section 519(c). In response to our concerns with this provision, the WVDEP requested that our decision on this provision be deferred, because the WVDEP is currently developing implementing regulations that it believes will address our concerns. Therefore, we are deferring our decision on Section 22–3–23(c). We will reconsider this proposed provision when the WVDEP submits the implementing regulations for our review and approval. In the meantime, the State

is prohibited from implementing these proposed bond release provisions.

6. § 22–3–24 Water Rights and Replacement; Waiver of Replacement

(A) This section is being amended to add new subsections (c), (d), (e), and (f). New subsection (c) provides that there is a rebuttable presumption that a mining operation caused damage to an owner's underground water supply if the inspector determines the following: (1) contamination, diminution or damage to an owner's underground water supply exists; and (2) a pre-blast survey was performed, consistent with the provisions of section 22–3–13a, on the owner's property including the underground water supply that indicated that contamination, diminution or damage to the underground water supply did not exist prior to the mining conducted at the mining operation. The operator conducting the mining operation shall: (1) provide an emergency drinking water supply within 24-hours; (2) provide a temporary water supply within 72-hours; (3) provide a permanent water supply within 30 days; and (4) pay all reasonable costs incurred by the owner in securing a water supply.

There is no direct counterpart to this provision in SMCRA or the Federal regulations. However, we find that this provision is not inconsistent with the water rights and replacement provisions at sections 717(b) and 720(a)(2) of SMCRA and to an extent constitutes a more stringent standard for water replacement than is provided for in SMCRA or the Federal regulations, in accordance with section 505(b). Therefore, the provision is approved.

(B) New subsection 22–3–24(d) provides that an owner aggrieved under the provisions of subsections (b) or (c) of this section, may seek relief in court or pursuant to the provisions of section 22–3A–5 concerning claims processing. There is no direct counterpart to this provision in SMCRA or the Federal regulations. However, we find that this provision is not inconsistent with the requirements of section 717(b) of SMCRA and can, therefore, be approved.

(C) New subsection 22–3–24(e) provides that the director shall propose rules for legislative approval to implement the requirements of this section. We find that this provision is not inconsistent with the water replacement provisions in SMCRA at section 717(b) and can, therefore, be approved.

(D) New subsection 22–3–24(f) provides that the rebuttable presumption provisions of subsection 22–3–24(c) shall not apply to underground coal mining operations, the surface operations and impacts incident to an underground coal mine, and the extraction of minerals by underground mining methods or the surface impacts of the underground mining methods. Since neither SMCRA nor the Federal regulations provide for rebuttable presumptions of water supply loss or damage due to surface or underground coal mining operations, we find that the provision is consistent with sections 717(b) and 720(a)(2) of SMCRA and can, therefore, be approved. However, it should be noted that the water replacement requirements of subsection 720(a)(2) of SMCRA are applicable to underground mining operations. The proposed State provision does not negate the State's water replacement requirements at subsection 22–3–24(b), and it would not relieve an operator of replacing a water supply which is adversely affected by an underground mining operation.

7. § 22–3–30a Blasting Requirements; Liability and Civil Penalties in the Event of Property Damage

(A) This section is new. Subsection 22–3–30a(a) provides that blasting of overburden and coal shall be conducted in accordance with the rules and laws established to regulate blasting. By doing so, the State is limiting all of its blasting requirements only to ''production blasting.'' We find this provision would render the West Virginia program less stringent than SMCRA section 515(b)(15) and less effective than the Federal regulations at 30 CFR 816/817.61(a). Specifically, the proposed provision only applies to the blasting of overburden and coal, whereas the Federal blasting provisions apply to all blasting at surface coal mining and reclamation operations and surface blasting activities incident to underground coal mining, including, but not limited to, initial rounds of slopes and shafts. Therefore, we are approving this provision, except for the phrase ''of overburden and coal'' which is not approved. Also, we are requiring the State to amend its program to remove the phrase ''of overburden and coal,'' or to otherwise clarify that its general surface coal mining blasting laws and regulations apply to all blasting at surface coal mining and reclamation operations and surface blasting activities incident to underground coal mining, including, but not limited to, initial rounds of slopes and shafts.

(B) Subsection 22–3–30a(b) provides the penalties to be imposed for each permit area or contiguous permit areas where blasting was out of compliance and resulted in property damage to a protected structure, other than wells, as defined in section 22–3–22a. The first offense carries a penalty of not less than $1,000.00 and not more than $5,000.00. The second offense and each subsequent offense within one year of the first offense carries a penalty of not less than $5,000.00 and not more than $10,000.00. The third offense, any subsequent offense within one year of the first offense, and any failure to pay any assessment within a reasonable time will subject the permit to a cessation order, which shall be released only when the permittee files a plan with the director assuring that additional violations will not occur, compensates for any property damages that have occurred due to the offense, and provides monetary or other assurances to compensate for future property damages. Second and subsequent offenses on any one permit area entitle the owner of a protected structure to a rebuttable presumption that the property damage was caused by the blasting offense, if a pre-blast survey was performed and the blasting is within seven tenths of a mile of the protected structure. No more than one offense shall arise out of a single ''shot,'' which means a single blasting event composed of one or multiple detonations, or the assembly of explosive materials for this purpose. One ''shot'' may be composed of numerous explosive charges detonated at intervals measured in milliseconds.

There is no direct counterpart to this provision in SMCRA or the Federal regulations. However, during our review of this provision, it appeared that the phrase ''other than wells'' which excludes wells from penalties to be imposed where blasting was out of compliance and resulted in property damage would render the West Virginia program less stringent than SMCRA at sections 515(b)(15)(C) and section 518(a). SMCRA at section 515(b)(15)(C) provides that blasting shall be limited so as to prevent injury to persons and damage to public and private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel or availability of ground or surface water outside the permit area. Wells are not excluded from the requirements of section 515(b)(15)(C). SMCRA at section 518(a) also provides for civil penalty assessment for violations of any provision of SMCRA. SMCRA does not exclude wells from this requirement.

In response to our concern with the phrase ''other than wells,'' the WVDEP

explained that new section 22–3–30a pertains only to production blasting violations that result in property damage. All other blasting related violations, including those cited for damage to wells, will utilize the penalty system described in CSR 38–2–20.

We note that the clear language of subsection 22–3–30a(b) indicates that it applies to all blasting that results in property damage to protected structures, rather than just to production blasting that results in damage to protected structures. Therefore, we cannot concur with the WVDEP's construction of subsection (b) in this regard. However, we agree with the WVDEP that the West Virginia program may reasonably be interpreted such that all other blasting related violations, including those cited for damage to water wells, will continue to be subject to the civil penalty provisions at CSR 38–2–20. Therefore, the exclusion of water wells from the coverage of the new requirements in section 22–3–30a(b) does not render the West Virginia program less stringent than section 518 of SMCRA or inconsistent with the Federal regulations at 30 CFR part 845.

We note that the proposed provision is silent on how the specific amount of a penalty would be determined. SMCRA at section 518(a) provides four criteria that should be considered that in determining the amount of a penalty: (1) the permittee's history of previous violations at the particular surface coal mining operation; (2) the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; (3) whether the permittee was negligent; and (4) the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation.

Therefore, we are approving section 22–3–30a(b) because blasting related enforcement actions taken for damage to wells, and all enforcement actions taken for blasting that does not cause damage to protected structures, will continue to be subject to the civil penalty requirements of CSR 38–2–20, rather than to the new requirements of this subsection, except as provided for in section 22–3–30a(e). Also, as noted below in Finding 7.H, violations for surface blasting activities incident to underground coal mining will continue to be subject to the requirements of CSR 38–2–20. We are also approving section 22–3–30a(b) upon the condition that the new rules to be developed by the State to implement this provision shall contain the four criteria listed above in determining the amount of a penalty for any type of blasting violation. In addition, the State may only implement this provision now, prior to promulgation of implementing regulations, to the extent that it applies the four criteria listed above and found in the State's program at W.Va. Code 22–3–17(c), to civil penalties assessed pursuant to this section.

(C) Subsection 22–3–30a(c) provides that the division of environmental protection may not impose penalties on an operator for the violation of any rule identified in 22–3–30a(a) that is merely administrative in nature. The meaning of this prohibition is unclear, and may allow the WVDEP to waive the assessment of a civil penalty on a cessation order issued for failure to abate a blasting related violation which is administrative in nature. If so, this new subsection is less stringent than section 518(a) of SMCRA which mandates the issuance of a civil penalty for any violation that leads to a cessation order. Therefore, this provision cannot be approved. The State may wish to clarify the meaning of the term ''administrative in nature'' in any regulation it may develop to implement this section, and if appropriate, we will reconsider this provision when the new regulations are submitted to OSM.

(D) Subsection 22–3–30a(d) provides that the remedies provided in this section are not exclusive and shall not bar an owner or occupant from any other remedy accorded by law. While this provision has no Federal counterpart, we find that it is not inconsistent with SMCRA or the Federal regulations and it can, therefore, be approved.

(E) Subsection 22–3–30a(e) provides that the monetary penalties and revocation set out at 22–3–30(b) apply if the division of environmental protection establishes that production blasting was conducted within 300 feet of a protected structure, within 100 feet of a cemetery, or within 1000 feet of a protected structure without an approved site specific blast design. Production blasting conducted within these distance limitations need not cause property damage to protected structures to be subject to the provisions of 22–3–30a(b). As noted above in Finding 7.B, all other blasting violations that do not cause property damage to protected structures will continue to be subject to the civil penalty requirements of CSR 38–2–20. We find that subsection 22–3–30a(e) is no less stringent than SMCRA section 518 and not inconsistent with 30 CFR Part 845.

(F) Subsection 22–3–30a(f) provides that all penalties and liabilities set forth in this section shall be assessed and collected by the director, and deposited with the treasurer of the State of West Virginia in the ''general school fund.'' The approved program, at W.Va. Code § 22–3–17(d)(2), currently requires that civil penalty moneys be deposited into the State's alternative bonding fund, known as the ''special reclamation fund.'' If this provision is approved, however, penalties collected from blasting violations that resulted in property damage to protected structures would no longer be placed in the special reclamation fund, but instead would be deposited into the newly created general school fund. Prior to our approval of subsection 22–3–30a(f), the State must demonstrate that the special reclamation fund will not become unacceptably compromised without the proceeds from these blasting related civil penalties. The State has not yet satisfied the required program amendment codified at 30 CFR 948.16(lll) concerning elimination of the deficit in the State's alternative bonding system and requiring that sufficient money will be available to complete reclamation, including the treatment of polluted water, at all existing and future bond forfeiture sites. Therefore, we are not approving subsection 22–3–30a(f) until the State demonstrates that the special reclamation fund does not have a deficit and that it will not become unacceptably compromised without the proceeds from blasting related civil penalties.

(G) Subsection 22–3–30a(g) provides that the director shall propose rules for the implementation of this section. We find this provision is not inconsistent with the blasting provisions in SMCRA at section 515(b)(15) and the Federal regulations at 30 CFR 816/817.61–816/817.68 and can be approved.

(H) Subsection 22–3–30a(h) provides that the provisions of this section shall not apply to underground coal mining operations and the surface operations and impacts incident to underground coal operations, or to the extraction of minerals by underground mining methods or the surface impacts of the underground mining methods. Nothing in this section shall exempt any coal mining operation from the general performance standards contained in section 22–3–13 and any implementing rules. As noted above in Finding 7.B., surface blasting activities incident to underground coal mining will continue to be regulated under CSR 38–2–6, and 20. Therefore, we are approving this provision.

8. § 22–3A Office of Explosives and Blasting

(A) Article 3A is new . Section 22–3A–1 provides for legislative findings,

and policies and purposes. Section 22–3A–1 declares that establishment of the office of explosives and blasting (office) is in the public interest, and that this office will be vested with authority to enforce all rules and laws established to regulate blasting. There is no Federal counterpart to this provision. We find, however, that the provision is not inconsistent with SMCRA at section 515(b)(15) and the Federal regulations at 30 CFR 816/817.61–816/817.68 and can be approved.

(B) Section 22–3A–2 creates the office of explosives and blasting, provides that the director shall appoint a chief to administer the office, and provides that the office shall assume responsibility for the enforcement of all the rules and laws established to regulate blasting. There is no Federal counterpart to this provision. We find, however, that the provision is not inconsistent with SMCRA at section 515(b)(15) and the Federal regulations at 30 CFR 816/817.61–816/817.68 and can be approved.

(C) Section 22–3A–3 establishes the powers and duties of the office of explosives and blasting. These include, but are not limited to: regulating blasting on all surface mining operations; implementing and overseeing the pre-blast survey process; maintaining and operating a system to receive and address questions, concerns and complaints; setting the qualifications for individuals and firms performing pre-blast surveys; education, training, examination and certification of blasters; and proposing rules for legislative approval. There is no Federal counterpart to this provision. We find, however, that the provision is not inconsistent with SMCRA at section 515(b)(15) and the Federal regulations at 30 CFR 816/817.61–816/817.68 and can be approved.

(D) Section 22–3A–4 provides that the office shall propose rules for the purpose of implementing article 3A. The rules shall include, but not be limited to: procedures for the review, modification and approval of blasting plans, inspection and monitoring of blasting; minimum requirements and review procedures for pre-blast surveys; procedures for the use of seismographs; a procedure to warn of impending blasting; a procedure to limit the type of explosives and detonating equipment, the size, timing, and frequency of blasts based on the physical conditions at the site to prevent injury, damage, and adverse impacts; publication of blasting schedules; and written notice of blasting schedules. The office shall also propose rules for blaster certification, and for disciplinary procedures for blasters. We find that the provision is not inconsistent with the Federal blasting provisions in SMCRA at section 515(b)(15) and the Federal regulations at 30 CFR 816/817.61–816/817.68 and Part 850, and can be approved.

(E) Section 22–3A–5 provides that the office shall establish and manage a claims process related to blasting, and shall propose rules concerning blasting claims and arbitration. The section also provides that participation in the claims process is voluntary for the claimant, but that claim determinations are intended to be final, if not taken to arbitration. The section provides for written notice, the payment of claims for which an operator is adjudged liable, and for the issuance of cessation orders to operators who fail to pay claims within thirty days of a final determination of liability. The section also provides that no permit shall be granted unless the applicant agrees to be subject to the terms of this section. The section also authorizes the office to retain the services of inspectors, experts and other persons or firms as necessary to fulfill its responsibilities under this section. This section has no Federal counterparts. However, we find that the section provides for more stringent environmental controls of surface coal mining and reclamation operations than those contained in SMCRA or the Federal regulations. Therefore, in accordance with section 505(b) of SMCRA, this section is not inconsistent with SMCRA and can be approved.

(F) Section 22–3A–6 provides that rules, orders, licenses, certificates and permits already issued will remain in effect until modified, terminated, superseded, set aside or revoked by a court, and that proceedings pending before the division are not affected by this enactment. We find that the provision is not inconsistent with the Federal blasting provisions in SMCRA at section 515(b)(15) and the Federal regulations at 30 CFR 816/817.61–816/817.68, and can be approved.

(G) Section 22–3A–7 concerns funding. It provides that the office shall assess each operator a fee on each quantity of explosive material used on the surface mining operations. The office shall propose rules establishing the fees, and the office shall deposit all monies received into a special fund called the ''mountaintop removal fund'' to be spent by the office of explosives and blasting and the office of coal field community development in conducting their duties. The legislature shall appropriate the funds for expenditure. This section has no Federal counterparts. However, because this section provides for the creation of a new funding source for these newly created offices and it will not affect the current funding of the State's approved program, we find this provision is not inconsistent with section 503(a)(3) of SMCRA and can be approved.

(H) Section 22–3A–8 concerns the transfer of personnel and assets currently used to perform the duties of article 3A to the office. We find that the provision is necessary to effectuate the transfer of authority for the regulation and enforcement of blasting activities to the office, that it is not inconsistent with the Federal blasting provisions in SMCRA at section 515(b)(15) and the Federal regulations at 30 CFR 816/817.61–816/817.68, and can be approved to the extent that the levels of funding, staffing, and equipment continue as before, with the addition of the funding provided for in section seven of this article.

(I) Section 22–3A–9 sets forth the limitations of article 3A. Except for sections five and seven of this article, pertaining to the claims process and funding, respectively, all provisions of this article are also applicable to surface blasting activities related to underground mining operations. As noted above, article 3A generally provides for blasting controls of surface coal mining and reclamation operations that are in addition to and to some extent more stringent than those contained in SMCRA or the Federal regulations. Sections five and seven are two examples of these additional controls. Therefore, the exemption of surface blasting activities related to underground mining operations from the requirements of section 5 and 7 of article 3A does not render this section inconsistent with SMCRA, and it can be approved.

(J) Section 22–3A–10 provides that the office shall conduct or participate in studies or research to develop scientifically based data and recommendations related to various aspects of blasting. The office shall report the data and recommendations to the West Virginia Legislature's joint committee on government and finance on or before January 1, 2001, and annually thereafter or as otherwise requested. We find that the provision is not inconsistent with the Federal blasting provisions in SMCRA at section 515(b)(15) and the Federal regulations at 30 CFR 816/817.61–816/817.68, and can be approved.

(K) Section 22–3A–11 provides that the office of explosives and blasting is continued until July 1, 2002. We find that the provision is not inconsistent with the Federal blasting provisions in SMCRA at section 515(b)(15) and the

Federal regulations at 30 CFR 816/817.61–816/817.68, and can be approved.

IV. Summary and Disposition of Comments

Federal Agency Comments

According to 30 CFR 732.17(h)(11)(i), we solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the West Virginia program. The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) responded and stated that the changes do not appear to affect MSHA. The U.S. Army Corps of Engineers responded and recommended that the proposed amendments specify measures in the International System of Units (SI), in lieu of the inch-pound (IP) system. While we concur with this recommendation, the lack of the use of SI units does not render the amendment less stringent than SMCRA nor less effective than the Federal regulations.

Public Comments

We solicited public comments on the amendment. The Surety Association of America (SAA) commented on the amended bond release provision at section 22–3–23(c)(3). The SAA stated that the amendment creates another bond release provision. Specifically, the SAA stated, the director of the WVDEP may release the entire amount of bond after satisfaction of the three specified criteria (backfilling and reclamation, sound future maintenance, and the quality of untreated discharges). Under this provision, the SAA stated, the director of the WVDEP will have the discretion to retain 100 percent of the bond throughout the entire reclamation process, as opposed to releasing the bond according to the normal three-phase bond release process. The SAA further stated that it is its understanding that the original intent of the bond release amendment was to permit an accelerated final bond release during Phase Three of reclamation. That is, the passing of five growing seasons alluded to in Subsection 22–3–23(c)(3) could be disregarded. However, as written the SAA asserts, the amendment actually prolongs the period during which the full bond liability is outstanding.

The SAA expressed its concern regarding the legislation (and any implementing rules) that permit the retention of the full bond amount during the entire reclamation process and which abandon the practice of a phased bond release. The current West Virginia Code mitigated the long-term underwriting hazard of the bond by allowing a phased release of the liability. The proposed amendment, the SAA stated, prevents any bond release until the entire process is completed.

The SAA provided the following recommendations. The SAA recommends that the phrase ''notwithstanding the bond release provisions of subdivision (1), (2), and (3)'' should be revised to state ''notwithstanding the bond release scheduling provision of subdivision (3).'' Further, the SAA suggested that the phrase ''backfilling and reclamation'' be revised to read ''backfilling and revegetation.'' With these changes, the SAA stated, ''the amendment is clear that the provisions regarding bond release in Phase One and Phase Two of reclamation are unchanged.'' With this change, the amendment would only affect Phase Three (monitoring). The SAA also requested that any rules concerning bond release should retain the phased bond release element.

In response, and as noted above in Finding 5, we have deferred our decision on this provision. The WVDEP requested that we defer our decision because the WVDEP is in the process of developing rules that, the WVDEP stated, will address our concerns with this provision. When those are submitted for our review, we will reopen the public comment period so that this statute and its implementing rules can be reviewed together. At that time, we will considered the SAA comments. Of course, the SAA may submit additional comments when the comment period is reopened on this provision.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The EPA responded by letter dated June 3, 1999 (Administrative Record Number WV–1134), and concurred with the amendment. The EPA stated that the amendment does not violate the Clean Water Act or the Clean Air Act.

Pursuant to 732.17(h)(11)(i), we also solicited comments on the proposed amendment from EPA. The EPA provided the following two comments. First, the EPA commented on section 22–3–13(a)(21) [the correct cite is 22–3–13(b)(21)], which provides an exemption for placing spoil material within the permit area. The EPA stated that although the change to this provision is a change in wording rather than in substance, the EPA endorses the State's concept of authorizing the placement of spoil material outside the permit area if it is determined that environmental benefits will result. The EPA stated that in some situations, it can be seen that placement of spoil on adjacent reclaimed permit areas, rather than in valley fills, can help minimize stream impacts. We concur with the EPA's comment concerning this provision, subject to the restrictions contained in the State's regulations at CSR 38–2–14.14.c.

Second, the EPA stated that changes to section 22–3–24 are disturbing because they place more burden of proof on a well owner if an underground mine is the suspected cause of damage to an underground water supply than if a surface mine is the suspected cause. Specifically, new subsection 22–3–24(c) provides a rebuttable presumption that a mining operation caused damages to an underground water supply if an inspector determines that contamination, diminution, or damage to the well exists, and that a pre-blast survey indicated that these problems did not exist beforehand. However, the EPA stated, new subsection 22–3–24(f) provides an exemption to subsection 22–3–24(c) if the suspected cause is either an underground mine, the surface operations incident to an underground mine, or surface impacts caused by an underground mine. In these situations, the EPA stated, the well owner would have to prove on his or her own that the underground mine is the cause of the damage to the underground water supply. This proposed exemption, the EPA stated, basically shifts the burden from the underground mining company, to the well owner. Since most well damage problems are linked to underground mines rather than surface mines, the proposed exemption in subsection 22–3–24(f) would seem to place an undue burden on the well owner to substantiate damage. The EPA recommended that this exemption be eliminated.

We agree with the EPA that proposed section 22–3–24(f) exempts underground mines from the rebuttable presumption at section 22–3–24(c) that a mining operation caused damage to an owner's underground water supply. However, as noted above in Finding 6, we find that the exception provided at section 22–3–24(f) is not inconsistent with sections 717(b) and 720(a)(2) of SMCRA concerning water rights and replacement, since the Federal provisions do not provide for a

rebuttable presumption of water supply loss or damage due to either an underground or surface coal mining operation. Nothing in the revised section would relieve an operator of replacing a water supply which is determined to be adversely affected by an underground mining operation.

V. Director's Decision

Based on the findings above, we are approving the proposed amendment, except as noted below.

The deletion of section 22–3–13(b)(15)(C) is approved with the understanding that the West Virginia rules at CSR 38–2–6.5.a. and CSR 38–2–6.4 and 6.5 continue in effect and provide the protection afforded by the deleted provision.

Section 22–3–13a(g) is approved with the understanding that the time limits for submittal of pre-blast surveys at CSR 38–2–6.8.a. continue to apply to all blasting other than ''production blasting.'' However, the words ''upon request'' are not approved. The State is being required to amend its program to remove the words ''upon request'' from subsection (g), or otherwise amend its program to require that a copy of the pre-blast survey be provided to the owner and/or occupant even if the owner or occupant does not specifically request a copy. In addition, the remainder of section 22–3–13a(g) is approved only to the extent that the State continues to implement CSR 38–2–6.8(a)(5) to allow any person who disagrees with the survey to file a detailed description of the areas of disagreement.

At section 22–3–13a(j)(2), the phrase ''or the surface impacts of the underground mining methods'' is not approved, and the State is being required to amend its program to remove this phrase or otherwise amend its program to clarify that the surface blasting impacts of underground mining operations are subject to the requirements of 22–3–13a.

Section 22–3–22a(d) is approved with the understanding that the VER requirements at W.Va. Code 22–3–22(d)(4) continue to apply to all blasting operations.

Section 22–3–22a(e) is approved only to the extent that all blast designs, site specific and generic, comply with section 38–2–6.5.g.3.

Section 22–3–22a(f) is approved with the understanding that all blast designs, site specific and generic, comply with section 38–2–6.5.g.3.

Our decision on section 22–3–23(c)(3) is deferred.

Section 22–3–30a(a) is approved, except the phrase ''of overburden and coal'' which is not approved.

Section 22–3–30a(b) is approved because blasting-related violations cited for damage to wells, and all violations cited for blasting that does not cause damage to protected structures, will continue to be subject to the civil penalty requirements of CSR 38–2–20, rather than to the new requirements of this subsection, except as provided for in section 22–3–30a(e). Violations for surface blasting activities incident to underground coal mining will also continue to be subject to the requirements of CSR 38–2–20. Also, section 22–3–30a(b) is approved upon the condition that the new rules to be developed by the State to implement this provision shall consider the four criteria listed at section 518(a) of SMCRA in determining the amount of a penalty for any type of blasting violation. In addition, the State may only implement this provision now, prior to promulgation of implementing regulations, to the extent that it applies the four criteria at section 518(a) of SMCRA and found in the State's program at W.Va. Code 22–3–17(c), to civil penalties assessed pursuant to this Section.

Section 22–3–30a(c) is not approved.

Section 22–3–30a(f) is not approved.

Section 22–3–30a(h) is approved because surface blasting activities incident to underground coal mining will continue to be regulated under CSR 38–2–6, and 20.

Section 22–3A–8 is approved to the extent that the levels of funding, staffing, and equipment continue as before, with the addition of the funding provided for in section 22–3A–7.

The Federal regulations at 30 CFR 948 codifying decisions concerning the West Virginia program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year

on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 29, 1999.

Michael K. Robinson,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 948—WEST VIRGINIA

1. The authority citation for Part 948 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 948.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 948.15 Approval of West Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * * * * * *		
March 25, 1999	November 12, 1999	W.Va. Code 22–1–7(a)(7); 22–3–13(a), (b)(3) and (15), (e), and (f); 22–3–13a, in 13a(g) the words ''upon request'' are not approved, in 13a(j)(2) the phrase ''or the surface impacts of the underground mining methods'' is not approved; 22–3–22a; 22–3–23(c)(3) decision is deferred; 22–3–24(c), (d), (e), and (f); 22–3–30a, in 30a(a) the phrase ''of overburden and coal'' is not approved, 30a(c) and (f) are not approved; and 22–3A.

3. Section 948.16 is amended by adding new paragraphs (kkkk), (llll) and (mmmm) to read as follows:

§ 948.16 Required regulatory program amendments.

* * * * *

(kkkk) By January 11, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to remove the words ''upon request'' at W. VA. Code 22–3–13a(g), or otherwise amend its program to require that a copy of the pre-blast survey be provided to the owner and/or occupant even if the owner or occupant does not specifically request a copy.

(llll) By January 11, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to remove the phrase ''or the surface impacts of the underground mining methods'' from 22–3–13a(j)(2), or otherwise amend its program to clarify that the surface blasting impacts of underground mining operations are subject to the requirements of 22–3–13a.

(mmmm) By January 11, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to remove the phrase ''of overburden and coal'' from W.Va. Code 22–3–30a(a), or to otherwise clarify that its general surface coal mining blasting laws and regulations apply to all blasting at surface coal mining and reclamation operations and surface blasting activities incident to underground coal mining, including, but not limited to, initial rounds of slopes and shafts.

[FR Doc. 99–29580 Filed 11–10–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–087]

RIN 2115–AE47

Drawbridge Operation Regulations: Niantic River, CT

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: The Coast Guard is changing the drawbridge operation regulations governing the S156 Bridge, mile 0.1, across the Niantic River, at Niantic, Connecticut. The bridge owner asked the Coast Guard to change the regulations to require a six-hour advance notice for openings at night during the winter months because there have been no requests to open the bridge during that time period. This final rule is expected to relieve the bridge owner of the burden of crewing the bridge at all times and still meet the needs of navigation.

DATES: This final rule is effective December 13, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the First Coast Guard District Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory History

On August 13, 1999, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations; Niantic River, Connecticut, in the **Federal Register** (64 FR 44149). The Coast Guard received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Background

The S156 Bridge, mile 0.1, across the Niantic River, at Niantic, Connecticut, has a vertical clearance of 9 feet at mean high water and 12 feet at mean low water.

The existing operating regulations listed at 33 CFR 117.215(b) require the bridge to open on signal; except that, from 7 a.m. to 8 a.m., and 4 p.m. to 5 p.m., Monday through Friday, except holidays, the draw shall open only for the passage of commercial vessels.

The owner of the bridge, the Connecticut Department of Transportation (CONNDOT) has asked the Coast Guard to change the

regulations to require a six-hour advance notice for openings from 8 p.m. to 4 a.m., December 1 through March 31. The bridge opening log data for 1998, and 1999, December through March, 8 p.m. to 4 a.m., indicate no requests to open the bridge.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking and no changes have been made to this final rule.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the bridge has not had any requests to open in 1998 and 1999, December through March, from 8 p.m. to 4 a.m. Mariners will still be able to obtain bridge openings during the regulated time period provided they give six-hour notice.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. Therefore, for reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132 and has determined that this final rule does not have federalism implications under that Order.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under Section 2.B.2., Figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A written ''Categorical Exclusion Determination'' is not required for this final rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.215(b) is revised to read as follows:

§ 117.215 Niantic River

* * * * *

(b) The draw of the S156 Bridge, mile 0.1, at Niantic, shall open on signal; except that, from 7 a.m. to 8 a.m., and 4 p.m. to 5 p.m., Monday through Friday, except holidays, the draw shall open only for the passage of commercial vessels. From December 1 through March 31, from 8 p.m. to 4 a.m., the draw shall open on signal if at least six hours notice is given by calling the number posted at the bridge.

Dated: October 28, 1999.

Robert F. Duncan,

Captain, U.S. Coast Guard Acting Commander, First Coast Guard District

[FR Doc. 99–29506 Filed 11–10–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CCGD08–99–014]

RIN 2115–AE47

Drawbridge Operation Regulations; Illinois River, IL

AGENCY: Coast Guard, DOT.

ACTION: Final Rule

SUMMARY: The Coast Guard is amending the drawbridge regulation for remote operation of the Elgin, Joliet and Eastern Railroad (E.J. & E.), Drawbridge at Mile 290.1 on the Illinois Waterway. The present regulation states the bridge is remotely operated from the E.J. & E. offices in Gary, Indiana. The regulation as amended, allows E.J. & E. Railroad Company to relocate the remote operator to their office in East Joliet, Illinois, approximately 1.5 miles from the bridge. The operation of the bridge will be unaffected by the proposed relocation of the operator.

DATES: This rule is effective November 12, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the offices of the Commander, Bridge Branch, Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is 314–539–3900, extension 378.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, 314–539–3900, Ext. 378.

SUPPLEMENTARY INFORMATION:

Regulatory History

This rule is being published as a final rule and is effective upon publication in the **Federal Register**. Relocation of the bridge operator and the associated address change will not affect operation of the bridge, and will have no impact on navigation or the public. For these reasons, the Coast Guard for good cause finds, under 5 U.S.C 553(b)(B) and (d)(3), that notice, and public procedure on the notice, before the effective date of this rule are unnecessary and that this rule should be made effective in less than 30 days after publication.

Background

Presently E.J. & E. Railway Company remotely operates this bridge from their offices in Gary, Indiana, approximately 40 miles distant from the bridge. The

bridge operator will be moved to East Joliet, Illinois approximately 1.5 miles distant from the bridge, without changing the present operation of the bridge.

This rule requires E.J. & E. Railroad to operate the bridge from their offices in East Joliet, Illinois. No other changes to the present operation of the bridge are planned.

Regulatory Evaluation

This is not a significant regulatory action under section 3(f) of the Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The regulation change will not affect the present safe operation of the bridge.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation change will have a significant economic impact on a substantial number of small entities. Small entities include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000. Since the regulation change will have no affect on present operating conditions for rail or river traffic, there will be little, if any impact on small entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this regulation change will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation change does not provide for a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this regulation change under the principles and criteria contained in Executive Order 13132 and have determined that this regulation change does not have implications for federalism under that Order.

Environment

The Coast Guard considered the environmental impact of this regulation change and concluded that under Figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1C, this regulation change is categorically excluded from further environmental documentation. This regulation change merely alters the drawbridge operating regulations to coincide with present operating conditions. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

§ 117.393 [Amended]

2. In § 117.393, paragraph (d) is amended by removing the words ''Gary, Indiana,'' and adding in their place the words ''East Joliet, Illinois,''.

Dated: October 7, 1999.

Paul J. Pluta,

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

[FR Doc. 99–29505 Filed 11–10–99; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–98–174]

RIN 2115–AE47

Drawbridge Operation Regulations: Kennebec River, ME

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the drawbridge operation regulations governing the Route-197 Bridge, mile 27.1, across the Kennebec River between Richmond and Dresden, Maine. The bridge owner asked the Coast Guard to change the regulations to restore the operating regulations that were inadvertently deleted in 1989, from the Code of Federal Regulations. This final rule is expected to relieve the bridge owner of the requirement to crew the bridge at all times and still meet the needs of navigation.

DATES: This final rule is effective December 13, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the First Coast Guard District Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory History

On August 25, 1999, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations; Kennebec River, Maine, in the **Federal Register** (64 FR 46323). The Coast Guard received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Background

The Route-197 Bridge has a vertical clearance at mean high water of 15 feet and at mean low water of 20 feet. The existing regulations require the bridge to open on signal at all times. The bridge owner, Maine Department of Transportation (MDOT), asked the Coast Guard to change the operating regulations for the Route-197 Bridge to correct an inadvertent removal of the operating regulations in 1989, as docket number (CGD01–89–077). The bridge owner was not aware of the removal and continued to operate the bridge in accordance with the old regulations. The Coast Guard was also unaware of the inadvertent removal until notified by the bridge owner.

This proposal, if adopted, will require the bridge open on signal from June 1 through September 30, 9 a.m. to 5 p.m. From 5 p.m. to 9 a.m., the draw shall open on signal after notice is given to the drawtender at the bridge during the drawtender's duty shift from 9 a.m. to 5 p.m. From October 1 to May 31, the draw shall open on signal after at least a 24 hour advance notice is given to the Maine Department of Transportation Division Office in Rockland, Maine.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking and no changes have been made to this final rule.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the bridge has continued to operate under the old regulations that were inadvertently removed, and the mariners will not be required to change their current operations as a result.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. Therefore, for reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132 and has determined that this final rule does not have federalism implications under that Order.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under Section 2.B.2., Figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A written ''Categorical Exclusion Determination'' is not required for this final rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.525 is amended by redesignating paragraph (b) as paragraph (a)(8) and by adding a new paragraph (b) to read as follows:

§ 117.525 Kennebec River

* * * * *

(b) The draw of the Route-197 bridge, mile 27.1, between Richmond and Dresden shall open on signal from June 1 through September 30, from 9 a.m. to 5 p.m. From 5 p.m. to 9 a.m., the draw shall open on signal after notice is given to the drawtender while the drawtender is on duty between 9 a.m. and 5 p.m. From October 1 through May 31, the draw shall open on signal after at least a twenty-four-hour advance notice is given to the Maine Department of Transportation Division Office in Rockland, Maine.

Dated: October 29, 1999.

R.M. Larrabee,

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

[FR Doc. 99–29504 Filed 11–10–99; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–086]

RIN 2115–AE47

Drawbridge Operation Regulations: Pequonnock River, CT

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the drawbridge operation regulations governing the Stratford Avenue Bridge, mile 0.1, across the Pequonnock River at Bridgeport, Connecticut. The bridge owner asked the Coast Guard to change the regulations to require a six-hour advance notice for openings during the winter months at night because there have been few requests to open the bridge during that time period. This final rule is expected to relieve the bridge owner of the burden of crewing the bridge at all times and still meet the needs of navigation.

DATES: This final rule is effective December 13, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the First Coast Guard District Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Regulatory History

On August 13, 1999, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations; Pequonnock River, Connecticut, in the **Federal Register** (64 FR 44151). The Coast Guard received no comments in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Background

The Stratford Avenue Bridge, mile 0.1, across the Pequonnock River at Bridgeport, Connecticut, has a vertical clearance of 8 feet at mean high water and 14 feet at mean low water.

The existing operating regulations for the bridge listed at 33 CFR 117.219(b) require it to open on signal; except that, from 6:45 a.m. to 7:15 a.m., 7:45 a.m. to 8:15 a.m., 11:45 a.m. to 1:15 p.m., and 4:30 p.m. to 6:10 p.m., the draw need not open for the passage of vessels.

The owner of the bridge, the Connecticut Department of Transportation (CONNDOT), has asked the Coast Guard to change the regulations to require a six-hour notice for openings from December 1 through March 31, 8 p.m. to 4 a.m. The bridge opening log data for 1998, and 1999, December through March, indicate the following number of openings during the time period, 8 p.m. to 4 a.m.: December 0, N/A, January 0, 0, February 2, 1, March 1, 2, respectively.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the notice of proposed rulemaking and no changes have been made to this final rule.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the bridge has not had many requests to open overnight during the winter months. Mariners will still be able to obtain bridge openings during the regulated time period provided they give six-hour notice.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. Therefore, for reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132 and has determined that this final rule does not have federalism implications under that order.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under section 2.B.2., Figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A written ''Categorical Exclusion Determination'' is not required for this final rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.219(b) is revised to read as follows:

§ 117.219 Pequonnock River

* * * * *

(b) The Stratford Avenue Bridge, mile 0.1, at Bridgeport, shall open on signal; except that, from 6:45 a.m. to 7:15 a.m., 7:45 a.m. to 8:15 a.m., 11:45 a.m. to 1:15 p.m., and 4:30 p.m. to 6:10 p.m., the draw need not open for the passage of vessels. From December 1 through March 31, from 8 p.m. to 4 a.m., the draw shall open on signal if at least six-hours notice is given by calling the number posted at the bridge.

* * * * *

Dated: October 29, 1999.

R.M. Larrabee,

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

[FR Doc. 99–29503 Filed 11–12–99; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT–054–7213; A–1–FRL–6471–7]

Removal of the Approval and Promulgation of Air Quality Implementation Plans; Connecticut; National Low Emission Vehicle Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; removal of amendments.

SUMMARY: On August 16, 1999 (64 FR 44411), EPA published a direct final rule that approved the National low emission vehicle (LEV) program for Connecticut. EPA stated in that direct final rule that if we received adverse comment by September 15, 1999, the rule would not take effect and EPA would publish a timely withdrawal. EPA subsequently received adverse comment on that direct final rule, but did not publish the withdrawal prior to the effective date of the direct final rule. In this action, EPA is removing the amendments that were published in the August 16, 1999, direct final rule.

DATES: This action is effective November 12, 1999.

FOR FURTHER INFORMATION CONTACT: Robert C. Judge, Air Quality Planning Unit of the Office of Ecosystem Protection (mail code CAQ), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114–2023, or at (617) 918–1045 or judge.robert@epa.gov.

SUPPLEMENTARY INFORMATION: EPA is removing the amendments to the Connecticut State Implementation Plan that was published as a direct final rule on August 16, 1999. This amendment had approved the National LEV program for the State of Connecticut as a compliance alternative to the State's California LEV program adopted under section 177. Since EPA received a letter dated September 14, 1999 with adverse comments from the American Canoe Association, Incorporated, by its terms, the direct final rule should not have become effective. EPA, therefore, is hereby removing those amendments in today's action.

This removal action is simply a ministerial correction of the prior direct final rulemaking, which by its terms should not have become effective because the American Canoe Association commented adversely on the approval action. Therefore, EPA is

invoking the good cause exception under the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B) because EPA believes that notice-and-comment rulemaking of this removal action is contrary to the public interest and unnecessary. This removal action merely restores the regulatory text that existed prior to the direct final rule. EPA stated in the August 16, 1999 direct final action that should adverse comment be received, the rule would not take effect. The rule took effect because EPA did not publish a timely withdrawal in the **Federal Register** prior to the rule's effective date. It would be contrary to the public interest to keep that final rule in effect when it should not have taken effect since adverse comment was received. Additionally, further notice-and-comment on this action is unnecessary because EPA is merely restoring the regulatory text that existed prior to the final rule, consistent with the original rulemaking. In a subsequent final rule, we will summarize and respond to any comments received and take final rulemaking action on this requested Connecticut SIP revision.

Administrative Requirements

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, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655 (May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). 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 regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of November 12, 1999. EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

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 January 11, 2000. 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, Nitrogen Dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: October 28, 1999.

John P. DeVillars,

Regional Administrator, Region I.

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

PART 52—[AMENDED]

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

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

Subpart H—Connecticut

§ 52.370 [Amended]

2. Section 52.370 is amended by removing paragraph (c)(79).

§ 52.385 [Amended]

3. In § 52.385, Table 52.385 is amended by removing the entries in Connecticut State citations for ''Section 22a–174–36, entitled 'Low Emission Vehicles' '' and ''Section 22a–174–36(g), entitled 'Alternative Means of Compliance via the National Low Emission Vehicle (LEV) Program.' ''

[FR Doc. 99–29302 Filed 11–10–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–106–1–7405a, FRL–6471–8]

Approval and Promulgation of Implementation Plans; Texas; Revisions to Consumer Products Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action approving revisions to the consumer products regulations in the Texas State Implementation Plan (SIP). The primary purpose of the revisions is to amend the regulations to exclude a new type of insecticide designated to kill house dust mites from the volatile organic compound (VOC) limitation applicable to other crawling bug insecticides. The EPA is approving these revisions to the Texas SIP as requested by the Governor of Texas.

DATES: This rule is effective on January 11, 2000 without further notice, unless EPA receives adverse comment by December 13, 1999. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Bill Deese of the EPA Region 6 Air Planning Section at (214) 665–7253.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever ''we'' is used, we mean EPA. This document makes references to subsections of 40 CFR 52.2270. Section 40 CFR 52.2270 was moved to 40 CFR 52.2299 in a **Federal Register** action published July 7, 1999 (64 FR 36586).

I. What Is EPA Approving in This Action?

The consumer products regulations in the Texas SIP are codified in Texas Natural Resource Conservation Commission (TNRCC) Regulation V (30 TAC Chapter 115), Control of Air Pollution from Volatile Organic Compounds, Subchapter G, Consumer-Related Products. The current SIP-approved regulations were adopted by the State on May 4, 1994; December 6, 1995; February 14, 1996; and July 24, 1996; and approved by EPA on May 22, 1997 (62 FR 27964), at 52.2270(c)(104), and January 26, 1999 (64 FR 3841), at 52.2270(c)(105). The current Texas SIP-approved consumer products regulations are available for public inspection by selecting ''Texas'' and ''TX Chap 115 (Reg 5)'' and ''Subchapter G—Consumer-Related Sources'' and ''TX sections 115.600–115.619: CONSUMER PRODUCTS'' at the following web site: http://www.epa.gov/earth1r6/6pd/air/sip/sip.htm

On September 15, 1998, the Governor of Texas submitted to EPA revisions to subchapter G, section 115.600, Definitions, adopted by TNRCC on August 26, 1998. The amendments added language to the definition of ''crawling bug insecticide'' to differentiate a ''house dust mite'' from other crawling bugs and a ''house dust mite product'' from crawling bug insecticides in order to exclude a new type of insecticide designed to kill house dust mites from the VOC limitation applicable to other crawling bug insecticides. The insecticide formulation necessary to kill house dust mites requires that the VOC content exceed the 40 percent-by-weight concentration limitation for crawling bug insecticides specified in section 115.612(a) of subchapter G of the State regulation and in 40 CFR 59.203 of the Federal regulations. The amended definition of ''crawling bug insecticide'' is consistent with the Federal definition of ''crawling bug insecticide'' promulgated September 11, 1998 (63 FR 48831), and codified in 40 CFR 59.202. This amended rule permits the sale of such products in Texas. This amendment benefits the public by expanding the markets for the sale of dust mite insecticides in Texas and the resulting benefits to consumers and users from control of insects by these insecticides.

The TNRCC also deleted the definition of the term ''device'' approved by EPA in the May 22, 1997 (62 FR 27964), **Federal Register** action. This is consistent with the definitions in the Federal consumer products regulations in 40 CFR 59.202 which does not have a definition of ''device.''

The amendments also make acceptable editorial changes to the definitions of ''consumer product,'' ''disinfectant,'' ''medium volatility organic compound (MVOC),'' ''percent-by-weight,'' and ''restricted materials.'' The amendments also assign numbers to the individual definitions.

II. Final Action

The EPA is approving revisions to section 115.600 of TNRCC Regulation V (30 TAC Chapter 115) adopted by TNRCC August 26, 1998, and submitted by the Governor on September 15, 1998.

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are received. This rule will be effective on January 11, 2000 without further notice unless we receive adverse comment by December 13, 1999. If EPA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

III. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled ''Regulatory Planning and Review.''

B. Executive Orders on Federalism

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on State, local, or tribal governments. The rule does not impose any enforceable rules on any of these entities. This action does not create any new requirements but simply approves requirements that the State is already imposing. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new E.O. on federalism, E.O. 13132 (64 FR 43255, August 10, 1999), which will take effect on November 2, 1999. In the interim, the current E.O. 12612 (52 FR 41685, October 30, 1987), on federalism still applies. This rule will not have a substantial direct effect on 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, as specified in E.O. 12612. The rule affects only one State, and does not alter the relationship or the distribution of power and responsibilities established in Federal Clean Air Act (the Act).

C. Executive Order 13045

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If

the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to E.O. 13045 because it approves a State program.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual 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.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual 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.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. A major rule can not take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major'' rule as defined by 5 U.S.C. 804(2). This rule will be effective January 11, 2000.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 11, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: October 27, 1999.

Myron O. Knudson,

Acting Regional Administrator, Region 6.

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

PART 52—[AMENDED]

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

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

Subpart SS—Texas

2. In § 52.2270(c), the first table is amended by revising the entry for sections 115.600 to 115.619 to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State adoption date	EPA approval date	Explanation
* * *	* * *	*	*	*
Chapter 115 (Reg 5)—Control of Air Pollution from Volatile Organic Compounds				
* * *	* * *	*	*	*
Subchapter G—Consumer-Related Sources				
Section 115.600 to 115.619	Consumer Products	08/26/98	11/12/99	
* * *	* * *	*	*	*

[FR Doc. 99–29299 Filed 11–10–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6472–2]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of partial deletion of the Tipton Army Airfield portion of the Fort George G. Meade Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the partial deletion of the Tipton Army Airfield portion of the Fort George G. Meade Site in Fort Meade, Maryland from the National Priorities List (NPL). The NPL constitutes appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Maryland have determined that all appropriate responses under CERCLA have been implemented and that no further cleanup by responsible parties is appropriate. Moreover, EPA and the State of Maryland have determined that response actions conducted at the site to date remain protective of public health, welfare, and the environment.

EFFECTIVE DATE: November 12, 1999.

ADDRESSES: Comprehensive information on this release is available for viewing at the Site information repositories at the following locations:

(1) Provinces Public Library, 2624 Annapolis Road, Severn, MD 21144, Phone: (410) 222–6280.

(2) U.S. Army, Directorate of Public Works, Attn: ANME–PWE, Bldg. 239, 2½ Street and Ross Road, Fort Meade, MD 20755, Phone: (301) 677–9648.

FOR FURTHER INFORMATION CONTACT: Nicholas J. DiNardo, Remedial Project Manager, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103, telepone (215) 814–3365.

SUPPLEMENTARY INFORMATION: The portion of the site to be deleted from the NPL is: Tipton Army Airfield, Fort Meade, Maryland

A Notice of Intent to Delete for this site was published September 17, 1999 (64 FR 50477). The closing date for comments on the Notice of Intent to Delete was October 19, 1999. EPA received no comments.

The EPA identifies releases which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those releases. Releases on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund. Any release deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Reporting and recordkeeping requirements, Superfund.

Dated: October 28, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

2. The Table 2 of Appendix B of part 300 is amended by revising the entry for Fort George G. Meade, Odenton, MD to read as follows:

Appendix B to Part 300—National Priorities List

* * * * *

TABEL 2.—FEDERAL FACILITIES SECTION

St	Site name	City/County	Notes(a)
* * *	* * *	*	*
MD	Fort George G. Meade	Odenton	P
* * *	* * *	*	*

(a) * * *

P = Sites with partial deletion(s).

[FR Doc. 99–29305 Filed 11–10–99; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter 1

[CC Docket No. 96–149, FCC 99–242]

Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document declines to reconsider the Commission's *Non-Accounting Safeguards Order*. It also clarifies several points concerning the non-accounting safeguards requirements set forth in section 272 of the Act, which prescribes the manner in which the Bell Operating Companies may enter certain markets.

DATES: Effective December 13, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle Carey, Deputy Chief, Policy and Program Planning Division, Common Carrier Bureau, (202) 418–1580 or via the Internet at mcarey@fcc.gov. Further information may also be obtained by calling the Common Carrier Bureau's TTY number: 202/418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order adopted September 8, 1999, and released October 1, 1999. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, S.W., Room CY–A257, Washington, DC. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common Carrier/Orders/fcc99242.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th St., NW., Washington, DC 20036.

Synopsis of Third Order on Reconsideration

I. Introduction

1. On December 24, 1996, the Commission adopted the *Non-Accounting Safeguards Order*, 62 FR 2927, (January 21, 1997), in its proceeding implementing the non-accounting safeguards provisions of the Communications Act of 1934 (the Act), as amended by the Telecommunications Act of 1996 (the 1996 Act). On February 2, 1997, several parties (the Association for Local Telecommunications Services, AT&T, BellSouth, Cox Communications, MCI, TCG, Time Warner Cable and US WEST) filed separate petitions to reconsider various aspects of the Non-Accounting Safeguards Order. For the reasons discussed, we deny all of the petitions. We also, on our own motion, clarify certain language in the *Non-Accounting Safeguards Order* relating to so-called teaming arrangements.

II. Background

2. Section 272 addresses the safeguards and statutory separate affiliate requirements necessary for the BOCs' provision of manufacturing activities, interLATA telecommunications services originating in their in-region states, and interLATA information services. Consistent with the statutory framework, the Commission held in the *Non-Accounting Safeguards Order* that section 272 allows a BOC to engage in manufacturing activities, origination of certain interLATA telecommunications services, and the provision of interLATA information services, as long as the BOC provides these activities through a separate affiliate.

3. Parties request reconsideration with respect to the Commission's interpretation in the *Non-Accounting Safeguards Order* of various provisions in section 272. We deny these petitions, and affirm and clarify the decisions in the underlying Order as follows:

(a) We affirm the prior conclusion that section 272(b)(1)'s ''operate independently'' requirement has no plain or ordinary meaning.

(b) We affirm the conclusion that specific reporting requirements to implement section 272(e)(1) are unnecessary at this time.

(c) We find unpersuasive BellSouth's argument that a broader reading of ''marketing'' and ''sale of services'' is consistent with the language and purpose of section 272, and affirm the view that the question of whether a section 272 affiliate is operating independently if a BOC designs and develops its affiliate's services should be decided on a case-by-case basis.

(d) We affirm the conclusion that section 272(a)(2)(C) does not exclude out-of-region interLATA information services from the separate affiliate requirement.

(e) We clarify that the conclusions in the *Non-Accounting Safeguards Order* are binding regardless of whether they are codified in the Code of Federal Regulations and decline to codify further those conclusions.

(f) We conclude in this *Third Order on Reconsideration* that section 272 of the Act does not require BOCs to provide video programming services through a separate affiliate.

(g) We clarify, on our own motion, that the *Non-Accounting Safeguards Order* was not intended as an affirmative sanction of teaming arrangements between a BOC and an unaffiliated entity.

(h) We find that Cox's petition requesting the Commission to reconcile the *Non-Accounting Safeguards* with certain other proceedings is moot.

III. Third Order on Reconsideration

A. Section 272(b)(1)'s ''Operate Independently'' Requirement

1. Inadequate Separation Of Operations

a. Background.

4. Section 272(b)(1) directs that the separate affiliate required pursuant to section 272(a) ''shall operate independently from the [BOC].'' In the *Non-Accounting Safeguards Order*, the Commission concluded that the ''operate independently'' requirement of section 272(b)(1) imposes certain requirements beyond the structural separation requirements contained in sections 272(b)(2)–(5), including the preclusion of joint ownership of transmission and switching facilities by a BOC and its section 272 affiliate, as well as the joint ownership of the land and buildings where those facilities are located. Additionally, we found that the ''operate independently'' requirement precludes a section 272 affiliate from performing operating, installation, and maintenance functions associated with the BOC's facilities, and also prohibits the BOC from performing such functions associated with the facilities that its section 271 affiliate owns, or leases from a third party provider. The Order declined, however, to impose additional restrictions on the sharing of services or on the joint ownership of other property between the BOC and its section 272 affiliate, concluding that additional structural separation requirements were unnecessary ''given the nondiscrimination safeguards, the biennial audit requirement, and other public disclosure requirements imposed by section 272.'' The Order also concluded that section 272(b)(3)'s ''separate employee'' requirement does not prohibit the sharing of services (other than operating, installation and maintenance services) between a BOC and its section 272 affiliate.

b. Discussion.

5. AT&T and MCI contend that the requirements the Commission adopted pursuant to section 272(b)(1) inadequately separate the functions of the BOC from those of its section 272

affiliate. In contrast, BellSouth contends that the Commission's interpretation of the ''operate independently'' requirement is too stringent. The arguments put forth by AT&T, MCI and BellSouth here are largely the same as those raised, considered, and rejected previously in this docket. Accordingly, we deny the parties' petitions to reconsider the interpretation of section 272(b)(1)'s ''operate independently'' requirement.

6. *The Relationship between Sections 274(b) and 272(b)(1).* AT&T asserts that section 271(b)(1)–(9) should be read into the ''operate independently'' requirement of section 272(b)(1). We affirm the conclusion in the *Non-Accounting Safeguards Order*, however, that the structural differences in the two sections indicate that the term ''operate independently'' in section 272(b)(1) ''should not be interpreted to impose the same obligations'' as the enumerated requirements in sections 274(b)(1)–(9). Moreover, construing ''operate independently'' in section 272(b)(1) to mean the same thing as ''operated independently'' in section 274(b) would render sections 272(b)(2)–(5), 272(c), and 272(e) redundant because the requirements in those sections and the enumerated requirements in sections 274(b)(1)–(9) overlap. This would violate the maxim that statutes must be construed, where possible, so that no provision is rendered inoperative or superfluous. Thus, we reject this argument.

7. *Computer II and the Cellular Separation Rules.* We also reject AT&T's contention that the Commission's interpretation of the ''operate independently'' requirement is irreconcilable with the prior interpretation of that same phrase in the *Computer II* and cellular structural separation rules. We agree with Ameritech that there is no ''precedent'' in the Commission's rules that defines the term ''operate independently'' as used in section 272(b). Rather, the *Non-Accounting Safeguards Order* interpreted ''operate independently'' to implement a new statutory provision, relying upon its accumulated expertise and predictive judgment. Moreover, we note that the *Non-Accounting Safeguards Order* determined that the requirements of *Computer II* would not necessarily increase an affiliate's operational independence. For instance, we noted that prohibiting an affiliate from constructing, owning, or operating its own local exchange facilities, as the requirements of *Computer II* would necessitate, could actually increase the affiliate's reliance on the BOC's facilities.

8. *Shared Administrative Services.* MCI's contention that the ''operate independently'' requirement of section 272(b)(1) requires fully separate operations was considered and rejected in the *Non-Accounting Safeguards Order*. Consistent with the letter and purposes of section 272, the term ''operate independently'' does not require total structural separation. We affirm that the economic benefits to consumers from allowing a BOC and its section 272 affiliate to derive the economies of scale and scope inherent in the integration of some services outweigh any potential for harm to competition created thereby. We reject as well MCI's argument that the explicit permission for joint marketing in section 272(g) would not be necessary had Congress not contemplated fully separate operations. Indeed, contrary to MCI's assertions, provisions such as the arm's length requirement in section 272(b)(5), the nondiscrimination requirement in section 272(c)(1), the Commission's accounting principles implemented in accordance with section 272(c)(2), and the joint marketing provision in section 272(g), suggest that Congress envisioned the type of sharing that MCI claims section 272(b)(1) prohibits.

9. We are also unpersuaded by MCI's suggestion that allowing a BOC to provide administrative services to its section 272 affiliate undermines the ''separate employees'' requirement of section 272(b)(3). The *Non-Accounting Safeguards Order* addressed these contentions, and the parties provide no new reasons for us to reconsider the interpretation of section 272(b)(3).

10. *Joint Provision of Operating, Installation, and Maintenance Services.* BellSouth argues that the Commission improperly determined that section 272(b)(1) prohibits a BOC affiliate, other than the section 272 affiliate, from providing installation and maintenance services to both the BOC and its section 272 affiliate. The *Non-Accounting Safeguards Order* addressed and rejected this argument, and BellSouth has not offered persuasive reasons to reverse course. The Order determined that allowing the same personnel to perform operating, installation, and maintenance services for the BOC and the section 272 affiliate would create a loophole around the separate affiliate requirement. Furthermore, the Commission determined that such sharing also would heighten the risk of improper cost allocation with regard to time spent and equipment utilized. Recognizing the burdensome regulatory involvement that would be necessary to detect and deter such cost misallocation, the Commission concluded that an outright prohibition of shared operating, installation and maintenance functions is necessary in the context of a section 272 affiliate.

2. Provision Of Local Exchange Service By Section 272 Affiliates

a. Background.

11. The *Non-Accounting Safeguards Order* concluded that section 272 does not prohibit a section 272 affiliate from providing local exchange service in addition to interLATA services, provided that the section 272 affiliate does not qualify as an incumbent LEC subject to the requirements of section 251(c). The Order also concluded that if a BOC transfers to an affiliated entity ownership of any network elements that must be provided on an unbundled basis pursuant to section 251(c)(3), the entity would be considered an ''assign'' of the BOC under section 3(4) of the Act with respect to those network elements.'' As a successor or assign, the affiliate would then be subject to the requirements of section 272. MCI and TCG petition the Commission to reconsider the decision to allow section 272 affiliates to provide local service.

b. Discussion.

12. We reaffirm that section 272 does not, on its face, prohibit a section 272 affiliate from providing both local exchange and interLATA services. We reject MCI's and TCG's arguments that allowing a section 272 affiliate to provide local exchange services violates the ''operate independently'' requirement and the separate affiliate requirement. We agree with the BOCs that Congress' intent in enacting section 272 was not to prevent a section 272 affiliate from providing both local exchange and long distance services. Rather, as concluded in the *Non-Accounting Safeguards Order*, the purpose of the ''operate independently'' requirement is to prevent BOCs from abusing bottleneck control of local exchange facilities. The BOCs' control over local exchange facilities does not extend to their section 272 affiliates.

13. In addition to finding that there is no statutory bar to allowing a section 272 affiliate to provide local service, we agree with the BOCs that allowing a section 272 affiliate to provide local services does not pose a competitive risk or violate sound public policy. TCG offers no new support for its argument, which we reject once again, that the risks of anticompetitive behavior are greater when a BOC provides UNEs rather than resold services to its section 272 affiliate. We reiterate that the existing safeguards in sections 251, 252, and 272, as well as antitrust laws,

possible state regulations, and the Commission's existing cost allocation and affiliate transaction rules provide protection against improper cost allocation and discrimination. Finally, we disagree with TCG and reaffirm that the increased flexibility from being able to offer ''one-stop shopping'' for both local and interLATA services would allow section 272 affiliates to create packages of services they would not be able to offer if confined to the rates and services of the BOCs.

3. BOC Transfer Of Official Service Networks

a. Background.

14. The *Non-Accounting Safeguards Order* determined that a BOC that seeks to transfer ownership of its Official Services Network to its section 272 affiliate in order to provide interLATA services must ensure that the transfer takes place in a nondiscriminatory manner, in accordance with section 272(c)(1), and must adhere to the affiliate transaction rules. MCI petitions the Commission to prohibit a BOC from transferring or making available its Official Services Networks to its section 272 affiliate under any conditions. Alternatively, should the Commission permit the transfer of Official Services Networks, ACTS urges the Commission to indicate that competitive Lees may bid on any BOC ownership transfers of those networks.

b. Discussion.

15. We reaffirm that a BOC may transfer its Official Services Network to its section 272 affiliate, provided that the transfer takes place in a nondiscriminatory manner, consistent with section 272(c)(1), and complies with the affiliate transaction rules. The parties dispute the scope of the restrictions that the MAJ placed on the use of Official Services Networks, but we need not resolve this dispute because we have found that a BOC may, under the Act, transfer its Official Services Network to its section 272 affiliate. Similarly, to implement the Act, we need not determine whether BOCs have overbuilt their Official Services Networks, as MCI contends. Rather, pursuant to the language of section 272(c) and 272(b)(5), we must only ensure that the terms of the transfer of Official Services Networks are fair and consistent with our accounting rules.

16. We reaffirm the conclusion in the *Non-Accounting Safeguards Order* that the nondiscrimination obligations established pursuant to section 272, other provisions of the Act, and state statutes and regulations provide sufficient protection in the event of a transfer of Official Services Network facilities. We are unpersuaded by MCI's argument that such a transfer cannot take place at arm's length in accordance with section 272(b)(5). Transactions between a BOC and its section 272 affiliate involving the BOC's Official Services Network would have to comply with our affiliate transactions rules, which generally satisfy the arm's length requirement of section 272. Furthermore, our public disclosure requirements help ensure the arm's length nature of the transaction by subjecting a BOC's transfer of its Official Services Network to intense scrutiny by both policymakers and the public.

17. We also reject MCI's unsupported assertion that the BOCs' transfer of Official Services Networks would inherently discriminate in favor of their section 272 affiliates. The Commission has explained that the BOC must ensure that unaffiliated entities are given an equal opportunity, along with the section 272 affiliate, to obtain ownership of this network in the event it decides to transfer. We clarify, as requested by ACTS, that one way in which a BOC may provide such an equal opportunity to obtain ownership is to allow competing Lees to bid for ownership of its Official Services Network.

B. Reporting Requirements

1. Background

18. The *Non-Accounting Safeguards Order* concluded that, with the exception of section 272(e)(1), none of the reporting requirements of *Computer III/ONA* were needed at that time to facilitate the detection and adjudication of violations of the separate affiliate and nondiscrimination requirements of section 272. The Order noted, however, that the Commission would revisit the need for reporting requirements should future developments warrant. MCI and TRA petition the Commission to reconsider its decision not to impose reporting requirements pursuant to section 272(c)(1), arguing that these requirements are unenforceable absent information about the quality of services that the BOCs provide to their section 272 affiliates.

2. Discussion

19. We deny the request by MCI and TRA to impose reporting requirements at this time. Our decision not to adopt specific reporting requirements was reinforced by the Commission's subsequent adoption of a Notice of Proposed Rulemaking setting forth a set of model performance measurements and reporting requirements for Operation Support Systems (OSS), interconnection and access to operator services and directory assistance. *See Performance Measurements Notice of Proposed Rulemaking,* 63 FR 27012 (May 15, 1998). We determined to establish model rules, rather than legally binding rules, in order to allow states that have begun performance measurement and reporting requirement proceedings to incorporate the model rules as they deem beneficial, and as an aid to those states that have not yet begun such proceedings.

20. The model performance measurements and reporting requirements are designed to help ensure that BOCs meet their nondiscrimination obligations when providing competing carriers access to critical support functions. Moreover, the model performance measurements include certain of the measurements that MCI seeks in its reconsideration petition. Finally, states, the Department of Justice, and the BOCs themselves have proposed performance measurements. The specific measurements that BOCs are proposing, or in some cases have begun to implement, are in many respects similar to those proposed in the Performance Measurements Notice. For the foregoing reasons, we deny the MCI and TRA requests for reconsideration.

C. The Joint Marketing Restrictions Of Sections 271(e)(1) And 272(g)(3)

1. Section 271(e)(1)—Joint Marketing Of Local And Long Distance Services By Certain Interexchange Carriers

21. We deny US WEST's request that the Commission clarify on reconsideration its interpretation of section 271(e)(1). This section provides that, for a period no longer than 36 months after implementation of the Telecommunications Act, certain interexchange carriers may not market interLATA services jointly with BOC local services purchased for resale. Because the 36-month period specified in this provision expired on February 8, 1999, this provision is no longer in effect and US WEST's petition for reconsideration on this issue is moot.

2. Section 272(g)(3)—''Marketing'' And ''Sale Of Service''

a. Background.

22. Section 272(g)(3) of the Act states that ''[t]he joint marketing and sale of services permitted under this section [272(g)] shall not be considered to violate the nondiscrimination provisions of section 272(c). The *Non-Accounting Safeguards Order* declined to develop an exhaustive list of specific

BOC activities covered by section 272(g). The Order did state, however, that activities such as customer inquiries, sales functions, and ordering are permitted under section 272(g)(3), because they involve only the marketing and sales of a section 272 affiliate's services. BellSouth contends that the Commission construed the terms ''marketing'' and ''sale of services'' too narrowly and urges the Commission to include planning, design, and development within the meaning of those terms.

b. Discussion.

23. We affirm that the reading of the section 272(g)(3) exemption from the nondiscrimination requirements of section 272(c) for ''joint marketing and sale of services'' is consistent with the language and purpose of section 272. We further conclude that the broad interpretation of the ''joint marketing and sale of services'' exception BellSouth advocates would create a loophole that would allow potential BOC discrimination in countless activities. We disagree with BellSouth that the reading that we adopt imposes an unqualified obligation on the BOCs to develop and design their competitors' interLATA services. As noted in the *Non-Accounting Safeguards Order,* a BOC must develop these services on a nondiscriminatory basis for or with other entities *only if* the BOC develops such services for or with its section 272 affiliate. Finally, as to MCI's contention that a BOC that designs and develops its affiliate's services will not be operating independently, as required by section 272(b)(1), we affirm the view in the *Non-Accounting Safeguards Order* that such determinations should be made on a case-by-case basis.

D. InterLATA Information Services

1. Out-of-Region InterLATA Information Services. Out-of-Region InterLATA Information Services

a. Background.

24. The *Non-Accounting Safeguards Order* concluded that section 272(a)(2) of the Act requires the BOCs to provide out-of-region interLATA information services through a section 272 separate affiliate. Section 272(a)(2)(B)(ii) requires a separate affiliate for the ''origination of telecommunication services,'' other than ''out-of-region services described in section 271(b)(2).'' The Order concluded that the section 272(a)(2)(B)(ii) exception extends only to out-of-region interLATA services that are telecommunications services and does not extend to out-of-region interLATA information services. The Order also found that section 272(a)(2)(C) requires a separate affiliate for ''interLATA information services,'' and exempts electronic publishing and alarm monitoring services from that requirement. The Order concluded that the explicit exclusion of out-of-region interLATA telecommunications services in one subsection of the statute, and the lack of such an express exclusion of out-of-region interLATA information services in another subsection of the same provision, suggests that Congress did not intend to exclude out-of-region interLATA information services from the separate affiliate requirement. BellSouth and US WEST petition us to allow BOCs to provide out-of-region information services on an integrated basis.

b. Discussion.

25. We affirm the determination that the statute does not exclude out-of-region interLATA information services from the separate affiliate requirement. Accordingly, we reject US WEST's contention that the exception to the separate affiliate requirement in section 272(a)(2)(B)(ii) for ''out-of-region services'' applies to both interLATA telecommunications services and interLATA information services, in the same way that the reference to ''incidental interLATA services'' in section 272(a)(2)(B)(i) applies to both telecommunications services and information services. We note, moreover, in response to US WEST's assertion, the conclusion in the *Non-Accounting Safeguards Order* that the incidental interLATA services exception contained in section 272(a)(2)(B)(i) ''applies, by its terms, to the origination of incidental interLATA services that are telecommunications services.'' Although services such as video and audio programming services, which do not appear to be solely telecommunications services, are listed within the exception, the Order stated that the limitation in section 271(h) ''specifies that these incidental interLATA services 'are limited to *those interLATA transmissions incidental to* the provision' '' of those services. Therefore, US WEST's argument that the incidental interLATA exception encompasses both telecommunications and information services is not persuasive.

26. Instead, we agree with MCI and TRA that the only exceptions to the separate affiliate requirement for interLATA information services are the two specifically identified in section 272(a)(2)(C), i.e., electronic publishing and alarm monitoring. Thus, we likewise reject BellSouth's argument that interLATA information services must fall within the scope of exempted out-of region ''interLATA services'' because, by definition, interLATA information services are provided via telecommunications that cross LATA boundaries. We instead agree with MCI that if Congress had intended to exclude out-of-region interLATA information services from the separate affiliate requirement, it would have done so explicitly. We further reject US WEST's and BellSouth's contention that it is incongruous as a policy matter to exclude out-of-region interLATA telecommunications services from the separate affiliate requirement, but to require a separate affiliate for out-of-region interLATA information services. This policy argument is foreclosed given that the statute requires that BOC out-of-region interLATA information services be offered through a separate section 272 affiliate. We, therefore, deny US WEST's and BellSouth's petitions for reconsideration on these grounds.

2. Codification Of Non-Accounting Safeguards Order Requirements

a. Background.

27. Several new rules, enumerated in Appendix B of the *Non-Accounting Safeguards Order,* were promulgated upon adoption of that order. The Order also imposed numerous other requirements that were not codified in our rules. ACTS submits that we should codify the conclusion in the *Non-Accounting Safeguards Order* that ''BOCs may not provide interLATA information services, except for information services covered by section 271(g)(4), in any of their in-region states prior to obtaining section 271 authorization.'' ACTS claims that codifying this requirement would reduce the potential for non-compliance and litigation by the BOCs.

b. Discussion.

28. We note that the requirement addressed by ACTS in its petition has been modified by subsequent Commission action. In the *First Order on Reconsideration* 62 FR 02927 (January 21, 1997) in this proceeding, we clarified that, prior to obtaining section 271 authorization, BOCs may provide *any* interLATA information service designated as an incidental interLATA service under section 271(g), not just those enumerated in sub-section 271(g)(4), as suggested in the *Non-Accounting Safeguards Order.* Like other conclusions in the *Non-Accounting Safeguards Order* and in the *First Order on Reconsideration,* this requirement is binding regardless of whether it is codified in the CFR. We decline to single out this particular requirement for codification because, as ACTS recognizes, ''there can be no

possible confusion about this requirement.'' We therefore deny the ACTS petition for reconsideration on this issue.

E. Other Issues

1. Applicability Of Section 272 To Video Programming Services

a. Background.

29. The *Non-Accounting Safeguards Order* concluded that, ''pursuant to section 272(a)(2)(B)(i), BOCs are not required to provide the interLATA telecommunications transmission incidental to the provision of programming services listed in sections 271(g)(1)(A), (B), and (C) through a section 272 affiliate.'' We found this conclusion to be consistent with the determination in the *OVS Second Report and Order,* 61 FR 28698 (June 5, 1996). Time Warner asks us to clarify on reconsideration that section 272 requires a BOC to establish a separate affiliate to provide video programming services to end users, while it exempts the underlying transmission service or the OVS platform, which may be provided by a BOC's local telephone company. Several BOCs maintain, other hand, that video programming services are not information services and therefore are not subject to section 272(a)(2)(C).

b. Discussion.

30. We agree with the BOCs that section 272 of the Act does not require BOCs to provide video programming services through a separate affiliate. We conclude that interLATA transmissions incidental to the provision by a BOC or its affiliate of video, audio, and other programming services are considered ''incidental'' interLATA services under the Act. Section 272(a)(2)(B)(i) exempts such incidental interLATA services from the section 272 separate affiliate requirement. Moreover, as Ameritech and SBC recognize, it defies logic to suggest that transmission component that itself is expressly exempt from the separate affiliate requirements would render the video programming component (which is neither intraLATA nor interLATA) subject to these same requirements. There is no indication that Congress intended section 271(h) to cancel out the exemption for audio, video and other programming services in this manner.

31. In reaching this conclusion, we need not determine whether programming services are, in some instances, ''information services,'' as defined by section 3(20) of the Communications Act. Even if a video programming service were found to be an ''information service,'' it would not be considered ''interLATA'' (and, thus, subject to the separate affiliate requirement of section 272(a)(2)(C)) if it is bundled with an incidental interLATA transmission component that is exempt from section 272(a)(2)(C), for the reasons set forth. Furthermore, there is no question that a BOC would be permitted to offer a video programming service directly to the public that is not bundled with an interLATA transmission component. Finally, we reject Time Warner's contention that BOCs may provide the video programming component of an open video service only through a section 272 separate affiliate. As we have explained previously, ''Congress expressly directed that Title II requirements not be applied to the 'establishment and operation of an open video system.' ''

2. Teaming Arrangements

32. Section 271(g)(2) states that a BOC ''may not market or sell interLATA service provided by an affiliate required by this section within any of its in-region States until such company is authorized to provide interLATA services in such State under section 271(d).'' The Commission concluded that ''section 272(g) is silent with respect to the question of whether a BOC may align [or 'team'] itself with an unaffiliated entity to provide interLATA services prior until the BOC receives section 271 authorization * * * to the extent that BOCs align themselves with non-affiliates, they must do so on a nondiscriminatory basis.''

33. We clarify, on our own motion, that the language concerning so-called teaming arrangements contained in the *Non-Accounting Safeguards Order* was not intended as an affirmative sanction of all teaming arrangements between a BOC and an unaffiliated entity. In particular, that language did not address the issue of whether, by entering into a business arrangement that involves the marketing of an unaffiliated entity's long distance services, a BOC may be providing interLATA service in violation of section 271(a). That question was addressed in the *Qwest Order,* where the Commission concluded that, although certain marketing arrangements are permissible under the Act, business arrangements between a BOC and an unaffiliated long distance carrier may, nevertheless, violate section 271(a) if the BOC's involvement in the long distance market enables it to obtain competitive advantages, thereby reducing its incentive to cooperate in opening its local market to competition. *See In the Matter of AT&T Corporation et al.,* File Nos. E–98–41, -42 and -43, Memorandum Opinion and Order.

3. Effect On Other Commission Proceedings

34. Cox petitions us to reconcile the *Non-Accounting Safeguards Order,* which found that existing safeguards for BOC provision of incidental interLATA services are sufficient to protect telephone exchange ratepayers and competition in telecommunications markets, with the *CMRS Safeguards Notice* and the *Video Cost Allocation Notice,* which seek comment on what additional safeguards, if any, are necessary to protect ratepayers and competition. Since Cox filed its petition, we released the *CMRS Safeguards Order,* 62 FR 63864 (December 3, 1997). We concluded in that order that all incumbent LECs (except rural telephone companies) must provide in-region broadband CMRS, including cellular services, through a CMRS affiliate, subject to the accounting and affiliate transactions rules in parts 32 and 64 of our rules. Cox's concerns with regard to the *CMRS Safeguards* proceeding, therefore, are now moot. Furthermore, any concerns that Cox has with regard to the Video Cost Allocation proceeding are more properly addressed in that proceeding.

IV. Regulatory Flexibility Act

35. In the *Non-Accounting Safeguards Order,* the Commission concluded and certified that the rules adopted in that Order would not, under the Regulatory Flexibility Act of 1980, as amended (RFA), have ''a significant economic impact on a substantial number of small entities.'' The rules then adopted pertained only to BOCs, which, because of their size, do not qualify as small entities. We received no petitions for reconsideration of that Final Regulatory Flexibility Certification. In this present *Third Order on Reconsideration,* the Commission promulgates no additional final rules, and our action does not affect that previous final certification.

V. Ordering Clauses

36. Accordingly, it is ordered that, pursuant to sections 1–4, 201–205, 214, 251, 252, 271, 272, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201–205, 214, 251, 252, 271, 272, 303(r), the Third Order on Reconsideration in CC Docket No. 96–149 is adopted.

37. It is further ordered that the Petitions for Reconsideration filed by AT&T, MCI, TCG, Cox, ACTS, US WEST and Time Warner are denied, as described herein.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–29550 Filed 11–10–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AF24

Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; correction.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter Service or we) published a document in the September 28, 1999, **Federal Register** prescribing the hunting seasons, hours, areas, and daily bag and possession limits for general waterfowl seasons and those early seasons for which States previously deferred selection. This document corrects errors in season dates and other pertinent information for the States of California, Kansas, Mississippi, New Mexico, and Washington.

DATES: This rule is effective on October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Jon Andrew, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, (703) 358–1714.

SUPPLEMENTARY INFORMATION: In the September 28, 1999, **Federal Register** (64 FR 52398), we published a final rule prescribing hunting seasons, hours, areas, and daily bag and possession limits for general waterfowl seasons, certain other migratory bird seasons, and those early seasons for which States previously deferred selection. The rule contained errors in the entries for California, Kansas, Mississippi, New Mexico, and Washington, which are discussed briefly below and corrected by this notice.

We received public comment on the proposed rules for the seasons and limits contemplated herein. We addressed these comments in the August 27, 1999, (64 FR 47072) and September 27, 1999, (64 FR 52124) **Federal Register**. The corrections are typographical in nature and involve no change in substance in the contents of the prior proposed and final rules.

§ 20.104 [Corrected]

1. On page 52400 under the heading Pacific Flyway, ''New Mexico'' is corrected to read ''New Mexico (16).''

§ 20.105 [Corrected]

1. On page 52408 under the heading Mississippi, subheading Geese, the subheading ''White-fronted and Brant'' is corrected to read ''White-fronted''; the subheading ''Brant'' is inserted above the subheading Light Geese; and season dates of ''Nov. 23–Jan. 31'' are inserted for Brant.

2. On page 52412, footnote (4) is corrected to read, ''In Kansas, exceptions to the dark goose season are as follows: Season dates in the Marais des Cygnes Valley (Unit 1), and the Southeast (Unit 2) Dark Goose Management Units are December 18, 1999 through February 6, 2000. Season dates in the Flint Hills (Unit 3) Dark Goose Management Unit are December 4, 1999 through February 6, 2000. Shooting hours in the Marais des Cygnes Valley Unit shall be one-half hour before sunrise to 1:00 p.m. Shooting hours in all other Units shall be one-half hour before sunrise to sunset.''

3. On page 52414 under the heading Washington, subheading Geese, subheading Western Management Area 1, subheading Light Geese, the season dates of ''Oct. 9–Jan 16'' are corrected to read ''Oct. 9–Jan. 2.''

§ 20.109 [Corrected]

1. On page 52419 the heading ''Mississippi'' is inserted above the heading Missouri; under the heading Mississippi, the subheadings ''Mourning doves'' and ''Ducks, mergansers, and coots'' are inserted; and season dates of ''Nov. 29–Dec. 17 & Jan. 9–Feb. 5'' are inserted for Mourning doves and ''Jan. 31–Mar. 10'' are inserted for Ducks, mergansers, and coots.

2. On page 52421 under the heading California, subheading White-fronted Geese, subheading Northeastern Zone, the season dates of ''Jan. 17–Jan. 22'' are corrected to read ''Nov. 22–Jan. 22.''

3. On page 52421 under the heading California, subheading Light Geese, subheading Northeastern Zone, the season dates of ''Jan. 17–Jan. 23'' are corrected to read ''Jan. 17–Jan. 22.''

Dated: October 28, 1999.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–29570 Filed 11–10–99; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 64, No. 218
Friday, November 12, 1999

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–235–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes Modified in Accordance With Supplemental Type Certificate SA1444SO, SA1509SO, SA1543SO, or SA1896SO

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, among other actions, installation of a fail-safe hinge, redesigned main deck cargo door warning and power control systems, and 9g cargo barrier. This proposal is prompted by the FAA's determination that the main deck cargo door hinge is not fail-safe; that certain main deck cargo door control systems do not provide an adequate level of safety; and that the main deck cargo barrier is not structurally adequate during an emergency landing. The actions specified by the proposed AD are intended to prevent structural failure of the main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight, rapid decompression, and structural damage to the airplane; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants.

DATES: Comments must be received by December 27, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–235–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location by appointment only between the hours of 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Paul Sconyers, Associate Manager, Airframe and Propulsion Branch, ACE–117A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (770) 703–6076; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–235–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–114, Attention: Rules Docket No. 97–NM–235–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Supplemental Type Certificate (STC) SA1509SO specifies a design for a cargo door, associated cargo door cutout, and door systems. STC SA1543SO specifies a design for a Class ''E'' cargo interior with a cargo restraint barrier net. STC's SA1444SO and SA1896SO specify a design for both of these subject areas. (All of these STC's are held by Pemco.) As discussed in notice of proposed rulemaking (NPRM), Rules Docket No. 97–NM–81–AD [the final rule, AD 98–26–21, amendment 39–10964, was published in the **Federal Register** on January 12, 1999 (64 FR 2061)], which is applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger to a cargo-carrying (''freighter'') configuration, the FAA has conducted a design review of Boeing Model 727 series airplanes modified in accordance with STC's SA1590SO and SA1543SO and has identified several potential unsafe conditions. [Results of this design review are contained in ''FAA Freighter Conversion STC Review, Report Number 1, dated September 23–26, 1996,'' (hereinafter referred to as ''the Design Review Report''), which is included in the Rules Docket for this NPRM.] This NPRM proposes corrective action for three of those potential unsafe conditions that relate to the following three areas: main deck cargo door hinge, main deck cargo door systems, and main deck cargo barrier.

Main Deck Cargo Door Hinge

In order to avoid catastrophic structural failure, it has been a typical industry approach to design outward opening cargo doors and their attaching structure to be fail-safe (*i.e.*, designed so that if a single structural element fails, other structural elements are able to carry resulting loads). Another potential design approach is safe-life, where the critical structure is shown by analyses and/or tests to be capable of withstanding the repeated loads of variable magnitude expected in service for a specific service life. Safe-life is usually not used on critical structure because it is difficult to account for manufacturing or in-service accidental damage. For this reason, plus the fact

that none of the STC holders have provided data in support of this approach, the safe-life approach will not be discussed further regarding the design and construction of the main deck cargo door hinge.

Structural elements such as the main deck cargo door hinge are subject to severe in-service operating conditions that could result in corrosion, binding, or seizure of the hinge. These conditions, in addition to the normal operational loads, can lead to early and unpredictable fatigue cracking. If a main deck cargo door hinge is not a fail-safe design, a fatigue crack could initiate and propagate longitudinally undetected, which could lead to a complete hinge failure. A possible consequence of this undetected failure is the opening of the main deck cargo door while the airplane is in flight. Service experience indicates that the opening of a cargo door while the airplane is in flight can be extremely hazardous in a variety of ways including possible loss of flight control, severe structural damage, or rapid decompression, any of which, could lead to loss of the airplane.

The design of the main deck cargo door hinge must be in compliance with Civil Air Regulations (CAR) part 4b, including CAR part 4b.270, which requires, in part, that catastrophic failure or excessive structural deformation, which could adversely affect the flight characteristics of the airplane, is not probable after fatigue failure or obvious partial failure of a single principal structural element. One common feature of a fail-safe hinge design is a division of the hinge into multiple segments such that, following failure of any one segment, the remaining segments would support the redistributed load.

The main deck cargo door installed in accordance with STC SA1509SO, SA1444SO, or SA1896SO is supported by latches along the bottom of the door and one continuous hinge along the top. This single-piece hinge is considered a critical structural element for this STC. A crack that initiates and propagates longitudinally along the hinge line of the continuous hinge will eventually result in failure of the entire hinge, because there is no segmenting of the hinge to interrupt the crack propagation and support the redistributed loads. Failure of the entire hinge can result in the opening of the main deck cargo door while the airplane is in flight.

As discussed in the Design Review Report, an inspection of one Boeing Model 727 series airplane modified in accordance with STC's SA1509SO and SA1543SO revealed a number of fasteners with both short edge margins and short spacing in the cargo door cutout external doublers. Some edge margins were as small as one fastener diameter. Fasteners that are placed too close to the edge of a structural member or spaced too close to an adjacent fastener can result in inadequate joint strength and stress concentrations, which may result in fatigue cracking of the skin. If such defects were to exist in the structure of the door or the fuselage to which the main deck cargo door hinge is attached, the attachment of the hinge could fail, and consequently cause the door to open while the airplane is in flight.

Since unsafe conditions have been identified that are likely to exist or develop on other products of this same type design, this proposed AD would require, within 250 flight cycles after the effective date of the AD, a one-time detailed visual inspection of the external surface of the main deck cargo door hinge (both fuselage and door side hinge elements) to detect cracks, and repair, if necessary. Accomplishment of this inspection will ensure that the subject airplanes are not in immediate risk of hinge failure.

In addition, the proposed AD would require a detailed visual inspection of the mating surfaces of both the hinge and the door skin and external fuselage doubler underlying the hinge to detect cracks or other discrepancies (e.g., double or closely drilled holes, corrosion, chips, scratches, or gouges). The proposed AD also would require installation of a main deck cargo door hinge that complies with the applicable requirements of CAR part 4b, including fail-safe requirements. Accomplishment of this detailed visual inspection will ensure the integrity of the door and fuselage structure to which the hinge is attached. The proposed compliance time for this inspection and installation is within 36 months or 4,000 flight cycles after the effective date of this AD, whichever occurs first. The compliance time is based on the FAA's assessment of the reasonable amount of time to redesign, manufacture, and install a fail-safe hinge. This time is in consideration of the 18-month time period estimated by the Boeing 727 industry working group, which includes operators, affected STC holders, and engineering organizations, to develop FAA-approved redesigns. These actions would be required to be accomplished in accordance with a method approved by the FAA.

Main Deck Cargo Door Systems

In early 1989, two transport airplane accidents were attributed to cargo doors coming open during flight. The first accident involved a Boeing 747 series airplane in which the cargo door separated from the airplane, and damaged the fuselage structure, engines, and passenger cabin. The second accident involved a McDonnell Douglas DC–9 series airplane in which the cargo door opened but did not separate from its hinge. The open door disturbed the airflow over the empennage, which resulted in loss of flight control and consequent loss of the airplane. Although cargo doors have opened occasionally without mishap during takeoff, these two accidents serve to highlight the extreme potential dangers associated with the opening of a cargo door while the airplane is in flight.

As a result of these cargo door opening accidents, the Air Transport Association (ATA) of America formed a task force, including representatives of the FAA, to review the design, manufacture, maintenance, and operation of airplanes fitted with outward opening cargo doors, and to make recommendations to prevent inadvertent cargo door openings while the airplane is in flight. A design working group was tasked with reviewing 14 CFR part 25.783 [and its accompanying Advisory Circular (AC) 25.783–1, dated December 10, 1986] with the intent of clarifying its contents and recommending revisions to enhance future cargo door designs. This design group also was tasked with providing specific recommendations regarding design criteria to be applied to existing outward opening cargo doors to ensure that inadvertent openings would not occur in the current transport category fleet of airplanes.

The ATA task force made its recommendations in the ''ATA Cargo Door Task Force Final Report,'' dated May 15, 1991 (hereinafter referred to as ''the ATA Final Report''). On March 20, 1992, the FAA issued a memorandum to the Director-Airworthiness and Technical Standards of ATA (hereinafter referred to as ''the FAA Memorandum''), acknowledging ATA's recommendations and providing additional guidance for purposes of assessing the continuing airworthiness of existing designs of outward opening doors. The FAA Memorandum was not intended to upgrade the certification basis of the various airplanes, but rather to identify criteria to evaluate potential unsafe conditions demonstrated on in-service airplanes. Appendix 1 of this AD contains the specific paragraphs from the FAA Memorandum that set forth the criteria to which the outward opening doors should be shown to comply.

Applying the applicable requirements of CAR part 4b and design criteria

provided by the FAA Memorandum, the FAA has reviewed the original type design of major transport airplanes, including Boeing 727 airplanes equipped with outward opening doors, for any design deficiency or service difficulty. Based on that review, the FAA identified unsafe condition and issued, among others, the following AD's:

- For certain McDonnell Douglas Model DC–9 series airplanes: AD 89–11–02, amendment 39–6216 (54 FR 21416, May 18, 1989);
- For all Boeing Model 747 series airplanes: AD 90–09–06, amendment 39–6581 (55 FR 15217, April 23, 1990);
- For certain McDonnell Douglas Model DC–8 series airplanes: AD 93–20–02, amendment 39–8709 (58 FR 471545, October 18, 1993);
- For certain Boeing Model 747–100 and –200 series airplanes: AD 96–01–51, amendment 39–9492 (61 FR 1703, January 23, 1996); and
- For certain Boeing Model 727–100 and –200 series airplanes: AD 96–16–08, amendment 39–9708 (61 FR 41733, August 12, 1996).

Using the criteria specified in the ATA Final Report and the FAA Memorandum as evaluation guides, the FAA conducted an engineering design review and inspection of an airplane modified in accordance with STC's SA1509SO and SA1543SO (held by Pemco). The FAA identified a number of unsafe conditions with the main deck cargo door systems of these STC's. The FAA design review team determined that the design data of these STC's design data did not include a safety analysis of the main deck cargo door systems.

As specified in the criteria contained in Appendix 1 of this AD, for powered lock systems on the main deck cargo door, it must be shown by safety analysis that inadvertent opening of the door after it is fully closed, latched, and locked is extremely improbable.

However, the FAA is aware of two events in which the main deck cargo door open during flight. These events occurred on FedEx passenger/freighter conversion STC's in October 1996, and March 1995. These events are referenced in the Design Review Report.

The FAA has reviewed the design drawings of the main deck cargo door systems installed on Boeing Model 727 series airplanes modified in accordance with STC's SA1444SO, SA1509SO, and SA1896SO, and has determined that the design of the door systems is nearly identical to that installed on the subject FedEx passenger/freighter conversion STC's. Therefore, the door opening events disclosed by FedEx are likely to occur on airplanes modified in accordance with STC SA1444SO, SA1509SO, or SA1896SO.

For airplanes modified in accordance with STC SA1444SO, SA1509SO, SA1543SO, or SA1896SO, the FAA considers the following four specific design deficiencies of the main deck cargo door systems to be unsafe:

1. Indication System

The main deck cargo door indication system for the STC's SA1509SO, SA1444SO, and SA1896SO uses a warning light at the door operator's control panel and a light at the flight engineer's panel. Both of these lights indicate the status of the cargo door latch and lock positions, but do not indicate either the door open or closed status. All three conditions (*i.e.*, door closed, latched, and locked) must be monitored directly so that the door indication system cannot display either ''latched'' before the door is closed or ''locked'' before the door is latched. If a sequencing error caused the door to latch and lock without being fully closed, the subject indication system, as designed, would not alert the door operator or the flight engineer of this condition. As a result, the airplane could be dispatched with the main deck cargo door unsecured, which could lead to the cargo door opening while the airplane is in flight and possible loss of the airplane.

The light on the flight engineer's panel is labeled ''MAIN CARGO'' and is displayed in red since it indicates an event that requires immediate pilot action. However, if the flight engineer is temporarily away from his station, a door unsafe warning indication could be missed by the pilots. In addition, the flight engineer could miss such an indication by not scanning the panel. As a result, the pilots and flight engineer could be unaware of, or misinterpret, an unsafe condition and could fail to respond in the correct manner. Therefore, an indicator light must be located in front of and in plain view of both pilots since one of the pilot's stations is always occupied during flight operations.

The main deck cargo door indication system of STC's SA1509SO, SA1444SO, and SA1896SO does not have a level of reliability that is considered adequate for safe operation. Many components are exposed to the environment during cargo loading operations and may be contaminated by precipitation, dirt, and grease, or damaged by foreign objects or cargo loading equipment. As a result, wires, switches, and relays can fail, jam, or short circuit and cause a loss of indication or a false indication to the door operator and flight crew. The design logic of the indication system (i.e., lights which extinguish when the door is locked) will, in the event of a single point failure that would extinguish the light, result in an erroneous ''safe'' indication regardless of actual door status.

The design of STC's SA1509SO, SA1444S0, and SA1896S0 has a ''Press-to-Test'' red warning light on the main deck cargo door control panel located near the L–1 door. The design of the monitoring system of the main deck cargo door does not include separate lights to provide the door operator with door close, latch, and lock status. The electrical wiring design of the close, latch, and lock sensors of the door monitoring system are wired in parallel instead of in series. In parallel, two sensors could be sensing ''unsafe'' and the third sensor could be sensing ''safe.'' If this situation were to occur, the sensors would not illuminate the red warning light on the door control panel or at the flight engineer's panel. Therefore, the ''Press-to-Test'' feature is adequate to check the light bulb functionality, but is not adequate to check the cargo door close, latch, and lock functions and status without annunciator lights for those three functions.

2. Means to Visually Inspect the Locking Mechanism

The single view port of the main deck cargo door installed in accordance with STC's SA1444SO, SA1509SO, and SA1896SO is included to allow the flight crew to conduct a visual inspection of the door locking mechanism. This view port is used in conjunction with the door warning system and should provide a suitable ''back-up'' in the event that the main deck cargo door warning system malfunctions.

The door locking mechanism is an assembly comprised of multiple lock pins (one for each of the door latches) connected by linkages to a common lock shaft. Although an indicator flag attached to the lock shaft can be seen through the view port when the shaft is in the ''locked'' position, a failure between the shaft and the pins could go undetected, because this flag is attached to the lock shaft and not the actual lock pins. If such a failure goes undetected, the airplane may be dispatched with the main deck cargo door warning system inoperative and the door not fully closed, latched, and locked, which could lead to a main deck cargo door opening while the airplane is in flight and possible loss of the airplane. Therefore, the FAA finds that the

subject view port is not a suitable back-up when the cargo door warning system malfunctions.

As discussed in the ATA Final Report and the FAA Memorandum, there must be a means of directly inspecting each lock or, at a minimum, the locks at each end of the lock shaft of certain designs, such that a failure condition in the lock shaft would be detectable.

3. Means to Prevent Pressurization to an Unsafe Level

Boeing 727–100 and –200 airplanes modified in accordance with STC SA1444SO, SA1509SO, or SA1896SO are configured to utilize the existing pressurization outflow valve for the purpose of preventing fuselage pressurization of the airplane to an unsafe level in the event that the main deck cargo door is not closed, latched, and locked. The FAA design review of these modified Boeing 727–200 airplanes (documented in the Design Review Report) identified single point failures in the door control/outflow valve interface that could result in the valve not sensing and responding to an unsafe door condition. In addition, the FAA found no data to substantiate that the outflow valve location and size could prevent pressurization to an unsafe level. With the current design, it is possible that the outflow valve may not perform its intended function when utilized for the purpose of preventing pressurization of the airplane in the event of an unsecured door. This condition could result in cabin pressurization forcing an unsecured door open while the airplane is in flight and possible loss of the airplane.

In some cases, neither Boeing 727–100 airplanes nor Boeing 727–200 airplanes modified in accordance with the STC SA1444SO or SA1509SO have any means of preventing pressurization in the event that the main deck cargo door is not closed, latched, and locked, and therefore, have a higher risk of a cargo door opening while the airplane is in flight and possible loss of the airplane.

4. Powered Lock Systems

The main deck cargo door control system for STC's SA1444SO, SA1509SO, and SA1896SO that utilizes electrical interlock switches is designed to remove door control power (electrical and hydraulic) prior to flight and to prevent inadvertent door openings. As discussed previously, the door system design of the subject STC's is nearly identical to the FedEx design. The FedEx door opening events, discussed previously, indicate the likelihood that there may be latent and/or single point failures that can restore or continue to allow power to the door controls and cause inadvertent door openings. The failure modes may be found in the electrical portion of the door control panel, which, in turn, activates the door control hydraulics. The potential for the occurrence of these failure conditions is increased by the harsh operating environment of freighter airplanes. Door system components are routinely exposed to precipitation, dirt, grease, and foreign object intrusion, all of which increase the likelihood of damage. As a result, wires, switches, and relays have a greater potential to fail or short circuit in such a way as to allow the cargo door to be powered open without an operator's command and regardless of electrical interlock positions.

A systems safety analysis would normally evaluate and resolve the potential for these types of unsafe conditions. However, the design data for STC's SA1444SO, SA1509SO, and SA1896SO do not include a systems safety analysis to specifically identify these failure modes and do not show that an inadvertent opening is extremely improbable. The need for a system safety analysis is identified in the ATA Final Report and the FAA Memorandum.

Since unsafe conditions have been identified that are likely to exist or develop on other products of this same type design, this proposed AD would require, within 60 days after the effective date, revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) Supplement to provide the flight crew with procedures for ensuring that all power is removed from the main deck cargo door prior to dispatch of the airplane, and that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane; and installing any associated placards.

In addition, the proposed AD would require, within 36 months after the effective date of the AD, incorporation of redesigned main deck cargo door systems (e.g., warning/monitoring, power control, view ports, and means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked), including any associated procedures and placards that comply with the applicable requirements of CAR part 4b and design criteria of the ATA Final Report and the FAA Memorandum. Design data provided in support of the door systems re-design should include a Systems Safety Analysis and Instructions for Continued Airworthiness that are acceptable to the FAA. Accomplishment of the incorporation of redesigned main deck cargo door systems will prevent rapid decompression and/or structural damage to the airplane as a result of loss or opening of the cargo door while the airplane is in flight. The compliance time is based on the FAA's assessment of the reasonable amount of time to incorporate redesigned main deck cargo door systems. This time is in consideration of the 18-month time period estimated by the Boeing 727 industry working group, which includes operators, affected STC holders, and engineering organizations, to develop FAA-approved redesigns.

These actions would be required to be accomplished in accordance with a method approved by the FAA.

Cargo Restraint Barrier

In order to ensure the safety of occupants during emergency landing conditions, the FAA first established in 1934, a set of inertia load factors used to design the structure for restraining items of mass in the fuselage. Because the airplane landing speeds have increased over the years as the fleet has transitioned from propeller to jet design, inertia load factors were changed as specified in CAR part 4b.260. Experience has shown that an airplane designed to this regulation has a reasonable probability of protecting its occupants from serious injury in an emergency landing. The 727 passenger airplane was designed to these criteria which specified an ultimate inertia load requirement of 9g in the forward direction. These criteria were applied to the seats and structure restraining the occupants, including the flight crew, as well as other items of mass in the fuselage.

When the 727 passenger airplane is converted to carry cargo on the main deck, a cargo barrier is required, since most cargo containers and the container-to-floor attaching devices are not designed to withstand emergency landing loads. In fact, the FAA estimates that the container-to-floor attaching devices will only support approximately 1.5g's to 3g's in the forward direction. Without a 9g cargo barrier, it is probable that the loads associated with an emergency landing would cause the cargo to be unrestrained and impact the occupants of the airplane, which could result in serious injury or death.

The structural inadequacy of the cargo barrier was evident to the FAA during its review in October 1996 of a Boeing 727 modified in accordance with STC SA1543SO. The observations revealed that the design of the net restraint barrier floor attachment and circumferential supporting structure

does not provide adequate strength to withstand the 9g forward inertia load generated by the main deck cargo mass, nor does it provide a load path to effectively transfer the loads from the restraint barrier to the fuselage structure of the airplane. These observations are supported by data contained in ''ER 2785, Structural Substantiation of the 50k 9g Bulkhead Restraint System in Support of STC SA1543SO PN 53–1292–401 for the 9g Bulkhead 53–1980–300 Assembly with Upper Attachment Structure, Lower Attachment Structure, Floor Shear Web Structure, Seat Track Splice Fittings, Seat Tracks, and Seat Track Splices,'' dated September 29, 1996, by M. F. Daniel. Although this report was specific to STC SA1543SO, the FAA has determined that the data are applicable to airplane modified in accordance with STC ST00015AT because the design principles for attachment of the barriers in both STC's are the same. The report reveals that the structural deficiencies were found in the net attach plates and floor attachment structure of the cargo barrier. The data show large negative margins of safety, which indicate that the inertia load capability of the cargo barrier is closer to 2g than the required 9g in the forward direction. From these analyses, it is evident that the cargo restraint barrier would not be capable of preventing serious injury to the occupants during an emergency landing event with the full allowable cargo load.

Since unsafe conditions have been identified that are likely to exist or develop on other products of this same type design, this proposed AD would require installation of a main deck cargo barrier that complies with the applicable requirements of CAR part 4b. Accomplishment of the installation will prevent serious injury to the occupants in the event of an emergency landing. The proposed compliance time for the installation is within 36 months or 4,000 flight cycles after the effective date of the AD, whichever occurs first. This compliance time is based on the FAA's assessment of the reasonable amount of time to redesign, manufacture, and install the cargo barrier. This time is consistent with estimates by affected STC holders and operators that necessary redesigns can by developed and approved by the FAA within 12 to 18 months from August 1998.

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.

This analysis examines the cost of a proposed AD that would require the installation of a fail-safe hinge, redesigned main deck cargo door warning and power control systems, and a 9g cargo barrier on Boeing Model 727 series airplanes that have been modified in accordance with STC's held by Pemco. As discussed above, the FAA has determined that the main deck cargo door hinge is not fail-safe, that certain main deck cargo door control systems do not provide an adequate level of safety, and that the main deck cargo barrier is not structurally adequate during a minor crash landing.

Approximately 62 U.S.-registered Boeing Model 727 series airplanes would be affected by the proposed AD. The following discussion addresses, in sequence, the actions in this proposed AD and the estimated cost associated with each of these actions. An analysis of the costs is also available in Rules Docket No. 97–NM–235–AD.

1. Main Deck Cargo Door Hinge

Since unsafe conditions have been identified that are likely to exist or develop on other modified Boeing Model 727 series airplanes, paragraph (a) of the proposed AD would require, within 250 flight cycles after the effective date of this AD, a one-time detailed visual inspection to detect cracks of the external surface of the main deck cargo door hinge. Pemco estimates that this inspection would take 1.5 work hours. At a mechanic's burdened labor rate of $60 per work hour, the cost per airplane would be $90, or $5,580 for the fleet of 62 affected Boeing Model 727 series airplanes.

Paragraph (b)(1) of the proposed AD would require, within 36 months or 4,000 cycles after the effective date of this AD, a detailed visual inspection of the mating surfaces of both the hinge and the door skin and external fuselage doubler underlying the hinge. The FAA estimates that compliance with this inspection would take 200 hours at a cost of $12,000 per airplane, or $744,000 for the affected fleet.

Paragraph (b)(2) of the proposed AD would require installation of a fail-safe door hinge. The compliance time for this installation also would be 36 months or 4,000 cycles after the effective date of this AD. Pemco estimates the cost to design and certificate such a hinge is $20,000, that the parts for a fail-safe door hinge would cost $8,000, and installation would take 300 hours. Total compliance costs for this proposed provision for the affected fleet of 62 airplanes would be $1.6 million.

Paragraph (c) of the proposed AD would require that, if any crack or discrepancy is detected during the inspections required by paragraph (a) or (b)(1) of the proposed AD, repairs must be made prior to further flight. The cost of these repairs is not attributable to this proposed AD.

For purposes of this analysis, the FAA assumes an effective date of July 1, 2000. The cost to comply with proposed paragraphs (a) through (c) over the 36-month compliance period is $2.4 million, or $2.0 million discounted to present value at 7 percent. The FAA assumes that the installation of the main deck cargo door hinge [paragraph (b)(1)] would be accomplished at the same time as the detailed visual inspection of fastener holes [paragraph (b)(2)]. The FAA also assumes that operators of airplanes modified under Pemco AD's would perform these two activities uniformly throughout the 36-month period. Finally, the certification cost for the main deck cargo door hinge would be incurred within the first 6 months after the effective date of this AD.

2. Main Deck Cargo Door Systems

Paragraph (d) of the proposed AD would require, within 60 days after the effective date, revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) Supplement to provide the flight crew with procedures for ensuring that all power is removed from the main deck cargo door prior to dispatch of the airplane, and that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane. In addition, paragraph (d) of the proposed AD would require the installation of any associated placards.

The Pemco door system design as provided by STC's SA1444SO, SA1896SO, and SA1509SO is nearly identical to that of FedEx. Therefore it is likely that the cost associated with the inspection of the door are the same based on FedEx's assumptions. FedEx assumes that an external inspection of the flushness of the cargo door, combined with an ''enhanced B-check'' would be an acceptable means to the FAA to ensure that the cargo door is secured prior to dispatch. Based on this assumption, FedEx estimates, before a redesigned door system is installed [see proposed paragraph (f) below], that it would take a mechanic 30 minutes to inspect for flushness of the main deck cargo door prior to dispatch. Using these

estimates for compliance for airplanes with Pemco STC's, and, assuming each affected airplane flies 1 flight per day, 260 days per year, the estimated cost per inspection would be $30, or $7,800 per airplane per year until the door system is changed, a total of $865,800 over 36 months.

B-checks on these Boeing Model 727 series airplanes occur approximately twice a year. FedEx estimates the incremental cost for maintenance during this ''enhanced B-check'' is $11,700 per year until the door system is changed. Assuming incorporation of the redesigned door system occurs uniformly over the 36-month period, the total cost to operators of Pemco-modified Boeing Model 727 series airplanes would be $1.3 million. In addition, Pemco estimates the setup costs for the daily inspection (i.e., procedure materials for the mechanics to perform the inspection and training requirements) would be $50,000.

Paragraph (e) of the proposed AD would require, within 36 months after the effective date of this AD, incorporation of a redesigned main deck cargo door system. Pemco estimates that the development and certification of the system would cost $138,800. Modification parts would cost $10,000 per airplane and labor costs would be $18,000 per airplane. The FAA assumes that operators would incorporate the redesigned main deck cargo door system during regularly scheduled maintenance but that, on average, each airplane in the affected fleet would be out of service for 3 additional days at a cost of $18,300. The total costs of installing a redesigned main deck cargo door system, including certification, parts, labor, and down time would be $3.0 million over the 36-month period.

The total estimated cost to comply with proposed requirements for the main deck cargo door system is $5.2 million or $4.6 million, discounted to present value.

3. Main Deck Cargo Barrier

Paragraph (f) of the proposed AD would require, within 36 months or 4,000 flight cycles after the effective date of this AD, installation of a main deck cargo barrier that complies with the applicable requirements of CAR part 4b. Pemco estimates that development and certification of a 9g barrier would cost $126,500, while parts would cost $25,000 and labor would cost $18,000 per airplane for 300 hours of labor at $60 per hour burdened rate.

The FAA assumes that operators would install 9g barriers in their affected fleets uniformly over the 36-month compliance period. The total non-discounted cost would be $2.8 million, or $2.4 million discounted to present value.

4. Alternative Methods of Compliance (AMOC) and Special Flight Permits

Paragraph (g) of the proposed AD would allow an AMOC or adjustment of compliance time that provides an acceptable level of safety if approved by the Manager of the Atlanta ACO. The FAA is unable to determine the cost of an AMOC, but assumes it would be less than the cost of complying with the proposed provisions in paragraphs (a) through (f) of the proposed AD.

Paragraph (h) of the proposed AD would allow special flight permits in accordance with the regulations to operate an affected airplane to a location where the requirements of the proposed AD could be accomplished.

5. Total Cost of the Proposed AD

The FAA estimates that the total compliance cost of the proposed AD would be $10.4 million, or $9.0 million discounted to present value.

The Regulatory Flexibility Act (RFA) of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation. To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the Agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Six of the 11 operators that would be affected by this proposed AD are small, that is, they employ fewer than 1,500 persons. The estimated total cost of the proposed AD is $10.4 million, or approximately $167,700 for each of the 62 affected airplanes.

Therefore, the FAA has determined that the proposed rule would have a significant impact on a substantial number of small entities and a regulatory flexibility analysis is required.

Under Section 63(b) of the RFA, the analysis must address:

1. Reasons why the agency is promulgating the rule;

2. The objectives and legal basis for the rule;

3. The kind and number of small entities to which the rule will apply;

4. The projected reporting, recordkeeping, and other compliance requirements of the rule; and

5. All federal rules that may duplicate, overlap, or conflict with the rule. These elements of the RFA are addressed below.

A. Reasons Why Agency Action is Being Considered

The FAA has determined that the main deck cargo door hinge is not fail-safe; that certain main deck cargo door control systems do not provide an adequate level of safety; and the main deck cargo barrier is not structurally adequate during a minor crash landing.

The actions specified in the proposed AD are intended to prevent structural failure of the main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight, and consequent rapid decompression and/or structural damage to the airplane; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants.

B. Statement of Objective and Legal Basis

Under the United States Code (U.S.C.), the FAA Administrator is required to consider the following matter, among others, as being in the public interest: assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. [See 49 U.S.C. § 44101(d).] 49 U.S.C. § 44701(a) provides broad rulemaking authority to ''promote safe flight of civil aircraft in air commerce.'' Accordingly, this proposed AD will amend Title 14 of the Code of Federal Regulations to require operators of Boeing Model 727 series airplanes that have been converted from a passenger-to a cargo-carrying configuration to correct the identified unsafe conditions.

C. Kind and Number of Small Entities

The RFA requires the FAA to determine whether or not a rule significantly affects a substantial number of small entities. This determination is typically based on small entity size and cost thresholds that vary depending on the affected industry. The entities affected by the rule are those operating U.S.-registered converted Boeing Model 727 series airplanes. The FAA has determined that approximately 6 of the 11 entities are small, i.e., employ fewer than 1,500 persons. Two small entities operate 1 affected airplane each, 1 small entity operates 2 affected airplanes, 1 small entity operates 7 affected airplanes, and 2 small entities operate 9 affected airplanes each. Assuming the total costs of the proposed rule are divided equally among the affected fleet of 62 airplanes, the costs per airplane would be about $167,700. Therefore, the FAA has determined that this proposed AD would significantly affect a substantial number of small entities.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

With two minor exceptions, the rule will not mandate additional reporting or recordkeeping. The proposed AD would require operators to report results of the visual inspection of the main deck cargo door hinge and the visual inspection of the fastener holes common to the main deck cargo door hinge and underlying door and fuselage structure. The cost of these reports is negligible.

E. Overlapping, Duplicative, or Conflicting Federal Rules

The rule will not overlap, duplicate, or conflict with existing Federal rules.

F. Analysis of Alternatives

The FAA acknowledges that the rule will impose a financial requirement on small entities. Therefore, the agency considered alternatives to the proposed rule. These alternatives are:

- Exclude small entities; and
- Extend the compliance date for small entities.

The FAA has determined that the option to exclude small entities from the requirements of the rule is not justified. The unsafe condition that exists on an affected Boeing Model 727 series airplane operated by a small entity is as potentially catastrophic as that on an affected Boeing Model 727 series airplane operated by a large entity.

The FAA also considered options to extend the compliance period for small operators. The Boeing 727 Freighter Industry Working Group, which includes all affected U.S. operators (including small entities), provided input on the incorporation of corrective actions for the door hinge, door systems, and 9g barrier issues. The FAA initially proposed a compliance time of 28 months, consistent with a related AD dealing with the cargo floor structure on the same airplanes. The Industry Working Group requested an extension to 36 months. Following review of the Working Group's request, the FAA finds 36 months to be an acceptable compliance time. Therefore, the FAA has, in fact, considered and accepted this alternative and has accommodated small entity concerns about compliance time.

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed AD does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 97–NM–235–AD.

Applicability: Model 727 series airplanes that have been converted from a passenger to a cargo-carrying (''freighter'') configuration in accordance with Supplemental Type Certificate (STC) SA1444SO, SA1509SO, SA1543SO, or SA1896SO; 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 main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight, rapid decompression, and structural damage to the airplane; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants; accomplish the following:

Actions Addressing the Main Deck Cargo Door Hinge

(a) Within 250 flight cycles after the effective date of this AD, perform a detailed visual inspection of the external surface of the main deck cargo door hinge (both fuselage and door side hinge elements) to detect cracks.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror,

magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(b) Within 36 months or 4,000 flight cycles after the effective date of this AD, whichever occurs first, accomplish paragraphs (b)(1) and (b)(2) of this AD.

(1) Perform a detailed visual inspection of the mating surfaces of both the hinge and the door skin and external fuselage doubler underlying the hinge to detect cracks or other discrepancies (e.g., double or closely drilled holes, corrosion, chips, scratches, or gouges). The detailed visual inspection shall be accomplished in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. The requirements of this paragraph may be accomplished prior to or concurrently with the requirements of paragraph (b)(2) of this AD.

(2) Install a main deck cargo door hinge that complies with the applicable requirements of Civil Air Regulations (CAR) part 4b, including fail-safe requirements, in accordance with a method approved by the Manager, Atlanta ACO.

(c) If any crack or discrepancy is detected during the detailed visual inspection required by either paragraph (a) or (b)(1) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Atlanta ACO.

Actions Addressing the Main Deck Cargo Door Systems

(d) Within 60 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) Supplement by inserting therein the procedures specified in paragraphs (d)(1) and (d)(2) of this AD, and install any associated placards. The AFM revision procedures and installation of any associated placards shall be accomplished in accordance with a method approved by the Manager, Atlanta ACO.

(1) Procedures to ensure that all power is removed from the main deck cargo door prior to dispatch of the airplane. And

(2) Procedures to ensure that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane.

(e) Within 36 months after the effective date of this AD, incorporate redesigned main deck cargo door systems (e.g., warning/monitoring, power control, view ports, and means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked), including any associated procedures and placards, that comply with the applicable requirements of CAR part 4b and criteria specified in Appendix 1 of this AD; in accordance with a method approved by the Manager, Atlanta ACO.

Note 3: The design data submitted for approval should include a Systems Safety Analysis and Instructions for Continued Airworthiness that are acceptable to the Manager, Atlanta ACO.

Actions Addressing the Main Deck Cargo Barrier

(f) Within 36 months or 4,000 flight cycles after the effective date of this AD, whichever occurs first, install a main deck cargo barrier that complies with the applicable requirements of CAR part 4.b, in accordance with a method approved by the Manager, Atlanta ACO.

Note 4: The maximum main deck total payload that can be carried is limited to the lesser of the approved cargo barrier weight limit, weight permitted by the approved maximum zero fuel weight, weight permitted by the approved main deck position weights, weight permitted by the approved main deck running load or distributed load limitations, or approved cumulative zone or fuselage monocoque structural loading limitations (including lower hold cargo).

Note 5: Installation of a Ventura Aerospace Inc. cargo barrier STC ST00848LA is an approved means of compliance with the requirements of paragraph (f) of this AD.

(g) An alternative method of compliance or adjustment of the compliance time contained in this proposal that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

(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.

Appendix 1

Excerpt from an FAA Memorandum to the Director-Airworthiness and Technical Standards of ATA, dated March 20, 1992.

''(1) *Indication System:*

(a) The indication system must monitor the closed, latched, and locked positions, directly.

(b) The indicator should be *amber* unless it concerns an outward opening door whose opening during takeoff could present an immediate hazard to the airplane. In that case the indicator must be *red* and located in plain view in front of the pilots. An aural warning is also advisable. A display on the master caution/warning system is also acceptable as an indicator. For the purpose of complying with this paragraph, an immediate hazard is defined as significant reduction in controllability, structural damage, or impact with other structures, engines, or controls.

(c) Loss of indication or a false indication of a closed, latched, and locked condition must be improbable.

(d) A warning indication must be provided at the door operators station that monitors the door latched and locked conditions directly, unless the operator has a visual indication that the door is fully closed and locked. For example, a vent door that monitors the door locks and can be seen from the operators station would meet this requirement.

(2) *Means to Visually Inspect the Locking Mechanism:*

There must be a visual means of directly inspecting the locks. Where all locks are tied to a common lock shaft, a means of inspecting the locks at each end may be sufficient to meet this requirement provided no failure condition in the lock shaft would go undetected when viewing the end locks. Viewing latches may be used as an alternate to viewing locks on some installations where there are other compensating features

(3) *Means to Prevent Pressurization:*

All doors must have provisions to prevent initiation of pressurization of the airplane to an unsafe level, if the door is not fully closed, latched and locked.

(4) *Lock Strength:*

Locks must be designed to withstand the maximum output power of the actuators and maximum expected manual operating forces treated as a limit load. Under these conditions, the door must remain closed, latched and locked.

(5) *Power Availability:*

All power to the door must be removed in flight and it must not be possible for the flight crew to restore power to the door while in flight.

(6) *Powered Lock Systems:*

For doors that have powered lock systems, it must be shown by safety analysis that inadvertent opening of the door after it is fully closed, latched and locked, is extremely improbable.''

Issued in Renton, Washington, on November 4, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–29476 Filed 11–10–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–234–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, among other actions, installation of a fail-safe hinge, redesigned main deck cargo door warning and power control systems, and 9g cargo barrier. This proposal is

prompted by the FAA's determination that the main deck cargo door hinge is not fail-safe; that certain main deck cargo door control systems do not provide an adequate level of safety; and that the main deck cargo barrier is not structurally adequate during an emergency landing. The actions specified by the proposed AD are intended to prevent structural failure of the main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight, rapid decompression, and structural damage to the airplane; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants.

DATES: Comments must be received by December 27. 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–234–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location by appointment only between the hours of 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael O'Neil, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5320; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–234–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–114, Attention: Rules Docket No. 97–NM–234–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Supplemental Type Certificate (STC) ST00015AT (held by Kitty Hawk Air Cargo) specifies a design for a main deck cargo door, associated cargo door cutout, door systems, and Class ''E'' cargo interior with a cargo barrier. As discussed in notice of proposed rulemaking (NPRM), Rules Docket No. 97–NM–80–AD [the final rule, AD 98–26–20, amendment 39–10963, was published in the **Federal Register** on January 12, 1999 (64 FR 2038)], which is applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger to a cargo-carrying (''freighter'') configuration, the FAA has conducted a design review of Boeing Model 727 series airplanes modified in accordance with STC ST00015AT and has identified several potential unsafe conditions. [Results of this design review are contained in ''FAA Freighter Conversion STC Review, Report Number 4, dated February 6, 1997,'' hereinafter referred to as ''the Design Review Report,'' which is included in the Rules Docket for this NPRM.] This NPRM proposes corrective action for three of those potential unsafe conditions that relate to the following three areas: main deck cargo door hinge, main deck cargo door systems, and main deck cargo barrier.

Main Deck Cargo Door Hinge

In order to avoid catastrophic structural failure, it has been a typical industry approach to design outward opening cargo doors and their attaching structure to be fail-safe (*i.e.*, designed so that if a single structural element fails, other structural elements are able to carry the redistributed load). Another potential design approach is safe-life, where the critical structure is shown by analyses and/or tests to be capable of withstanding the repeated loads of variable magnitude expected in service for a specific service life. Safe-life is usually not used on critical structure because it is difficult to account for manufacturing or in-service accidental damage. For this reason, plus the fact that none of the STC holders have provided data in support of this approach, the safe-life approach will not be discussed further regarding the design and construction of the main deck cargo door hinge.

Structural elements such as the main deck cargo door hinge are subject to severe in-service operating conditions that could result in corrosion, binding, or seizure of the hinge. These conditions, in addition to the normal operational loads, can lead to early and unpredictable fatigue cracking. If a main deck cargo door hinge is not a fail-safe design, a fatigue crack could initiate and propagate longitudinally undetected, which could lead to a complete hinge failure. A possible consequence of this undetected failure is the opening of the main deck cargo door while the airplane is in flight. Service experience indicates that the opening of a cargo door while the airplane is in flight can be extremely hazardous in a variety of ways including possible loss of flight control, severe structural damage, or rapid decompression, any of which, could lead to loss of the airplane.

The design of the main deck cargo door hinge must be in compliance with Civil Air Regulations (CAR) part 4b, including CAR part 4b.270, which requires, in part, that catastrophic failure or excessive structural deformation, which could adversely affect the flight characteristics of the airplane, is not probable after fatigue failure or obvious partial failure of a single principal structural element. One common feature of a fail-safe hinge design is a division of the hinge into multiple segments such that, following failure of any one segment, the remaining segments would support the redistributed load.

The main deck cargo door installed in accordance with STC ST00015AT is supported by latches along the bottom of the door and a two-segment hinge along the top. This two-segment hinge is considered a critical structural element for this STC. A crack that initiates and propagates longitudinally along either segment of the hinge will eventually result in failure of the entire hinge, because the remaining segment of the hinge is unable to support the redistributed loads. Failure of the entire hinge can result in the opening of the main deck cargo door while the airplane is in flight.

On other Boeing Model 727 series airplanes modified in accordance with

similar STC's, inspections revealed a number of fasteners with both short edge margins and short spacing in the cargo door cutout external doublers. Some edge margins were as small as one fastener diameter. Fasteners that are placed too close to the edge of a structural member or spaced too close to an adjacent fastener can result in inadequate joint strength and stress concentrations, which may result in fatigue cracking of the skin. If such defects were to exist in the structure of the door or the fuselage to which the main deck cargo door hinge is attached, the attachment of the hinge could fail, and consequently cause the door to open while the airplane is in flight.

Since unsafe conditions have been identified that are likely to exist or develop on other products of this same type design, this proposed AD would require, within 250 flight cycles after the effective date of the AD, a one-time detailed visual inspection of the external surface of the main deck cargo door hinge (both fuselage and door side hinge elements) to detect cracks, and repair, if necessary. Accomplishment of this inspection will ensure that the subject airplanes are not in immediate risk of hinge failure.

In addition, the proposed AD would require a detailed visual inspection of the mating surfaces of both the hinge and the door skin and external fuselage doubler underlying the hinge to detect cracks or other discrepancies (e.g., double or closely drilled holes, corrosion, chips, scratches, or gouges). The proposed AD also would require installation of a main deck cargo door hinge that complies with the applicable requirements of CAR part 4b, including fail-safe requirements. Accomplishment of this detailed visual inspection will ensure the integrity of the door and fuselage structure to which the hinge is attached. The proposed compliance time for this inspection and installation is within 36 months or 4,000 flight cycles after the effective date of this AD, whichever occurs first. The compliance time is based on the FAA's assessment of the reasonable amount of time to redesign, manufacture, and install a fail-safe hinge. This time is in consideration of the 18-month time period estimated by the Boeing 727 industry working group, which includes operators, affected STC holders, and engineering organizations, to develop FAA-approved redesigns. These actions would be required to be accomplished in accordance with a method approved by the FAA.

Main Deck Cargo Door Systems

In early 1989, two transport airplane accidents were attributed to cargo doors coming open during flight. The first accident involved a Boeing 747 series airplane in which the cargo door separated from the airplane, and damaged the fuselage structure, engines, and passenger cabin. The second accident involved a McDonnell Douglas DC–9 series airplane in which the cargo door opened but did not separate from its hinge. The open door disturbed the airflow over the empennage, which resulted in loss of flight control and consequent loss of the airplane. Although cargo doors have opened occasionally without mishap during takeoff, these two accidents serve to highlight the extreme potential dangers associated with the opening of a cargo door while the airplane is in flight.

As a result of these cargo door opening accidents, the Air Transport Association (ATA) of America formed a task force, including representatives of the FAA, to review the design, manufacture, maintenance, and operation of airplanes fitted with outward opening cargo doors, and to make recommendations to prevent inadvertent cargo door openings while the airplane is in flight. A design working group was tasked with reviewing 14 CFR part 25.783 [and its accompanying Advisory Circular (AC) 25.783–1, dated December 10, 1986] with the intent of clarifying its contents and recommending revisions to enhance future cargo door designs. This design group also was tasked with providing specific recommendations regarding design criteria to be applied to existing outward opening cargo doors to ensure that inadvertent openings would not occur in the current transport category fleet of airplanes.

The ATA task force made its recommendations in the ''ATA Cargo Door Task Force Final Report,'' dated May 15, 1991 (hereinafter referred to as ''the ATA Final Report''). On March 20, 1992, the FAA issued a memorandum to the Director-Airworthiness and Technical Standards of ATA (hereinafter referred to as ''the FAA Memorandum''), acknowledging ATA's recommendations and providing additional guidance for purposes of assessing the continuing airworthiness of existing designs of outward opening doors. The FAA Memorandum was not intended to upgrade the certification basis of the various airplanes, but rather to identify criteria to evaluate potential unsafe conditions identified on in-service airplanes. Appendix 1 of this AD contains the specific paragraphs from the FAA Memorandum that set forth the criteria to which the outward opening doors should be shown to comply.

Applying the applicable requirements of CAR part 4b and design criteria provided by the FAA Memorandum, the FAA has reviewed the original type design of major transport airplanes, including Boeing 727 airplanes equipped with outward opening doors, for any design deficiency or service difficulty. Based on that review, the FAA identified unsafe conditions and issued, among others, the following AD's:

- For certain McDonnell Douglas Model DC–9 series airplanes: AD 89–11–02, amendment 39–6216 (54 FR 21416, May 18, 1989);
- For all Boeing Model 747 series airplanes: AD 90–09–06, amendment 39–6581 (55 FR 15217, April 23, 1990);
- For certain McDonnell Douglas Model DC–8 series airplanes: AD 93–20–02, amendment 39–8709 (58 FR 471545, October 18, 1993);
- For certain Boeing Model 747–100 and –200 series airplanes: AD 96–01–51, amendment 39–9492 (61 FR 1703, January 23, 1996); and
- For certain Boeing Model 727–100 and –200 series airplanes: AD 96–16–08, amendment 39–9708 (61 FR 41733, August 12, 1996).

Using the criteria specified in the ATA Final Report and the FAA Memorandum as evaluation guides, the FAA conducted an engineering design review and inspection of an airplane modified in accordance with STC ST00015AT (held by Kitty Hawk). The FAA identified a number of design features of the main deck cargo door systems of this STC that are unsafe and do not meet the criteria specified in the ATA Final Report and the FAA Memorandum. The FAA design review team determined that the design data of this STC did not include an adequate safety analysis of the main deck cargo door systems.

For airplanes modified in accordance with STC ST00015AT, the FAA considers the following three specific design deficiencies of the main deck cargo door systems to be unsafe:

1. Means to Visually Inspect the Locking Mechanism

The three view ports installed in accordance with STC ST00015AT are located for viewing locking pins at the No. 2, No. 4, and No. 6 latch positions of the main deck cargo door. These view ports are intended to allow the flight crew to conduct a visual inspection of the cargo door locking mechanism to determine whether or not the cargo door is closed, latched, and locked. The view

ports are used in conjunction with the door warning system and should provide a suitable back-up for confirming that the door is closed, latched and locked in the event that the main deck cargo door warning system malfunctions.

However, during the FAA design review, it was determined that these view ports are installed at an angle; therefore, a visual inspection of the locking pins is not possible. Therefore, the FAA finds that these view ports cannot be used to confirm that the door is closed, latched, and locked when the cargo door warning system malfunctions.

As discussed in the ATA Final Report and the FAA Memorandum, there must be a means of directly inspecting each lock or, at a minimum, the locks at each end of the lock shaft of certain designs, such that a failure condition in the lock shaft would be detectable.

2. Means to Prevent Pressurization to an Unsafe Level

Boeing 727–200 airplanes modified in accordance with STC ST00015AT are configured to utilize two outward opening vent doors for the purpose of preventing pressurization of the airplane to an unsafe level in the event the main deck cargo door is not closed, latched, and locked. Because the vent door openings are approximately six inches in diameter, the opening area may be insufficient to prevent pressurization of the airplane to an unsafe level in the event the main deck cargo door is not closed, latched, and locked. Paragraph (1)(d) of Appendix 1 describes the requirement that a warning indication be provided to the door operators station to monitor the door condition. Another function of the vent doors, if properly designed, would be to provide such a visual warning indication. If the vent door is open, the door operator will know the door is not closed, locked, and latched. The vent doors in this design are not spring loaded to the fully open position. As a result, they may appear to be closed when in fact they are not. Rather than provide a positive indication of a safe door, they can create a false indication of the door status. Therefore, the position of these vent doors cannot be used to indicate that the main cargo door is closed, latched, and locked, nor that there is a malfunction in the vent door system.

''Failure Mode and Effects Analysis (FMEA) for B727–200 Cargo Door Modifications,'' dated November 20, 1991, was prepared by the STC holder as a qualitative safety analysis for the vent door system of this STC. The FMEA indicates that the system has single point failures of the vent door systems that can result in a false indication that the door is safe. The presence of single point failures reflects that the system does not meet the standard established in the ATA Final Report and FAA memorandum that a false indication of a closed, latched, and locked condition is improbable.

3. Powered Lock Systems

The main deck cargo door actuation control system for STC ST00015AT utilizes a powered lock system. The main deck cargo door control system for STC ST00015AT that utilizes electrical interlock switches is designed to remove door control power (electrical and hydraulic) prior to flight and to prevent inadvertent door openings. The design shows the likelihood that latent and/or single point failures can restore or continue to allow power to the door controls and cause inadvertent door openings. The failure modes may be found in the electrical portion of the door control panel, which, in turn, activates the door control hydraulics. The potential for the occurrence of these failure conditions is increased by the harsh operating environment of freighter airplanes. Door system components are routinely exposed to precipitation, dirt, grease, and foreign object intrusion, all of which increase the likelihood of damage. As a result, wires, switches, and relays have a greater potential to fail or short circuit in such a way as to allow the cargo door to be powered open without an operator's command and regardless of electrical interlock positions.

A systems safety analysis would normally evaluate and resolve the potential for these types of unsafe conditions. However, the design data for STC ST00015AT includes a systems safety analysis that is insufficient to show that an inadvertent opening of the main deck cargo door after it is fully closed, latched, and locked is extremely improbable. The need for a system safety analysis is identified in the ATA Final Report and the FAA Memorandum.

Since unsafe conditions have been identified that are likely to exist or develop on other products of this same type design, this proposed AD would require, within 60 days after the effective date, revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) Supplement to provide the flight crew with procedures for ensuring that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane; and installing any associated placards.

In addition, the proposed AD would require, within 36 months after the effective date of the AD, incorporation of redesigned main deck cargo door systems (*e.g.*, power control, view ports, and means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked), including any associated procedures and placards that comply with the applicable requirements of CAR part 4b and design criteria of the ATA Final Report and the FAA Memorandum. Design data provided in support of the door systems re-design should include a Systems Safety Analysis and Instructions for Continued Airworthiness that are acceptable to the FAA. Accomplishment of the incorporation of redesigned main deck cargo door systems will prevent rapid decompression and/or structural damage to the airplane as a result of loss or opening of the cargo door while the airplane is in flight. The compliance time is based on the FAA's assessment of the reasonable amount of time to incorporate redesigned main deck cargo door systems. This time is in consideration of the 18-month time period estimated by the Boeing 727 industry working group, which includes operators, affected STC holders, and engineering organizations, to develop FAA-approved redesigns.

These actions would be required to be accomplished in accordance with a method approved by the FAA.

Cargo Barrier

In order to ensure the safety of occupants during emergency landing conditions, the FAA first established in 1934, a set of inertia load factors used to design the structure for restraining items of mass in the fuselage. Because the airplane landing speeds have increased over the years as the fleet has transitioned from propeller to jet design, inertia load factors were changed as specified in CAR part 4b.260. Experience has shown that an airplane designed to this regulation has a reasonable probability of protecting its occupants from serious injury in an emergency landing. The 727 passenger airplane was designed to these criteria which specified an ultimate inertia load requirement of 9g in the forward direction. This criteria was applied to the seats and structure restraining the occupants, including the flight crew, as well as other items of mass in the fuselage.

When the 727 passenger airplane is converted to carry cargo on the main deck, a cargo barrier is required, since most cargo containers and the container-to-floor attaching devices are not

designed to withstand emergency landing loads. In fact, the FAA estimates that the container-to-floor attaching devices will only support approximately 1.5g's to 3g's in the forward direction. Without a 9g cargo barrier, it is probable that the loads associated with an emergency landing would cause the cargo to become unrestrained and impact the occupants of the airplane, which could result in serious injury or death.

The structural inadequacy of the cargo barrier was evident to the FAA during its review in October 1996 of a Boeing 727 modified in accordance with STC ST00015AT. The observations revealed that the design of the cargo barrier floor attachment and circumferential supporting structure does not provide adequate strength to withstand the 9g forward inertia load generated by the main deck cargo mass, nor does it provide a load path to effectively transfer the loads from the cargo barrier to the fuselage structure of the airplane. These observations are supported by data contained in ''ER 2785, Structural Substantiation of the 50k 9g Bulkhead Restraint System in Support of STC SA1543SO PN 53–1292–401 for the 9g Bulkhead 53–1980–300 Assembly with Upper Attachment Structure, Lower Attachment Structure, Floor Shear Web Structure, Seat Track Splice Fittings, Seat Tracks, and Seat Track Splices,'' dated September 29, 1996, by M. F. Daniel. Although this report was specific to STC SA1543SO, the FAA has determined that the data are applicable to airplane modified in accordance with STC ST00015AT because the design principles for attachment of the barriers in both STC's are the same. The report reveals that structural deficiencies were found in the net attach plates and floor attachment structure of the cargo barrier. The data show large negative margins of safety, which indicate that the inertia load capability of the cargo barrier is closer to 2g than the required 9g in the forward direction. From these analyses, it is evident that the cargo barrier would not be capable of preventing serious injury to the occupants during an emergency landing event with the full allowable cargo load.

Since unsafe conditions have been identified that are likely to exist or develop on other products of this same type design, this proposed AD would require installation of a main deck cargo barrier that complies with the applicable requirements of CAR part 4b. Accomplishment of the installation will prevent serious injury to the occupants in the event of an emergency landing. The proposed compliance time for the installation is within 36 months or 4,000 flight cycles after the effective date of the AD, whichever occurs first. This compliance time is based on the FAA's assessment of the reasonable amount of time to redesign, manufacture, and install the cargo barrier. This time is consistent with estimates by affected STC holders and operators that necessary redesigns can by developed and approved by the FAA within 12 to 18 months from August 1998.

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.

This analysis examines the cost of a proposed AD that would require the installation of a fail-safe hinge, redesigned main deck cargo door warning and power control systems, and a 9g cargo barrier on Boeing Model 727 series airplanes that have been modified in accordance with an STC held by Kitty Hawk Air Cargo. As discussed above, the FAA has determined that the main deck cargo door hinge is not fail-safe, that certain main deck cargo door control systems do not provide an adequate level of safety, and that the main deck cargo barrier is not structurally adequate during a minor crash landing.

Approximately 5 U.S.-registered Boeing Model 727 series airplane would be affected by the proposed AD. Kitty Hawk, owner of the STC, operates all of these airplanes. The following discussion addresses, in sequence, the actions in proposed Rules Docket No. 97–NM–234–AD and the estimated cost associated with each of these actions. An analysis of the estimated cost is also available in the Rules Docket.

1. Main Deck Cargo Door Hinge

Since unsafe conditions have been identified that are likely to exist or develop on other modified Boeing Model 727 series airplanes, paragraph (a) of the proposed AD would require, within 250 flight cycles after the effective date this AD, a one-time detailed visual inspection to detect cracks of the external surface of the main deck cargo door hinge.

Paragraph (b)(1) of the proposed AD would require, within 36 months or 4,000 cycles after the effective date of this AD, a detailed visual inspection of the mating surfaces of both the hinge and the door skin and external fuselage doubler underlying the hinge. The FAA estimates that compliance with this inspection would take 200 hours at a cost of $12,000 per airplane, or $600,000 for the affected fleet. Kitty Hawk estimates that compliance with these two inspections would cost approximately $1,430 per airplane, or $7,150 for the affected fleet.

Paragraph (b)(2) of the proposed AD would require installation of a fail-safe door hinge. The compliance time for this installation also would be 36 months or 4,000 cycles after the effective date this AD. Kitty Hawk estimates the cost to design and certificate such a hinge is $50,000, that no parts for a fail-safe door hinge would be required, and that the cost of the modification would cost $15,000. Total compliance costs for this proposed provision for the affected fleet of 5 airplanes would be $125,000.

Paragraph (c) of the proposed AD would require that, if any cracks or discrepancies are detected during the inspections required by paragraph (a) or (b)(1) of the proposed AD, repairs must be made prior to further flight. The cost of these repairs is not attributable to this proposed AD.

For purposes of this analysis, the FAA assumes an effective date of July 1, 2000. The cost to comply with proposed paragraphs (a) through (c) over the 36-month compliance period is $132,000 or $116,000 discounted to present value at 7 percent. The FAA assumes that the installation of the main deck cargo door hinge [paragraph (b)(1)] would be accomplished at the same time as the detailed visual inspection of fastener holes [paragraph (b)(2)]. The FAA also assumes that Kitty Hawk would perform these two activities uniformly throughout the 36-month period. Finally, the certification cost for the main deck cargo door hinge would be incurred within the first 6 months after the effective date of this AD.

2. Main Deck Cargo Door Systems

Paragraph (d) of the proposed AD would require, within 60 days after the effective date of this AD, a revision to the Limitations Section of the FAA-approved AFM Supplement by inserting procedures to ensure that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane. In addition, paragraph (d) of the proposed AD would require the installation of any associated placards.

The FAA assumes that Boeing Model 727 series airplanes converted under a

Kitty Hawk STC will have an acceptable pressurization vent door installed, which operators could use to visually determine whether the vent is in the proper position prior to dispatch, indicating that the door is closed, latched, and locked. The FAA estimates that this activity would take no more than 30 minutes. Assuming each affected airplane flies one flight per day, 260 days per year, the estimated cost per inspection would be $30, or $7,800 per airplane per year until the door system is changed, a total of $58,500 over 36 months.

Paragraph (e) of the proposed AD would require, within 36 months after the effective date of this AD, incorporation of a redesigned main deck cargo door system. Kitty Hawk estimates that the development and certification of the system would cost $175,000. Modification parts would cost $38,000 per airplane and labor costs would be $23,500 per airplane. The FAA assumes that operators would incorporate the redesigned main deck cargo door system during regularly scheduled maintenance. (Kitty Hawk indicates that any lost revenue due to additional down time should be attributed to the installation of the 9g main deck cargo barrier, discussed below.) The total costs of installing a redesigned main deck cargo door system, including certification, parts, and labor would be $482,500 over the 36-month period.

The total estimated cost to comply with proposed requirements for the main deck cargo door system is $541,000 or $523,000, discounted to present value.

3. Main Deck Cargo Barrier

Paragraph (f) of the proposed AD would require, within 36 months or 4,000 flight cycles after the effective date of this AD, installation of a main deck cargo barrier that complies with the applicable requirements of CAR part 4b. Ventura Aerospace holds an STC for an approved 9g barrier, and Kitty Hawk indicates that they may purchase barriers manufactured to this STC. The cost of the barrier kits is $67,500. Kitty Hawk estimates that labor would cost $13,500 per airplane and that an affected airplane would be out-of-service 3 additional days, at a cost of $15,000 per day, while this barrier is installed.

The FAA assumes that Kitty Hawk would install 9g barriers uniformly over the 36-month compliance period. The total non-discounted cost of this proposed requirement would be $630,000, or $551,000 discounted to present value.

4. Alternative Methods of Compliance (AMOC) and Special Flight Permits

Paragraph (g) of the proposed AD would allow an AMOC or adjustment of compliance time that provides an acceptable level of safety if approved by the Manager of the Atlanta ACO. The FAA is unable to determine the cost of an AMOC, but assumes it would be less than the cost of complying with the proposed provisions in paragraphs (a) through (f) of the proposed AD.

Paragraph (h) of the proposed AD would allow special flight permits in accordance with the regulations to operate an affected airplane to a location where the requirements of the proposed AD could be accomplished.

5. Total Cost of the Proposed AD

The FAA estimates that the total compliance cost of the proposed AD would be $1.3 million, or $1.2 million discounted to present value.

The Regulatory Flexibility Act (RFA) of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation. To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the Agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Only one operator, Kitty Hawk, would be affected by this proposed AD. Kitty Hawk is small, that is, it employs fewer than 1,500 persons. However, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FAA certifies that this proposed AD would not have a significant economic impact on a substantial number of small entities, because one entity is not a substantial number.

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed AD does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 97–NM–234–AD.

Applicability: Model 727 series airplanes that have been converted from a passenger to a cargo-carrying (''freighter'') configuration in accordance with Supplemental Type Certificate (STC) 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 main deck cargo door hinge or failure of the cargo door systems, which could result in the loss or opening of the cargo door while the airplane is in flight, rapid decompression, and structural damage to the airplane; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants; accomplish the following:

Actions Addressing the Main Deck Cargo Door Hinge

(a) Within 250 flight cycles after the effective date of this AD, perform a detailed visual inspection of the external surface of the main deck cargo door hinge (both fuselage and door side hinge elements) to detect cracks.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(b) Within 36 months or 4,000 flight cycles after the effective date of this AD, whichever occurs first, accomplish paragraphs (b)(1) and (b)(2) of this AD.

(1) Perform a detailed visual inspection of the mating surfaces of both the hinge and the door skin and external fuselage doubler underlying the hinge to detect cracks or other discrepancies (*e.g.*, double or closely drilled holes, corrosion, chips, scratches, or gouges). The detailed visual inspection shall be accomplished in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The requirements of this paragraph may be accomplished prior to or concurrently with the requirements of paragraph (b)(2) of this AD.

(2) Install a main deck cargo door hinge that complies with the applicable requirements of Civil Air Regulations (CAR) part 4b, including fail-safe requirements, in accordance with a method approved by the Manager, Los Angeles ACO.

(c) If any crack or discrepancy is detected during the detailed visual inspection required by either paragraph (a) or (b)(1) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles ACO.

Actions Addressing the Main Deck Cargo Door Systems

(d) Within 60 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) Supplement by inserting therein procedures to ensure that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane, and install any associated placards. The AFM revision procedures and installation of any associated placards shall be accomplished in accordance with a method approved by the Manager, Los Angeles ACO.

(e) Within 36 months after the effective date of this AD, incorporate redesigned main deck cargo door systems (*e.g.*, power control, view ports, and means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked), including any associated procedures and placards, that comply with the applicable requirements of CAR part 4b and criteria specified in Appendix 1 of this AD; in accordance with a method approved by the Manager, Los Angeles ACO.

Note 3: The design data submitted for approval should include a Systems Safety Analysis and Instructions for Continued Airworthiness that are acceptable to the Manager, Los Angeles ACO.

Actions Addressing the Main Deck Cargo Barrier

(f) Within 36 months or 4,000 flight cycles after the effective date of this AD, whichever occurs first, install a main deck cargo barrier that complies with the applicable requirements of CAR part 4.b, in accordance with a method approved by the Manager, Los Angeles ACO.

Note 4: The maximum main deck total payload that can be carried is limited to the lesser of the approved cargo barrier weight limit, weight permitted by the approved maximum zero fuel weight, weight permitted by the approved main deck position weights, weight permitted by the approved main deck running load or distributed load limitations, or approved cumulative zone or fuselage monocoque structural loading limitations (including lower hold cargo).

Note 5: Installation of a Ventura Aerospace Inc. cargo barrier STC ST00848LA is an approved means of compliance with the requirements of paragraph (f) of this AD.

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

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

(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.

Appendix 1

Excerpt from an FAA Memorandum to Director-Airworthiness and Technical Standards of ATA, dated March 20, 1992.

''(1) *Indication System:*

(a) The indication system must monitor the closed, latched, and locked positions, directly.

(b) The indicator should be *amber* unless it concerns an outward opening door whose opening during takeoff could present an immediate hazard to the airplane. In that case the indicator must be *red* and located in plain view in front of the pilots. An aural warning is also advisable. A display on the master caution/warning system is also acceptable as an indicator. For the purpose of complying with this paragraph, an immediate hazard is defined as significant reduction in controllability, structural damage, or impact with other structures, engines, or controls.

(c) Loss of indication or a false indication of a closed, latched, and locked condition must be improbable.

(d) A warning indication must be provided at the door operators station that monitors the door latched and locked conditions directly, unless the operator has a visual indication that the door is fully closed and locked. For example, a vent door that monitors the door locks and can be seen from the operators station would meet this requirement.

(2) *Means to Visually Inspect the Locking Mechanism:*

There must be a visual means of directly inspecting the locks. Where all locks are tied to a common lock shaft, a means of inspecting the locks at each end may be sufficient to meet this requirement provided no failure condition in the lock shaft would go undetected when viewing the end locks. Viewing latches may be used as an alternate to viewing locks on some installations where there are other compensating features.

(3) *Means to Prevent Pressurization:*

All doors must have provisions to prevent initiation of pressurization of the airplane to an unsafe level, if the door is not fully closed, latched and locked.

(4) *Lock Strength:*

Locks must be designed to withstand the maximum output power of the actuators and maximum expected manual operating forces treated as a limit load. Under these conditions, the door must remain closed, latched and locked.

(5) *Power Availability:*

All power to the door must be removed in flight and it must not be possible for the flight crew to restore power to the door while in flight.

(6) *Powered Lock Systems:*

For doors that have powered lock systems, it must be shown by safety analysis that inadvertent opening of the door after it is fully closed, latched and locked, is extremely improbable.''

Issued in Renton, Washington, on November 4, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–29475 Filed 11–10–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–233–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, among other actions, installation of a fail-safe hinge, redesigned main deck cargo door warning and power control systems, and 9g cargo barrier. This proposal is prompted by the FAA's determination that the main deck cargo door hinge is not fail-safe; that certain main deck cargo door control systems do not provide an adequate level of safety; and that the main deck cargo barrier is not structurally adequate during an emergency landing. The actions specified by the proposed AD are intended to prevent structural failure of the main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight, rapid decompression, and structural damage to the airplane; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants.

DATES: Comments must be received by December 27. 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–233–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location by appointment only between the hours of 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Paul Sconyers, Associate Manager, Airframe and Propulsion Branch, ACE–117A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (770) 703–6076, fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–233–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–114, Attention: Rules Docket No. 97–NM–233–AD, 1601 Lind Avenue, SW, Renton, Washington 98055–4056.

Discussion

Supplemental Type Certificates (STC) SA1797SO and SA1368SO (held by Aeronautical Engineers, Inc.) specify a design for a main deck cargo door, associated cargo door cutout, and door systems. STC SA1798SO (held by Aeronautical Engineers, Inc.) specifies a design for a Class ''E'' cargo interior with a cargo barrier. As discussed in notice of proposed rulemaking (NPRM), Rules Docket No. 97–NM–79–AD [the final rule, AD 98–26–19, amendment 39–10962, was published in the **Federal Register** on January 12, 1999 (64 FR 2016)], which is applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger to a cargo-carrying (''freighter'') configuration, the FAA has conducted a design review of Boeing Model 727 series airplanes modified in accordance with STC's SA1797SO and SA1798SO and has identified several potential unsafe conditions. [Results of this design review are contained in ''FAA Freighter Conversion STC Review, Report Number 3, dated January 27, 1997,'' hereinafter referred to as ''the Design Review Report,'' which is included in the Rules Docket for this NPRM.] This NPRM proposes corrective action for three of those potential unsafe conditions that relate to the following three areas: Main deck cargo door hinge, main deck cargo door systems, and main deck cargo barrier.

Main Deck Cargo Door Hinge

In order to avoid catastrophic structural failure, it has been a typical industry approach to design outward opening cargo doors and their attaching structure to be fail-safe (*i.e.*, designed so that if a single structural element fails, other structural elements are able to carry resulting loads). Another potential design approach is safe-life, where the critical structure is shown by analyses and/or tests to be capable of withstanding the repeated loads of variable magnitude expected in service for a specific service life. Safe-life is usually not used on critical structure because it is difficult to account for manufacturing or in-service accidental damage. For this reason, plus the fact that none of the STC holders have provided data in support of this approach, the safe-life approach will not be discussed further regarding the design and construction of the main deck cargo door hinge.

Structural elements such as the main deck cargo door hinge are subject to severe in-service operating conditions that could result in corrosion, binding, or seizure of the hinge. These

conditions, in addition to the normal operational loads, can lead to early and unpredictable fatigue cracking. If a main deck cargo door hinge is not a fail-safe design, a fatigue crack could initiate and propagate longitudinally undetected, which could lead to a complete hinge failure. A possible consequence of this undetected failure is the opening of the main deck cargo door while the airplane is in flight. Service experience indicates that the opening of a cargo door while the airplane is in flight can be extremely hazardous in a variety of ways including possible loss of flight control, severe structural damage, or rapid decompression, any of which, could lead to loss of the airplane.

The design of the main deck cargo door hinge must be in compliance with Civil Air Regulations (CAR) part 4b, including CAR part 4b.270, which requires, in part, that catastrophic failure or excessive structural deformation, which could adversely affect the flight characteristics of the airplane, is not probable after fatigue failure or obvious partial failure of a single principal structural element. One common feature of a fail-safe hinge design is a division of the hinge into multiple segments such that, following failure of any one segment, the remaining segments would support the redistributed load.

The main deck cargo door installed in accordance with STC's SA1797SO and SA1368SO is supported by latches along the bottom of the door and a two-segment hinge along the top. This two-segment hinge is considered a critical structural element for these STC's. A crack that initiates and propagates longitudinally along either segment of the hinge will eventually result in failure of the entire hinge, because the remaining segment of the hinge is unable to support the redistributed loads. Failure of the entire hinge can result in the opening of the main deck cargo door while the airplane is in flight.

As discussed in the Design Review Report, an inspection of one Boeing Model 727 series airplane modified in accordance with STC's SA1797SO and SA1798SO revealed a number of fasteners with both short edge margins and short spacing in the cargo door cutout external doublers. Some edge margins were as small as one fastener diameter. Fasteners that are placed too close to the edge of a structural member or spaced too close to an adjacent fastener can result in inadequate joint strength and stress concentrations, which may result in fatigue cracking of the skin. If such defects were to exist in the structure of the door or the fuselage to which the main deck cargo door hinge is attached, the attachment of the hinge could fail, and consequently cause the door to open while the airplane is in flight.

Since unsafe conditions have been identified that are likely to exist or develop on other products of this same type design, this proposed AD would require, within 250 flight cycles after the effective date of the AD, a one-time detailed visual inspection of the external surface of the main deck cargo door hinge (both fuselage and door side hinge elements) to detect cracks, and repair, if necessary. Accomplishment of this inspection will ensure that the subject airplanes are not in immediate risk of hinge failure.

In addition, the proposed AD would require a detailed visual inspection of the mating surfaces of both the hinge and the door skin and external fuselage doubler underlying the hinge to detect cracks or other discrepancies (*e.g.*, double or closely drilled holes, corrosion, chips, scratches, or gouges). The proposed AD also would require installation of a main deck cargo door hinge that complies with the applicable requirements of CAR part 4b, including fail-safe requirements. Accomplishment of this detailed visual inspection will ensure the integrity of the door and fuselage structure to which the hinge is attached. The proposed compliance time for this inspection and installation is within 36 months or 4,000 flight cycles after the effective date of this AD, whichever occurs first. The compliance time is based on the FAA's assessment of the reasonable amount of time to redesign, manufacture, and install a fail-safe hinge. This time is in consideration of the 18-month time period estimated by the Boeing 727 industry working group, which includes operators, affected STC holders, and engineering organizations, to develop FAA-approved redesigns. These actions would be required to be accomplished in accordance with a method approved by the FAA.

Main Deck Cargo Door Systems

In early 1989, two transport airplane accidents were attributed to cargo doors coming open during flight. The first accident involved a Boeing 747 series airplane in which the cargo door separated from the airplane, and damaged the fuselage structure, engines, and passenger cabin. The second accident involved a McDonnell Douglas DC–9 series airplane in which the cargo door opened but did not separate from its hinge. The open door disturbed the airflow over the empennage, which resulted in loss of flight control and consequent loss of the airplane. Although cargo doors have opened occasionally without mishap during takeoff, these two accidents serve to highlight the extreme potential dangers associated with the opening of a cargo door while the airplane is in flight.

As a result of these cargo door opening accidents, the Air Transport Association (ATA) of America formed a task force, including representatives of the FAA, to review the design, manufacture, maintenance, and operation of airplanes fitted with outward opening cargo doors, and to make recommendations to prevent inadvertent cargo door openings while the airplane is in flight. A design working group was tasked with reviewing 14 CFR part 25.783 [and its accompanying Advisory Circular (AC) 25.783–1, dated December 10, 1986] with the intent of clarifying its contents and recommending revisions to enhance future cargo door designs. This design group also was tasked with providing specific recommendations regarding design criteria to be applied to existing outward opening cargo doors to ensure that inadvertent openings would not occur in the current transport category fleet of airplanes.

The ATA task force made its recommendations in the ''ATA Cargo Door Task Force Final Report,'' dated May 15, 1991 (hereinafter referred to as ''the ATA Final Report''). On March 20, 1992, the FAA issued a memorandum to the Director—Airworthiness and Technical Standards of ATA (hereinafter referred to as ''the FAA Memorandum''), acknowledging ATA's recommendations and providing additional guidance for purposes of assessing the continuing airworthiness of existing designs of outward opening doors. The FAA Memorandum was not intended to upgrade the certification basis of the various airplanes, but rather to identify criteria to evaluate potential unsafe conditions demonstrated on in-service airplanes. Appendix 1 of this AD contains the specific paragraphs from the FAA Memorandum that set forth the criteria to which the outward opening doors should be shown to comply.

Applying the applicable requirements of CAR part 4b and design criteria provided by the FAA Memorandum, the FAA has reviewed the original type design of major transport airplanes, including Boeing 727 airplanes equipped with outward opening doors, for any design deficiency or service difficulty. Based on that review, the FAA identified unsafe conditions and issued, among others, the following AD's:

- For certain McDonnell Douglas Model DC–9 series airplanes: AD 89–11–02, amendment 39–6216 (54 FR 21416, May 18, 1989);
- For all Boeing Model 747 series airplanes: AD 90–09–06, amendment 39–6581 (55 FR 15217, April 23, 1990);
- For certain McDonnell Douglas Model DC–8 series airplanes: AD 93–20–02, amendment 39–8709 (58 FR 471545, October 18, 1993);
- For certain Boeing Model 747–100 and –200 series airplanes: AD 96–01–51, amendment 39–9492 (61 FR 1703, January 23, 1996); and
- For certain Boeing Model 727–100 and –200 series airplanes: AD 96–16–08, amendment 39–9708 (61 FR 41733, August 12, 1996).

Using the criteria specified in the ATA Final Report and the FAA Memorandum as evaluation guides, the FAA conducted an engineering design review and inspection of an airplane modified in accordance with STC's SA1797SO and SA1798SO (held by Aeronautical Engineers, Inc.). The FAA identified a number of unsafe conditions with the main deck cargo door systems of these STC's. The FAA design review team determined that the design data of these STC's did not include a safety analysis of the main deck cargo door systems.

For airplanes modified in accordance with STC SA1797SO, SA1798SO, or SA1368SO, the FAA considers the following four specific design deficiencies of the main deck cargo door systems to be unsafe:

1. Indication System

The main deck cargo door indication system for STC's SA1368SO and SA1797SO uses warning lights at the door operator's control panel and a light at the flight engineer's panel. These lights indicate the status of the cargo door closed, latched and locked configurations. All three conditions (*i.e.*, door closed, latched, and locked) should be monitored directly so that the door indication system cannot display either ''latched'' before the door is closed or ''locked'' before the door is latched. The latch and lock sensors are wired in parallel and are tied to a single indicator light. This design can illuminate the ''locked light'' on the control panel of the main deck cargo door even if the latches are latched but not locked. If a sequencing error causes the door to latch and lock without being fully closed, the subject indication system, as designed, may not alert the door operator or the flight engineer of this condition. As a result, the airplane could be dispatched with the main deck cargo door unsecured, which could lead to the cargo door opening while the airplane is in flight and possible loss of the airplane.

The light on the flight engineer's panel is labeled ''DOOR CARGO'' and is displayed in red since it indicates an event that requires immediate pilot action. However, if the flight engineer is temporarily away from his station, a door unsafe warning indication could be missed by the pilots. In addition, the flight engineer could miss such an indication by not scanning the panel. As a result, the pilots and flight engineer could be unaware of, or misinterpret, an unsafe condition and could fail to respond in the correct manner. Therefore, an indicator light should be located in front of and in plain view of both pilots since one of the pilot's stations is always occupied during flight operations.

Based on the review of the electrical drawings of the door control and door monitoring/annunication systems and observations from an inspection of an airplane modified in accordance with the subject STC's, the FAA concludes that latent failures (*i.e.*, failures of system components that are not monitored and would go undetected) in the closed, latched, and locked functions may occur and lead to the main deck cargo door opening during flight of the airplane.

The FAA has determined that the main deck cargo door indication system of STC's SA1368SO, and SA1797SO also does not meet the improbable level of reliability regarding false indication that is considered adequate for safe operation. Many components are exposed to the environment during cargo loading operations and may be contaminated by precipitation, dirt, and grease, or damaged by foreign objects or cargo loading equipment. As a result, wires, switches, and relays can fail, jam, or short circuit and cause a loss of indication or a false indication to the door operator and flight crew. The design logic of the indication system (*i.e.*, lights which extinguish when the door is locked) could, in the event of latent failures that would extinguish the light, result in an erroneous ''safe'' indication regardless of actual door status.

STC's SA1368SO and SA1797SO lack a safety analysis of the main deck cargo door systems. As a result, even though the light at the door operator's control panel and the light at the flight engineer's panel annunciate the status of closed, latched, and locked, a safety analysis must be developed to show whether the design of the wiring of the main deck cargo door monitoring system meets all FAA requirements.

2. Means to Visually Inspect the Locking Mechanism

The two view ports installed in accordance with STC's SA1797SO and SA1368SO are located externally on the door for the purpose of viewing locking pins at the No. 2 and No. 7 latch positions of the main deck cargo door. These view ports are intended to allow the flight crew to conduct a visual inspection of the cargo door locking mechanism to determine whether the cargo door is closed, latched, and locked. The view ports are used in conjunction with the door warning system and is intended to provide a suitable back-up in the event that the main deck cargo door warning system malfunctions.

However, because of the location of these view ports on the main deck cargo door, a visual inspection may not result in the detection of certain failures (*e.g.*, bending or shearing of locking pins), and consequently the airplane could be dispatched with the main deck cargo door unsecured. Therefore, the FAA finds that these view ports are not a suitable back-up when the cargo door warning system malfunctions.

As discussed in the ATA Final Report and the FAA Memorandum, there must be a means of directly inspecting each lock or, at a minimum, the locks at each end of the lock shaft of certain designs, such that a failure condition in the lock shaft would be detectable.

3. Means to Prevent Pressurization to an Unsafe Level

Boeing 727–200 airplanes modified to install a cargo door in accordance with STC SA1797SO are configured to utilize a mechanical vent door for the purpose of preventing pressurization of the airplane to an unsafe level in the event the main deck cargo door is not closed, latched, and locked. However, Boeing 727–100 airplanes that have been modified in accordance with STC SA1368SO do not have a vent door design to prevent pressurization as part of the STC.

The results of an FAA inspection of the vent door linkage revealed that the linkage design could exhibit single failures that could cause the vent door to malfunction. A complete safety analysis of the vent door mechanical design is necessary to identify and correct all such malfunctions. No single failure of the mechanisms can defeat the intended function of the vent door system.

4. Powered Lock Systems

The main deck cargo door control system for STC's SA1368SO and

SA1797SO that utilizes electrical interlock switches is designed to remove door control power (electrical and hydraulic) prior to flight and to prevent inadvertent door openings. Failure modes have been found in the electrical portion of the door control panel, which, in turn, activates the door control hydraulics. The potential for the occurrence of these failure conditions is increased by the harsh operating environment of freighter airplanes. Door system components are routinely exposed to precipitation, dirt, grease, and foreign object intrusion, all of which increase the likelihood of damage. As a result, wires, switches, and relays have a greater potential to fail or short circuit in such a way as to allow the cargo door to be powered open without an operator's command and regardless of electrical interlock positions.

A systems safety analysis would normally evaluate and resolve the potential for these types of unsafe conditions. However, the FAA has reviewed the design data for STC's SA1368SO and SA1797SO. The FAA finds that the powered lock systems of the main deck cargo door do not comply with criteria specified in Appendix 1 of this AD and considers the design of these systems to be unsafe. The need for a system safety analysis is identified in the ATA Final Report and the FAA Memorandum.

Since unsafe conditions have been identified that are likely to exist or develop on other products of this same type design, this proposed AD would require, within 60 days after the effective date, revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) Supplement to provide the flight crew with procedures for ensuring that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane; and installing any associated placards.

In addition, the proposed AD would require, within 36 months after the effective date of the AD, incorporation of redesigned main deck cargo door systems (*e.g.*, warning/monitoring, power control, view ports, and means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked), including any associated procedures and placards that comply with the applicable requirements of CAR part 4b and design criteria of the ATA Final Report and the FAA Memorandum. Design data provided in support of the door systems re-design should include a Systems Safety Analysis and Instructions for Continued Airworthiness that are acceptable to the FAA. Accomplishment of the incorporation of redesigned main deck cargo door systems will prevent rapid decompression and/or structural damage to the airplane as a result of loss or opening of the cargo door while the airplane is in flight. The compliance time is based on the FAA's assessment of the reasonable amount of time to incorporate redesigned main deck cargo door systems. This time is in consideration of the 18-month time period estimated by the Boeing 727 industry working group, which includes operators, affected STC holders, and engineering organizations, to develop FAA-approved redesigns.

These actions would be required to be accomplished in accordance with a method approved by the FAA.

Cargo Barrier

In order to ensure the safety of occupants during emergency landing conditions, the FAA first established in 1934, a set of inertia load factors used to design the structure for restraining items of mass in the fuselage. Because the airplane landing speeds have increased over the years as the fleet has transitioned from propeller to jet design, inertia load factors were changed as specified in CAR part 4b.260. Experience has shown that an airplane designed to this regulation has a reasonable probability of protecting its occupants from serious injury in an emergency landing. The 727 passenger airplane was designed to these criteria which specified an ultimate inertia load requirement of 9g in the forward direction. These criteria were applied to the seats and structure restraining the occupants, including the flight crew, as well as other items of mass in the fuselage.

When the 727 passenger airplane is converted to carry cargo on the main deck, a cargo barrier is required, since most cargo containers and the container-to-floor attaching devices are not designed to withstand emergency landing loads. In fact, the FAA estimates that the container-to-floor attaching devices will only support approximately 1.5g's to 3g's in the forward direction. Without a 9g cargo barrier, it is probable that the loads associated with an emergency landing would cause the cargo to be unrestrained and impact the occupants of the airplane, which could result in serious injury or death.

The structural inadequacy of the cargo barrier was evident to the FAA during its review in October 1997 of a Boeing 727 modified in accordance with STC SA1798SO.

The observations revealed that the design of the cargo barrier floor attachment and circumferential supporting structure does not provide adequate strength to withstand the 9g forward inertia load generated by the main deck cargo mass, nor does it provide a load path to effectively transfer the loads from the cargo barrier to the fuselage structure of the airplane. These observations are supported by data contained in ''ER 2785, Structural Substantiation of the 50k 9g Bulkhead Restraint System in Support of STC SA1543SO PN 53–1292–401 for the 9g Bulkhead 53–1980–300 Assembly with Upper Attachment Structure, Lower Attachment Structure, Floor Shear Web Structure, Seat Track Splice Fittings, Seat Tracks, and Seat Track Splices,'' dated September 29, 1996, by M. F. Daniel. Although this report was specific to STC SA1543SO, the FAA has determined that the data are applicable to airplane modified in accordance with STC ST00015AT because the design principles for attachment of the barriers in both STC's are the same. The report reveals that structural deficiencies were found in the net attach plates and floor attachment structure of the cargo barrier. The data show large negative margins of safety, which indicate that the inertia load capability of the cargo barrier is closer to 2g than the required 9g in the forward direction. From these analyses, it is evident that the cargo barrier would not be capable of preventing serious injury to the occupants during an emergency landing event with the full allowable cargo load.

Since unsafe conditions have been identified that are likely to exist or develop on other products of this same type design, this proposed AD would require installation of a main deck cargo barrier that complies with the applicable requirements of CAR part 4b.

Accomplishment of the installation will prevent serious injury to the occupants in the event of an emergency landing. The proposed compliance time for the installation is within 36 months or 4,000 flight cycles after the effective date of the AD, whichever occurs first. This compliance time is based on the FAA's assessment of the reasonable amount of time to redesign, manufacture, and install the cargo barrier. This time is consistent with estimates by affected STC holders and operators that necessary redesigns can by developed and approved by the FAA within 12 to 18 months from August 1998.

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.

This analysis examines the cost of this proposed AD that would require the installation of a fail-safe hinge, redesigned main deck cargo door warning and power control systems, and a 9g cargo barrier on Boeing Model 727 series airplanes that have been modified in accordance with STC's held by Aeronautical Engineers, Inc. (AEI). As discussed above, the FAA has determined that the main deck cargo door hinge is not fail-safe, that certain main deck cargo door control systems do not provide an adequate level of safety, and that the main deck cargo barrier is not structurally adequate during a minor crash landing.

Approximately 72 U.S.-registered Boeing Model 727 series airplanes would be affected by the proposed AD. The following discussion addresses, in sequence, the actions in this proposed rulemaking and the estimated cost associated with each of these actions. An analysis of the cost is also available in Rules Docket No. 97–NM–233–AD.

1. Main Deck Cargo Door Hinge

Since unsafe conditions have been identified that are likely to exist or develop on other modified Boeing Model 727 series airplanes, paragraph (a) of the proposed AD would require, within 250 flight cycles after the effective date of this AD, a one-time detailed visual inspection to detect cracks of the external surface of the main deck cargo door hinge. AEI estimates that this inspection would take 2 work hours. At a mechanic's burdened labor rate of $60 per work hour, the cost per airplane would be $120, or $8,640 for the 72 affected Boeing Model 727 series airplanes.

Paragraph (b)(1) of the proposed AD would require, within 36 months or 4,000 cycles after the effective date of this AD, a detailed visual inspection of the mating surfaces of both the hinge and the door skin and external fuselage doubler underlying the hinge. The FAA estimates that compliance with this inspection would take 200 hours at an estimated cost of $12,000 per airplane, or $224,400 for the entire affected fleet of 72 airplanes.

Paragraph (b)(2) of the proposed AD would require installation of a fail-safe door hinge. The compliance time for this installation also would be 36 months, or 4,000 cycles after the effective date of this AD. AEI estimates the cost to design and certificate such a hinge is $25,000, that no parts for a fail-safe door hinge would be required, and that the modification would take 50 hours. Total compliance costs for this proposed provision for the affected fleet of 72 airplanes would be $241,000.

Paragraph (c) of the proposed AD would require that, if any cracks or discrepancies are detected during the inspections required by paragraph (a) or (b)(1) of the proposed AD, repairs must be made prior to further flight. The cost of these repairs is not attributable to this proposed AD.

For purposes of this analysis, the FAA assumes an effective date of July 1, 2000. The cost to comply with proposed paragraphs (a) through (c) over the 36-month compliance period is $474,000 or $419,800 discounted to present value at 7 percent. The FAA assumes that the installation of the main deck cargo door hinge [paragraph (b)(1)] would be accomplished at the same time as the detailed visual inspection of fastener holes [paragraph (b)(2)]. The FAA also assumes that the affected carriers would perform these two activities uniformly throughout the 36-month period. Finally, the certification cost for the main deck cargo door hinge would be incurred within the first 6 months after the effective date of the AD.

2. Main Deck Cargo Door Systems

Paragraph (d) of the proposed AD would require, within 60 days after the effective date of this AD, a revision to the Limitations Section of the FAA-approved AFM Supplement by inserting procedures to ensure that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane. In addition, paragraph (d) of the proposed AD would require the installation of any associated placards.

The FAA assumes that Boeing Model 727 series airplanes converted under a AEI STC will have an acceptable pressurization vent door installed, which operators could use to visually determine whether the vent is in the proper position prior to dispatch, indicating that the door is closed, latched, and locked. The FAA estimates that this activity would take no more than 30 minutes. Assuming each affected airplane flies one flight per day, 260 days per year, the estimated cost per inspection would be $30, or $7,800 per airplane per year until the door system is changed, a total of $982,800 over 36 months.

Paragraph (e) of the proposed AD would require, within 36 months after the effective date of this AD, incorporation of a redesigned main deck cargo door system. The FAA estimates that the development and certification of the system would cost $25,000. Modification parts would cost $5,000 per airplane and labor costs would be $6,000 per airplane for 100 hours. The FAA assumes that operators would incorporate the redesigned main deck cargo door system during regularly scheduled maintenance. The total costs of installing a redesigned main deck cargo door system, including certification, parts, and labor would be $817,000 over the 36-month period.

The total estimated cost to comply with proposed requirements for the main deck cargo door system is $1.8 million, or $1.7 million, discounted to present value.

3. Main Deck Cargo Barrier

Paragraph (f) of the proposed AD would require, within 36 months or 4,000 flight cycles after the effective date of this AD, installation of a main deck cargo barrier that complies with the applicable requirements of CAR part 4b. Ventura Aerospace holds an STC for an approved 9g barrier, and the FAA estimates that operators whose airplanes have been modified in accordance with AEI STC's would purchase 9g barrier kits from Ventura Aerospace. The cost of a barrier kit is $67,500. The FAA estimates that labor would cost $13,500 per airplane and that an affected airplane would be out-of-service 3 additional days, at a cost of $15,000 per day, while this barrier is installed.

The FAA assumes that operators would install 9g barriers uniformly over the 36-month compliance period. The total non-discounted cost to comply with paragraph (g) of the proposed AD would be $9.1 million, or $7.8 million discounted to present value.

4. Alternative Methods of Compliance (AMOC) and Special Flight Permits

Paragraph (g) of the proposed AD would allow an AMOC or adjustment of compliance time that provides an acceptable level of safety if approved by the Manager of the Atlanta ACO. The FAA is unable to determine the cost of an AMOC, but assumes it would be less than the cost of complying with the proposed provisions in paragraphs (a) through (f) of the proposed AD.

Paragraph (h) of the proposed AD would allow special flight permits in accordance with the regulations to operate an affected airplane to a location where the requirements of the proposed AD could be accomplished.

5. Total Cost of the Proposed AD

The FAA estimates that the total compliance cost of the proposed AD

would be $11.3 million, or $10.0 million discounted to present value.

The Regulatory Flexibility Act (RFA) of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation. To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the Agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA estimates that 16 carriers operate airplanes that would be affected by this proposed AD. Four of these operators are foreign entities, 5 operators are large, and 7 operators are small, that is, they employ fewer than 1,500 persons. The estimated total cost of the proposed AD is $11.3 million, or approximately $157,600 for each of the 72 affected airplanes. Therefore, the FAA has determined that the proposed rule would have a significant impact on a substantial number of small entities and a regulatory flexibility analysis is required.

Under Section 63(b) of the RFA, the analysis must address:

1. Reasons why the agency is promulgating the rule;
2. The objectives and legal basis for the rule;
3. The kind and number of small entities to which the rule will apply;
4. The projected reporting, recordkeeping, and other compliance requirements of the rule; and
5. All federal rules that may duplicate, overlap, or conflict with the rule.

These elements of the RFA are addressed below.

A. Reasons Why Agency Action Is Being Considered

The FAA has determined that the main deck cargo door hinge is not fail-safe; that certain main deck cargo door control systems do not provide an adequate level of safety; and the main deck cargo barrier is not structurally adequate during a minor crash landing. The actions specified in the proposed AD are intended to prevent structural failure of the main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight, and consequent rapid decompression and/or structural damage to the airplane; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants.

B. Statement of Objective and Legal Basis

Under the United States Code (U.S.C), the FAA Administrator is required to consider the following matter, among others, as being in the public interest: assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. [See 49 U.S.C. § 44101(d).] 49 U.S.C. § 44701(a) provides broad rulemaking authority to ''promote safe flight of civil aircraft in air commerce.'' Accordingly, this proposed AD will amend Title 14 of the Code of Federal Regulations to require operators of Boeing Model 727 series airplanes that have been converted from a passenger- to a cargo-carrying configuration to correct the identified unsafe condition.

C. Kind and Number of Small Entities

The RFA requires the FAA to determine whether or not a rule significantly affects a substantial number of small entities. This determination is typically based on small entity size and cost thresholds that vary depending on the affected industry. The entities affected by the rule are those operating U.S.-registered converted Boeing Model 727 series airplanes. The FAA has determined that approximately 7 of the 16 entities are small, *i.e.*, employ fewer than 1,500 persons. These small entities operate between 1 and 9 affected airplanes. Assuming the total costs of the proposed rule are divided equally among the affected fleet of 62 airplanes, the costs per airplane would be about $157,600. Therefore, the FAA has determined that this proposed AD would significantly affect a substantial number of small entities.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

With two minor exceptions, the rule will not mandate additional reporting or recordkeeping. The proposed AD would require operators to report results of the visual inspection of the main deck cargo door hinge and the visual inspection of the fastener holes common to the main deck cargo door hinge and underlying door and fuselage structure. The cost of these reports is negligible.

E. Overlapping, Duplicative, or Conflicting Federal Rules

The rule will not overlap, duplicate, or conflict with existing Federal rules.

F. Analysis of Alternatives

The FAA acknowledges that the rule will impose a financial requirement on small entities. Therefore, the agency considered alternatives to the proposed rule. These alternatives are:

- Exclude small entities; and
- Extend the compliance date for small entities.

The FAA has determined that the option to exclude small entities from the requirements of the rule is not justified. The unsafe condition that exists on an affected Boeing Model 727 series airplane operated by a small entity is as potentially catastrophic as that on an affected Model 727 series airplane operated by a large entity.

The FAA also considered options to extend the compliance period for small operators. The Boeing 727 Freighter Industry Working Group, which includes all affected U.S. operators (including small entities), provided input on the incorporation of corrective actions for the door hinge, door systems, and 9g barrier issues. The FAA initially proposed a compliance time of 28 months, consistent with a related AD dealing with the cargo floor structure on the same airplanes. The Industry Working Group requested an extension to 36 months. Following review of the Working Group's request, the FAA finds 36 months to be an acceptable compliance time. Therefore, the FAA has, in fact, considered and accepted this alternative and has accommodated small entity concerns about compliance time.

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the

private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed AD does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 97–NM–233–AD.

Applicability: Model 727 series airplanes that have been converted from a passenger to a cargo-carrying (''freighter'') configuration in accordance with Supplemental Type Certificate (STC) 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 main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight, rapid decompression, and structural damage to the airplane; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants; accomplish the following:

Actions Addressing the Main Deck Cargo Door Hinge

(a) Within 250 flight cycles after the effective date of this AD, perform a detailed visual inspection of the external surface of the main deck cargo door hinge (both fuselage and door side hinge elements) to detect cracks.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(b) Within 36 months or 4,000 flight cycles after the effective date of this AD, whichever occurs first, accomplish paragraphs (b)(1) and (b)(2) of this AD.

(1) Perform a detailed visual inspection of the mating surfaces of both the hinge and the door skin and external fuselage doubler underlying the hinge to detect cracks or other discrepancies (*e.g.,* double or closely drilled holes, corrosion, chips, scratches, or gouges). The detailed visual inspection shall be accomplished in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. The requirements of this paragraph may be accomplished prior to or concurrently with the requirements of paragraph (b)(2) of this AD.

(2) Install a main deck cargo door hinge that complies with the applicable requirements of Civil Air Regulations (CAR) part 4b, including fail-safe requirements, in accordance with a method approved by the Manager, Atlanta ACO.

(c) If any crack or discrepancy is detected during the detailed visual inspection required by either paragraph (a) or (b)(1) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Atlanta ACO.

Actions Addressing the Main Deck Cargo Door Systems

(d) Within 60 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) Supplement by inserting therein procedures to ensure that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane, and install any associated placards. The AFM revision procedures and installation of any associated placards shall be accomplished in accordance with a method approved by the Manager, Atlanta ACO.

(e) Within 36 months after the effective date of this AD, incorporate redesigned main deck cargo door systems (*e.g.,* warning/monitoring, power control, view ports, and means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked), including any associated procedures and placards, that comply with the applicable requirements of CAR part 4b and criteria specified in Appendix 1 of this AD; in accordance with a method approved by the Manager, Atlanta ACO.

Note 3: The design data submitted for approval should include a Systems Safety Analysis and Instructions for Continued Airworthiness that are acceptable to the Manager, Atlanta ACO.

Actions Addressing the Main Deck Cargo Barrier

(f) Within 36 months or 4,000 flight cycles after the effective date of this AD, whichever occurs first, install a main deck cargo barrier that complies with the applicable requirements of CAR part 4.b, in accordance with a method approved by the Manager, Atlanta ACO.

Note 4: The maximum main deck total payload that can be carried is limited to the lesser of the approved cargo barrier weight limit, weight permitted by the approved maximum zero fuel weight, weight permitted by the approved main deck position weights, weight permitted by the approved main deck running load or distributed load limitations, or approved cumulative zone or fuselage monocoque structural loading limitations (including lower hold cargo).

Note 5: Installation of a Ventura Aerospace Inc. cargo barrier STC ST00848LA is an approved means of compliance with the requirements of paragraph (f) of this AD.

(g) An alternative method of compliance or adjustment of the compliance time contained in this proposal that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

(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.

Appendix 1

Excerpt from an FAA Memorandum to the Director—Airworthiness and Technical Standards of ATA, dated March 20, 1992.

''(1) *Indication System:*

(a) The indication system must monitor the closed, latched, and locked positions, directly.

(b) The indicator should be *amber* unless it concerns an outward opening door whose opening during takeoff could present an immediate hazard to the airplane. In that case the indicator must be *red* and located in plain view in front of the pilots. An aural warning is also advisable. A display on the master caution/warning system is also acceptable as an indicator. For the purpose of complying with this paragraph, an immediate hazard is defined as significant reduction in controllability, structural damage, or impact with other structures, engines, or controls.

(c) Loss of indication or a false indication of a closed, latched, and locked condition must be improbable.

(d) A warning indication must be provided at the door operators station that monitors the door latched and locked conditions directly, unless the operator has a visual indication that the door is fully closed and locked. For example, a vent door that monitors the door locks and can be seen from the operators station would meet this requirement.

(2) *Means to Visually Inspect the Locking Mechanism:*

There must be a visual means of directly inspecting the locks. Where all locks are tied to a common lock shaft, a means of inspecting the locks at each end may be sufficient to meet this requirement provided no failure condition in the lock shaft would go undetected when viewing the end locks. Viewing latches may be used as an alternate to viewing locks on some installations where there are other compensating features.

(3) *Means to Prevent Pressurization:*

All doors must have provisions to prevent initiation of pressurization of the airplane to an unsafe level, if the door is not fully closed, latched and locked.

(4) *Lock Strength:*

Locks must be designed to withstand the maximum output power of the actuators and maximum expected manual operating forces treated as a limit load. Under these conditions, the door must remain closed, latched and locked.

(5) *Power Availability:*

All power to the door must be removed in flight and it must not be possible for the flight crew to restore power to the door while in flight.

(6) *Powered Lock Systems:*

For doors that have powered lock systems, it must be shown by safety analysis that inadvertent opening of the door after it is fully closed, latched and locked, is extremely improbable.''

Issued in Renton, Washington, on November 4, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–29474 Filed 11–10–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–232–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes Modified in Accordance With Supplemental Type Certificate SA1767SO or SA1768SO

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, among other actions, installation of a fail-safe hinge, redesigned main deck cargo door warning and power control systems, and 9g cargo barrier. This proposal is prompted by the FAA's determination that the main deck cargo door hinge is not fail-safe; that certain main deck cargo door control systems do not provide an adequate level of safety; and that the main deck cargo barrier is not structurally adequate during an emergency landing. The actions specified by the proposed AD are intended to prevent structural failure of the main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight, rapid decompression, and structural damage to the airplane; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants.

DATES: Comments must be received by December 27, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–232–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location by appointment only between the hours of 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Paul Sconyers, Associate Manager, Airframe and Propulsion Branch, ACE–117A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (770) 703–6076; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–232–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–114, Attention: Rules Docket No. 97–NM–232–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Supplemental Type Certificate (STC) SA1767SO (held by FedEx) specifies a design for a main deck cargo door, associated cargo door cutout, and door systems. STC SA1768SO (held by FedEx) specifies a design for a Class ''E'' cargo interior with a cargo restraint barrier net. As discussed in notice of proposed rulemaking (NPRM), Rules

Docket No. 97–NM–09–AD [the final rule, AD 98–26–18, amendment 39–10961, was published in the **Federal Register** on January 12, 1999 (64 FR 1994)], which is applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger to a cargo-carrying (''freighter'') configuration, the FAA has conducted a design review of Boeing Model 727 series airplanes modified in accordance with STC's SA1767SO and SA1768SO and has identified several potential unsafe conditions. [Results of this design review are contained in ''FAA Freighter Conversion STC Review, Report Number 2, dated October 16–18, 1996,'' hereinafter referred to as ''the Design Review Report,'' which is included in the Rules Docket for this NPRM.] This NPRM proposes corrective action for three of those potential unsafe conditions that relate to the following three areas: main deck cargo door hinge, main deck cargo door systems, and main deck cargo barrier.

Main Deck Cargo Door Hinge

In order to avoid catastrophic structural failure, it has been a typical industry approach to design outward opening cargo doors and their attaching structure to be fail-safe (*i.e.*, designed so that if a single structural element fails, other structural elements are able to carry resulting loads). Another potential design approach is safe-life, where the critical structure is shown by analyses and/or tests to be capable of withstanding the repeated loads of variable magnitude expected in service for a specific service life. Safe-life is usually not used on critical structure because it is difficult to account for manufacturing or in-service accidental damage. For this reason, plus the fact that none of the STC holders have provided data in support of this approach, the safe-life approach will not be discussed further regarding the design and construction of the main deck cargo door hinge.

Structural elements such as the main deck cargo door hinge are subject to severe in-service operating conditions that could result in corrosion, binding, or seizure of the hinge. These conditions, in addition to the normal operational loads, can lead to early and unpredictable fatigue cracking. If a main deck cargo door hinge is not a fail-safe design, a fatigue crack could initiate and propagate longitudinally undetected, which could lead to a complete hinge failure. A possible consequence of this undetected failure is the opening of the main deck cargo door while the airplane is in flight. Service experience indicates that the opening of a cargo door while the airplane is in flight can be extremely hazardous in a variety of ways including possible loss of flight control, severe structural damage, or rapid decompression, any of which, could lead to loss of the airplane.

The design of the main deck cargo door hinge must be in compliance with Civil Air Regulations (CAR) part 4b, including CAR part 4b.270, which requires, in part, that catastrophic failure or excessive structural deformation, which could adversely affect the flight characteristics of the airplane, is not probable after fatigue failure or obvious partial failure of a single principal structural element. One common feature of a fail-safe hinge design is a division of the hinge into multiple segments such that, following failure of any one segment, the remaining segments would support the redistributed load.

The main deck cargo door installed in accordance with STC SA1767SO is supported by latches along the bottom of the door and one continuous hinge along the top. This single-piece hinge is considered a critical structural element for this STC. A crack that initiates and propagates longitudinally along the hinge line of the continuous hinge will eventually result in failure of the entire hinge, because there is no segmenting of the hinge to interrupt the crack propagation and support the redistributed loads. Failure of the entire hinge can result in the opening of the main deck cargo door while the airplane is in flight.

As discussed in the Design Review Report, an inspection of one Boeing Model 727 series airplane modified in accordance with STC's SA1767SO and SA1768SO revealed a number of fasteners with both short edge margins and short spacing in the cargo door cutout external doublers. Some edge margins were as small as one fastener diameter. Fasteners that are placed too close to the edge of a structural member or spaced too close to an adjacent fastener can result in inadequate joint strength and stress concentrations, which may result in fatigue cracking of the skin. If such defects were to exist in the structure of the door or the fuselage to which the main deck cargo door hinge is attached, the attachment of the hinge could fail, and consequently cause the door to open while the airplane is in flight.

Since unsafe conditions have been identified that are likely to exist or develop on other products of this same type design, this proposed AD would require, within 250 flight cycles after the effective date of the AD, a one-time detailed visual inspection of the external surface of the main deck cargo door hinge (both fuselage and door side hinge elements) to detect cracks, and repair, if necessary. Accomplishment of this inspection will ensure that the subject airplanes are not in immediate risk of hinge failure.

In addition, the proposed AD would require a detailed visual inspection of the mating surfaces of both the hinge and the door skin and external fuselage doubler underlying the hinge to detect cracks or other discrepancies (*e.g.*, double or closely drilled holes, corrosion, chips, scratches, or gouges). The proposed AD also would require installation of a main deck cargo door hinge that complies with the applicable requirements of CAR part 4b, including fail-safe requirements. Accomplishment of this detailed visual inspection will ensure the integrity of the door and fuselage structure to which the hinge is attached. The proposed compliance time for this inspection and installation is within 36 months or 4,000 flight cycles after the effective date of this AD, whichever occurs first. The compliance time is based on the FAA's assessment of the reasonable amount of time to redesign, manufacture, and install a fail-safe hinge. This time is in consideration of the 18-month time period estimated by the Boeing 727 industry working group, which includes operators, affected STC holders, and engineering organizations, to develop FAA-approved redesigns. These actions would be required to be accomplished in accordance with a method approved by the FAA.

Main Deck Cargo Door Systems

In early 1989, two transport airplane accidents were attributed to cargo doors coming open during flight. The first accident involved a Boeing 747 series airplane in which the cargo door separated from the airplane, and damaged the fuselage structure, engines, and passenger cabin. The second accident involved a McDonnell Douglas DC–9 series airplane in which the cargo door opened but did not separate from its hinge. The open door disturbed the airflow over the empennage, which resulted in loss of flight control and consequent loss of the airplane. Although cargo doors have opened occasionally without mishap during takeoff, these two accidents serve to highlight the extreme potential dangers associated with the opening of a cargo door while the airplane is in flight.

As a result of these cargo door opening accidents, the Air Transport Association (ATA) of America formed a task force, including representatives of the FAA, to review the design,

manufacture, maintenance, and operation of airplanes fitted with outward opening cargo doors, and to make recommendations to prevent inadvertent cargo door openings while the airplane is in flight. A design working group was tasked with reviewing 14 CFR part 25.783 [and its accompanying Advisory Circular (AC) 25.783–1, dated December 10, 1986] with the intent of clarifying its contents and recommending revisions to enhance future cargo door designs. This design group also was tasked with providing specific recommendations regarding design criteria to be applied to existing outward opening cargo doors to ensure that inadvertent openings would not occur in the current transport category fleet of airplanes.

The ATA task force made its recommendations in the ''ATA Cargo Door Task Force Final Report,'' dated May 15, 1991 (hereinafter referred to as ''the ATA Final Report''). On March 20, 1992, the FAA issued a memorandum to the Director-Airworthiness and Technical Standards of ATA (hereinafter referred to as ''the FAA Memorandum''), acknowledging ATA's recommendations and providing additional guidance for purposes of assessing the continuing airworthiness of existing designs of outward opening doors. The FAA Memorandum was not intended to upgrade the certification basis of the various airplanes, but rather to identify criteria to evaluate potential unsafe conditions demonstrated on in-service airplanes. Appendix 1 of this AD contains the specific paragraphs from the FAA Memorandum that set forth the criteria to which the outward opening doors should be shown to comply.

Applying the applicable requirements of CAR part 4b and design criteria provided by the FAA Memorandum, the FAA has reviewed the original type design of major transport airplanes, including Boeing 727 airplanes equipped with outward opening doors, for any design deficiency or service difficulty. Based on that review, the FAA identified unsafe conditions and issued, among others, the following AD's:

- For certain McDonnell Douglas Model DC–9 series airplanes: AD 89–11–02, amendment 39–6216 (54 FR 21416, May 18, 1989);
- For all Boeing Model 747 series airplanes: AD 90–09–06, amendment 39–6581 (55 FR 15217, April 23, 1990);
- For certain McDonnell Douglas Model DC–8 series airplanes: AD 93–20–02, amendment 39–8709 (58 FR 471545, October 18, 1993);
- For certain Boeing Model 747–100 and –200 series airplanes: AD 96–01–51, amendment 39–9492 (61 FR 1703, January 23, 1996); and
- For certain Boeing Model 727–100 and –200 series airplanes: AD 96–16–08, amendment 39–9708 (61 FR 41733, August 12, 1996).

Using the criteria specified in the ATA Final Report and the FAA Memorandum as evaluation guides, the FAA conducted an engineering design review and inspection of an airplane modified in accordance with STC's SA1767SO and SA1768SO held by FedEx. The FAA identified a number of unsafe conditions with the main deck cargo door systems of these STC's. The FAA design review team determined that the design data of these STC's did not include a safety analysis of the main deck cargo door systems.

As specified in the criteria contained in Appendix 1 of this AD, for powered lock systems on the main deck cargo door, it must be shown by safety analysis that inadvertent opening of the door after it is fully closed, latch, and locked is extremely improbable. However, the FAA is aware of two events in which the main deck cargo door opened during flight. These events occurred on FedEx passenger/freighter conversion STC's in October 1996, and March 1995. These events are referenced in the Design Review Report.

For airplanes modified in accordance with STC's SA1767SO or SA1768SO, the FAA considers the following four specific design deficiencies of the main deck cargo door systems to be unsafe:

1. Indication System

The main deck cargo door indication system for STC's SA1767SO and SA1768SO uses a warning light at the door operator's control panel and a light at the flight engineer's panel. Both of these lights indicate the status of the cargo door latch and lock positions, but do not indicate either the door open or closed status. All three conditions (*i.e.*, door closed, latched, and locked) must be monitored directly so that the door indication system cannot display either ''latched'' before the door is closed or ''locked'' before the door is latched. If a sequencing error caused the door to latch and lock without being fully closed, the subject indication system, as designed, would not alert the door operator or the flight engineer of this condition. As a result, the airplane could be dispatched with the main deck cargo door unsecured, which could lead to the cargo door opening while the airplane is in flight and possible loss of the airplane.

The light on the flight engineer's panel is labeled ''MAIN CARGO'' and is displayed in red since it indicates an event that requires immediate pilot action. However, if the flight engineer is temporarily away from his station, a door unsafe warning indication could be missed by the pilots. In addition, the flight engineer could miss such an indication by not scanning the panel. As a result, the pilots and flight engineer could be unaware of, or misinterpret, an unsafe condition and could fail to respond in the correct manner. Therefore, an indicator light must be located in front of and in plain view of both pilots since one of the pilot's stations is always occupied during flight operations.

The main deck cargo door indication system of STC's SA1767SO and SA1768SO does not have a level of reliability that is considered adequate for safe operation. Many components are exposed to the environment during cargo loading operations and may be contaminated by precipitation, dirt, and grease, or damaged by foreign objects or cargo loading equipment. As a result, wires, switches, and relays can fail, jam, or short circuit and cause a loss of indication or a false indication to the door operator and flight crew. The design logic of the indication system (*i.e.*, lights which extinguish when the door is locked) will, in the event of a single point failure that would extinguish the light, result in an erroneous ''safe'' indication regardless of actual door status.

The design of STC's SA1767SO and SA1768S0 has a ''Press-to-Test'' red warning light on the control panel of the main deck cargo door located near the L–1 door. The design of the monitoring system of the main deck cargo door does not include separate lights to provide the door operator with door close, latch, and lock status. The electrical wiring design of the close, latch, and lock sensors of the door monitoring system are wired in parallel instead of in series. In parallel, two sensors could be sensing ''unsafe'' and the third sensor could be sensing ''safe.'' If this situation were to occur, the sensors would not illuminate the red warning light on the door control panel or at the flight engineer's panel. Therefore, the ''Press-to-Test'' feature is adequate to check the light bulb functionality, but is not adequate to check the cargo door closed, latched, and locked functions and status without annunciator lights for those three functions.

2. Means to Visually Inspect the Locking Mechanism

The single view port of the main deck cargo door installed in accordance with STC SA1767SO is intended to allow the flight crew to conduct a visual

inspection of the door locking mechanism. This view port is used in conjunction with the door warning system and should provide a suitable ''back-up'' in the event that the main deck cargo door warning system malfunctions.

The door locking mechanism is an assembly comprised of multiple lock pins (one for each of the door latches) connected by linkages to a common lock shaft. Although an indicator flag attached to the lock shaft can be seen through the view port when the shaft is in the ''locked'' position, a failure between the shaft and the pins could go undetected, because this flag is attached to the lock shaft and not the actual lock pins. If such a failure goes undetected, the airplane may be dispatched with the main deck cargo door warning system inoperative and the door not fully closed, latched, and locked, which could lead to a main deck cargo door opening while the airplane is in flight and possible loss of the airplane. Therefore, the FAA finds that the subject view port is not a suitable back-up when the cargo door warning system malfunctions.

As discussed in the ATA Final Report and the FAA Memorandum, there must be a means of directly inspecting each lock or, at a minimum, the locks at each end of the lock shaft of certain designs, such that a failure condition in the lock shaft would be detectable.

3. Means to Prevent Pressurization to an Unsafe Level

Boeing 727–200 airplanes modified in accordance with STC SA1767SO are configured to utilize the existing fuselage pressurization outflow valve for the purpose of preventing pressurization of the airplane to an unsafe level in the event that the main deck cargo door is not closed, latched, and locked. The FAA design review of these modified Boeing 727–200 airplanes (documented in the Design Review Report) identified single point failures in the door control/outflow valve interface that could result in the valve not sensing and responding to an unsafe door condition. In addition, the FAA found no data to substantiate that the outflow valve location and size could prevent pressurization to an unsafe level.

With the current design, it is possible that the outflow valve may not perform its intended function when utilized for the purpose of preventing pressurization of the airplane in the event of an unsecured door. This condition could result in cabin pressurization forcing an unsecured door open while the airplane is in flight and possible loss of the airplane.

Boeing 727–100 airplanes modified in accordance with the subject STC's have no means of preventing pressurization in the event that the main deck cargo door is not closed, latched, and locked, and therefore, have a higher risk of a cargo door opening while the airplane is in flight and possible loss of the airplane.

4. Powered Lock Systems

The main deck cargo door control system for STC SA1767SO that utilizes electrical interlock switches is designed to remove door control power (electrical and hydraulic) prior to flight and to prevent inadvertent door openings. The occurrence of an in-flight door opening event on airplanes modified in accordance with STC SA1767SO, as identified in the Design Review Report, indicates the likelihood that there may be latent and/or single point failures that can restore or continue to allow power to the door controls and cause inadvertent door openings. The failure modes may be found in the electrical portion of the door control panel, which, in turn, activates the door control hydraulics. The potential for the occurrence of these failure conditions is increased by the harsh operating environment of freighter airplanes. Door system components are routinely exposed to precipitation, dirt, grease, and foreign object intrusion, all of which increase the likelihood of damage. As a result, wires, switches, and relays have a greater potential to fail or short circuit in such a way as to allow the cargo door to be powered open without an operator's command and regardless of electrical interlock positions.

A systems safety analysis would normally evaluate and resolve the potential for these types of unsafe conditions. However, the design data for STC SA1767SO do not include a systems safety analysis to specifically identify these failure modes and do not show that an inadvertent opening is extremely improbable. The need for a system safety analysis is identified in the ATA Final Report and the FAA Memorandum.

Since unsafe conditions have been identified that are likely to exist or develop on other products of this same type design, this proposed AD would require, within 60 days after the effective date, revising the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) Supplement to provide the flight crew with procedures for ensuring that all power is removed from the main deck cargo door prior to dispatch of the airplane, and that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane; and installing any associated placards.

In addition, the proposed AD would require, within 36 months after the effective date of the AD, incorporation of redesigned main deck cargo door systems (*e.g.*, warning/monitoring, power control, view ports, and means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked), including any associated procedures and placards that comply with the applicable requirements of CAR part 4b and design criteria of the ATA Final Report and the FAA Memorandum. Design data provided in support of the door systems redesign should include a Systems Safety Analysis and Instructions for Continued Airworthiness that are acceptable to the FAA. Accomplishment of the incorporation of redesigned main deck cargo door systems will prevent rapid decompression and/or structural damage to the airplane as a result of loss or opening of the cargo door while the airplane is in flight. The compliance time is based on the FAA's assessment of the reasonable amount of time to incorporate redesigned main deck cargo door systems. This time is in consideration of the 18-month time period estimated by the Boeing 727 industry working group, which includes operators, affected STC holders, and engineering organizations, to develop FAA-approved redesigns.

These actions would be required to be accomplished in accordance with a method approved by the FAA.

Cargo Restraint Barrier

In order to ensure the safety of occupants during emergency landing conditions, the FAA first established in 1934, a set of inertia load factors used to design the structure for restraining items of mass in the fuselage. Because the airplane landing speeds have increased over the years as the fleet has transitioned from propeller to jet design, inertia load factors were changed as specified in CAR part 4b.260. Experience has shown that an airplane designed to this regulation has a reasonable probability of protecting its occupants from serious injury in an emergency landing. The 727 passenger airplane was designed to these criteria which specified an ultimate inertia load requirement of 9g in the forward direction. These criteria were applied to the seats and structure restraining the occupants, including the flight crew, as well as other items of mass in the fuselage.

When the 727 passenger airplane is converted to carry cargo on the main

deck, a cargo barrier is required, since most cargo containers and the container-to-floor attaching devices are not designed to withstand emergency landing loads. In fact, the FAA estimates that the container-to-floor attaching devices will only support approximately 1.5g's to 3g's in the forward direction. Without a 9g cargo barrier, it is probable that the loads associated with an emergency landing would cause the cargo to be unrestrained and impact the occupants of the airplane, which could result in serious injury or death.

The structural inadequacy of the cargo barrier was evident to the FAA during its review in October 1997 of a Boeing 727 modified in accordance with STC SA1767SO. The observations revealed that the design of the net restraint barrier floor attachment and circumferential supporting structure does not provide adequate strength to withstand the 9g forward inertia load generated by the main deck cargo mass, nor does it provide a load path to effectively transfer the loads from the restraint barrier to the fuselage structure of the airplane. These observations are supported by data contained in ''ER 2785, Structural Substantiation of the 50k 9g Bulkhead Restraint System in Support of STC SA1543SO PN 53–1292–401 for the 9g Bulkhead 53–1980–300 Assembly with Upper Attachment Structure, Lower Attachment Structure, Floor Shear Web Structure, Seat Track Splice Fittings, Seat Tracks, and Seat Track Splices,'' dated September 29, 1996, by M. F. Daniel. Although this report was specific to STC SA1543SO, the FAA has determined that the data are applicable to airplane modified in accordance with STC ST00015AT because the design principles for attachment of the barriers in both STC's are the same. The report reveals that structural deficiencies were found in the net attach plates and floor attachment structure of the cargo barrier. The data show large negative margins of safety, which indicate that the inertia load capability of the cargo barrier is closer to 2g than the required 9g in the forward direction. From these analyses, it is evident that the cargo restraint barrier would not be capable of preventing serious injury to the occupants during an emergency landing event with the full allowable cargo load.

Since unsafe conditions have been identified that are likely to exist or develop on other products of this same type design, this proposed AD would require installation of a main deck cargo barrier that complies with the applicable requirements of CAR part 4b. Accomplishment of the installation will prevent serious injury to the occupants in the event of an emergency landing. The proposed compliance time for the installation is within 36 months or 4,000 flight cycles after the effective date of the AD, whichever occurs first. This compliance time is based on the FAA's assessment of the reasonable amount of time to redesign, manufacture, and install the cargo barrier. This time is in consideration of the 18-month time period estimated by the Boeing 727 industry working group, which includes operators, affected STC holders, and engineering organizations, to develop and get FAA-approved redesigns.

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.

This analysis examines the cost of a proposed AD that would require the installation of a fail-safe hinge, redesigned main deck cargo door warning and power control systems, and a 9g cargo barrier on Boeing Model 727 series airplanes that have been modified in accordance with STC's held by FedEx. As discussed above, the FAA has determined that the main deck cargo door hinge is not fail-safe, that certain main deck cargo door control systems do not provide an adequate level of safety, and that the main deck cargo barrier is not structurally adequate during a minor crash landing.

Approximately 117 U.S.-registered Boeing Model 727 series airplanes operated by FedEx would be affected by the proposed AD. The following discussion addresses, in sequence, the actions in this proposed rulemaking and the estimated cost associated with each of these actions. An analysis of the cost is also available in Rules Docket No. 97–NM–232–AD.

1. Main Deck Cargo Door Hinge

Since unsafe conditions have been identified that are likely to exist or develop on other modified Boeing Model 727 series airplanes, paragraph (a) of the proposed AD would require, within 250 flight cycles after the effective date of this AD, a one-time detailed visual inspection to detect cracks of the external surface of the main deck cargo door hinge. FedEx estimates that this inspection would take 14 work hours. At a mechanic's burdened labor rate of $60 per work hour, the cost per airplane would be $840, or $98,280 for FedEx's fleet of 117 affected Boeing Model 727 series airplanes.

Paragraph (b)(1) of the proposed AD would require, within 36 months or 4,000 cycles after the effective date of this AD, a detailed visual inspection of the mating surfaces of both the hinge and the door skin and external fuselage doubler underlying the hinge. The FAA estimates that compliance with this inspection would take 200 hours at an estimated cost of $12,000 per airplane, or $1.4 million for the affected fleet.

Paragraph (b)(2) of the proposed AD would require installation of a fail-safe door hinge. The compliance time for this installation would also be 36 months or 4,000 cycles after the effective date of this AD. The estimated cost to design and certificate such a hinge is $45,000. FedEx estimates that parts for a fail-safe door hinge would cost $2,600, while installation would cost $11,520 per airplane for 192 hours of labor. Parts and labor for 117 affected airplanes would be $1.7 million.

Paragraph (c) of the proposed AD would require that, if any cracks or discrepancies are detected during the inspections required by paragraph (a) or (b)(1) of the proposed AD, repairs must be made prior to further flight. The cost of these repairs is not attributable to this proposed AD.

For purposes of this analysis, the FAA assumes an effective date of July 1, 2000. The cost to comply with proposed paragraphs (a) through (c) over the 36-month compliance period is $3.2 million, or $2.8 million discounted to present value. The FAA assumes that the installation of the main deck cargo door hinge [paragraph (b)(1)] would be accomplished at the same time as the detailed visual inspection of fastener holes [paragraph (b)(2)]. The FAA also assumes that FedEx would perform these two activities uniformly throughout the 36-month period. Finally, the certification cost for the main deck cargo door hinge would be incurred within the first 6 months after the effective date of this AD.

2. Main Deck Cargo Door Systems

Paragraph (d) of the proposed AD would require, within 60 days after the effective date, revising the Limitations Section of the FAA-approved AFM Supplement to provide the flight crew with procedures for ensuring that all power is removed from the main deck cargo door prior to dispatch of the airplane, and that the main deck cargo door is closed, latched, and locked prior

to dispatch of the airplane. In addition, paragraph (d) of the proposed AD would require the installation of any associated placards.

FedEx assumes that an external inspection of the flushness of the cargo door, combined with an ''enhanced B-check'' would be an acceptable means to the FAA to ensure that the cargo door is secured prior to dispatch. Based on this assumption, FedEx estimates, before a redesigned door system is installed [see proposed paragraph (f) below], that it would take a mechanic 30 minutes to inspect for flushness of the main deck cargo door prior to dispatch. FedEx also estimates that there are 62 flights per day among the 117 affected airplanes and that these airplanes fly 260 days per year. The estimated cost per inspection would be $30, or $4,133 per airplane per year until the door system is changed. In addition, FedEx estimates that the setup costs for the daily inspection (*i.e.*, procedure materials for the cadre of mechanics to perform the inspection and training requirements) would be $50,000.

B-checks on FedEx Boeing Model 727 series airplanes occur approximately twice a year. FedEx estimates the incremental cost for maintenance during this ''enhanced B-check'' is $11,700 per year until the door system is changed.

Paragraph (e) of the proposed AD would require, within 36 months after the effective date of this AD, incorporation of a redesigned main deck cargo door system. FedEx estimates that the development and certification of the system would cost $212,000. Modification parts would cost $110,000 per airplane and labor costs would be $34,560 per airplane. FedEx also estimates that 40 percent of the fleet would be modified during a scheduled maintenance visit. The remainder of the fleet would be out-of-service for an additional 4 days. Based on a lease rate of $6,100 per day, FedEx estimates that the cost of down time for the fleet would be $1.7 million over the 36-month period.

Based on FedEx's assumption that a combination of an external inspection of cargo door flushness prior to dispatch and an ''enhanced'' B-check every 6 months, the total cost would be $3.2 million over 36 months. These activities would occur until incorporation of a redesigned door system. Again, the FAA assumes that the accomplishment of this incorporation would occur uniformly over the 36-month period.

The estimated cost for redesigned door systems for the fleet of 117 affected airplanes would be $18.8 million, including $212,000 for design and certification costs and $1.7 million for additional down time. The total cost to comply with proposed requirements for the main deck cargo door system is $22.0 million, or $19.1 million, discounted to present value.

3. Main Deck Cargo Barrier

Paragraph (f) of the proposed AD would require, within 36 months or 4,000 flight cycles after the effective date of this AD, installation of a main deck cargo barrier that complies with the applicable requirements of CAR part 4b. FedEx estimates that development and certification of a 9g barrier would cost $94,500, while parts would cost $30,000 and labor would cost $23,040 per airplane.

The FAA assumes that FedEx would install 9g barriers in their affected fleet uniformly over the 36-month compliance period. The total non-discounted cost would be $6.3 million, or $5.4 million discounted to present value.

4. Alternative Methods of Compliance (AMOC) and Special Flight Permits

Paragraph (g) of the proposed AD would allow an AMOC or adjustment of compliance time that provides an acceptable level of safety if approved by the Manager of the Atlanta ACO. The FAA is unable to determine the cost of an AMOC, but assumes it would be less than the cost of complying with the proposed provisions in paragraphs (a) through (f) of the proposed AD.

Paragraph (h) of the proposed AD would allow special flight permits in accordance with the regulations to operate an affected airplane to a location where the requirements of the proposed AD could be accomplished.

5. Total Cost of the Proposed AD

The FAA estimates that the total compliance cost of the proposed AD would be $31.6 million, or $27.3 million discounted to present value.

The Regulatory Flexibility Act (RFA) of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation. To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the Agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Only one operator, FedEx, is affected by this proposed AD. FedEx is not a small entity. Pursuant to the Regulatory Flexibility Act, 5 U.S. C. 605(b), the FAA certifies that this proposed AD would not have a significant economic impact on a substantial number of small entities.

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed AD does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded

Mandates Reform Act of 1995 do not apply.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 97–NM–232–AD.

Applicability: Model 727 series airplanes that have been converted from a passenger to a cargo-carrying (''freighter'') configuration in accordance with Supplemental Type Certificate (STC) SA1767SO or SA1768SO; 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 main deck cargo door hinge or failure of the cargo door system, which could result in the loss or opening of the cargo door while the airplane is in flight, rapid decompression, and structural damage to the airplane; and to prevent failure of the main deck cargo barrier during an emergency landing, which could injure occupants; accomplish the following:

Actions Addressing the Main Deck Cargo Door Hinge

(a) Within 250 flight cycles after the effective date of this AD, perform a detailed visual inspection of the external surface of the main deck cargo door hinge (both fuselage and door side hinge elements) to detect cracks.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(b) Within 36 months or 4,000 flight cycles after the effective date of this AD, whichever occurs first, accomplish paragraphs (b)(1) and (b)(2) of this AD.

(1) Perform a detailed visual inspection of the mating surfaces of both the hinge and the door skin and external fuselage doubler underlying the hinge to detect cracks or other discrepancies (*e.g.,* double or closely drilled holes, corrosion, chips, scratches, or gouges). The detailed visual inspection shall be accomplished in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. The requirements of this paragraph may be accomplished prior to or concurrently with the requirements of paragraph (b)(2) of this AD.

(2) Install a main deck cargo door hinge that complies with the applicable requirements of Civil Air Regulations (CAR) part 4b, including fail-safe requirements, in accordance with a method approved by the Manager, Atlanta ACO.

(c) If any crack or discrepancy is detected during the detailed visual inspection required by either paragraph (a) or (b)(1) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Atlanta ACO.

Actions Addressing the Main Deck Cargo Door Systems

(d) Within 60 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) Supplement by inserting therein the procedures specified in paragraphs (d)(1) and (d)(2) of this AD, and install any associated placards. The AFM revision procedures and installation of any associated placards shall be accomplished in accordance with a method approved by the Manager, Atlanta ACO.

(1) Procedures to ensure that all power is removed from the main deck cargo door prior to dispatch of the airplane. And

(2) Procedures to ensure that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane.

(e) Within 36 months after the effective date of this AD, incorporate redesigned main deck cargo door systems (*e.g.,* warning/monitoring, power control, view ports, and means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked), including any associated procedures and placards, that comply with the applicable requirements of CAR part 4b and criteria specified in Appendix 1 of this AD; in accordance with a method approved by the Manager, Atlanta ACO.

Note 3: The design data submitted for approval should include a Systems Safety Analysis and Instructions for Continued Airworthiness that are acceptable to the Manager, Atlanta ACO.

Actions Addressing the Main Deck Cargo Barrier

(f) Within 36 months or 4,000 flight cycles after the effective date of this AD, whichever occurs first, install a main deck cargo barrier that complies with the applicable requirements of CAR part 4.b, in accordance with a method approved by the Manager, Atlanta ACO.

Note 4: The maximum main deck total payload that can be carried is limited to the lesser of the approved cargo barrier weight limit, weight permitted by the approved maximum zero fuel weight, weight permitted by the approved main deck position weights, weight permitted by the approved main deck running load or distributed load limitations, or approved cumulative zone or fuselage monocoque structural loading limitations (including lower hold cargo).

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time contained in this proposal that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permit

(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.

Appendix 1

Excerpt from an FAA Memorandum to the Director-Airworthiness and Technical Standards of ATA, dated March 20, 1992

''(1) *Indication System:*

(a) The indication system must monitor the closed, latched, and locked positions, directly.

(b) The indicator should be *amber* unless it concerns an outward opening door whose opening during takeoff could present an immediate hazard to the airplane. In that case the indicator must be *red* and located in plain view in front of the pilots. An aural warning is also advisable. A display on the master caution/warning system is also acceptable as an indicator. For the purpose of complying with this paragraph, an immediate hazard is defined as significant reduction in controllability, structural damage, or impact with other structures, engines, or controls.

(c) Loss of indication or a false indication of a closed, latched, and locked condition must be improbable.

(d) A warning indication must be provided at the door operators station that monitors the door latched and locked conditions directly, unless the operator has a visual indication that the door is fully closed and locked. For example, a vent door that monitors the door locks and can be seen from

the operators station would meet this requirement.

(2) *Means to Visually Inspect the Locking Mechanism:*

There must be a visual means of directly inspecting the locks. Where all locks are tied to a common lock shaft, a means of inspecting the locks at each end may be sufficient to meet this requirement provided no failure condition in the lock shaft would go undetected when viewing the end locks. Viewing latches may be used as an alternate to viewing locks on some installations where there are other compensating features.

(3) *Means to Prevent Pressurization:*

All doors must have provisions to prevent initiation of pressurization of the airplane to an unsafe level, if the door is not fully closed, latched and locked.

(4) *Lock Strength:*

Locks must be designed to withstand the maximum output power of the actuators and maximum expected manual operating forces treated as a limit load. Under these conditions, the door must remain closed, latched and locked.

(5) *Power Availability:*

All power to the door must be removed in flight and it must not be possible for the flight crew to restore power to the door while in flight.

(6) *Powered Lock Systems:*

For doors that have powered lock systems, it must be shown by safety analysis that inadvertent opening of the door after it is fully closed, latched and locked, is extremely improbable.''

Issued in Renton, Washington, on November 4, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–29473 Filed 11–10–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 990

[Docket No. FR–4425–N–07]

Negotiated Rulemaking Committee on Operating Fund Allocation; Meetings

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Negotiated Rulemaking Committee Meetings.

SUMMARY: This document announces a meeting of the Negotiated Rulemaking Committee on Operating Fund Allocation. These meetings are sponsored by HUD for the purpose of discussing and negotiating a proposed rule that would change the current method of determining the payment of operating subsidies to public housing agencies (PHAs).

DATES: The committee meeting will be held on November 30, December 1, and December 2, 1999.

On November 30, 1999, the meeting will begin at approximately 2:00 pm and end at approximately 6:00 pm. On December 1, 1999, the meeting will begin at approximately 9:00 am and end at approximately 5:30 pm. On December 2, 1999, the meeting will begin at approximately 9:00 am and end at approximately 4:00 pm.

ADDRESSES: The committee meeting will take place at the Holiday Inn On-the-Hill, 415 New Jersey Avenue, NW, Washington, DC 20001; telephone (202) 638–1616.

FOR FURTHER INFORMATION CONTACT: Steve Sprague, Acting Director, Funding and Financial Management Division, Public and Indian Housing, Room 4216, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500; telephone (202) 708–1872 (this telephone number is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of HUD has established the Negotiated Rulemaking Advisory Committee on Operating Fund Allocation to negotiate and develop a proposed rule that would change the current method of determining the payment of operating subsidies to PHAs. The establishment of the committee is required by the Quality Housing and Work Responsibility Act of 1996 (Pub. L. 105–276, approved October 21, 1998) (the ''Public Housing Reform Act''). The Public Housing Reform Act makes extensive changes to HUD's public and assisted housing programs. These changes include the establishment of an Operating Fund for the purpose of making assistance available to PHAs for the operation and management of public housing. The Public Housing Reform Act requires that the assistance to be made available from the new Operating Fund be determined using a formula developed through negotiated rulemaking procedures.

II. Negotiated Rulemaking Committee Meeting

This document announces a meeting of the Negotiated Rulemaking Committee on Operating Fund Allocation. The next committee meeting will take place as described in the **DATES** and **ADDRESSES** section of this document.

The agenda planned for the committee meeting includes: (1) Work group sessions to discuss various issues related to the implementation of an Operating Fund formula; (2) full committee discussions of the work-products developed by the work groups; (3) development of draft regulatory language; and (4) the scheduling of future meetings, if necessary.

The meetings will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION** section of this notice. Summaries of committee meetings will be available for public inspection and copying at the address in the same section.

Dated: November 5, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–29497 Filed 11–10–99; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 11–99–013]

RIN 2115–AE47

Drawbridge Operation Regulations: Oakland Inner Harbor Tidal Canal, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of a local citizen, the Coast Guard is considering a change in operating regulations for the drawbridges crossing the Oakland Inner Harbor Tidal Canal (Oakland Estuary), between Oakland and Alameda, California. The proposal would amend the existing operating regulations to adjust the commute hour closures to coincide with current peak traffic periods.

DATES: Comments must be received on or before January 11, 2000.

ADDRESSES: Comments may be mailed or hand-delivered to: Commander (oan), Eleventh Coast Guard District, Bldg. 50–6, Coast Guard Island, Alameda, CA 94501–5100. Comments may also be faxed to: (510) 437–5836. Comments may be e-mailed to:

jolmes@d11.uscg.mil. Comments may be delivered to the above address between 6:30 a.m. and 4:00 p.m. Monday through Friday except Federal holidays.

The Commander, Eleventh Coast Guard District maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the address above.

FOR FURTHER INFORMATION CONTACT: Jerry Olmes, Bridge Administrator, at the address above. His telephone number is (510) 437–3515.

SUPPLEMENTARY INFORMATION:

Requests for Comments

The Coast Guard encourages interested persons to participate in this proposed rulemaking by submitting written data, views, or arguments for or against the proposed change. Persons submitting comments should identify this rulemaking (CGD 11–99–013) and the specific section of this document to which each comment applies. Give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ × 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self addressed postcard or envelope. All comments and other materials referenced in this notice will be available for inspection and copying at the Coast Guard address given above. Normal office hours are between 6:30 a.m. and 4:00 p.m., Monday through Friday, except holidays. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Coast Guard including the reasons why a hearing would be beneficial. If it is determined that the opportunity for oral presentations will aid in this rulemaking, the Coast Guard will hold a public hearing at time and place announced by a later notice in the **Federal Register**.

The proposed regulation may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on the NPRM. The Commander, Eleventh Coast Guard District, will evaluate all comments received and determine a course of final action on this proposal.

Background and Purpose

The current regulation, 33 CFR 117.181, specifies that the bridges need not open for the passage of vessels from 7:30 a.m. to 8:30 a.m. and 3:45 p.m. to 5:45 p.m. Monday through Friday, except Federal holidays. This regulation was enacted in 1973 to accommodate peak highway traffic periods. However, a recent analysis of traffic data reveals that the peak morning commute period is now from 8:30 a.m. to 9:30 a.m. and the afternoon peak is from 5 p.m. to 7 p.m. The proposed change should better accommodate peak highway traffic with no additional impact on vessel traffic, although vessel operators will have to adjust their travel times. Vessel traffic is light on weekdays; the bridges typically open about 4 times each day during daylight hours. Vessel operators should be able to adjust their time of passage without significant economic consequences.

The Coast Guard also proposes to amend the waterway mileages listed in the regulation to coincide with current practice.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the office of Management and Budget under that order. It is not significant under the Department of Transportation Regulatory Policies and Procedures (DOT) (44 FR 11040, February 26, 1979). The only impact would be on the larger vessels not able to pass under the closed bridge, and they will have the same access as they do presently, but will have a slightly modified schedule of closed periods. The Coast Guard expects the impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include small businesses and not-for profit organizations that are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000. For the same reasons set forth in the Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. § 605(b) that this proposal, if adopted, is not expected to have a significant economic impact on any substantial number of entities, regardless of their size.

Assistance for Small Entities

In accordance with § 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rule making process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Jerry Olmes, Coast Guard Bridge Section, Alameda office at the address listed in **ADDRESSES.**

Collection of Information

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

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 13132 and has determined that this proposal does not have federalism implications under this Order.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposal and concluded that under Commandant Instruction M16475.1C, Figure 2–1, paragraph 32(e), this proposal is categorically excluded from further environmental documentation, because it is a Bridge Administration Program action involving the promulgation of operating requirements or procedures for a drawbridge.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub L. 104–4), the Coast Guard must consider whether this proposed rule will result in an annual expenditure by state, local, and tribal governments, in the aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected.

No state, local or tribal government entities will be affected by this rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this rule and reached the following conclusions:

E.O 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This Rule will not effect a taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This Rule will not impose, on any State, local, or tribal government, a mandate that is not required by statute and that is not funded by the Federal government.

E.O. 12988, Civil Justice Reform. This Rule meets applicable standards in section 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This Rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations as follows:

PART 117—[AMENDED]

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05–1(g); section 117.255 also issued under the authority of P.L. 102–587, 106 Stat. 5039.

2. Section 117.181 is revised to read as follows:

§ 117.181 Oakland Inner Harbor Tidal Canal.

The draws of the Alameda County highway bridges at Park Street, mile 5.2; Fruitvale Avenue, mile 5.6; and High Street, mile 6.0; and the U.S. Army Corps of Engineers railroad bridge, mile 5.6 at Fruitvale Avenue, shall open on signal; except that, from 8:30 a.m. to 9:30 a.m. and 5 p.m. to 7 p.m. Monday through Friday except Federal holidays, the draws need not be opened for the passage of vessels. However, the draws shall open during the above closed periods for vessels which must, for reasons of safety, move on a tide or slack water, if at least two hours notice is given. The draws shall open as soon as possible for vessels in distress and emergency vessels, including commercial vessels engaged in rescue or emergency salvage operations.

Dated: October 21, 1999.

T.H. Collins,

Vice Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 99–29603 Filed 11–10–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Parts 5 and 13

RIN 1024–AC58

National Park System Units in Alaska; Denali National Park and Preserve, Special Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: For National Park System units in Alaska, the proposed rule would establish a definition for ''traditional activities'' as the term is used in Alaska National Interest Lands Conservation Act (ANILCA) and in the regulations of the Office of the Secretary of the Interior. The rule would close the area within Denali National Park that was formerly Mount McKinley National Park to the use of snowmachines (snowmobiles) for traditional activities. The rule would also consolidate, expand and codify certain designations, closures, and permit requirements for Denali National Park and Preserve. This proposal includes requirements for vehicular traffic, vehicle use limits, public health and safety, and resource protection postings and closures. It also replaces the out-of-date references to ''Mount McKinley National Park'' with the Alaska National Interest Lands Conservation Act name ''Denali National Park and Preserve.'' The National Park Service (NPS) will hold hearings in the vicinity of the Park concerning the proposed closure to snowmachines and the other portions of this proposed rule. NPS will analyze all timely comments, modify the Rule as needed and publish a Final Rule in early 2000.

DATES: Written comments will be accepted through January 11, 2000. Commenters are advised that the Department of the Interior intends to make the names and addresses of commenters public, but that commenters may request that this information not be released and the Department will then determine whether the information may be withheld under the Freedom of Information Act (5 U.S.C. 552).

ADDRESSES: Address comments to: Superintendent, Denali National Park and Preserve, PO Box 9, Denali National Park, AK 99755. Attention: Ken Kehrer, Jr.

FOR FURTHER INFORMATION CONTACT: Ken Kehrer, Jr. at the above address or by calling 907–683–2294.

SUPPLEMENTARY INFORMATION:

Background

Denali National Park and Preserve is a vast area that provides visitors of all abilities with opportunities for superlative, inspirational, recreational, wilderness, and wildlife experiences in keeping with its legislative mandates. Over the long term, preserving the wilderness, and its continually evolving natural processes, is essential to ensuring opportunities for outstanding resource-based visitor experiences.

In the NPS Organic Act of 1916, Congress directed the Secretary of the Interior and the NPS to manage national parks and monuments to ''conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.'' 16 U.S.C. 1. The Organic Act also granted the Secretary the authority to implement ''rules and regulations as he may deem necessary or proper for the use and management of the parks, monuments and reservations under the jurisdiction of the National Park Service.'' 16 U.S.C. 3. In 1917, Congress established Mount McKinley National Park to ''set apart as a public park for the benefit and enjoyment of the people * * * for recreation purposes by the public and for the preservation of animals, birds, and fish and for the preservation of the natural curiosities and scenic beauties thereof * * * said park shall be, and is hereby established as a game refuge'' (39 Stat. 938).

In 1980, Congress passed the Alaska National Interest Lands Conservation Act (ANILCA), which enlarged Mt. McKinley National Park and renamed it Denali National Park and Preserve. P.L. 96–487, Dec. 2, 1980, 94 Stat. 2371. Consistent with the 1917 Act that created the park, ANILCA recognized the importance of protecting habitat for, and populations of, fish and wildlife. The legislative history of ANILCA states that certain NPS units in Alaska,

including ''Mount McKinley [National Park] * * * are intended to be large sanctuaries where fish and wildlife may roam freely, developing their social structures and evolving over long periods of time as nearly as possible without the changes that extensive human activities would cause.'' Sen. Rep. No. 96–413, 96th Cong., 1st Sess. 137 (1979); and, Cong. Rec. H10532 (Nov. 12, 1980). The heart of the new Park and Preserve lies on the lands that once comprised Mount McKinley National Park, where predator-prey relationships have functioned for many decades without significant human interference. This ''core'' area of Denali National Park (also known as the Old Park) has historically been the only place in the interior and northern parts of Alaska where wildlife protection has been ensured through minimal disturbance to wildlife and habitat. This core area's dedication to wildlife protection is essential to the wilderness wildlife experience of over 300,000 visitors who travel into the park each season.

Limiting motor vehicle use on the Denali Park Road, and prohibiting snowmachine use in the adjacent Denali wilderness, have been essential factors in maintaining the natural systems in the park interior and in providing continued outstanding visitor experiences. The overall visitor experience depends in large part on seeing the spectacular variety of wildlife along the park road and the opportunity to observe natural predator-prey interactions. Vehicle use above certain levels displaces the wildlife that can be seen from the road and otherwise disrupts the park's ecosystems and is therefore detrimental to the resources, values and purposes for which the park was established. Because the core area of the park was established in 1917, over 63 years before ANILCA, park guidelines and patterns of use and administration for the core area have developed over time and in ways uniquely suited to the local conditions and needs. With the passage of ANILCA and improved highway access to the park, it has become necessary to consolidate many of these requirements and practices in the park specific regulations.

Section-by-Section Analysis

36 CFR 5.2(b), 5.4(a) and 5.10(a)

NPS proposes updates to these sections to reflect the name change to the park that occurred on December 2, 1980. With the adoption of ANILCA, the name of the park was changed from Mount McKinley National Park to Denali National Park and Preserve (P.L. 96–487 § 202(3)(a), Dec. 2, 1980). The proposed revisions here would delete references to the former name and substitute the new name. In section 5.4(a) the reference to ''McKinley Park Hotel'' in the existing regulations would be replaced with ''Denali Park Railroad Depot.'' This change reflects the fact that the 1996 Final Denali Entrance Area and Road Corridor Development Concept Plan Environmental Impact Statement (1996 Final Entrance and Road Plan), which was approved in a 1997 Record of Decision, adopted September 2001 as the closing date for the hotel. The railroad depot, which is just across the road, would be substituted for the hotel because the depot will remain open. No change is proposed for the regulatory content of the other sections.

36 CFR 13.1(u)

NPS proposes to define ''traditional activities'' as the term is used in Section 1110(a) and 43 CFR 36.11 for National Park System units in Alaska. This proposal is discussed as part of the snowmachine discussion, below.

36 CFR 13.2(c)

The purpose of this section is to indicate those parks statutorily excepted from applicability of subsistence regulations found in Part 13, subpart B. In the case of Denali, only part of the park was statutorily excepted (i.e., that ''core'' part formerly known as Mount McKinley National Park). NPS proposes to revise this regulation to use that terminology to clarify the meaning of the current § 13.2(c) phrase ''. . . and parts of Denali National Park.'' The proposed change more clearly specifies the intended area and does not change the regulatory application of the section.

36 CFR 13.63(d) Denali Park Road: Motor Vehicle Traffic

NPS proposes this new special regulation to consolidate existing motor vehicle rules and restrictions currently compiled separately by the Superintendent in accordance with 36 CFR 1.7(b). Because a portion of the motor vehicle traffic on the Denali Park road is destined for commercial lodges and other private inholdings in Kantishna at the western end of the road, the proposed regulation includes consideration of the requirements of ANILCA § 1110(b). ANILCA § 1110(b) directs NPS to give inholders such rights as may be necessary to ensure adequate and feasible access to their land for economic and other purposes, subject to reasonable regulations that protect the natural and other values of the conservation system unit. Therefore, this section would be implemented in consideration of the requirements of 43 CFR 36.10 (Access to inholdings).

Before the completion of the George Parks Highway in 1972, annual visitation to Mt. McKinley National Park did not exceed 30,000 visitors, with a majority of those arriving by railroad. Significant increases in visitation began in 1972, and the resulting demands of private motor vehicle traffic for use of the road into the park was greater than could be accommodated without disturbing and displacing wildlife that could be seen from the road. In 1997, visitors to Denali National Park exceeded 300,000, a tenfold increase from 1972.

The primary visitor attraction at the park is the unparalleled array of Alaska wildlife regularly seen from the Denali Park Road and the opportunity to see natural predator-prey interactions. In 1972, to ensure that the increasing number of visitors would continue to see grizzly bears, caribou, moose, Dall sheep, the occasional wolf, as well as other species of Alaska wildlife in their natural habitat, NPS developed a shuttle bus system that replaced most of the private vehicular traffic with buses each capable of transporting more than 36 passengers. Concurrently, general private vehicular traffic was limited to the improved, easternmost 15 miles of the 88-mile park road. This action allowed an increase in the number of visitors who could travel the road without unduly impacting the wildlife viewing experience.

The other option that NPS considered in 1972—adding additional private vehicular traffic to the road—proved untenable for a number of reasons. NPS determined that the increase in activities associated with additional private vehicle use caused the greatest disturbance to wildlife given that such vehicles could stop at will to allow passengers to approach wildlife on foot. As a previous rulemaking noted, when an unchecked flow of traffic was allowed to use the Denali Park road for a few weeks each fall and spring, park resource managers observed that wildlife abandoned the road corridor after three or four days, depriving visitors of the opportunity to watch and photograph them (48 FR 14978). Although bus passengers may choose to be dropped off at any safe point along the road, when wildlife is near, passenger discharge is controlled to avoid conflicts with, and displacement of, wildlife. Accordingly, opportunities for viewing and photographing wildlife abound while the bus is stopped for those purposes.

In 1986, a General Management Plan (GMP) for Denali National Park and Preserve was developed through public hearings and other public input. The GMP authorized a motor vehicle use level of 10,512 vehicle round trips on the unimproved portion of the Denali Park road during the visitor season, which runs annually from Memorial Day weekend through mid-September. The 10,512 vehicle level was established by using 1984 use levels as a base and allowing a maximum 20 percent increase in shuttle and tour bus traffic. This increase in bus traffic was offset by reductions of non-bus traffic and by consideration of such factors as road wear and maintenance, natural resource protection (including maintaining the opportunity for unparalleled wildlife watching), environmental impacts and traffic safety.

Shuttle and tour buses have been operating at, or near, their GMP-established level for several years. Additionally, since the mid-1980s, three new businesses have opened at the west end of the park road on private land in Kantishna. The park has permitted motor vehicle access to these businesses for their guests, a trend that is likely to continue. Also, individual inholders will continue to be able to obtain road access permits to use their private vehicles on the unimproved, restricted access section of the Denali Park road to regularly access their property.

The 1996 Final Entrance and Road Plan called for retaining the annual season motor vehicle traffic level (10,512) as established in the 1986 GMP. Public comment on the Draft Entrance Area and Road Corridor Development Concept Plan (Draft Plan) during summer 1996, including public hearings at several different locations in Alaska and a 60-day comment period, indicated widespread support for retaining the GMP level. NPS received 262 written comments and heard testimony from 40 people; no comments were received opposing the overall level of 10,512 motor vehicle permits although there were numerous comments that supported more restrictive regulation of vehicle traffic than was adopted in the final plan. In the proposed regulations, the NPS would codify the annual visitor season traffic level of 10,512 motor vehicle permits. The Denali Entrance Area and Road Corridor Development Concept Plan was designed to be applicable for 10–15 years. NPS intends to reevaluate the road use levels established by this rule in 10 years or sooner if significant change in circumstances should occur.

Traffic safety is also a significant factor for limiting use to the GMP allocation. Studies of visitor satisfaction, and both formal and informal visitor comments, consistently support the NPS decision to maintain most of the Denali Park Road in its rustic, unimproved condition. The character of the park road and its relationship with the landscape through which it passes are integral to the visitor experience at Denali. Consequently, 72 miles of the road are graded gravel, much of which varies between one and one-and-one-half lanes wide. As the road traverses scenic mountain passes between broad river valleys, it often dips and climbs and winds as it clings precipitously to the mountains' supporting contours. The road, which was originally designed for 1930s era vehicles and levels of use, must now accommodate 1999 traffic levels—a mix of large tour and shuttle buses, private vehicles for inholder access, park administrative and maintenance traffic, and service vehicles traveling to Kantishna lodges.

NPS concern over traffic safety is also based on bus accidents that occurred in 1969, 1974, 1981 and 1989, and resulted in six fatalities and serious injuries to park visitors. The historic character of the road warrants special attention to safety procedures for its use. Known locally as the ''rules of the road,'' practices such as driving with lights on and specific procedures for yielding to buses have developed through time and are practiced by many, although not all, drivers on the unimproved, restricted access section of the road. Permitted users, such as those traveling to inholdings, are advised of these rules, and the rules are mandatory for NPS staff. However, to avoid unanticipated actions by vehicle operators, mandatory observance of ''the rules'' is necessary, particularly for NPS to use large, 52 passenger buses to accommodate more visitors. To ensure a safe, enjoyable experience for all visitors, interactions between vehicles must be managed in the safest possible manner and all drivers must participate. To date, and when properly observed, these safety procedures have been effective in minimizing traffic problems and accidents. This rulemaking provides that ''rules of the road'' will apply, as a term and condition of a permit to operate a vehicle on the restricted access section of the Denali Park Road.

To manage the annual traffic level of motor vehicle permits set by the GMP and the 1996 Final Entrance and Road Plan, NPS would limit motor vehicles in the various authorized user categories as proposed in, and adopted by, the 1996 planning process. Recognizing that ANILCA § 1110(b) provides inholders with access as may be necessary to assure adequate and feasible use for economic and other purposes, the 1996 plan addresses both the commercial and private uses of inholders. Through careful analysis and negotiation, the park superintendent will continue to balance: the number of bus trips provided for visitors; access by inholders; the level and duration of permits, and; the administrative requirements of the agency. Accordingly, this rulemaking proposes to explicitly provide the superintendent with the regulatory authority to annually evaluate anticipated-use requirements and to reasonably apportion motor vehicle permits for the restricted access section of the road among authorized users.

A system for allocating permits among the various authorized users was proposed as part of the 1996 Draft Plan. NPS received a few comments that raised questions about the distribution of vehicle permits among Kantishna lodges. The 1996 Final Entrance and Road Plan included a method of allocating motor vehicle permits for Kantishna business traffic that was developed in cooperation with existing Kantishna businesses, according to their established business practices, within the road traffic limits of the 1986 GMP. Specific allocations for Kantishna motor vehicle traffic will help ensure long-term protection of the current visitor experience and of wildlife populations along the road corridor. Kantishna businesses will be able to continue using both the Kantishna airstrip and the NPS visitor transportation system buses for guest access, as well as operate buses and other vehicles on the park road as allocated below.

Overall allocations for Kantishna motor vehicle business traffic will be based on recent use levels (1994–96 seasons). The allocation will allow for some additional expansion provided that the businesses continue current patterns of transporting guests to and from Kantishna. The allocations established by the 1996 Final Entrance and Road Plan for the total number of round trips during the visitor season for the existing business are:

- Denali Backcountry Lodge: 315.
- Kantishna Roadhouse: 420.
- Northface Lodge/Camp Denali: 315.

As previously expressed in the 1996 Final Entrance and Road Plan, Proposed Section 13.63(d)(4) would not permit recreational vehicle (RV) travel (motor homes, trailers, and campers) for the purpose of transporting guests to and from Kantishna businesses is not

permitted. Motor vehicle permits will not be transferable from one business operation to another. Additionally, when a business is sold to a different entity, NPS will re-evaluate the access requirements of the new entity. If a business ceases to operate, or changes dramatically, the superintendent, through appropriate planning, would be able to re-allocate use among all users.

Motor vehicle permits for present and future Kantishna businesses would be subject to reallocation in accordance with proposed section 13.63(d)(2) within the annual limit of 10,512 permits. However, Kantishna businesses would be encouraged to use a combination of park road permit allocations, the existing NPS visitor transportation system buses and the Kantishna airstrip, to accommodate increased guest access. Kantishna businesses could also work to provide for shared vehicle access (for example, for supply vehicles) to minimize the effects on other travel requirements.

A total of 1,360 vehicle round trips for Kantishna inholders would be authorized, comprising 13 percent of all annual traffic. This total includes other Kantishna traffic (individual inholders, mining claim owners, and others), which generally has averaged less than 100 round trips per year, and should decline as mining claims are acquired by the Federal Government.

NPS intends to reserve a small number of motor vehicle trips to cover emergency vehicles. In the unlikely event that the number of emergency vehicle trips exceeds this level, emergency use can still be authorized under the general administrative exception at 36 CFR 1.2(d).

NPS believes that adoption of these regulatory measures would implement the GMP and the 1996 Final Entrance and Road Plan to: maintain the appropriate level of safety on the Denali Park road; meet the present and future requirements of authorized users; ensure NPS facilities are sufficient to accommodate projected visitation levels; minimize impacts on the resources and support a quality visitor experience. NPS believes that adopting this rule would achieve these goals without unduly disturbing the cornerstone of the park's existence—the superlative and unparalleled array of wildlife that is viewed by the public from the Denali Park road.

36 CFR 13.63(g) Firearms

The provisions of ANILCA Title VIII govern subsistence management and use. Section 814 directs the Secretary to prescribe such regulations as are necessary and appropriate to carry out his responsibilities under Title VIII. Section 816 recognizes the Secretary's general authority to designate areas where, and establish periods when, the taking of wildlife is prohibited for reasons of public safety. The proposed rule would establish a seasonal closure to the discharge of firearms on public lands in the developed area of Kantishna, except for the protection of life or property. The closure would apply on: the Kantishna Airstrip; the approximately 4.5 mile-long State Omnibus Act Road right-of-way, and; and all public lands located within one mile of the Kantishna Airstrip or the State Omnibus Act Road right-of-way (within the park addition at Kantishna).

During the applicable seasons, eligible subsistence users in the Kantishna area may hunt black bear, brown bear, moose, coyote, red fox, hare, lynx, wolf, wolverine, grouse and ptarmigan, and may trap beaver, coyote, red fox, lynx, marten, mink, weasel, muskrat, otter, wolf and wolverine. The closure would be effective seasonally beginning the Saturday of Memorial Day weekend through the second Thursday following Labor Day or September 15, whichever comes first. This period is the time of heaviest overlap between subsistence hunting and other seasonal visitor activities. The intent of the proposal is to protect public safety while accommodating the various public user groups to the fullest extent possible. The purpose of the closure is to reduce the level of risk of firearm-related injury inherent in heavy use areas without otherwise affecting authorized subsistence uses. The restriction would not apply on private inholdings. This proposal follows consultation with the State of Alaska. NPS invites written comments on this proposal as a part of this rulemaking. NPS will also accept comments during public hearings on the proposed rule.

36 CFR 13.63(h) Snowmachines (Snowmobiles)

The purpose of the proposed rule is to modify and make permanent the current snowmobile closure for traditional activities in the former Mount McKinley National Park. The closure does not affect the park's four-million-acre ANILCA additions where snowmobile use is permitted for traditional activities and for travel to and from villages and homesites, subject to reasonable regulations (43 CFR 36.11(c)). The proposed rule also requires the superintendent to determine that snowcover is adequate for snowmachines in order to protect the underlying vegetation and soils. This determination is necessary to prevent damage to exposed vegetation, as observed by park rangers and resource management staff during the past winter. This process is similar to a provision at the Kenai National Wildlife Refuge (50 CFR 36.39(i)(4)(i)) which NPS understands has worked well since it was adopted in 1986. (*see* also, Denali State Park, 11 AAC § 20.425).

The proposed rule follows NPS's February 3, 1999, publication of a *Statement of Finding: Temporary Closure of the Former Mt. McKinley National Park Area of Denali National Park and Preserve to the Use of Snowmobiles for Traditional Activities (Statement of Finding).* The NPS notes that this Temporary Closure is currently under litigation in Alaska (see *Alaska State Snowmobile Assoc.* v. *Babbitt,* U.S.D.C. Alaska, No. A99–0059 CV [JWS]). A copy of the *Statement of Finding* and maps of the affected area can be obtained by visiting the park's web site at *www.nps.gov/dena/statement.htm* or by writing or calling the Superintendent at the address or number printed at the beginning of this proposed rule.

NPS will also hold a series of public hearings in compliance with 43 CFR 36.11(h), as a part of this rulemaking, to continue gathering public comment on snowmobile use in the Old Park. NPS will announce the locations, dates, and times of the public hearings by publication in local area newspapers.

ANILCA § 1110(a) and 43 CFR 36.11 govern the use of snowmachines (snowmobiles) on public lands in Alaska for traditional activities and for travel to and from villages and homesites. Snowmobile use for these purposes is permitted (during periods of adequate snow cover), subject to reasonable regulations to protect the natural and other values of, in this case, Denali National Park and Preserve. Section 1110(a), as enacted, was derived from a provision originally reported by the Senate (S. Rep. No. 413, 96th Cong. 1st Sess. 66–67 (1979)). Section 1110(a) was drafted to address concerns that the subsistence access provisions under consideration did not protect similar access for non-qualifying people who engaged in subsistence-like activities (hunting, fishing, berry picking and trapping) as part of the unique Alaska lifestyle. Senate Committee On Energy and Natural Resources, Alaska (d)(2) Lands—Mark Up, August 1, 1978, pgs. 50–75. The Senate Committee Report and the House Report (Committee on Interior and Insular Affairs) list several examples of traditional activities: subsistence and sport hunting, fishing, and berry picking, provided that the activity was generally occurring before

the area's designation in ANILCA. S. Rep. No. 413, 96th Cong., 1st Sess. pp. 247–248 (1979); H.R. Rep. No. 96–97, 96th Cong., 1st Sess. Pt. I at 238 (1979).

The NPS Organic Act of 1916 directs NPS to manage the national parks to conserve their scenery, natural and historic objects and wildlife, and to provide for public enjoyment in a manner and means that leave the parks unimpaired for the enjoyment of future generations (16 U.S.C. 1). Mount McKinley National Park (Old Park) was established, in part, as a game refuge (16 U.S.C. 352). Since 1917, activities in the Old Park have been compatible with the protection of the park's values and purposes. The legislative history of ANILCA recognized that the Old Park would continue to function as a ''large sanctuar[y] where fish and wildlife may roam freely, developing their social structures and evolving over long periods of time as nearly as possible without the changes that extensive human activities would cause.'' Sen. Rep. No. 96–413, 96th Cong., 1st Sess. 137 (1979); Cong. Rec. S11126 (August 18, 1980), and; Cong. Rec. H10532 (Nov. 12, 1980).

As such, the Old Park remains ''off-limits'' to such traditional Alaska activities as sport and subsistence hunting. Other subsistence activities have never been authorized and no winter fishing or wintertime berry picking took place. Accordingly NPS does not believe that any discernible traditional activities, supported by snowmobiles, lawfully occurred in the Old Park before the enactment of ANILCA.

Nor was there snowmobile travel to and from villages or homesites. There are no inholdings in the Old park, and in the past 19 years (i.e., since the enactment of ANILCA), NPS is only aware of one attempt to cross the Old Park by snowmobile to reach a homesite to the west of the Old Park. That 1981 attempt ended in an accident. All homesites and villages outside the boundary of the Old Park (including Kantishna) have reasonable alternate routes for snowmobile access (including routes through other portions of the park) that have been regularly used for such access.

The Old Park was closed to snowmobile use prior to ANILCA (*see* 36 CFR 2.34 Snowmobiles and § 7.44 Mount McKinley National Park, Alaska (1980 ed.)). After ANILCA, the Old Park remained closed by 36 CFR 2.18 and orders published in the Denali National Park and Preserve Superintendent's Compendium. NPS has consistently managed the two-million-acre Old Park for nonmotorized winter recreation in a way that allows visitors to experience solitude and natural sounds, such as dog mushing, snowshoeing, and cross-country skiing. As far back as 1981, in the implementing regulations to ANILCA, NPS cautioned ''[p]rospective snowmachine users [to] note that the legislative history of section 1110(a) defines a traditional activity in terms of a use generally occurring in a park area prior to its designation.'' 46 FR 3184, June 17, 1981.

Since NPS had never promulgated a regulatory definition for ''traditional activities,'' however, the State of Alaska and other interested groups and individuals questioned whether NPS's compendium closure was legally sufficient. A newsletter article was published last year urging recreational snowmobilers to travel throughout the Old Park. Alaska Snow Rider (October 1998), Volume 9, Issue 6. In response, NPS published the *Statement of Finding* on February 3, 1999, as a temporary closure in compliance with the requirements of ANILCA section 1110(a) and the implementing regulations at 43 CFR 36.11(h). Following notice and public hearings, NPS determined that snowmobile use for traditional activities would be detrimental to the resource values of the Old Park portion of Denali National Park and Preserve and that it was necessary and appropriate to close most of that area to the use of snowmobiles for traditional activities.

Snowmobile use in, and near, the Old Park area began to increase in the early 1990s. The increased use occurred simultaneously with an increase in snowmobile sales and use throughout Alaska. In addition to increased snowmobile activity, the character and pattern of use also changed. Snowmobile manufacturers began producing more reliable, higher performance vehicles that could access steep terrain and travel greater distances (*see The mountain was screaming,* Anchorage Daily News, March 28, 1999). Snowmobiling changed from a utilitarian form of access for the traditional activities discussed in ANILCA, such as hunting, into a new and popular recreational activity in and of itself. Since NPS had not defined the term ''traditional activity,'' recreational snowmobilers began using the ANILCA additions to Denali National Park near the George Parks Highway. Technological advances have enabled snowmobilers to reach, and lately, enter some corridors in the Old Park in a limited number of drainages on the south side of the Alaska Range. This has caused NPS tremendous concern that the resources of the Old Park would be detrimentally affected by snowmobiles. These concerns have prompted NPS to analyze the effects that section 1110(a) snowmobile use would have on the resources of the Old Park, and explicitly close the Old Park to such use.

The *Statement of Finding,* published on February 3, 1999, analyzed and discussed a number of key issues, including: The detrimental effects that snowmobiles would have on wildlife, vegetation, and soils; the conflicts that snowmobiles create with resource values and historically-occuring recreational uses; the interference snowmobiles can present to subsistence opportunities on nearby lands; and, additional concerns such as the impact snowmobiles have on air and water quality. As discussed in the *Statement of Finding,* the Old Park contains important wintering ground and spring calving areas for ungulates and also serves as denning habitat for wolves and bears. One of the primary purposes for establishing Denali National Park and Preserve was to provide protection for wildlife and wildlife habitat. Since its establishment in 1917, the Old Park has been protected and is, in fact, the only place in the Interior and northern parts of Alaska where wildlife has been protected through minimal disturbance of natural wildlife conditions. Thus, a very special natural system has developed where predator-prey relationships have functioned without significant human interference. The unparalleled array of Alaska wildlife regularly seen from the Denali Park Road and the opportunity to see natural predator-prey interactions is the primary visitor attraction at the park. The key factors in the development of this balance were the policies of restricting the use of private vehicles on the park road during the summer months and prohibiting snowmobile use in the winter. The *Statement of Finding* (pages 9–13) cites observations of, and studies on, wildlife, including moose and caribou, which indicate that snowmobile activity alters the behavior of a wide variety of animals. These studies confirm that exposure of wildlife to snowmobile use results in behavioral alteration, habitat avoidance, and energy expenditures at critical times when animals are under extreme stress from winter privations. Winter is an extremely difficult time of year for animals in the Old Park. As noted in the *Statement of Finding:*

> The health of this shielded ecological system is the foundation for one of the world's finest wildlife viewing opportunities. The possibility of seeing bears, wolves, caribou, moose, Dall sheep, and many other animals against the backdrop of a spectacular subarctic, alpine landscape and vegetation is

the cornerstone of a multimillion-dollar tourism industry in Alaska. These wildlife populations in the old park area are available for this unparalleled viewing opportunity precisely because they have been protected from intrusive interactions with humans for decades.

Id. at 5.

Any increase in stress through added energy expenditure or loss of preferred habitat is a concern in the difficult times of winter. In the former Mt. McKinley National Park, there is the possibility of many additional miles of snowmobile trails and increased snowmobile activity levels throughout all types of habitats. This area of previously protected habitat is particularly vulnerable to increased disturbance given its close proximity to the George Parks Highway. This new pattern of use will leave little opportunity for wildlife avoidance and refuge. This major change in the level and extent of human activity in this historically undisturbed winter environment will affect many animals over a large area. It would also represent a significant change from the long-standing patterns of non-intrusive human interaction with wildlife.

Id. at 10

NPS believes that snowmobile use in this area would compromise the park's successful long-term resource protection strategy and would be detrimental to the internationally-significant resources and the opportunity to view them. NPS also believes that snowmobile use would be detrimental to the resource values of natural quiet, solitude and the sounds of nature—among the values for which the Old Park has been managed, that are generally unique to the Old Park, and that snowshoers, cross-country skiers and dog mushers have long enjoyed.

Therefore, based on the *Statement of Finding* and additional information gathered in the interim, NPS believes that the temporary snowmobile closure of the former Mount McKinley National Park should be implemented on a permanent basis by this rulemaking in accordance with 43 CFR 36.11(h).

Traditional Activities: Proposed Definition

In 1986, the Department of the Interior promulgated regulations to implement the provisions of Title XI of ANILCA (51 FR 31629, September 4, 1986). That rulemaking included the implementing regulations for ''Special Access'' (ANILCA section 1110(a), 43 CFR 36.11). Responding to comments suggesting that ''traditional activities'' should be defined, the Department stated:

Because these regulations apply to a number of areas Under the administrative jurisdiction of three agencies, it has been decided that it would be unwise, and perhaps impossible to develop a definition that would be appropriate for all areas under all circumstances. Exactly what ''traditional activities'' are must be decided on a case-by-case basis. Once the agencies have had the opportunity to review this question for each area under their administration, it may be possible to specifically define ''traditional activities'' for each area.

Id. at 31627.

Defining the term ''traditional activity,'' in the context of the Special Access provisions of ANILCA section 1110(a) and National Park System units in Alaska is an important part of Section 13.1(u) of the proposed rule. In 1986, the Denali National Park and Preserve General Management Plan discussed the meaning of ''traditionally employed'' surface transportation and ''snowmachine * * * transportation * * * for traditional activities.'' NPS stated that:

In applying the provisions of ANILCA * * * section 1110.

* * *[NPS] has relied on the following definitions of 'tradition(al)' from Webster's Third New International Dictionary of the English Language (unabridged), 1976:

2. The process of handing down information, opinions, beliefs, and customs by word of mouth or by example: transmission of knowledge and instruction through successive generations without written instruction * * *

3. An inherited or established way of thinking, feeling or doing; a cultural feature (as an attitude, belief, custom, institution) preserved or evolved from the past (as of a family or nation); as * * * a doctrine or practice or a body of a doctrine and practice preserved by oral transmission * * *

5.a: Cultural continuity embodied in a massive complex of evolving social attitudes, beliefs, conventions, and institutions rooted in the experience of the past and exerting an orienting and normative influence on the present.

b: the residual elements of past artistic styles or periods.

To qualify under ANILCA, a . . . 'traditional activity has to have been an established cultural pattern, per these definitions, prior to . . . when the unit was established.

Denali National Park and Preserve General Management Plan (1986), page 45 and at Appendix I.

In determining whether any traditional activities had occurred in the Old Park prior to the enactment of ANILCA, NPS is proposing the immediate following definition which is drafted to be consistent with the legislative history underlying section 1110(a). This definition draws also from, but attempts to simplify, the dictionary definition.

Traditional activity—An activity that generally and lawfully occurred in a unit or a geographically defined area of a unit prior to enactment of ANILCA, and that was typically associated with that region as an integral and established part of a utilitarian Alaska lifestyle or cultural pattern.

Applying this definition to the Old Park, NPS is unable to identify any specific traditional winter activities. The examples of traditional activities identified in the House and Senate Committee reports are subsistence and sport hunting, fishing, and berry picking. While various winter recreational activities did take place in the Old Park, the legislative history reveals that these activities were not traditional as that concept was debated in Congress. Therefore there could not now be traditional activities within this area for which a snowmachine is authorized under section 1110(a) or 43 CFR 36.11. Accordingly, Proposed section 13.63(h)(1) would implement on a permanent basis the previous temporary closure of snowmachines for traditional activities in most of the former Mount McKinley portion of the park, and also serve as the Service's determination that traditional activities did not take place in this area during periods of adequate snow cover. NPS specifically requests commenters to address both the proposed definition and its application to the Old Park. In connection with the latter, NPS requests that commenters address, wherever possible, where and when such activities may have lawfully occurred, or report the absence of such activities, and the basis for the commenters knowledge. For the reasons previously discussed NPS believes that the Old Park is unique, and the application of this definition should not be viewed as a precedent for determining whether traditional activities took place in the ANILCA additions, the preserve or any other park unit in Alaska.

To foster opportunities for information gathering, NPS excluded two corridors from the temporary closure announced in the *Statement of Finding:* Cantwell Creek from the wilderness boundary north to the Cantwell Glacier; and Bull River from the wilderness boundary northwest through Easy Pass, then south returning to the wilderness boundary on the West Fork of the Chulitna River. However, since NPS believes that no section

1110(a) snowmobile use for traditional activities can be identified in the Old Park, NPS must comply with the Wilderness Act's general prohibition of motorized vehicles in wilderness (16 U.S.C. 1133 (c)). Accordingly, the proposed rule does not exclude these two corridors.

Once implemented by a final rule, NPS intends to review this closure action as part of the upcoming Denali National Park and Preserve backcountry management planning process. NPS is not using this rulemaking to examine what traditional activities may have taken place in the preserve and park additions—which, NPS recognizes, have a different history of use and management prior to ANILCA. NPS intends to also undertake that examination as part of the upcoming backcountry management planning process, and if necessary, in a future rulemaking. As noted previously, this process to specifically identify traditional activities for each area on a case-by-case basis was recognized by the Department of the Interior in the final regulations implementing ANILCA section 1110(a). (51 FR 31619, September 4, 1986). The impending backcountry management planning process will also consider whether additional, reasonable regulations under ANILCA section 1110(a) should be applicable to snowmobile use in the preserve and park additions. NPS notes, however, that where snowmobile activity is presently authorized by section 1110(a) in other areas of the National Park System in Alaska, such snowmachine activity remains subject to the regulations found at 36 CFR § 2.18 (a), (b) and (d).

36 CFR 13.63(i) Wildlife Protection During Sensitive Periods

NPS proposes to codify the Denali National Park and Preserve superintendent's site-specific, wildlife habitat closure procedures that are employed during breeding, nesting, denning, and other sensitive periods. These procedures permit periodic evaluations of, and changes to, closure boundaries to allow optimize visitor access to, and use of, the affected areas. Wolves, for example, have an extensive recurring history of using denning sites, but may skip a year or more, or move pups completely out of the area at any time. Known denning areas and the lands immediately around them are seasonally closed to entry, on a recurring basis. However, if wolves move pups from one area to another, the protective closure can be shifted, reduced or opened to the public. These closure procedures may also be safety related. For example, a bear may bury a large kill and return to feed on the carcass for a week or more. Approaching a kill site during this period is extremely dangerous. This proposal would standardize NPS actions to safeguard visitors and prevent unnatural displacement and other disturbances that are detrimental to wildlife and habitat resource values. It would also enable NPS to continue to periodically review the most current biological data and modify closure boundaries, allowing optimum visitor access and use of Denali National Park and Preserve. Limited closures to the public of this nature do not fall under ANILCA section 1110(a) and thus are not subject to the procedures for such closures. (''Nothing in this section shall limit the authority of the appropriate Federal agency to restrict or limit uses of an area under other statutory authority.'' 43 CFR 36.11(h)(6)). The Secretary of the Interior is authorized to close areas or restrict use for a variety of reasons apart from those under Section 1110(a), such as health and safety. *See also* 36 CFR 1.5 and 51 FR 31618, September 4, 1986. Similar closures were proposed in the rulemaking found at 48 FR 14978, 14979; April 6, 1983. NPS invites written comments on this proposal as a part of this rulemaking. NPS will also accept comments during public hearings on the proposed rule.

Drafting Information

The primary authors of this rule are Ken Kehrer, Jr., Mike Tranel, Joe Van Horn and Russel J. Wilson, Denali National Park and Preserve; and Lou Waller and Paul Hunter, NPS Alaska Support Office.

Compliance with Laws, Executive Orders and Department Policy
Regulatory Planning and Review (E.O. 12866)

This rule is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866. This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The NPS has prepared a Preliminary Cost-Benefit Analysis (9/1/98) that is available from the Denali National Park and Preserve superintendent. Based on this analysis, the NPS anticipates positive net benefits such as: increased public safety; improved public understanding of park regulations; and, continued protection of wildlife, preservation of natural interactions among wildlife, and the minimization of habitat disturbances that contributes to visitors' use and enjoyment of park resources. This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The rule does not alter the budgetary effects, entitlements, grants, user fees, loan programs or the rights or obligations of their recipients. The rule may raise novel legal or policy issues, however, the primary effect of the proposed action is to consolidate in the Code of Federal Regulations or otherwise clarify requirements that already exist under separate NPS authorities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The primary effect of this proposed action is to consolidate in the Code of Federal Regulations or otherwise clarify requirements that already exist under separate NPS authorities. Copies of a Preliminary Cost-Benefit Analysis (9/1/98) are available from the Denali National Park and Preserve superintendent. The analysis found that no significant costs would result from this action.

Regulatory Flexibility Act

The Department of the Interior has determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). The primary effect of this proposed action is to consolidate in the Code of Federal Regulations or otherwise clarify requirements that already exist under separate authorities. Only one of the requirements addressed by the proposed action is new. This new requirement adopts ''rules of the road'' that have generally been followed on a voluntary basis for some years and is therefore not anticipated to inconvenience drivers or otherwise adversely impact any small entity. Substantial areas exist nearby where Park users can go who may be displaced

as a result of firearms and snowmachine closures in this proposed action. The wide availability of such substitute-use areas would lessen, or eliminate, any impact on park users, including small entities. The only direct compliance cost that would be imposed by this proposed action is the requirement to provide drivers license information, vehicle license plate information, and a vehicle description for purposes of issuing a permit to operate a motor vehicle on the restricted access section of the Denali Park Road. That requirement is not anticipated to impose significant costs on the public, including small entities. No other direct compliance costs would be imposed. Therefore, significant impacts on small entities are not expected from this proposed action. Copies of a Preliminary Cost-Benefit Analysis (9/1/98) are available from the Denali National Park and Preserve superintendent.

Unfunded Mandates Reform Act

The NPS has determined and certifies pursuant 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 local, state or tribal governments or private entities. Copies of a Preliminary Cost-Benefit Analysis (9/1/98) are available from the Denali National Park and Preserve superintendent. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12360, the rule does not have significant takings implications. The primary effect of this proposed action is to consolidate in the Code of Federal Regulations or otherwise clarify requirements that already exist under separate NPS authorities. A takings implication assessment is not required.

Federalism

In accordance with Executive Order 12612, the rule does not have federalism implications which warrant the preparation of a Federalism Assessment. This rule applies mainly to the portion of Denali National Park and Preserve that was formerly known as Mount McKinley National Park and which is under the exclusive jurisdiction of the United States. The primary effect of this proposed action is to consolidate in the Code of Federal Regulations or otherwise clarify requirements that already exist under separate NPS authorities.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does not meet the requirements of sections 3 (a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation requires an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is required. The information collection requirements contained in this rule at 13.63(d)(2) have been approved by the Office of Management and Budget and assigned clearance number 1024–0026. This information is being collected to solicit information that is necessary for the Superintendent to issue vehicle permits. The public is being asked to provide this information in order for the park to track the number of permits issued and to whom they are issued. The information will be used to grant administrative benefits. The obligation to respond is required in order to obtain a benefit.

Specifically, the NPS needs the following information to issue the permit:

(1) Drivers license number and State of issue.

(2) Vehicle license plate number and State.

(3) Vehicle description, including year, make and model.

The public reporting burden for the collection of information in this instance is estimated to be 0.10 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden of these information collection requests to: Information Collection Officer, National Park Service, 1849 C Street, NW, Washington, DC 20240; and the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for Department of the Interior (1024–0125), Washington, DC 20503.

The Department has determined that this rule meets the applicable standards provided in Section 3(a) and 3(b)(2) of Executive Order 12988.

National Environmental Policy Act

The NPS has determined that most aspects of this rulemaking, with the exception of the portion on snowmobile useage, have been previously addressed pursuant to the National Environmental Policy Act, 42 U.S. C. 4332, in environmental documents prepared in conjunction with park management plans. These are the environmental assessment prepared in conjunction with the park General Management Plan which was approved in a 1986 Finding of No Significant Impact, or the environmental impact statement prepared in conjunction with the Denali Entrance Area and Road Corridor Development Concept Plan which was approved in a 1997 Record of Decision. Copies of these environmental documents are available from the Denali National Park and Preserve superintendent.

Associated with that portion of this regulation regarding snowmobile useage, the NPS has prepared an environmental assessment (EA) on the proposed action and three alternatives. The proposed action provides for the closure of the Old Park to snowmobiles for traditional activities as described in this proposed rule. The second alternative is a partial closure and regulatory program that would generally restrict snowmobile use to the south side of the Alaska Range. Where use was still allowed, the NPS would develop a program to protect park resources and values by further regulating snowmobile useage (i.e. speed, snow conditions, slope angles, etc.). To implement this alternative, additional regulations would need to be promulgated. The third alternative considers a temporary closure of the Old Park to snowmobiles for traditional activities, as allowed under ANICLA and its implementing regulations at 43 CFR 36.11(h). A no action is also considered and evaluated, which would leave the Old Park open to snowmobile use for traditional activities.

The EA is available for public review during the comment period provided for in this rule so that interested parties can comment contemporaneously on both documents.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its

clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§'' and a numbered heading; for example, *§ 13.63 Denali National Park and Preserve.*) (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov

Public Comment Solicitation

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Superintendent, Denali National Park and Preserve, PO Box 9, Denali National Park, AK 99755. Attention: Ken Kehrer, Jr. You may also comment via the Internet to: dena__superintendent@nps.gov Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn RIN 1024–AC58'' as the subject, and your name and return address in the body of your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at National Park Service, Denali National Park and Preserve (907) 683–9581.

Finally, you may hand-deliver comments to Denali National Park Headquarters, Mile 3.2, Denali National Park Road. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety. NPS will also hold public hearings on this rulemaking at which verbal and written comments will be received, the public hearing schedule will be published in the local newspapers.

List of Subjects

36 CFR Part 5

Alcohol and alcoholic beverages, Business and industry, Civil rights, Equal employment opportunity, National parks, Transportation.

36 CFR Part 13

Alaska, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the NPS proposes to amend 36 CFR Chapter I, Parts 5 and 13 as follows:

PART 5—COMMERCIAL AND PRIVATE OPERATIONS

1. The authority citation for part 5 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 17j-2, 462.

§ 5.2 [Amended]

2. In § 5.2(b), the words ''Mount McKinley'' in the first sentence are revised to read ''Denali''.

§ 5.4 [Amended]

3. In § 5.4(a), the words ''Mount McKinley (prohibition does not apply to that portion of the Denali Highway between the Nenana River and the McKinley Park Hotel)'' in the first sentence are revised to read, ''Denali National Park and Preserve (prohibition does not apply to that portion of the Denali Park road between the Highway 3 junction and the Denali Park Railroad Depot).''

§ 5.10 [Amended]

4. In § 5.10(a) the words ''Mount McKinley'' in the first sentence are revised to read, ''Denali''.

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

5. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 462(k), 3101 *et seq.*; § 13.65 also issued under 16 U.S.C. 1a-2(h), 20, 1361, 1531, 3197.

6. Section 13.1 is amended by re-designating paragraphs (u) and (v) as (v) and (w) and by adding paragraph (u) to read as follows:

§ 13.1 Definitions.

* * * * *

(u) The term *traditional activity* means an activity that generally and lawfully occurred in a unit or a geographically defined area of a unit prior to enactment of ANILCA, and that was typically associated with that region as an integral and established part of a utilitarian Alaska lifestyle or cultural pattern.

* * * * *

§ 13.2 [Amended]

7. In § 13.2(c), the words ''and parts of Denali National Park'' are revised to read ''and the former Mt. McKinley National Park.''

8. Section 13.63 is amended by adding paragraphs (d) and (g) through (i) to read as follows:

§ 13.63 Denali National Park and Preserve.

* * * * *

(d) *Operation of motor vehicles on the Denali Park road west of the Savage River.*—(1) *Do I need a permit to operate a motor vehicle on the Denali Park road west of the Savage River?* Yes, you must obtain a permit from the superintendent to operate a motor vehicle on the restricted section of the Denali Park road. The restricted section begins at the west end of the Savage River Bridge (mile 14.8) and continues to the former Mt. McKinley National Park boundary north of Wonder Lake (mile 87.9).

(2) *How many permits will be issued each summer?* The superintendent is authorized, under this section, to issue no more than 10,512 motor vehicle permits each year for access to the restricted section of the road. The superintendent will issue the permits for the period that begins on the Saturday of Memorial Day weekend and continues through the second Thursday following Labor Day or September 15, whichever comes first. Each permit allows one vehicle one entry onto the restricted portion of the park road.

(3) *How will the superintendent manage the permit program?*

(i) The superintendent will apportion motor vehicle permits among authorized users following the procedure in 36 CFR 13.31. Authorized users are individuals, groups and governmental entities who are allowed by law or policy to use the restricted section of the road.

(ii) The superintendent will establish an annual date to evaluate permit requests and publish that date, along with the results of the annual apportionment, in the superintendent's compendium of rules and orders. The superintendent's compendium is available to the public upon request.

(iii) The Superintendent may establish terms or conditions in the permits issued under paragraph (d) of this section, including rules for the safe use of the park road.

(iv) The Superintendent will re-evaluate the access requirements of any business that is sold, ceases to operate or that significantly changes the services currently offered to the public.

(4) *What is prohibited?* (i) No one may operate a motor vehicle on the restricted section of the park road without a valid permit.

(ii) No one may violate a term or condition of a permit.

(iii) No one may use a motor home, camper or trailer to transport guests to a lodge or other business in Kantishna.

(iv) No one may transfer or accept transfer of a Denali Park road permit without the superintendent's approval.

* * * * *

(g) *Kantishna area summer season firearm safety zone.*—(1) *What is prohibited?* No one may fire a gun during the summer season in or across the Kantishna area firearm safety zone, unless they are defending life or property.

(i) The summer season begins on the Saturday of Memorial Day weekend and continues through the second Thursday following Labor Day or September 15, whichever comes first.

(ii) The Kantishna Area firearm safety zone is: the Kantishna Airstrip; the State Omnibus Act Road right-of-way; and all public lands located within one mile of the Kantishna Airstrip or the State Omnibus Act Road right-of-way, from the former Mt. McKinley National Park boundary at mile 87.9 to the south end of the Kantishna Airstrip.

(2) [Reserved]

(h) *Snowmachine (snowmobile) operation in Denali National Park and Preserve.*—(1) *Where is snowmobile use prohibited?* No one may use a snowmobile in that part of Denali National Park formerly known as Mt. McKinley National Park.

(2) *Where can I operate a snowmobile?* You can use a snowmobile for traditional activities outside of the area formerly known as Mt. McKinley National Park.

(3) *What types of snowmobiles are allowed?* The types of snowmobiles allowed are defined in § 13.1(q) under *snowmachine* or *snowmobile.*

(4) *What other regulations apply to snowmobile use?* Snowmobile use is governed by regulations at § 2.18(a) of this chapter, traffic safety, § 2.18(b) state laws and § 2.18(d) prohibited activities; and 43 CFR 36.11(a)(2) adequate snow cover, and § 36.11(c) traditional activities.

(5) *Who determines when there is adequate snowcover?* The superintendent will determine when snowcover is adequate for snowmobile use. The superintendent will follow the procedures in §§ 1.5 and 1.7 of this chapter to inform the public.

(i) Temporary and seasonal restrictions to protect wildlife.

(1) *How may the superintendent restrict access?* To protect wildlife and wildlife habitat during breeding, nesting, denning, and other sensitive periods the superintendent may:

(i) Seasonally close or restrict public access or use to a part of the park or preserve;

(ii) Change the size of a closed or restricted use area as needed;

(iii) Continue the closures or restricted use area seasonally in subsequent years; or

(iv) Reopen an area to park visitors.

(2) Before continuing a seasonal closure or restricted use area under paragraph (i)(1)(iii) of this section, the superintendent will evaluate biological data. The superintendent will publish a schedule for evaluating the biological data in the superintendent's compendium of rules and orders. The compendium is available to the public upon request.

(3) *How will the public be informed?* To establish, terminate, and provide public notice of closures and restricted use area, the superintendent will follow the procedures in §§ 1.5 and 1.7 of this chapter.

(4) *What activities are prohibited?* No one may enter a closed area or disobey a requirement for a restricted use area established under this paragraph (i).

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–29338 Filed 11–10–99; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–106–1–7405b; FRL–6471–9]

Approval and Promulgation of Implementation Plans; Texas; Revisions to Consumer Products Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to take direct final action on revisions to the Texas Natural Resource Conservation Commission Regulation V in the Texas State Implementation Plan (SIP). These revisions amend the consumer products rules to exclude a new type of insecticide designed to kill house dust mites from the volatile organic compound limitation applicable to other crawling bug insecticides. The EPA is approving these revisions to the Texas SIP as requested by the Governor of Texas.

In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comment. The EPA has explained its reasons for this approval in the preamble to the direct final rule. If EPA receives no relevant adverse comment, EPA will not take further action on this proposed rule. If EPA receives relevant adverse comment, EPA will withdraw the direct final rule and it will not take effect. The EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments must be received by December 13, 1999.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Bill Deese of the EPA Region 6 Air Planning Section at (214) 665–7253 at the address above.

SUPPLEMENTARY INFORMATION: This document concerns revisions to the consumer products rules in the Texas SIP. For further information, please see the information provided in the direct final action that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

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

Dated: October 27, 1999.

Myron O. Knudson,

Acting Regional Administrator, Region 6.

[FR Doc. 99–29300 Filed 11–10–99; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 64, No. 218
Friday, November 12, 1999

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Draft—Pub. L. 480 Title II Guidelines for Fiscal Year 2001 Program Proposals and Draft—Pub. L. 480 Title II Guidelines for Fiscal Year 1999 Results Reports

Pursuant to the Agricultural Market and Transition Act of 1996 (Public Law 480, as amended), notice is hereby given that the Draft Guidelines for Pub. L. 480 Title II Fiscal Year 2001 Program Proposals, and the Draft Guidelines for Pub. L. 480 Title II Fiscal Year 1999 Results Reports, are being made available to interested parties for the required thirty (30) day comment period.

Individuals who wish to receive a copy of these draft guidelines should contact: Office of Food for Peace, Agency for International Development, RRB 7.06–120, 1300 Pennsylvania Avenue, Washington, DC 20523–0809. Contact person: Gwen Johnson, (202 712–0664. Individuals who have questions or comments on the draft guidelines should contact Richard Newberg at (202) 712–1828.

The thirty day comment period will begin on the date that this announcement is published in the **Federal Register**.

Dated: November 1, 1999.

William T. Oliver,

Director, Office of Food for Peace, Bureau for Humanitarian Response.

[FR Doc. 99–29621 Filed 11–10–99; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section 1 of the Iowa State Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in the Iowa NRCS State Technical Guide for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Iowa that changes must be made in the NRCS State Technical Guide specifically in Section 1 Erosion Prediction, Revised Universal Soil Loss Equation, to account for improved technology. This erosion prediction process can be used in systems that treat highly erodible land.

DATES: Comments will be received on or before December 13, 1999.

FOR FURTHER INFORMATION CONTACT: Leroy Brown, State Conservationist, Natural Resources Conservation Service, Federal Building, 210 Walnut Street, Suite 693, Des Moines, Iowa 50309; at 515/284–4260; fax 515/284–4394.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made.

Dated: October 27, 1999.

Lynn Betts,

Acting State Conservationist.

[FR Doc. 99–28990 Filed 11–10–99; 8:45 am]

BILLING CODE 3410–66–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

New Mexico Field Office Technical Guide; Changes

AGENCY: Untied States Department of Agriculture, Natural Resources Conservation Service, New Mexico.

ACTION: Notice of availability of proposed changes in the NRCS New Mexico FOTG, Section IV, conservation practices for review and comment.

AUTHORITY: 16 U.S.C. 3801; Public Law 104–127.

SUMMARY: It is the intention of NRCS New Mexico to issue a series of new conservation practice standards and specifications in its FOTG on Conservation Practices. These revised standards and specifications include: Conservation crop rotation, Cross wind ridges, Cross wind stripcropping, Cross wind trap strips, Residue management, seasonal, Residue management, mulch till, residue management, no-till & strip till, Residue management, ridge till, Restoration and Management of Declining Habitat, Shallow Water Management for Wildlife, Wetland Creation, Wetland wildlife habitat management, Wildlife watering facility, Prescribed burning, Brush management, Forage Harvest Management, Grazing land mechanical treatment, Pasture and hay planting, prescribed grazing, and range planting.

The NRCS New Mexico State Conservationist has chosen to revise and supplement the National Standards and add specifications adapted to the State of New Mexico. These will be incorporated into Section IV of the New Mexico Field Office Technical Guide (FOTG). Some of these practices may be used in conservation systems that treat highly erodible land and wetlands.

Copies of these standards are available from NRCS in Albuquerque, NM and are also available electronically on the NRCS New Mexico Internet Homepage at: http://www.nm.nrcs.usda.gov/techserv/sec4home.htm.

SUPPLEMENTARY INFORMATION: Section 343 on the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out

highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS will receive comments relative to these proposed changes. Following that period a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made.

DATES: Comments will be received on or before December 13, 1999.

ADDRESSES: Inquire in writing to Mr. Rosendo Trevino, State Conservationist, NRCS, 6200 Jefferson NE, Suite 305, Albuquerque, New Mexico 87109.

Dated: October 21, 1999.

Rosendo Trevino III,

State Conservationist.

[FR Doc. 99–29526 Filed 11–10–99; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Business—Cooperative Service

Invitation for Applications of Interest to Sell Intermediary Relending Program (IRP) Loans Under an Expanded Pilot

AGENCY: Rural Business-Cooperative Service, U.S. Department of Agriculture (USDA).

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBS) announces an expanded pilot sale of Intermediary Relending Program intermediary loans made to third parties. RBS will competitively select and authorize several intermediaries to sell an aggregate amount of approximately $50 million of the existing IRP portfolios in Fiscal Year (FY) 2000 from among those intermediaries who have advanced at least 95 percent of IRP funding received by the intermediary. This announcement is also intended to provide notice to potential purchasers and other parties interested in structuring the sale of ultimate recipient notes. The intended effect of this notice is to solicit applications of interest from intermediaries who wish to participate in the FY 2000 loan sale. Selected applicants will be notified in writing and on the Agency web site. The benefit of this loan sale to the intermediary will be an increase in portfolio liquidity, allowing the intermediary to re-loan money back into the community. The Agency advances loans to eligible intermediaries that subsequently reloan to eligible applicants, including individuals, public or private organizations, or other legal entities with authority to incur debt and carry out the purpose of the loan. During the application process for this pilot sale, an intermediary will express interest in selling its seasoned portfolio. The initial screening of the intermediaries and their portfolios will be the responsibility of the Rural Development State Offices. State Offices will make recommendations to the National Office, and the National Office will evaluate the applications of interest, along with State Office recommendations, and make the final selections for loan sales.

RBS will maintain lists of intermediaries expressing interest in offering their portfolios for sale, potential buyers for those portfolios, and offerors of other services to buyers or sellers, e.g., financial advisors. However, only intermediaries selected through the invitation of applications of interest process will be authorized to sell third-party loans. Intermediary applications of interest must include (1) a history of the intermediary; (2) its latest annual report; (3) summary data on each loan in the portfolio including original and current amount, interest rate, terms, loan maturities, and loan performance; (4) delinquency rate on all loans in its portfolio; (5) reserves for loan payments; (6) the number of jobs created or saved; (7) the Standard Industrial Code for each loan recipient; (8) write-off of bad debts history; (9) a proposal that illustrates how the sale of the intermediary's portfolio supports Rural Development Mission Area target objectives, i.e., rural areas suffering fundamental, physical and economic stress, persistent poverty, out migration, or as identified in the Rural Development State Strategic Plan; (10) non-federal fund leveraging of past or potential loans; and (11) the documentation of the need for added capital and unmet loan demand. It is important that the performance history of the overall portfolio, including any portion not proposed for sale, be fully detailed including the volume and frequency of any delinquencies or default.

DATES: The deadline for receipt of the applications of interest in the third-party sale must be received in the applicable Rural Development State Office (see **ADDRESSES** below) by 4:00 P.M. Eastern Standard Time on December 27, 1999.

Applications received after that date will not be considered for participation in the expanded pilot. The comment period for information collection under the Paperwork Reduction Act of 1995 continues through January 11, 2000. Comments on the paperwork burden must be received by this date to be assured of consideration.

ADDRESSES: Applications to participate in the expanded pilot sale should be mailed to the Rural Development State Office in the State in which the intermediary is headquartered. Listed below are the following addresses for Rural Development State Offices:

Alabama
USDA Rural Development State Office, Sterling Center, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683 (334) 279–3400

Alaska
USDA Rural Development State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539, (907) 745–2176

Arizona
USDA Rural Development State Office, 3003 North Central Avenue, Suite 900, Phoenix, AZ 85012–2906, (602) 280–8700

Arkansas
USDA Rural Development State Office, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3200

California
USDA Rural Development State Office, 430 G Street, Agency 4169, Davis, CA 95616–4169, (530) 792–5800

Colorado
USDA Rural Development State Office, 655 Parfet Street, Room E–100, Lakewood, CO 80215, (303) 236–2801

Delaware-Maryland
USDA Rural Development State Office, 4607 South DuPont Highway, Camden, DE 19934–9998, (302) 697–4300

Florida/Virgin Islands
USDA Rural Development State Office, 4440 NW. 25th Place, Gainesville, FL 32614–7010, (352) 338–3400

Georgia
USDA Rural Development State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2162

Hawaii
USDA Rural Development State Office, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8380

Idaho
USDA Rural Development State Office, 9173 West Barnes Drive, Suite A1, Boise, ID 83709, (208) 378–5600

Illinois
USDA Rural Development State Office, Illini Plaza, Suite 103, 1817

South Neil Street, Champaign, IL 61820, (217) 398–5235

Indiana
USDA Rural Development State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100

Iowa
USDA Rural Development State Office, Federal Building, Room 873, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4663

Kansas
USDA Rural Development State Office, 1200 SW. Executive Drive, Topeka, KS 66604, (785) 271–2700

Kentucky
USDA Rural Development State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (606) 224–7300

Louisiana
USDA Rural Development State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7920

Maine
USDA Rural Development State Office, 444 Stillwater Avenue, Suite 2, Bangor, ME 04402–0405, (207) 990–9106

Massachusetts/Rhode Island/Connecticut
USDA Rural Development State Office, 451 West Street, Amherst, MA 01002, (413) 253–4300

Michigan
USDA Rural Development State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5100

Minnesota
USDA Rural Development State Office, 410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7800

Mississippi
USDA Rural Development State Office, Federal Building, Suite 831, 100 West Capitol Street, Jackson, MS 39269, (601) 965–4316

Missouri USDA Rural Development State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0976

Montana
USDA Rural Development State Office, 900 Technology Blvd., Unit 1, Suite B, Bozeman, MT 59715, (406) 585–2580

Nebraska
USDA Rural Development State Office, Federal Building, Room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5551

Nevada
USDA Rural Development State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222

New Jersey
USDA Rural Development State Office, Tarnsfield Plaza, Suite 22, 790 Woodlane Road, Mt. Holly, NJ 08060, (609) 265–3600

New Mexico
USDA Rural Development State Office, 6200 Jefferson Street, NE., Room 255, Albuquerque, NM 87109, (505) 761–4950

New York
USDA Rural Development State Office, The Galleries of Syracuse 441 South Salina Street, Suite 357, Syracuse, NY 13202–2541, (315) 477–6400

North Carolina
USDA Rural Development State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2000

North Dakota
USDA Rural Development State Office, Federal Building, Room 208, 220 East Rosser, Bismarck, ND 58502–1737, (701) 530–2043

Ohio
USDA Rural Development State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 469–5606

Oklahoma
USDA Rural Development State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1000

Oregon
USDA Rural Development State Office, 101 SW Main Street, Suite 1410, Portland, OR 97204–3222, (503) 414–3300

Pennsylvania
USDA Rural Development State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2299

Puerto Rico
USDA Rural Development State Office, New San Juan Office Building, Room 501, 159 Carlos E. Chardon Street, Hato Rey, PR 00918–5481, (787) 766–5095

South Carolina
USDA Rural Development State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5163

South Dakota
USDA Rural Development State Office, Federal Building, Room 210, 200 4th Street, SW., Huron, SD 57350, (605) 352–1100

Tennessee
USDA Rural Development State Office, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1084, (615) 783–1300

Texas
USDA Rural Development State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9700

Utah
USDA Rural Development State Office, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84147–0350, (801) 524–4320

Vermont/New Hampshire
USDA Rural Development State Office, City Center, 3rd Floor 89 Main Street, Montpelier, VT 05602, (802) 828–6000

Virginia
USDA Rural Development State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1550

Washington
USDA Rural Development State Office, 1835 Black Lake Boulevard, SW., Suite B, Olympia, WA 98512–5715, (360) 704–7740

West Virginia
USDA Rural Development State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 291–4791

Wisconsin
USDA Rural Development State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7600

Wyoming
USDA Rural Development State Office, 100 East B, Federal Building, Room 1005, Casper, WY 82602, (307) 261–6300

FOR FURTHER INFORMATION CONTACT: David W. Lewis, Rural Business-Cooperative Service, USDA, Room 6858–S, Mail Stop 3224, South Agriculture Building, 1400 Independence Avenue, SW., Washington, D.C. 20250–3224, Telephone (202) 690–0797.

SUPPLEMENTARY INFORMATION: IRP regulations are published in 7 CFR part 4274, subpart D. Section 1323 of the Food and Security Act of 1985 (Public Law (Pub. L.) 99–198) (7 U.S.C. 1932 Note) as amended by Pub. L. 99–425, in 1988, authorized the Secretary to make loans to entities for the purposes and subject to the terms and conditions specified in the first, second, and last sentences of section 623(a) of the Community Economic Development Act of 1981 (42 U.S.C. 9812(a)). The intermediary loans previously approved and administered by the U.S. Department of Health and Human Services under 45 CFR part 1076, which were transferred to the USDA under the

provisions of Section 1323 of the Food Security Act of 1985, Public Law 99–198, will not be eligible for participation in the pilot sale.

The Agency initiated a pilot program through a Memorandum of Understanding with the Colorado Housing and Finance Authority (CHFA) in May 1997 to allow CHFA to sell its ultimate recipient portfolio on the secondary market. CHFA was created to address the critical funding needs of community-based development lenders in Colorado. Since the sale of IRP notes is not addressed in the RBS regulations governing the IRP, only a pilot program was authorized. In consultation with the Office of Management and Budget (OMB) and the U.S. Department of the Treasury, RBS has decided to expand the pilot sale, on a limited basis, in order to gather additional information and experience for consideration in establishing a permanent sales program.

Paperwork Reduction Act:

The reporting requirements contained in this regulation have received temporary emergency clearance by the Office of Management and Budget (OMB) under Control Number 0570–0036. However, in accordance with the Paperwork Reduction Act of 1995, RBS will seek standard OMB approval of the reporting requirements contained in this notice and hereby opens a 60-day public comment period.

Abstract: RBS, an Agency within the Rural Development area of USDA, administers the Intermediary Relending Program which provides loans to non-profit organizations, public agencies, Indian Tribes, and cooperatives to establish a revolving loan program. The revolving loan program provides financial assistance to business facilities and community development projects in rural areas.

Estimate of Burden: .22 hours.

Respondents: Intermediaries and ultimate recipients.

Estimated Number of Respondents: 1,000.

Estimated Number of Responses per Respondent: 19.41.

Estimated Total Annual Burden on Respondents: 4,308 hours.

Copies of this information collection can be obtained from Tracy Gillin, Regulations and Paperwork Management Branch, (202) 692–0039.

Comments: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments on the paperwork burden may be sent to Tracy Gillin, Regulations and Paperwork Management Branch, Rural Development, U.S. Department of Agriculture, Stop 0742, 1400 Independence Avenue, SW., Washington, D.C. 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Criteria For Participation in the Ultimate Recipient Portfolio Sale:

The expansion of the pilot sale will be conducted on a competitive basis and under criteria set by RBS. The following criteria are set forth and must be met (with adequate documentation provided) to be considered under this pilot sale.

1. Intermediaries must express interest in selling their entire ultimate recipient portfolio classified as seasoned loans (loans outstanding for at least 12 months). The following qualifications also apply:

a. The loans must be current according to their promissory notes and other agreements.

b. The current 30-day or more delinquency rate based on the number of loans outstanding for the entire IRP portfolio, including the portion not proposed to be offered for sale, must not exceed 3 percent.

c. In the aggregate, loans will be sold at ''hold'' or ''market'' value.

d. Notes will be sold without recourse to the intermediary.

e. Annual portfolio writeoffs by the intermediary of its loans based on the number of loans outstanding will not exceed an average of 1 percent over the past 3 years.

f. All due diligence expenses in connection with the sale will be paid by the purchaser and reflected in any sale contract entered into between intermediary and purchaser.

g. Due diligence expenses will only be authorized by the Agency to be paid if the intermediary portfolio is selected for the loan sale. The intermediary will be released from any subsequent liability in regard to the sale of notes sold as non-recourse loans.

h. Intermediaries agree to use sale proceeds only to make new loans under 7 CFR part 4274, subpart D.

i. The sales proceeds will be tracked separately and will be deposited into the intermediary's revolving loan fund, recapitalizing the fund for the purpose of making new loans in accordance with the eligible purposes outlined in the current Agency regulations, work plan, and loan agreements.

2. Intermediaries who have advanced at least 95 percent of the aggregate total funds loaned them by RBS under this program and who meet the stated criteria are eligible to apply for participation in this expanded pilot. The intermediary must provide documentation for the unmet demand for third-party loans and its ability to re-lend all of the proceeds to eligible projects within 3 years from the date of the loan sale before it will be considered for participation in this expanded pilot. This documentation must include a list of loans turned down for lack of funds and the aggregate number and amount of viable loans considered but not made. The intermediary may provide a survey indicating demand for additional funds. The intermediary must provide documentation evidencing project cost leveraging, reserves for losses, and loans made in Rural Development mission areas, targeted areas, and population. Refer to State Offices for details on target areas. The intermediary must reloan 95 percent of the replenished capital within the 3-year period following loan sale closing or at the end of the 3-year period must immediately make extra principal repayments on its IRP loan(s) in the full amount of the undisbursed portion as required by current IRP regulations. Intermediaries selected to participate in the expanded third-party sale must maintain their IRP loans with the Agency in a current status. There will be no moratorium or deferment of payments granted to the intermediary to advance the new funds, and proceeds from the sale can be used for Agency debt service.

Intermediaries must have sufficient alternative sources of funds to ensure IRP loan repayment. Intermediaries permitted to sell their loan portfolios will be ineligible to apply for further IRP loans from RBS unless 95 percent of funds received from the sale have been advanced. Upon selection of the IRP application for the loan sale, all pending IRP applications for funding from the annual Agency appropriation cycle will be held in suspense. If the intermediary is unable to sell its loans under terms approved by RBS, the suspended IRP applications for funding will be reactivated for further funding

consideration under the available Agency appropriation.

3. All sales will be ''hold'' or ''market value'' without recourse to the intermediary. If there is Community Reinvestment Act credit associated with the loans, the amount of such credit is to be permanently noted, as it may influence the value to a final purchaser. RBS interprets any financial contribution by the intermediary, other than meeting its own expenses associated with the sale, as potentially weakening the financial strength of the intermediary to meet its long-term obligation to RBS. Intermediary affiliate resources or contributions from private sources used in ''hold'' or ''market value'' sale of the ultimate recipient portfolio will not be either a debt or a contingent liability of the intermediary and will be highly scrutinized by the Agency. Only intermediaries selected for the loan sale are authorized to sell their ultimate recipient portfolio.

4. RBS may authorize the non-recourse sale of less than a total portfolio. The sale may be structured as a sale of whole loans or as any related structure.

5. The intermediary will advertise the sale of its loans in media with significant national distribution to attract the greatest possible interest from a diverse client base. Advertising costs may be shared on a cooperative basis with other participating intermediaries to assist in defraying advertising expenses. Such cost will be the responsibility of the intermediary. It is the intent of RBS to develop a coordinated approach to soliciting interest from eligible intermediaries and potential purchasers of the portfolio to ensure an equitable opportunity to participate and to obtain the best prices for the portfolios.

6. Intermediaries may retain or offer to retain servicing rights to their portfolio loans sold in the pilot as authorized by the Agency. In the event the intermediary retains servicing rights, the intermediary will analyze the portfolios it manages, the staffing and process it maintains to make and service loans in each portfolio, and the steps it expects to take to maintain adequate staffing to service and make loans and present such analysis to RBS. The intermediary will be required to obtain certification from the purchaser that the sale of servicing will not result in an acceleration of ultimate recipient loans and that appropriate and adequate servicing will continue following the loan sale.

7. Recapitalized funds realized from the loan sale will be reloaned for eligible purposes in accordance with current IRP regulations found at 7 CFR part 4274, subpart D, and 7 CFR part 1951, subpart R; the approved work plan; and processed under the same procedure as third-party loans made from Agency (Federal) funds. Recapitalized funds resulting from the sale, even though not Agency IRP loan funds, will be administered in accordance with current regulations and the approved work plan. The Agency will exercise the same oversight responsibilities as required for projects receiving IRP Federal funds directly from the Agency. These responsibilities include Agency review of individual third-party loans prior to approval, conduct of environmental reviews, and the requirement that 25 percent of the loan amount for all third-party loans be financed from other sources until funds have revolved. Proceeds from the sale shall only be used for recapitalization of the IRP revolving fund and will not be co-mingled with funds from other programs until funds have revolved.

8. All reserves and other cash in the IRP revolving fund not immediately needed for loans to ultimate recipients or other authorized uses will be deposited in Federal Deposit Insurance Corporation (FDIC) accounts in banks or other financial institutions. Such accounts will be fully covered by FDIC or fully collateralized with U.S. Government obligations and must be interest bearing. Any interest earned thereon remains a part of the IRP revolving fund.

9. In order to participate in the pilot program, the intermediary must have no more than an average of 1 percent in annual writeoffs over the past 3 years in the same portfolio, measured as the percentage of the total seasoned portfolio. Intermediary applications for the pilot program will be evaluated on the RBS point scoring system on a nationwide basis.

IRP Ranking Criteria

Priority points are determined as follows:

(Maximum Number of Points Including Administrator Priority Points: 100)

1. Percent of Portfolio Loaned—Maximum Points: 10.

a. Intermediary that has loaned out all of the IRP Federal funds (10 points).

b. Intermediary that has loaned out between 97–99 percent of the IRP Federal funds (8 points).

c. Intermediary that has loaned out 95 up to 97 percent of the IRP Federal funds (5 points).

2. Delinquencies—Maximum Points: 10.

a. Intermediary that has no ultimate recipient delinquency in its portfolio (10 points).

b. Intermediary that has 1 percent or less delinquencies in its portfolio based on number of outstanding loans (8 points).

c. Intermediary that has more than 1 percent but less than 2 percent delinquencies in its portfolio based on number of outstanding loans (5 points).

d. Intermediary that has between 2 percent up to and including 3 percent portfolio delinquency rate inclusive on the number of outstanding loans (3 points).

3. Writeoffs of Bad Loans—Maximum Points: 10.

a. Intermediary that has no writeoffs of ultimate recipient loans over the past 3 fiscal years (10 points).

b. Intermediary that has written off 1 percent or less of its ultimate recipient loans over the past 3 fiscal years (8 points).

4. Maturity of Loans—Maximum Points: 10.

a. Intermediary that has an average ultimate recipient loan portfolio maturity of more than 10 years (10 points).

b. Intermediary that has an average ultimate recipient loan portfolio maturity of 7 but less than 10 years (8 points).

c. Intermediary that has an average ultimate recipient loan portfolio maturity of 5 but less than 7 years (5 points).

d. Intermediary that has an average ultimate recipient loan portfolio with maturity of 3 but less than 5 years (3 points).

e. Intermediary that has an average ultimate recipient loan portfolio maturity of 1 but less than 3 years (1 point).

5. Leverage: Intermediary that has Obtained Non-Federal Loan or Grant Funds to Pay a Portion of the Cost of the Ultimate Recipient Projects—Maximum Points: 10.

a. Fifty percent or more of the total project cost (10 points).

b. At least 25 percent but less than 50 percent of the total project cost (8 points).

c. At least 10 percent but less than 25 percent of the total project cost (5 points).

6. Rural Area—Maximum Points: 10.

a. Intermediary that has made 2 or more ultimate recipient loans or has made 25 percent of the total loans, whichever is the greater, to ultimate recipients in unincorporated areas, and cities or towns with populations of 10,000 or less based on 1990 census data (10 points).

b. Intermediary that has made ultimate recipient loans in unincorporated areas, and cities or towns with population more than 10,000 up to and including 20,000 based on 1990 census data (5 points).

7. Reserves for Loan Payments—Maximum Points: 10. Intermediary that has established a sufficient cash reserve to make RBS loan payments for at least 1 year (10 points).

8. Community Reinvestment Act Requirements—Maximum Points: 10. Intermediary's ultimate recipient loans that meet Community Reinvestment Act requirements (10 points).

9. Loans Sold at Par Value—Maximum Points: 5. A par sale is defined as the receipt of sufficient funds from the sale of all principal and interest outstanding on the loans sold to third parties.

10. Presidential/Administration Priority Areas: Empowerment Zones/Enterprise Communities, Pacific Northwest/Alaskan Initiative, Rural Development Mission Area, Targeted Areas and Population—Maximum Points: 15.

a. Intermediary that has loaned 50 percent or more of its IRP funds in targeted area populations (15 points).

b. Intermediary that has loaned between 25 up to 50 percent in targeted area populations (10 points).

c. Intermediary that has loaned less than 25 percent of its IRP funds in targeted area populations (5 points).

Additional Application Requirements for the IRP Pilot Sale

The intermediary's application will also include the following:

1. Company Name, Address, Contact Person, Telephone and Fax Numbers, and E-Mail and URL Addresses (Web Site).

2. History of the Intermediary.

3. Modified Work plan, Detailing Mission or Goals, Outreach Service Plan, etc.

4. Summarize Each Ultimate Recipient Loan in the Format Outlined in Form RD 1951–4:

a. Name and address of intermediary.

b. Type of business.

c. Use of loan funds.

d. Original amount of loan.

e. Date of loan.

f. Unpaid balance.

g. Interest rate.

h. Terms of loan/date of final payment.

i. Collateral, including lien position.

j. Loan status.

k. Number of consecutive loan payments ultimate recipient has made in accordance with the promissory note.

l. Standard Industrial Code on the ultimate recipient loan.

5. Summarize the Intermediary Ultimate Recipient Portfolio.

a. Range and average interest rates.

b. Range and average repayment term.

c. Percent of loans made for which intermediary received first lien.

d. Percent of loans made with real estate collateral.

e. Percent of loans made with machinery and equipment collateral.

f. Percent of outstanding loans with current repayment status on report date.

g. Percent of loans written off.

h. Percent of loans made with one or more payments late by 30 days or more, since loan inception.

i. Percent of loans made for which terms have been renegotiated.

j. Use of leverage on each ultimate recipient loan.

k. Population where ultimate recipient loans were made.

l. Identify loans in mission area targeted areas.

Selections Announcement

The Agency will announce on its Internet web site, 45 days after the end of the solicitation period, the intermediaries selected to participate in the expanded pilot, potential purchasers, and third parties interested in structuring the sale of ultimate recipient notes. The Business Programs web site is located at www.rurdev.usda.gov/rbs/busp/bpdir.htm. Click on ''IRP 3rd Party Sale'' to receive updates on this loan sale on the Internet (e-mail and web site hot links included). The information will provide updated lists of interested intermediaries, third-party advisors, and third-party purchasers. The application can be found on the Agency web site. RBS employees will be notified of loan sale selections via memorandum and the Agency intranet. All intermediaries making an application of interest under the pilot program will also be notified, in writing, of their selection or non-selection and of third-party purchaser and financial advisory interest. To be included in the published listings, interested third parties (purchasers and advisors) must provide the following information:

Third-Party Purchasers Will Provide

Third-party purchasers will provide the company name, address, contact person, telephone and fax numbers, e-mail address, and URL address (web site). The expression of interest must be in writing. A written letter accompanying the company history, expertise, examples, and references from the purchasers is required and will be submitted to the National Office, Attention: David Lewis, Loan Specialist, Business Programs Servicing Division, Rural Business-Cooperative Service, Rural Development, USDA, STOP 3224, 1400 Independence Avenue, SW., Washington, D.C. 20250–3224.

Advisors—Structuring the Sale

Advisors will provide the company name, address, contact person, telephone and fax numbers, e-mail address, and URL address (web site). The expression of interest must be in writing. A written letter accompanying the company history, expertise, examples, and references from the advisors is required and will be submitted to the National Office, Attention: David Lewis, Loan Specialist, Business Programs Servicing Division, Rural Business-Cooperative Service, Rural Development, USDA, STOP 3224, 1400 Independence Avenue, SW., Washington, D.C. 20250–3224.

Other Matters

1. Environmental Finding. A Finding of No Significant Impact with respect to the environment has been made in accordance with RBS regulations at 7 CFR part 1940, subpart G.

2. Civil Rights Impact Analysis. It is the policy within the Rural Development mission area to ensure that the consequences of any proposed project approval do not negatively or disproportionately affect program beneficiaries by virtue of race, color, sex, national origin, religion, age, disability, and marital or familial status. To ensure that any proposal under this demonstration program complies with these objectives, the RBS approval official will complete Form RD 2006–38, ''Civil Rights Impact Analysis Certification.''

3. Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this Notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the Notice is not subject to review under the Order.

4. Prohibition Against Advance Information on Funding Decisions. The requirements of the rule continue to apply until the announcement of the selection of successful applicants. RBS employees involved in the review of applications and in the making of funding decisions are restricted from providing advance information to any

person (other than an authorized employee of RBS) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage.

Dated: November 2, 1999.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 99–29527 Filed 11–10–99; 8:45 am]

BILLING CODE 3410–XY–U

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Brazos Electric Power Cooperative, Inc.; Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a Finding of No Significant Impact (FONSI) with respect to the potential environmental impacts related to the construction and operation of the Lewisville 345/138 kV Switching Station in the City of Lewisville, Texas. The project is proposed by Brazos Electric Power Cooperative, Inc. (Brazos), of Waco, Texas. RUS may provide financing assistance for the project.

RUS has concluded that the environmental impacts from the proposed project would not be significant and the proposed action is not a major Federal action significantly affecting the quality of the human environment. Therefore, the preparation of an environmental impact statement is not required.

FOR FUTHER INFORMATION CONTACT: Dennis E. Rankin, Environmental Protection Specialist, RUS, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone: (202) 720–1953 or e-mail: *drankin@rus.usda.gov.;* or David McDaniel, Brazos, P.O. Box 2585, Waco, Texas 76702–2585, telephone: (254) 750–6324 or e-mail: dmcdaniel@brazoselectric.com.

SUPPLEMENTARY INFORMATION: Brazos is planning to construct an 8–10 acre 345/138 kV switching station on a 23 acre site in Denton County, Texas. The proposed site is located in the vicinity of the northwest corner of North Mill Street and Jones Street in the City of Lewisville. Existing transmission facilities are located in the immediate area.

An environmental report (ER) which describes the project further and discusses the environmental impacts of the proposed project was prepared by Brazos. The ER included input from Federal, State and local agencies. RUS has conducted an independent evaluation of the ER and believes that it accurately assesses the impacts of the proposed project. No adverse impacts are expected with the construction of the project. RUS has reviewed and accepted the document as its Environmental Assessment. The proposed project will have no impact on cultural resources, floodplains, wetlands, important farmlands and federally listed or proposed for listing threatened and endangered species or their critical habitat. The document was made available for public review for 30 days. No public comments were received.

Copies of the FONSI can be obtained from RUS or Brazos at the address provided herein.

Dated: November 4, 1999.

Blaine D. Stockton, Jr.,

Assistant Administrator—Electric Rural Utilities Service.

[FR Doc. 99–29528 Filed 11–10–99; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

M&A Electric Power Cooperative; finding of no significant impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact (FONSI) with respect to a request from M&A Electric Power Cooperative for assistance from the Rural Utilities Service (RUS) to finance the construction of a 69 kV electric transmission line and electric substation in Wayne County, Missouri.

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Environmental Protection Specialist, Engineering and Environmental Staff, RUS, Stop 1571, 1400 Independence Avenue, SW, Washington, D.C. 20250–1571, telephone (202) 720–0468, e-mail at bquigel@rus.usda.gov.

SUPPLEMENTARY INFORMATION: The 69 kV electric transmission line will tie into M&A Electric Power Cooperative's existing Patterson Substation located west of Patterson, Missouri, and extend in an easterly direction to the proposed Silva Substation to be located south of Silva, Missouri. The length of the transmission line is approximately 7 miles. The amount of land required for the Silva Substation will be approximately 4 acres. Approximately 30 acres of land to be used for the transmission line right-of-way will traverse the Wappapello Lake Project which is managed by the U.S. Army Corps of Engineers. M&A Electric Power Cooperative has acquired an equal amount of land with a habitat value equal to that which will be cleared for the right-of-way of the proposed transmission line. This acquired land will be deeded to the Corps of Engineers as mitigation for the transmission line easement across the Wappapello Lake Project. The U.S. Army Corps of Engineers was a cooperating agency in the review of the potential environmental impacts associated with this project.2

Copies of the FONSI are available from RUS at the address provided herein or Tony Gott, M&A Electric Power Cooperative, Inc., Highway PP, West, Poplar Bluff, Missouri 63901, (573) 785–9651.

Dated: November 4, 1999.

Blaine D. Stockton, Jr.,

Assistant Administrator—Electric Rural Utilities Service.

[FR Doc. 99–29529 Filed 11–12–99; 8:45 am]

BILLING CODE 3410–15–M

CENSUS MONITORING BOARD

Notice of Closed Meeting

November 8, 1999.

SUMMARY: This notice, in compliance with P.L. 105–119, sets forth the meeting date, time, and place for a closed meeting of the U.S. Census Monitoring Board. The meeting will include a discussion with the U.S. Census Bureau's Regional Directors. Unfortunately, due to space limitations, it is not possible to open the meeting to the public. The meeting will, however, remain ''on the record'' and a transcript of the proceedings will be produced and made available to the public upon request.

Date: Thursday November 18, 1999.

Time: 10:00 a.m. to 12:30 p.m.

Location: U.S. Census Bureau, Suitland, MD.

FOR FURTHER INFORMATION CONTACT: Contact Clark Reid, 301–457–5080 Communications Director (Congressional Members) or Estela

Mendoza, Communications Director (Presidential Members) 301–457–9900.

Fred T. Asbell,

Executive Director, Congressional Members.

[FR Doc. 99–29625 Filed 11–10–99; 8:45 am]

BILLING CODE 3510–07–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors From the People's Republic of China: Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On May 6, 1999, the U.S. Department of Commerce published the preliminary results of the new shipper review and partial rescission of antidumping duty administrative review of the antidumping duty order on brake rotors from the People's Republic of China. *See Preliminary Results of New Shipper Review and Preliminary Results and Partial Rescission of First Antidumping Duty Administrative Review: Brake Rotors from the People's Republic of China,* 64 FR 24322 (May 6, 1999). This review covers seven exporters of the subject merchandise to the United States, which requested the review and responded to the Department's questionnaire, and the non-market economy entity, including three non-responding companies. The period of review is October 10, 1996, through March 31, 1998. We gave interested parties an opportunity to comment on our preliminary results.

EFFECTIVE DATE: November 12, 1999.

FOR FURTHER INFORMATION CONTACT: Brian C. Smith or Terre Keaton, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1766 or (202) 482–1280, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all references are made to the Department's regulations at 19 CFR Part 351 (1998).

SUPPLEMENTARY INFORMATION: On April 14, 1998, the petitioner [1] requested that the Department determine, in the context of this review, whether certain exporters [2] (who had been excluded from the antidumping duty order with respect to exports of brake rotors supplied by producers that furnished the factor data upon which the exclusion was based) had shipped merchandise during the period of review (''POR'') manufactured by other producers which would be subject to review. After analyzing the relevant shipment data and conducting verification, the Department is rescinding this review in part with respect to those exporter/producer combinations because they had no shipments during the POR of merchandise subject to the antidumping duty order. Furthermore, the Department is also rescinding this review, in part, with respect to a trading company [3] which is subject to the order but which had no shipments of subject merchandise during the POR; and a trading company [4] which is subject to the order but which withdrew its request for review.

Six of the seven exporters that requested a review submitted full responses to the antidumping questionnaire were fully cooperative and are entitled to a separate rate. [5] For those six exporters, we have determined that U.S. sales have not been made below normal value. The one exporter requesting a new shipper review, Yantai Chen Fu Machinery Co., Ltd. (''Chen Fu''), did not permit the Department to verify its questionnaire response. Because the Department was unable to assure itself that Chen Fu was entitled to a separate rate, it will continue to consider Chen Fu part of the non-market economy (''NME'') entity. Therefore, we have determined that Chen Fu does not qualify as a new shipper and, accordingly, we are rescinding the new shipper review. For the NME entity (*i.e.*, People's Republic of China (''PRC'') government-controlled companies, including PRC companies [6] that did not respond to the antidumping questionnaire or did not permit verification), which is covered by the concurrent administrative review, we are basing the final results on ''facts available.''

We will instruct the U.S. Customs Service to assess no antidumping duties on entries from the six PRC exporters that cooperated in this review for which the importer-specific assessment rates are zero or *de minimis* (*i.e.*, less than 0.50 percent), and to assess duties on entries from the NME entity companies at the PRC-wide rate. Entries from all other companies during this review period (including those for which the Department has rescinded the administrative review) will be assessed at the rates applicable at the time of entry.

Background

Since the Department published in the **Federal Register** the preliminary results of its second new shipper review and first administrative review of the antidumping duty order on brake rotors from the PRC the following events have occurred.

On June 18, 1999, the Department published in the **Federal Register** a notice of postponement of the final results until no later than November 2, 1999 (64 FR 32845). On June 29, 1999, the Department provided the parties to this proceeding an additional amount of time (until July 26, 1999), to submit publicly available information for consideration in the final results. No party submitted any such additional information. On July 28 and August 2, 1999, the Department issued verification outlines to Chen Fu, to Longjing, and to the exporter/producer combinations excluded from antidumping duty order (the latter solely with respect to the question of which producers had supplied the relevant exports). *See Notice of Final Determinations of Sales*

[1] The petitioner is the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers.

[2] These exporter/producer combinations are (1) China National Automobile Industry Import & Export Corporation (''CAIEC'') and Shandong Laizhou CAPCO Industry (''Laizhou CAPCO''); (2) Shenyang Honbase Machinery Co., Ltd. (''Shengyang Honbase'') and Laizhou Luyuan Automobile Fittings Co., Ltd. (''Laizhou Luyuan''); and (3) China National Machinery and Equipment Import & Export (Xinjiang) Co., Ltd. (''Xinjiang'') and Zibo Botai Manufacturing Co., Ltd. (''Zibo Botai'').

[3] This PRC trading company is Southwest Technical Import & Export Corporation (''Southwest'').

[4] This PRC trading company is Beijing Xinchangyuan Automobile Fittings Co., Ltd. (''Xinchangyuan'').

[5] The six exporters are (1) Jilin Provincial Machinery & Equipment Import & Export Corporation (''Jilin''); (2) Longjing Walking Tractor Works Foreign Trade Import & Export Corporation (''Longjing''); (3) Shandong Jiuyang Enterprise Corporation (''Jiuyang''); (4) Xianghe Zichen Casting Co., Ltd. (''Xianghe''); (5) Yantai Import & Export Corporation (''Yantai''); and (6) Yenhere Corporation (''Yenhere'').

[6] These PRC trading companies are Chen Fu (the new shipper) and the following companies for which the petitioner requested reviews, but which did not respond to the Department's questionnaires: (1) Hebei Metals and Minerals Import & Export Corporation (''Hebei''); (2) Qingdao Metals, Minerals & Machinery Import & Export Corporation (''Qingdao''); and (3) Shanxi Machinery and Equipment Import & Export Corporation (''Shanxi'').

at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China, 62 FR 9160 (February 28, 1997) (''*Brake Rotors*'').

From August 2 through August 19, 1999, the petitioner filed comments related to the Department's conduct of verification in this case, the selection of respondents for verification and receipt of verification exhibits. In an August 4, 1999, memorandum to the file, the Department explained to the petitioner's counsel that it selected the verification site and number of companies to be verified in this case due to security/logistical considerations and Department resource constraints.

From August 9 through August 17, 1999, the Department conducted verification of the information and statements submitted by Longjing and the exporter/producer combinations excluded from this order, in accordance with 19 CFR 351.307.

In an August 20, 1999, memorandum to the file, the Department addressed the petitioner's verification concerns by stating that the Department had made decisions with respect to the verification site and number of companies verified in this case based on security/logistical considerations and the Department's resource constraints. *See* August 20, 1999, memorandum to the File from Irene Darzenta Tzafolias. The Department also informed the petitioner that although the Department's preference is to verify at the company site, it was not possible to do so in this case. Moreover, the Department explained to the petitioner that it was the decision of the Department, not of the respondents, as to which companies the Department would verify in this review. From August 30, 1999, through September 10, 1999, the Department issued its verification reports.

Because neither the respondents nor the petitioner requested a hearing, no hearing was held in this case. On September 27, 1999, the petitioner submitted its case brief. Jilin, Longjing, Jiuyang, Xianghe, Yantai, and Yenhere (hereafter referred to as the ''six respondents'') did not submit a case brief. On September 29, the Department returned the petitioner's case brief because it contained new factual information. On October 4, 1999, the petitioner resubmitted its case brief without the new factual information and the six respondents submitted their rebuttal brief.

On October 12, the Department placed on the record a memorandum which elaborated on its decision to conduct off-site verifications in this proceeding along with documentation supporting that decision. The Department provided parties two business days to submit comments on the contents of the memorandum and attached documentation. On October 14, the petitioner submitted comments. No other party submitted comments.

Scope of Reviews

The products covered by these reviews are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under ''one ton and a half,'' and light trucks designated as ''one ton and a half.''

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those on which the surface is not entirely smooth, and have undergone some drilling. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer (''OEM'') which produces vehicles sold in the United States (*e.g.*, General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake rotors covered in this investigation are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria. Excluded from the scope of the review are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are classifiable under subheading 8708.39.5010 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of these reviews is dispositive.

Period of Reviews

The period of reviews covers the period October 10, 1996, through March 31, 1998.

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(3), we have determined that, during the POR, the exporters which received zero rates in the less-than-fair-value (''LTFV'') investigation did not ship to the United States subject merchandise produced by a manufacturer whose production was not examined during the LTFV proceeding with respect to sales by the relevant exporters. Specifically, we determined that during the POR, (1) neither CAIEC nor Laizhou CAPCO exported brake rotors to the United States that were manufactured by producers other than Laizhou CAPCO; (2) neither Shenyang Honbase nor Laizhou Luyuan exported brake rotors to the United States that were manufactured by producers other than Shenyang Honbase or Laizhou Luyuan; and (3) Xinjiang did not export brake rotors to the United States that were manufactured by producers other than Zibo (*see* verification reports for CAIEC, Laizhou CAPCO, Shenyang Honbase, Laizhou Luyuan and Xinjiang dated August 30 through September 10, 1999). In order to make this determination, we confirmed shipment data furnished by the U.S. Customs Service relating to entries made by the exporters at issue by conducting verification of those exporters. Based on the results of our verification, we are rescinding this review with respect to CAIEC, Laizhou CAPCO, Shenyang Honbase, Laizhou Luyuan and Xinjiang.

Furthermore, we have rescinded this review with respect to Southwest, which reported that it made no shipments of subject merchandise during this POR, based on the results of our examination of shipment data furnished by the U.S. Customs Service. The shipment data we examined did not show U.S. entries of brake rotors during the POR from Southwest. We have also rescinded this review with respect to Xinchangyuan because it withdrew its request for review and no other interested party requested a review of this company. *See Preliminary Results* at 24323.

Rescission of New Shipper Review

We have rescinded the review of Chen Fu because Chen Fu did not allow the Department to conduct verification of its separate rates information. Therefore, we consider Chen Fu to be an uncooperative respondent and have made the adverse assumption that Chen Fu does not qualify for a separate rate and have treated it as part of the NME entity (*see* ''Separate Rates'' and ''Facts Available'' sections and Comment 1 in

the ''Interested Party Comments'' section of this notice for further discussion). As part of the NME entity, Chen Fu is not entitled to a rate as a new shipper, as the NME entity as a whole was subject to the LTFV investigation. Consequently, we are rescinding the new shipper review of Chen Fu.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate. Seven exporters submitted questionnaire responses in this review. As mentioned above, we have determined that Chen Fu does not qualify for a separate rate. (*See ''De Facto Control''* section below for further discussion).

The other six exporters that submitted questionnaire responses exhibit various ownership patterns. Xianghe is a joint venture between Chinese and U.S. companies. Yenhere is a limited liability corporation in the PRC. The four other respondents are either wholly owned by all the people (*i.e.*, Jilin, Longjing, Yantai) or collectively owned (*i.e.*, Jiuyang). For these six respondents, a separate rates analysis was conducted to determine whether the exporters are independent from government control. *See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China (''Bicycles''*), 61 FR 56570 (April 30, 1996).

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) and amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). Under the separate rates criteria, the Department assigns separate rates in nonmarket economy cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. De Jure Control

Each respondent has placed on the administrative record documents to demonstrate absence of *de jure* control, including the ''Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People,'' adopted on April 13, 1988, (''the Industrial Enterprises Law''); ''the Enterprise Legal Person Registration Administrative Regulations,'' promulgated on June 13, 1988 (''the Enterprise Registration Regulations;'' the 1990 ''Regulation Governing Rural Collectively-Owned Enterprises of PRC''; the 1992 ''Regulations for Transformation of Operational Mechanisms of State-Owned Industrial Enterprises'' (''Business Operation Provisions''); and the 1994 ''Foreign Trade Law of the People's Republic of China.''

In prior cases, we have analyzed these laws and have found them to sufficiently establish an absence of *de jure* control of companies ''owned by the whole people,'' joint ventures, privately owned enterprises or collectively owned enterprises. *See, e.g., Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China (''Furfuryl Alcohol''),* 60 FR 22544 (May 8, 1995), and *Preliminary Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China (''Drawer Slides''),* 60 FR 29571–29576 (June 5, 1995). We have no new information in this proceeding which would cause us to reconsider this determination with regard to the six respondents (*i.e.*, Jilin, Longjing, Jiuyang, Xianghe, Yantai and Yenhere) mentioned above. *See* Comment 3 in the ''Interested Party Comments'' section of this notice for further discussion.

2. De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide* and *Furfuryl Alcohol.* Therefore, the Department has determined that an analysis of de facto control is critical in determining whether the respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether each respondent is subject to de facto governmental control of its export functions: (1) whether the export prices are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (*see Silicon Carbide* and *Furfuryl Alcohol*).

Each respondent asserted the following: (1) it establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, the respondents' questionnaire responses indicate that company-specific pricing during the POR does not suggest coordination among exporters.

In this proceeding, the Department selected two of the seven respondents for verification, namely Chen Fu and Longjing. The Department did not select the other five respondents (*i.e.*, Jilin, Jiuyang, Xianghe, Yantai, and Yenhere) for verification in accordance with section 351.307(a) of the Department's regulations. One of the respondents selected for verification, Chen Fu, declined verification. Therefore, the Department considers Chen Fu's separate rate claim and response to be unverified (*see* discussion below).

For Longjing, the Department found no evidence at verification of government involvement in Longjing's business operations. *See* Comment 3 in the ''Interested Party Comments'' section of this notice for further discussion. Specifically, Department officials examined sales documents that showed that Longjing negotiated its contracts and set its own sales prices with its customers. In addition, the Department reviewed sales payments, bank statements and accounting documentation that demonstrated that Longjing received payment from its U.S. customers via bank wire transfer, which was deposited into its own bank account without government intervention. Finally, the Department examined internal company memoranda, such as appointment notices and election results, which demonstrated that Longjing selected its own management. *See* Department verification report on Longjing at page six, and exhibit one of the August 10, 1999, supplemental response. This information, taken in its entirety, supports a finding that there is a de facto absence of governmental control of Longjing's export functions.

With regard to Jilin, Jiuyang, Xianghe, Yantai and Yenhere, the Department

elected not to verify these companies' responses. Based on documentation contained in each company's response, the Department also finds that each of these five respondents (1) negotiated its contracts and set its own sales prices with its customers; (2) received payment from its U.S. customers via bank wire transfer, which was deposited into its own bank account without government intervention; (3) retained its profits and, where applicable, arranged its own financing; and (4) selected its own management. Consequently, we have determined that Longjing, Jilin, Jiuyang, Xianghe, Yantai and Yenhere have each met the criteria for the application of separate rates either through documentation submitted on the record subject to verification or through actual verification. *See Notice of Final Determination at Less Than Fair Value: Persulfates from the People's Republic of China,* 62 FR 27222 (May 19, 1997).

Hebei, Qingdao and Shanxi, three of the named respondents in this review, did not respond to the questionnaire issued in this review. Hebei, Qingdao and Shanxi also did not submit information which demonstrated a de jure and de facto absence of government control with respect to each company's export functions. In addition, the new shipper respondent, Chen Fu, did not allow the Department to conduct verification of its questionnaire response which contained information claiming a de jure and de facto absence of government control with respect to its export functions. Therefore, we have determined that these four companies are not entitled to separate rates in this review and will be considered to be part of the non-responding PRC NME entity. *See* Comment 1 in the ''Interested Party Comments'' section of this notice for further discussion.

Facts Available

Section 776(a)(1) of the Act mandates that the Department use the facts available if necessary information is not available on the record of an antidumping proceeding. In addition, section 776(a)(2) of the Act provides that the Department may make an adverse inference in determining the facts available where an interested party or any other person: (A) withholds information requested by the Department; (B) fails to provide requested information by the requested date or in the form and manner requested; (C) significantly impedes an antidumping proceeding; or (D) provides information that cannot be verified.

For the reasons stated above, Chen Fu, Hebei, Qingdao and Shanxi failed to demonstrate that they are entitled to separate rates and therefore are presumed to be part of the PRC NME entity. Furthermore, because the PRC NME entity did not provide a questionnaire response, it failed to cooperate to the best of its ability. *See Preliminary Results* at 64 FR 24324. When the Department must base the entire dumping margin for a respondent in an administrative review on the facts available because that respondent has failed to cooperate to the best of its ability, section 776(b) of the Act also authorizes the Department to make an adverse inference in selecting from the facts available, and to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

As adverse facts available, imports of subject merchandise from the PRC NME entity (including Chen Fu, Hebei, Qingdao and Shanxi and any other producers/exporters which have not qualified for a separate rate in this or a prior review) will be subject to a PRC-wide rate of 43.32 percent, which is based on the highest corroborated petition rate and which is the highest rate on the record of this proceeding. Because information from the petition constitutes secondary information, section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (''SAA'') (H. Doc. 316, 103d Cong., 2nd Sess., at 870) provides that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value.

During our analysis of the petition in the LTFV investigation, we reviewed all of the data submitted and the assumptions that petitioners had made when calculating estimated dumping margins. As a result of our analysis, we recalculated the petition rate during the LTFV investigation to correct the petitioner's methodology with respect to certain factor values. *See Brake Rotors* at 62 FR 9160, 9162, and Comment 1 in the ''Interested Party Comments'' section of this notice for further discussion. Thus, because we reviewed the petitioner's assumptions and the calculations from which the petition rates were derived, and made appropriate corrections, we determined in the LTFV investigation that the petition rates, as corrected, had probative value. We have no new information that would warrant reconsideration of that decision.

Comparisons

To determine whether sales of the subject merchandise by each cooperative respondent to the United States were made at less than normal value (''NV''), we compared the export price (''EP'') to the NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below.

Export Price

We calculated EP in accordance with section 772(a) of the Act, because the subject merchandise was sold directly by the PRC exporter to unaffiliated parties in the United States prior to importation into the United States and constructed export price methodology was not warranted based on the facts of record. We calculated EP based on the same methodology used in the preliminary results.

Normal Value

A. Non-Market Economy Status

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. None of the parties to this proceeding has contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

B. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. We determined that India and Indonesia are countries comparable to the PRC in terms of overall economic development (*see* Memorandum from Office of Policy to Louis Apple, dated June 23, 1998). In addition, based on publicly available information placed on the record, we determined that India is a significant producer of the subject merchandise. Accordingly, we considered India the primary surrogate country for purposes of valuing the factors of production as the basis for NV because it meets the Department's criteria for surrogate country selection. Where we could not find surrogate factor values from India, we used values from Indonesia.

C. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on the factors of production reported by the companies in the PRC which produced the subject merchandise for the

exporters which sold the subject merchandise to the United States during the POR. To calculate NV, the reported unit factor quantities were multiplied by publicly available Indian values or Indonesian values.

The selection of the surrogate values applied in this determination was based on the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices to make them delivered prices. For those values not contemporaneous with the POR and quoted in a foreign currency, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's *International Financial Statistics.* For a complete analysis of surrogate values, *see Memorandum from the Team to the File Regarding Factors Valuation for the Final Results,* dated November 2, 1999 (''*Final Results Valuation Memorandum*'').

We calculated surrogate values based on the same methodology used in the preliminary results with the following exception—we used the verified factors of Longjing, which is both an exporter and producer of the subject merchandise (*see* Comment 2 in the ''Interested Party Comments'' section of this notice for further discussion).

Currency Conversion

We made currency conversions pursuant to section 773A(a) of the Act and section 351.415 of the Department's regulations, based on the rates certified by the Federal Reserve Bank.

Interested Party Comments

We gave interested parties an opportunity to comment on the preliminary results. We received comments only from the petitioner. We received rebuttal comments only from Jilin, Longjing, Jiuyang, Xianghe, Yantai, and Yenhere.

Comment 1: Rate Assignment for Respondents That Did Not Respond to the Department's Questionnaire or Declined Verification

The petitioner contends that, based on previous Department decisions, the Department should assign the highest petition rate rather than the PRC country-wide rate to four PRC companies (*i.e.*, Chen Fu, Hebei, Qingdao and Shanxi) which either did not respond to the Department's questionnaire or declined verification. In support of its argument, the petitioner cites to the *Final Results of Antidumping Duty Administrative Review: Extruded Rubber Thread from Malaysia,* 64 FR 12967 (March 16, 1999); the *Final Results of Antidumping Duty Administrative Review: Certain Fresh Cut Flowers from Colombia,* 61 FR 42833 (August 19, 1996); the *Final Results and Partial Recission of Antidumping Duty Administrative Review of Roller Chain, Other Than Bicycle Chain from Japan,* 63 FR 63671 (November 16, 1998); the *Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from Romania,* 61 FR 24274 (May 14, 1996); and the *Preliminary Results of Antidumping Duty Administrative Review of Dynamic Random Access Memory Semiconductors of One Megabit or Above from the Republic of Korea,* 64 FR 30841 (June 8, 1999).

The respondent did not comment on this issue.

DOC Position

We do not agree with the petitioner. We have determined that Chen Fu, Hebei, Qingdao and Shanxi have not fully cooperated with the Department in this proceeding either because they refused to submit questionnaire responses or because they refused verification. As a general practice in NME cases, when a respondent fails to cooperate in a proceeding to such an extent that the Department cannot ascertain whether it is entitled to a separate rate, we consider such uncooperative respondents to be part of the NME entity, and, as such, subject to the PRC country-wide rate. As adverse facts available, we normally assign as the country-wide rate the highest margin in the petition. However, in the LTFV proceeding, we revised the highest rate in the petition (64.56 percent) as a result of finding through corroboration procedures that the petitioner incorrectly treated certain factory overhead items as direct materials. As a result of recalculating NV in the petition by treating those items as part of factory overhead and reassigning an Indian surrogate value to one material for which a value based on a U.S. price was incorrectly assigned, we arrived at a revised and corroborated highest petition rate for brake rotors of 43.32 percent. *See Brake Rotors* at 62 FR 9162. Therefore, we have used this corroborated rate as adverse facts available for all of the companies within the NME entity. The administrative cases relied upon by the petitioner have no applicability in this case because they involve cases in which the Department was able to corroborate the highest rate alleged in the petition or assigned as adverse facts available the highest calculated rate from the investigation to uncooperative respondents.

Comment 2: Verification of Longjing's Data

The petitioner argues that, as a result of verification, Longjing's response has been substantially revised, and that Longjing submitted new information at verification. Specifically, the petitioner claims that at verification the Department found errors in almost all of the raw material cost allocations, as well as in the labor, energy and production figures included in Longjing's response. In addition, the petitioner claims that a verification exhibit the Department collected to document Longjing's electrical usage contains electrical usage figures on an electricity vendor invoice which are inconsistent with the meter reading figures contained in Longjing's electrical records. The petitioner argues that the Department should not allow Longjing to use verification as an opportunity to reconstruct its questionnaire response, and that the errors noted in the verification report indicate that Longjing did not provide accurate and complete information prior to verification. Moreover, the petitioner claims that the number of errors noted in the verification report calls into question the reliability of information not verified. Therefore, the petitioner contends that the use of total facts available is warranted with regard to Longjing. In support of its arguments, the petitioner cites to the *Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil,* 62 FR 1953, 1969 (January 14, 1997) (''*Silicon Metal from Brazil*''), and the *Preliminary Results of Antidumping Duty Administrative Review: Circular Welded Non-Alloy Steel Pipe and Tube from Mexico,* 64 FR 34190, 34191 (June 25, 1999) (''*Pipe and Tube from Mexico*'').

Longjing maintains that the petitioner's claim that it failed verification because of the minor changes and clarifications Longjing brought to the attention of the Department prior to the start of verification has no merit. The respondent adds that the errors in its response were minor in nature and did not affect the overall integrity of the response, and that the Department was able to verify all of Longjing's corrections as accurate and reliable.

DOC Position

We agree with Longjing. Longjing informed the Department of some minor clerical errors they found in preparation for verification at the commencement of verification. After thoroughly examining selected data reported by Longjing using standard verification techniques, we determined that these errors did not

affect the overall integrity of Longjing's Section D response. The errors that the petitioner is alleging warrant resorting to adverse facts available involve the misreporting of seven material factors, the electricity factor and the labor factors for all control numbers included in Longjing's factors of production (''FOP'') listing. We verified that all of these errors resulted from Longjing using a slightly higher than actual total production amount in its allocation methodology. Longjing alerted us to this error at the start of verification and we were able to determine the nature and extent of the error and confirm that Longjing's corrected information was accurate based on its accounting and production records. *See* verification exhibits 0, 4, 5A, 15, 16A through 16C, 18A through 18K, 21, 22, 23, and pages 13 through 18 of the September 10, 1999, Longjing verification report.

We note that although the change in the production quantity affected the allocation of more than one factor reported in the Section D listing, the resulting changes to the factor amounts reported in the Section D response (using the revised production quantity in the allocation formula) were minor in nature and had absolutely no impact on the final analysis. Moreover, the Department was able to verify all of the corrected information (*see* pages and exhibits noted above from the Longjing verification report). In addition, we examined and tested the accuracy of all of Longjing's reported factors data, and were able to determine that the only errors in Longjing's data (with the exception of one which was also minor in nature) were those brought to the Department's attention prior to the start of verification (*see* pages 4 and 5 of the Longjing verification report).

With regard to the petitioner's claim that information in one particular exhibit does not support Longjing's reported electricity factor, we find the petitioner's claim has no merit. First, the sales invoice that the petitioner claims was the only one provided by Longjing is one of several examined by the Department and/or available for examination by the Department. The Department only requested a copy of one invoice in this instance because Longjing was able to tie its worksheets showing total electricity usage for each month of the POR back to its source documentation (invoices and payment receipts) and internal records. Second, the petitioner is factually incorrect in claiming that the total kilowatt usage on the August 1997 invoice from the electricity vendor to Longjing contained in the exhibit does not reconcile to the sum of two kilowatt usage figures noted for the corresponding month on Longjing's internal energy record (*see* pages 1 and 6 of verification exhibit 23). As noted on the verification exhibit and in the verification report, Longjing apportioned part of its total factory electricity usage in each month to administrative (*i.e.,* non-production) operations as reflected in its internal energy records and accounting records (*see* page17 and verification exhibits 18I and 23 of the Longjing verification report).

Hence, for the foregoing reasons, we find the application of facts available is unwarranted in this case and have used the corrected factors data noted in the verification report for Longjing in the final results. Unlike *Pipe and Tube from Mexico,* we do not find that the data errors of Longjing were so pervasive as to prevent the Department from relying on Longjing's response for the final results. *See Pipe and Tube from Mexico* at 64 FR 34191. Moreover, unlike *Silicon Metal from Brazil,* we find that Longjing fully substantiated all portions of its response. *See Silicon Metal from Brazil* at 62 FR 1955.

Comment 3: Request for Ministry Verifications

The petitioner argues that the Department should have conducted verification at the Ministry of Foreign Trade and Economic Cooperation (''MOFTEC'') and the Ministry of Machinery Industry (''MMI'') in this proceeding in an effort to clarify questions it characterized as left unanswered during the LTFV investigation. For example, the petitioner claims that all respondents in this case failed to disclose to the Department that they had dealings with MOFTEC based on information obtained by the Department from MMI during the LTFV investigation. Moreover, the petitioner claims that MOFTEC failed to inform the Department that it had dealings with trading companies during the LTFV proceeding. In addition, the petitioner argues that, in the LTFV proceeding, MMI withheld information from the Department regarding its meetings with manufacturers, the macro-guidance it provided to 10 industrial areas, and the field research it conducts to determine how government policies affect these industries. The petitioner argues that the Department should have conducted verifications of MMI and MOFTEC to further examine the relationships these ministries have with trading companies and manufacturers. However, since the Department did not conduct verification at these two PRC ministries, the petitioner alleges that the Department has not established the extent to which MOFTEC deals with trading companies and the extent to which MMI deals with manufacturers.

In addition, the petitioner argues that the burden of proving *de facto* absence of government control has not been met by the respondents in this review because the petitioner claims they willfully withheld information relevant for determining whether they are entitled to separate rates. Based on this presumption, the petitioner contends that the respondents did not cooperate to the best of their ability, and that the Department should therefore apply adverse facts available by denying each respondent a separate rate. In support of its argument, the petitioner cites to the *Preliminary Results of Antidumping Duty Administrative Review of Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China,* 64 FR 5770, 5771 (February 5, 1999).

The respondents maintain that the Department should not impute any alleged lack of cooperation by MMI and MOFTEC in a prior review or investigation to the respondents, who have cooperated fully with the Department's requests in this review, and who have independently established their entitlement to separate rates in this case. The respondents also maintain that the petitioner's insistence that the Department conduct a verification of MMI and MOFTEC is illustrative of petitioner's misunderstanding of the Department's NME practice with regard to separate rates analysis.

DOC Position

We agree with the respondents. There is nothing on the record of this proceeding that suggests that a Department visit to MMI or MOFTEC was warranted. In the LTFV investigation, the petitioner provided us with documentary evidence in support of its claim that two respondents were still controlled by the PRC government. Thus, in the LTFV investigation, documentation submitted by the petitioner justified the Department's visit to MMI in order to examine in greater depth the relationship between MMI and two respondents in the LTFV proceeding. Neither of the two respondents involved in that case is a named respondent in this review. Furthermore, in this administrative review, we have no evidence of a similar relationship between any of the six cooperating respondents and MMI or MOFTEC. Therefore, we determined that there was no basis for conducting verification at either MMI or MOFTEC,

and no basis for inferring any lack of cooperation with respect to MMI, MOFTEC or the cooperating respondents. The Court of International Trade has already rejected a similar claim with respect to the LTFV investigation. *See Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers* v. *United States,* 44 F. Supp.2d 229, 242–246 (CIT 1999).

As in a prior segment of this proceeding (*i.e.,* the first new shipper review), the petitioner has sought to draw overly broad conclusions from a verification conducted during the LTFV investigation. The petitioner incorrectly claims that the same situation exists in this case with regard to two respondents in the LTFV proceeding, and has sought to apply those erroneous conclusions to the respondents in this review by placing on the record of this review the Department's verification report from the investigation. We find that the information in that report has no bearing on our findings in this segment of the proceeding. As mentioned above, our inquiries at the MMI during the investigation were limited to matters associated with two PRC companies which are not part of this review. In contrast, in this review, there is substantial evidence on the record which indicates that none of the six cooperative respondents is subject to government control. Because there is no evidence on this record to the contrary, we find that the petitioner's claim that the six respondents have withheld information on the separate rates issue to be without merit. Based on the information obtained in conducting numerous NME investigations, the Department considers MOFTEC's role vis-a-vis the trading companies to be compatible with the existence of separate rates for such companies (*i.e.,* MOFTEC providing information on production and sales of the subject merchandise exported to the United States from the trading companies). We do not consider this relationship to constitute government control. *See, e.g., Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations: Brake Drums and Brake Rotors from the People's Republic of China,* 61 FR 53190, 53192 (October 10, 1996).

As for MMI's dealings with manufacturers, we know that MMI meets with certain manufacturers in the automotive industry but we have no evidence that any of the brake rotor manufacturers in this proceeding have been a part of those meetings. Even if PRC manufacturers of the subject merchandise have attended meetings with MMI, however, we find that this is irrelevant because such a practice per se would not constitute government control. The U.S. government also holds regular meetings with companies in various industry sectors to facilitate communication with regard to issues affecting these industries. Furthermore, manufacturers are not entitled to a separate rate or do not have to meet the separate rates criteria, unless they are also exporters of the subject merchandise. Since we have no evidence that any respondents (*i.e.,* exporters) in this proceeding are also manufacturers of the subject merchandise who have met with MMI, the fact that MMI has a practice of meeting with companies in the automotive and other sectors does not require a finding that the respondents in this proceeding do not qualify for a separate rate.

Comment 4: The Department's Discretion in Conducting Verifications

The petitioner argues that the Department should have conducted verification of the exporter/producer combinations excluded from the antidumping duty order and Longjing at each company's facilities, rather than at a hotel in Beijing. In addition, although the Department stated that due to security reasons it intended to conduct verification of each company's records at a hotel in Beijing rather than at the company's facility, the petitioner claims that there is no evidence on the record supporting the Department's decision and that the Department's action is contrary to its own practice. Moreover, the petitioner contends that, because the Department conducted abbreviated and off-site verifications, the completeness and accuracy of the verification results are in question.

First, the petitioner contends that the Department should either redo all of the verifications or resort to facts available for all respondents. The petitioner alleges that the value of verifications performed at a hotel is limited, because Department officials cannot actually verify the place where production or sale of the subject merchandise occurs or perform surprise inspections or document traces. In addition, the petitioner alleges that by verifying at the hotel, the Department was (1) unable to determine if the merchandise was transshipped from another manufacturer; (2) unable to check energy consumption meters; (3) and unable to check production operations. Moreover, the petitioner alleges that the respondents falsified their records because they had prior notice through the verification outlines of everything the Department intended to examine at verification and because the Department did not conduct verification at the companies' facilities. The petitioner cites to the Department's *Antidumping Manual* in support of its argument.

Second, the petitioner contends that another reason why the Department should either redo the verification or resort to facts available is that each verification was one to two days in length, which the petitioner describes as contrary to established Department policy. The petitioner also cites to the Department's *Antidumping Manual* in support of this argument. In addition, the petitioner claims, based on a number of court decisions, that the Department abused its discretion when it decided to conduct abbreviated verifications at a hotel. *See Rubberflex Sdn. Bhd.* v. *United States* (''*Rubberflex*''), Slip. Op. 99–68 (CIT July 23, 1999); *Rhone Poulenc, Inc.* v. *United States* (''*Rhone Poulenc*''), 899 F.2d 1185, 1191 (Fed. Cir. 1990); *Usinor Sacilor* v. *United States* (''*Usinor Sacilor*''), 872 F. Supp. 1000 (CIT 1994); and *Sugiyama Chain Co., Ltd.* v. *United States* (''*Sugiyama*''), 852 F. Supp. 1103 (CIT 1994).

Finally, the petitioner contends that the Department should redo the verifications or resort to facts available because the respondents and the PRC government impeded these reviews. The petitioner argues that this conclusion is supported by the Department's security concerns with regard to conducting verification at the companies' facilities.

The respondents maintain that the Department properly exercised its discretion in conducting verification, and that the petitioner has failed to demonstrate any factual support for its allegations that (1) ''off-site'' and shortened verifications should be considered failed verifications; (2) such verifications cannot properly ensure the integrity of the responses; and (3) the Department should base respondents' margins on adverse facts available because any security concerns should be attributed to efforts by the PRC government and the respondents to impede these reviews.

DOC Position

We disagree with the petitioner. Although it is the Department's preference to conduct on-site verifications, it is not a requirement. More importantly, when there are security considerations to take into account at the on-site verification location, the Department has the discretion to elect to verify at off-site locations. *See Torrington* v. *United States,* 68 F.3d 1347, 1350 (Fe. Circ.

1995) (upholding the Department's decision to cancel verification entirely in light of security concerns). In this case, the Department successfully examined the records of the companies it selected at the off-site location.

In this proceeding, the Department had major concerns about the security situation in the PRC as a result of the May 1999 NATO bombing incident in Belgrade, Yugoslavia. The Department had planned on-site verifications for most of the companies it intended to examine in the PRC (with the exception of one company located in Xinjiang province) in early June 1999. Even though the U.S. State Department country advisory notice indicated no security concerns in early June 1999, our embassy in Beijing advised us to postpone our travel to the PRC until further notice. In light of the postponement in travel and uncertainty expressed by our embassy in the PRC, we delayed the verifications of the companies we selected until August 1999. The petitioner's comments submitted in early August 1999 immediately after the Department issued its verification outlines in this proceeding objected to the Department conducting off-site verifications in Beijing and questioned the Department's assessment of the security situation in the PRC. In an August 4, 1999, memorandum to the file, a Department official explained to the petitioner's counsel that the verification site and number of companies to be verified in this case was non-negotiable due to security/logistical considerations and the Department's resource constraints. The Department reiterated this explanation in an August 20, 1999, memorandum to the file. In past cases, the Department has resorted to off-site verifications when it wished to conduct verification but had security concerns. *See, e.g., Notice of Final Determination of Sales At Less Than Fair Value: Certain Preserved Mushrooms from Indonesia,* 63 FR 72268 (December 31, 1998).

Regarding the Department's assessment of the security situation in the PRC, even though the U.S. State Department country advisory notice did not refer to security concerns associated with travel in the PRC from early July through early August 1999, our embassy in Beijing advised us to conduct our verifications, if possible, within the confines of major cities in the PRC because of the continued uncertainty with respect to security. Therefore, the Department requested that all companies located outside of Beijing that it intended to verify bring all of their accounting records and support documentation to an off-site location in Beijing. The companies which the Department selected for verification were the four excluded exporter/producer combinations mentioned below, the new shipper (*i.e.,* Chen Fu), and Longjing. The Department informed these companies that they would be held to the same level of accountability to which they normally are held during on-site verifications. Even though the verifications (except for one at CAIEC's headquarters in Beijing) were conducted at an off-site location, the Department was able to determine for each producer/exporter combination that no merchandise was transhipped from another manufacturer by thoroughly examining accounting records, and reconciling the production records of the manufacturer to the sales records of the exporter included in each producer/exporter combination. (*See* verification reports and exhibits for CAIEC, Laizhou CAPCO, Laizhou Luyuan, Shenyang Honbase, and Xinjiang for further discussion.) The Department also examined data from U.S. Customs obtained prior to the preliminary results. These data corroborate our verification findings. In contrast, the Department has no evidence that any exporter in the excluded exporter/producer combinations has shipped merchandise to the United States during the POR from a producer not included in those combinations.

Petitioner's insistence that it was critical for the Department to conduct on-site verifications in order to examine the number of people at the factory, check meters to measure energy consumption figures, tour the production facilities or inspect the factory inventories for evidence of merchandise being transshipped from another manufacturer is without merit. First, it is not a requirement that the Department verify through physical inspection or verify all information reported by a respondent, especially if the information can be linked to accounting, production or sales records, backed up by support documentation. The only factory for which such a physical count of employees or meter reading checks might have had any possible relevance was Longjing. For all of the excluded exporter/producer combinations, the Department's emphasis was not on labor or electricity usage at the factories but on whether all of the brake rotor sales made by the exporter in the exporter/producer combinations were (based on sales, inventory and production records) manufactured by the producer with which it was linked in the exporter/producer combination. As for the verification of Longjing, even without a physical inspection, the Department was able to ascertain, to its satisfaction, through examination of salary, labor attendance, and energy records, payment documentation and production records, the number of employees and the amount of energy consumption at the factory. Therefore, it was not necessary to conduct a physical count of the employees at the factory or examine the electricity meter. In fact, such tests would have only provided data on the factory's current levels of employment and electricity usage, and not the levels associated with the POR, which ended at least one year and a half before the verifications. Therefore, any conclusions drawn from information gathered at the factory with respect to labor or energy factors would have been of minimal use in this proceeding.

Second, the Department did not find it imperative in this proceeding to tour the production facilities or inspect the factory inventories in order to ascertain whether the exporter/producer combinations or Longjing were transshipping merchandise produced by manufacturers undisclosed to the Department. First of all, a tour of the production facility or physical inspection of inventory in the factory warehouses would have only provided information on: (1) What materials the factory currently uses to produce its merchandise; (2) the types of products the factory currently produces; and (3) the products the factory currently keeps in inventory rather than what the factory used or produced during the POR, a year and a half earlier. Therefore, any conclusions drawn from information gathered at the factory with respect to a plant tour or inspection of its production facilities and inventory warehouse would not have been directly relevant to the data the Department was verifying. For the same reason, the petitioner's unsupported allegation that the factories and/or trading companies we selected for verification had merchandise in their warehouses which was produced by manufacturers undisclosed to the Department is also of little value. Furthermore, the Department was able to resolve through a vigorous examination of each of the selected company's accounting, production and sales records and supporting documentation, the issue of whether any of the excluded exporters was transshipping merchandise not actually produced by the factory associated with its exclusion from the antidumping duty order.

In addition, the Department's examination and testing of the records

and statements of each company was not constrained by where the verification took place or the number of days during which the Department examined each company's records. As indicated above, the Department sought to verify only one issue (*i.e.*, the source of exported merchandise) with respect to all verified companies other than Longjing (*i.e.*, the exporters excluded from the order). Thus, it is not unusual that these verifications could be completed quickly. As the verification reports illustrate, the Department thoroughly examined the topics included in each company's verification outline and thoroughly tested the sales and production information noted in each company's accounting records in support of its statements or in support of data contained in its response. The number of days the Department spent examining each company's accounting records and covering the topics noted in the verification outlines did not hinder the Department from conducting comprehensive examinations of each company's data. For example, whenever the Department requested a document which a particular company did not have at the verification site, in every case, the company was able to supply the requested documentation by transmitting the requested documentation via facsimile from the company's facilities to the off-site verification location.

Furthermore, the judicial cases the petitioner relies upon as the basis for its claim that the Department's decision to conduct an abbreviated, off-site verification is an abuse of discretion are inapposite. *Rhone Poulenc* simply stands for the broad premise that the Department strives to determine margins as accurately as possible. This case does not specify that verifications must be conducted either on-site or for any particular number of days. *See Rhone Poulenc*, 889 F. 2d at 1191. *Usinor Sacilor* and *Sugiyama* likewise do not involve any issues related to abbreviated or off-site verifications. *Rubberflex* criticized the Department for not allowing the respondent sufficient time to prepare for verification, not the length or location of the verification. *See Rubberflex*, Slip Op. 99–68 at 21. Furthermore, the opinion in *Rubberflex* also acknowledges the Department's broad discretion with respect to the conduct of verification. Thus, *Rubberflex* cites to a different judicial precedent which addresses the specific question of the Department's discretion as to the length of verification. *Id.*, at 16, citing *Persico Pizzamiglio, S.A.* v. *United States*, 18 CIT 299, 307 (1994)(rejecting respondent's claim that the Department devoted insufficient time to verification, on the grounds that ''there is no statutory mandate as to how long the process of verification must last,'' such that the Department is accorded discretion to make such determinations considering the time and resource constraints that the agency faces). As noted above, the Court of Appeals has held that the Department has extremely broad discretion in setting-up verification. *See Torrington* v. *U.S.*, 68 F.3d at 1350.

Final Results of the Review

We determine that the following margins exist for the six respondents, which fully cooperated in this review, and the PRC entity, for the period October 10, 1996, through March 31, 1998:

Manufacturer/producer/exporter	Margin
Jilin Provincial Machinery & Equipment Import & Export Corporation	0.00
Longjing Walking Tractor Works Foreign Trade Import & Export Corporation	0.00
Shandong Jiuyang Enterprise Corporation	0.00
Xianghe Zichen Casting Co., Ltd.	0.00
Yantai Import & Export Corporation	0.00
Yenhere Corporation	0.00
PRC-Wide Rate	43.32

Note: (A) Exports by the following exporter/producer combinations continue to be excluded from the antidumping duty order: (1) CAIEC or Laizhou CAPCO/Laizhou CAPCO; (2) Shenyang or Laizhou Luyuan/Shenyang or Laizhou Luyuan; (3) Xinjiang/Zibo.

(B) The separate rates established for the following companies in the investigation or in an earlier review remain in effect either because of non-shipment during this POR or because no review was requested for this POR: (1) Southwest; and (2) Xinchangyuan.

(C) All exporters other than the six cooperative respondents or those named above in (A) or (B) are subject to the PRC-wide rate.

Assessment Rates

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. In accordance with 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries of subject merchandise during the POR from the six PRC exporters that cooperated in this review for which the importer-specific assessment rate is zero or *de minimis* (*i.e.*, less than 0.50 percent). Pursuant to 19 CFR 351.212(b)(1), we have calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales (*i.e.*, sales made during the POR by the above-referenced six PRC exporters who cooperated in this review) to the total entered value of those same sales. In order to estimate the entered value, we have subtracted international movement expenses from the gross sales value. The resulting *ad valorem* rates will be assessed uniformly on all entries made by the importers during the POR.

For entries from the NME entity companies, the Customs Service shall assess *ad valorem* duties at the PRC-wide rate. For entries made by PRC companies for which the Department has rescinded the administrative review (*i.e.*, Southwest and Xinchangyuan), the Customs Service shall assess ad valorem duties at the rates applicable at the time of entry.

Cash Deposit Requirements

The following deposit rates shall be required for merchandise subject to the order[7] entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for each company that fully cooperated in this review will be the rate established in the final results; (2) for imports of brake rotors from the PRC made by the exporter/producer combinations listed in this notice, entries of these exporters may be liquidated without regard to antidumping duties, except that, if the exporter listed in the exporter/producer combination sells subject merchandise which is not manufactured by the producer in that same exporter/producer combination, then those entries will be subject to the ''PRC-wide'' rate; (3) the cash deposit rate for PRC exporters which received a separate rate in the LTFV investigation but who did not export subject merchandise during the POR or for which there was no request for administrative review (*e.g.*, Southwest and Xinchangyuan) will continue to be the rate assigned in that investigation; (4) the cash deposit rate for the PRC NME entity (*i.e.*, all other PRC exporters subject to the order, including Chen Fu, Hebei, Qingdao and Shanxi) will be 43.32 percent; and (5) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in

[7] Merchandise excluded from the order includes merchandise produced and exported by the above-referenced exporter-producer combinations. Such merchandise should not be suspended.

effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as the final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification 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 notice are in accordance with sections 751(a)(1) and 777i(1) of the Act and 19 CFR 351.213.

Dated: November 2, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–29206 Filed 11–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–503, A–122–503, A–570–502]

Continuation of Antidumping Duty Orders: Certain Iron Construction Castings From Brazil, Canada, and the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Continuation of Antidumping Orders: Certain iron construction castings from Brazil, Canada, and the People's Republic of China.

SUMMARY: On June 7, 1999, the Department of Commerce (''the Department''), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended (''the Act''), determined that revocation of the antidumping duty orders on certain iron construction castings from Brazil, Canada, and the People's Republic of China (''China'') is likely to lead to continuation or recurrence of dumping (64 FR 30310 (June 7, 1999)). On October 29, 1999, the International Trade Commission (''the Commission''), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty orders on certain iron construction castings from Brazil, Canada, and China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 58442 (October 29, 1999)). Therefore, pursuant to 19 CFR 351.218(e)(4), the Department is publishing notice of the continuation of the antidumping duty orders on certain iron construction castings from Brazil, Canada, and China.

EFFECTIVE DATE: November 12, 1999.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, D.C. 20230; telephone: (202) 482–5050 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 2, 1998, the Department initiated, and the Commission instituted, sunset reviews (63 FR 58709 and 63 FR 58758, respectively) of the antidumping duty orders on certain iron construction castings from Brazil, Canada, and China pursuant to section 751(c) of the Act. As a result of these reviews, the Department found that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the orders to be revoked (*see Final Results of Expedited Sunset Reviews: Certain Iron Construction Castings from Brazil, Canada and The People's Republic of China,* 64 FR 30310 (June 7, 1999)).

On October 29, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on certain iron construction castings from Brazil, Canada, and China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Iron Metal Castings From India; Heavy Iron Construction Castings From Brazil; and Iron Construction Castings From Brazil, Canada, and China,* 64 FR 58442 (October 29, 1999), and USITC Pub. 3247, Investigations Nos. 303–TA–13 (Review); 701–TA–249 (Review); and 731–TA–262, 263, and 265 (Review) (October 1999)).

Scope

Brazil—Merchandise covered by the order on Brazil consists of certain iron construction castings. Heavy castings are limited to manhole covers, rings, and frames, catch basins, grates and frames, clean-out covers and frames used for drainage or access purposes for public utility, water and sanitary systems. Light castings are limited to valve, service, and meter boxes which are placed below ground to encase water, gas, or other valves, or water or gas meters. These articles must be of cast iron, not alloyed, and not malleable. ''Heavy'' castings are classifiable under Harmonized Tariff Schedule (''HTS'') item number 7325.10.0010, and ''light'' castings are classified under HTS item number 7325.10.0050. On April 28, 1995, the Department determined, in response to a request from Southland Marketing, Inc., that the Polycast 700 Series frame, part number DG0700, and grate, part number DG0641, are not within the scope of the antidumping duty order on iron construction castings from Brazil (*see Notice of Scope Rulings,* 60 FR 36782, (July 18, 1995)).

Canada—Merchandise covered by the order on Canada consists of certain iron construction castings. Heavy castings are limited to manhole covers, rings, and frames, catch basins, grates and frames, clean-out covers and frames used for drainage or access purposes for public utility, water and sanitary systems. ''Heavy'' castings are classifiable under Harmonized Tariff Schedule (''HTS'') item number 7325.10.0010. These articles must be of cast iron, not alloyed, and not malleable. On September 23, 1998, the Department issued the final results of a changed circumstance review, in which the Department revoked the order with respect to ''light'' castings. [1]

PRC—Merchandise covered by the order on the PRC consists of certain iron construction castings. Heavy castings are limited to manhole covers, rings, and frames, catch basins, grates and frames, clean-out covers and frames used for drainage or access purposes for public utility, water and sanitary systems. Light castings are limited to valve, service, and meter boxes which are placed below ground to encase water, gas, or other valves, or water or

[1] *See Iron Construction Castings From Canada: Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order: Correction,* 63 FR 50881 (September 23, 1998).

gas meters. These articles must be of cast iron, not alloyed, and not malleable. ''Heavy'' castings are classifiable under Harmonized Tariff Schedule (''HTS'') item number 7325.10.0010, and ''light'' castings are classified under HTS item number 7325.10.0050. In response to a request from Jack's International Trading Associates, Ltd., on August 28, 1995, the Department determined that certain cast iron floor area drains are outside the scope of the order (*see Notice of Scope Rulings,* 60 FR 54213 (October 20, 1995). Further, in response to a request from The Metraflex Company, on August 13, 1997, the Department determined that ''Y'' pipe strainers are outside the scope of the of the order (*see* Notice of Scope Rulings, 62 FR 62288 (November 21, 1997)).

The HTS item numbers are provided for convenience and customs purposes. The written product description remains dispositive.

These reviews cover all manufacturers and exporters of certain iron construction castings from Brazil, Canada and China.

Determination

As a result of the determinations by the Department and the Commission that revocation of these antidumping duty orders would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on certain iron construction castings from Brazil, Canada, and China. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rate in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of these orders not later than October 2004.

Dated: November 5, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–29607 Filed 11–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–504]

Continuation of Countervailing Duty Order: Heavy Iron Construction Castings From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Continuation of Countervailing Duty Order: Heavy Iron Construction Castings from Brazil.

SUMMARY: On June 7, 1999, the Department of Commerce (''the Department''), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended (''the Act''), determined that revocation of the countervailing duty order on heavy iron construction castings from Brazil would be likely to lead to continuation or recurrence of a countervailable subsidy (64 FR 30313 (June 7, 1999)). On October 29, 1999, the International Trade Commission (''the Commission''), pursuant to section 751(c) of the Act, determined that revocation of the countervailing duty order on heavy iron construction castings from Brazil would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 58442 (October 29, 1999)). Therefore, pursuant to 19 CFR 351.218(e)(4), the Department is publishing notice of the continuation of the countervailing duty order on heavy iron construction castings from Brazil.

EFFECTIVE DATE: November 12, 1999.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: November 12, 1999.

SUPPLEMENTARY INFORMATION:

Background

On November 2, 1998, the Department initiated, and the Commission instituted, a sunset review (63 FR 58709 and 63 FR 58758, respectively) of the countervailing duty order on heavy iron construction castings from Brazil pursuant to section 751(c) of the Act. As a result of this review, the Department found that revocation of the countervailing duty order would likely lead to continuation or recurrence of a countervailable subsidy and notified the Commission of the net countervailable subsidy likely to prevail were the order revoked (*see Final Results of Expedited Sunset Review: Heavy Iron Construction Castings From Brazil,* 64 FR 30313 (June 7, 1999)).

On October 29, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the countervailing duty order on heavy iron construction castings from Brazil would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Iron Metal Castings From India; Heavy Iron Construction Castings From Brazil; and Iron Construction Castings From Brazil, Canada, and China,* 64 FR 58442 (October 29, 1999), and USITC Pub. 3247, Inv. Nos. 303–TA–13; 701–TA–249; and 731–TA–262, 263, and 265 (October 1999)).

Scope

The merchandise subject to this countervailing duty order is certain heavy iron construction castings from Brazil. This merchandise is defined as manhole covers, rings and frames; catch basin grates and frames; and cleanout covers and frames. The DGO700 frame and the DG0641 grate from Southland Marketing are outside the scope of the order. This merchandise is currently classifiable under item number 7325.10.00 of the Harmonized Tariff Schedule (''HTS'') of the United States. The HTS item number is provided for convenience and customs purposes only. The written description remains dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of this countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the countervailing duty order on heavy iron construction castings from Brazil. The Department will instruct the U.S. Customs Service to continue to collect countervailing duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of this countervailing duty order will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to sections 751(c)(2) and 751(c)(6) the Department intends to initiate the next five-year review of this order not later than October 2004.

Dated: November 5, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–29605 Filed 11–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–063]

Certain Iron-Metal Castings From India: Preliminary Results and Partial Recission of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce is conducting an administrative review of the countervailing duty order on certain iron-metal castings from India. The period covered by this administrative review is January 1, 1997 through December 31, 1997. For information on the net countervailable subsidy rate for each reviewed company, as well as for all non-reviewed companies, please see the *Preliminary Results of Review* section of this notice. If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Preliminary Results of Review* section of this notice. Interested parties are invited to comment on these preliminary results. (*See Public Comment* section of this notice.)

EFFECTIVE DATE: November 12, 1999.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson or Michael Grossman, Office of CVD/AD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On October 16, 1980, the Department of Commerce (the Department) published in the **Federal Register** (45 FR 50739) the countervailing duty order on certain iron-metal castings from India. On October 14, 1998, the Department notified all interested parties of the opportunity to request an administrative review of this order. We received timely requests for review, and we initiated a review covering the period January 1, 1997 through December 31, 1997, on November 30, 1998 (63 FR 65748).

In accordance with 19 CFR 351.213(b), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. The producers/exporters of the subject merchandise for which the review was requested are:

AGV Exports,
Agarwal Hardware,
Ambika Exports,
Bengal Export Corporation,
Bengal Iron Corporation,
Bhagyadevi Factory,
Calcutta Ferrous Ltd.,
Carnation Enterprise Pvt. Ltd.,
Carnation Industries,[1]
Commex Corporation,
Crescent Foundry Co. Pvt. Ltd.,
Delta Enterprises,
Delta Corporation Ltd.,
Dinesh Brothers Pvt. Ltd.,
Dugar International,
Edcons Castings,
Essen International,
Ganapati Suppliers,
Global Intertrade,
Hargolal & Sons,
Hindustahn Malleables & Forgings Ltd.,
J.K. Udyog,
Kajaria Iron Castings Ltd.,[2]
Kajaria Iron Castings Pvt. Ltd.,
Kauntia Exports,
Kejriwal Iron & Steel Works,
Kiswok Industries Pvt. Ltd.,[3]
Metflow Corporation Pvt. Ltd.,
Nandikeshwari Iron Foundry Pvt. Ltd.,
Orissa Metal Industries,
Overseas Iron Foundry Pvt. Ltd.,
Rangilal & Sons,
RBA Exports,
R.B. Agarwalla & Company,
R.B. Agarwalla & Company Pvt. Ltd.,
RR Enterprise,
RSI Limited,
RS Ispat Pvt. Ltd.,
Samitex Corporation,
Sammitex,
Serampore Industries Pvt. Ltd.,
Shakti Isabgel Industries,
Shree Hanuman Foundry & Engineering Co. Ltd.,
Shree Rama Enterprises,
Shree Uma Foundries Pvt. Ltd.,
Siko Exports,
Sitaram Maohogarhia & Sons Pvt. Ltd.,
Sociedad J.B. Nagar,
SSL Exports,
Super Iron Foundry,
Tara Engineering Works,
Thames Engineering,
Tirupati International Pvt. Ltd.,
Trident Industries,
Trident International,
Uma Iron & Steel, and
Victory Castings Ltd.

The following companies, for which a review was requested, certified that they either do not produce or did not export the subject merchandise to the United States during the period of review (POR): AGV Exports, Agarwal Hardware Works & Foundries Pvt. Ltd., Ambika Exports, Bengal Iron Corporation, Bhagyadevi Factory, Delta Enterprises, Edcons Castings Pvt. Ltd., Essen International, Hargolal & Sons, Hindustahn Malleables & Forgings Ltd., J.K. Udyog, Kauntia Exports, Metflow Corporation Pvt. Ltd., Orissa Metal Industries, Overseas Iron Foundry Pvt. Ltd., RBA Exports, R.B. Agarwalla & Company Pvt. Ltd., RR Enterprise, RS Ispat Pvt. Ltd., Samitex Corporation, Sammitex, Shree Hanuman Foundry & Engineering Co. Ltd., Shree Rama Enterprises, Shree Uma Foundries Pvt. Ltd., Siko Exports, Sitaram Madhogarhia & Sons Pvt. Ltd., Tara Engineering Works, Tirupati International Pvt. Ltd., and Tirupati Trading Company. In addition, the Government of India (GOI) certified that the following companies either do not exist or do not export the subject merchandise to the United States: Dugar International, Global Intertrade, Shakti Isabgel Industries, Sociedad J.B. Nagar, and Trident Industries. Therefore, in accordance with section 351.213(d)(3) of the Department's regulations, we are rescinding the review with respect to these companies.

On December 1, 1998, the Department issued a questionnaire to the GOI and the producers/exporters of the subject merchandise. The Department received questionnaire responses from the GOI and the producers/exporters of the subject merchandise on February 1, 4, and 8, 1999. The Department issued a supplemental questionnaire on April 26, 1999. On April 28, 1999, the Department extended the preliminary results of this administrative review until no later than November 2, 1999 (*see* 64 FR 23822, May 4, 1999). The Department then on June 2, 1999, corrected the deadline for issuance of this notice of preliminary results to November 1, 1999. *See Memorandum to the File: Correction of Deadline for Notice of Results of Preliminary Results,* dated June 2, 1999 (public document on file in the Central Records Unit (Room B–099 of the Main Commerce Building) (CRU). The Department received the respondents' supplemental questionnaire responses on June 4, 14, 22, 28, and July 9, 1999. Additional

[1] Carnation Industries was formerly Carnation Enterprise Pvt. Ltd.

[2] Kajaria Iron Castings Ltd. was formerly Kajaria Iron Castings Pvt. Ltd.

[3] Kiswok Industries Pvt. Ltd. was formerly Kejriwal Iron & Steel Works.

supplemental questionnaires were issued to the respondents on July 30, 1999, and August 4, 1999, and their responses were received on August 11, 12, and 20, 1999.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department is conducting this administrative review in accordance with section 751(a) of the Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR Part 351 (1998).

Scope of the Review

Imports covered by this administrative review are shipments of Indian manhole covers and frames, clean-out covers and frames, and catch basin grates and frames. These articles are commonly called municipal or public works castings and are used for access or drainage for public utility, water, and sanitary systems. During the review period, such merchandise was classifiable under the *Harmonized Tariff Schedule of the United States* (HTSUS) item numbers 7325.10.0010 and 7325.10.0050. The HTSUS 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 submitted by the GOI, regional government of West Bengal, and certain producers/exporters of the subject merchandise over the dates of August 19, 1999 through August 27, 1999. We followed standard verification procedures, including meeting with government and company officials and conducting an examination of all relevant accounting and financial records and other original source documents. Our verification results are outlined in public versions of the verification reports, which are on file in the Central Records Unit (Room B–099 of the Main Commerce Building).

Use of Facts Available

The following companies, for which a review was requested, failed to respond to the Department's questionnaires: Delta Corporation Ltd., SSL Exports, Thames Engineering, and Trident International. Section 776(a)(2) of the Act requires the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. In such cases, the Department must use the facts otherwise available in reaching the applicable determination. Because these companies failed to submit the information that was specifically requested by the Department, we have based our preliminary results for these companies on the facts available. In addition, the Department finds that by not providing the requested information, the respondents have failed to cooperate to the best of their abilities.

In accordance with section 776(b) of the Act, the Department may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available when the party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such adverse inference may include reliance on information derived from (1) the petition; (2) a final determination in a countervailing duty or an antidumping investigation; (3) any previous administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review; or (4) any other information placed on the record. *See* Section 351.308(c) of the Department's regulations. In the absence of information from the respondents, we consider information placed on the record by other respondent producers/exporters to be the appropriate basis for a facts available countervailing duty rate calculation.

Therefore, to calculate the *ad valorem* subsidy rate for these non-respondent companies, we summed the highest company-specific net countervailable subsidy rate for each program under review. *See Preliminary Results of Review* section of the notice below for the preliminary *ad valorem* rate calculated for these companies.

Analysis of Programs

I. Programs Found To Confer Countervailable Subsidies

A. Pre-Shipment Export Financing

The Reserve Bank of India (RBI), through commercial banks, provides short-term pre-shipment financing, or ''packing credits,'' to exporters. Upon presentation of a confirmed export order or letter of credit, companies may receive pre-shipment loans for working capital purposes, *i.e.*, for the purchase of raw materials and for packing, warehousing, and transporting of export merchandise. Exporters may also establish pre-shipment credit lines upon which they may draw as needed. Credit line limits are established by commercial banks, based upon a company's creditworthiness and past export performance. Companies that have pre-shipment credit lines typically pay interest on a quarterly basis on the outstanding balance of the account at the end of each period. In general, packing credits are granted for a period of up to 180 days.

Commercial banks extending export credit to Indian companies must, by law, charge interest on this credit at rates determined by the RBI. The rate of interest charged on pre-shipment export loans up to 180 days was 13.0 percent for the period January 1, 1997 through October 21, 1997, and 12.0 percent for the period October 22, 1997 through December 31, 1997. For pre-shipment loans not repaid within 180 days, the banks charged interest at the following rates for the number of days the loans were overdue: 15.0 percent for the period January 1, 1997 through October 21, 1997, and 14.0 percent for the period October 22, 1997 through December 31, 1997. An exporter would lose the concessional interest rate if the export loan was not repaid within 270 days. If that occurred, the banks were able to assess interest at a non-concessional interest rate above the ceiling rate of interest set by the RBI.

In prior administrative reviews of this order, the Department has found this program to be an export subsidy because receipt of pre-shipment export financing is contingent upon export performance, and the interest rates are below those which would be obtained for comparable commercial financing. *See, e.g., Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings From India,* 63 FR 64050 (November 18, 1998) *(1996 Indian Castings Final Results).* No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding. Therefore, in accordance with sections 771(5)(D) and (E) of the Act, we continue to find this program countervailable because it results in a financial contribution by the government in the form of a loan and provides a benefit to the recipient in the amount of the interest savings. Moreover, because receipt of the financing is contingent upon export performance, we continue to find the program to be an export subsidy under section 771(5A)(B) of the Act.

To determine the benefit conferred under this program, we compared the interest rates charged under the pre-shipment financing program to a

benchmark interest rate. As our benchmark, we used the cash credit rate. In the 1994 administrative review of this order, the Department determined that, in the absence of a company-specific benchmark, the most comparable short-term benchmark to measure the benefit under the pre-shipment export financing scheme is the cash credit interest rate. *See Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings From India,* 62 FR 32297, 32304 (June 13, 1997) *(1994 Indian Castings Final Results).* The cash credit interest rate is for domestic working capital finance, and thus comparable to pre-and post-shipment export finance. For the POR, we calculated a cash credit rate of 16.31 percent based on the short-term interest rate and spread information reported by the GOI in its February 1, 1999 questionnaire response.

We compared the cash credit benchmark rate to the interest rates charged on pre-shipment rupee loans and found that for loans granted under this program, the interest rates charged were lower than the benchmark rate. Therefore, in accordance with section 771(5)(E)(ii) of the Act, this program conferred countervailable benefits during the POR because the interest rates charged on the export loans were less than what a company otherwise would have paid on comparable short-term commercial loans.

To calculate the benefit from the pre-shipment loans, we compared the actual interest paid on the loans with the amount of interest that would have been paid at the benchmark interest rate. Where the benchmark rate exceeded the program rates, the difference between those amounts is the benefit.

If the pre-shipment financing loans were received solely to finance exports of subject merchandise to the United States, we divided the benefit derived from those loans by exports of subject merchandise to the United States. For all other pre-shipment financing loans, we divided the benefit by total exports to all destinations. On this basis, we preliminarily determine the net countervailable subsidies from this program to be as follows:

Producers/exporters which used the program during the POR	Ad valorem rates (percentages)
Calcutta Ferrous Ltd	0.04
Commex Corporation	0.03
Dinesh Brothers (Pvt.) Ltd	0.44
Ganapati Suppliers Pvt. Ltd	0.24
Kajaria Iron Castings Ltd	0.22
Nandikeshwari Iron Foundry Pvt. Ltd	0.38
R.B. Agarwalla & Company	0.17
RSI Limited	0.38
Serampore Industries Pvt. Ltd	0.19
Uma Iron & Steel Company	0.03
Victory Castings Ltd	0.40

B. Post-Shipment Export Financing

Post-shipment export financing consists of loans in the form of trade bill discounting or advances by commercial banks. The credit covers the period from the date of shipment of the goods, to the date of realization of export proceeds from the overseas customer. Post-shipment finance, therefore, is a working capital finance or sales finance against receivables. The interest amount owed is deducted from the total amount of the bill at the time of discounting by the bank. The exporter's account is then credited for the rupee equivalent of the net amount.

In general, post-shipment loans are granted for a period of up to 90 days. The following interest rates were charged on post-shipment loans up to 90 days: 13.0 percent for the period January 1, 1997 through June 23, 1997, 12.0 percent for the period June 24, 1997 through October 21, 1997, and 11.0 percent for the period October 22, 1997 through December 31, 1997.

For loans not repaid within the negotiated number of days (90 days maximum), banks assessed the following rates of interest for the number of days the loans were overdue, up to six months from the date of shipment: 15.0 percent for the period January 1, 1997 through June 23, 1997, 14.0 percent for the period June 24, 1997 through October 21, 1997, and 13.0 percent for the period October 22, 1997 through December 31, 1997. If a post-shipment loan was not repaid within six months of the date of shipment, an exporter would lose the concessional interest rate on the financing, and interest would be charged at a commercial rate determined by the banks.

In prior administrative reviews, the Department has found this program to be an export subsidy because receipt of the post-shipment financing is contingent upon export performance, and the interest rates are below those which would be obtained for comparable commercial financing. *See, e.g., 1996 Indian Castings Final Results* at 63 FR 64051. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding. Therefore, in accordance with sections 771(5)(D) and (E) of the Act, we continue to find this program countervailable because it results in a financial contribution by the government in the form of a loan and provides a benefit to the recipient in the amount of the interest savings. Moreover, because receipt of the financing is contingent upon export performance, we continue to find the program to be an export subsidy under section 771(5A)(B) of the Act.

To determine the benefit conferred under this program, we compared the interest rates charged under the post-shipment financing program to a benchmark interest rate. To measure the benefit each company received under the post-shipment financing scheme, we used as our benchmark interest rate the cash credit rate for 1997, as discussed above in the pre-shipment export financing section. Because the loans under this program are discounted, and the effective interest rates paid by the exporters on the loans are discounted rates, we derived a discounted benchmark rate from the cash credit rate of 14.02 percent to measure the benefits conferred by this program.

We compared the discounted cash credit benchmark rate to the interest rates charged on post-shipment loans. We found that for loans granted under this program, the interest rates charged were lower than the benchmark rate. Therefore, in accordance with section 771(5)(E)(ii) of the Act, this program conferred countervailable benefits during the POR where the interest rates charged on the loans were less than what a company otherwise would have paid on comparable short-term commercial loans.

To calculate the benefit from these loans, we followed the same short-term loan methodology discussed above for pre-shipment financing. We divided the benefit by either total exports to all markets, total exports to the United States, or exports of the subject merchandise to the United States, depending on whether the company was able to segregate its post-shipment financing by merchandise and destination. On this basis, we preliminarily determine the net countervailable subsidies from this program to be as follows:

Producers/exporters which used the program during the POR	Ad valorem rates (percentages)
Bengal Export Corporation	0.23
Calcutta Ferrous Ltd	0.25

Producers/exporters which used the program during the POR	Ad valorem rates (percentages)
Calcutta Iron Foundry	0.37
Carnation Industries Ltd	0.25
Commex Corporation	0.19
Crescent Foundry Co. Pvt. Ltd	0.11
Dinesh Brothers (Pvt.) Ltd	0.31
Ganapati Suppliers Pvt. Ltd	0.40
Kajaria Iron Castings Ltd	0.35
Nandikeshwari Iron Foundry Pvt. Ltd	0.20
R.B. Agarwalla & Company	0.22
RSI Limited	0.29
Serampore Industries Pvt. Ltd	0.24
Uma Iron & Steel Company	0.20
Victory Castings Ltd.0.23%	0.30

C. Exemption of Export Credit From Interest Taxes

Indian commercial banks are required to pay a tax on all interest accrued from borrowers. The banks pass along this interest tax to borrowers in its entirety. As of April 1, 1993, the GOI exempted from the interest tax all interest accruing to a commercial bank on export-related loans. In the 1993 administrative review, we determined that this tax exemption is an export subsidy, and thus countervailable, because only interest accruing on loans and advances made to exporters in the form of export credit is exempt from the interest tax. *See Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings From India*, 61 FR 64676, 64686 (December 6, 1996) *(1993 Indian Castings Final Results).* No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding. Therefore, in accordance with sections 771(5)(D) and (E) of the Act, we continue to find this program countervailable because it results in a financial contribution by the government in the form of revenue forgone and provides a benefit to the recipient in the amount of the interest tax savings. Moreover, because receipt of the interest tax exemption is contingent upon export performance, we continue to find the program to be an export subsidy under section 771(5A)(B) of the Act.

During the POR, fifteen of the respondent companies made interest payments on export-related loans, through either or both, the pre- and post-shipment financing schemes, and thus, were exempt from paying the interest tax under this program. To calculate the benefit for each company, we first determined the total amount of interest paid by each exporter during the POR by adding the interest payments made on all pre- and post-shipment export loans. We then multiplied this amount by the tax rate which the interest amount would have been subject to, if not for the exemption during the POR. During the POR, exporters were exempt from paying a three (3.0) percent interest tax for the period January 1, 1997 through March 31, 1997, and a two (2.0) percent interest tax for the period April 1, 1997 through December 31, 1997.

Next, we divided the benefit by the f.o.b. value of each company's total exports to all markets, total exports to the United States, or exports of subject merchandise to the United States, depending on whether the export financing was tied to total exports or only exports of subject castings to the United States. On this basis, we preliminarily determine the net countervailable subsidies from this program to be as follows:

Producers/exporters which used the program during the POR	Ad valorem rates (percentages)
Bengal Export Corporation	0.05
Calcutta Ferrous Ltd	0.06
Calcutta Iron Foundry	0.05
Carnation Industries Ltd	0.14
Commex Corporation	0.04
Crescent Foundry Co. Pvt. Ltd	0.02
Dinesh Brothers (Pvt.) Ltd	0.11
Ganapati Suppliers Pvt. Ltd	0.13
Kajaria Iron Castings Ltd	0.16
Nandikeshwari Iron Foundry Pvt. Ltd	0.09
R.B. Agarwalla & Company	0.07
RSI Limited	0.13
Serampore Industries Pvt. Ltd	0.07
Uma Iron & Steel Company	0.06
Victory Castings Ltd	0.12

D. Income Tax Deductions Under Section 80HHC

Under section 80HHC of the Income Tax Act, the GOI allows exporters to deduct profits derived from the export of merchandise from taxable income. In prior administrative reviews of this order, the Department has found this program to be an export subsidy, and thus countervailable, because receipt of the benefit is contingent upon export performance. *See, e.g., 1994 and 1996 Indian Castings Final Results* at 62 FR 32298 and 63 FR 64051, respectively. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding. Therefore, in accordance with sections 771(5)(D) and (E) of the Act, we continue to find this program countervailable because it results in a financial contribution by the government in the form of tax revenue not collected which also constitutes the benefit. Moreover, because receipt of the tax deduction is contingent upon export performance, we continue to find the program to be an export subsidy under section 771(5A)(B) of the Act.

In its questionnaire responses, Kiswok Industries (P) Ltd (Kiswok Industries) stated that its profit rate on export sales of subject castings is lower than the profit rate the company realizes on the export sales of other castings. The company submitted audited derivations of its profit rate for exports of subject castings in 1997, and its profit rate for exports of other castings for the same year. The company then calculated that portion of the 80HHC tax deduction which was applicable to export profit earned on subject castings.

In prior reviews of this order, the Department has found the section 80HHC tax deduction program to be an ''untied'' export subsidy program. The benefits provided under this program are not tied to the production or sale of a particular product or products. It is the Department's consistent and long-standing practice to attribute a benefit from an export subsidy that is not tied to a particular product or market to all products exported by the company. *See, e.g., Final Affirmative Countervailing Duty Determination: Certain Pasta from Turkey*, 61 FR 30366, 30370, (June 14, 1996). Therefore, to calculate the benefit Kiswok Industries received under the section 80HHC program, we have not made any adjustments to our standard allocation methodology.

To calculate the benefit each company received under section 80HHC, we subtracted the total amount of income tax the company actually paid during the review period from the amount of tax the company otherwise would have paid had it not claimed a deduction under section 80HHC. We then divided this difference by the f.o.b. value of the company's total exports.

For those companies which used section 80HHC during the POR, we preliminarily determine the net countervailable subsidies from this program to be as follows:

Producers/exporters which used the program during the POR	Ad valorem rates (percentages)
Bengal Export Corporation	8.07
Calcutta Ferrous Ltd	1.66
Carnation Industries Ltd	0.33
Commex Corporation	2.45
Crescent Foundry Co. Pvt. Ltd	0.71
Dinesh Brothers (Pvt.) Ltd	0.74
Ganapati Suppliers Pvt. Ltd	4.40
Kajaria Iron Castings Ltd	0.70
Kiswok Industries Pvt. Ltd	14.90

Producers/exporters which used the program during the POR	Ad valorem rates (percentages)
Nandikeshwari Iron Foundry Pvt. Ltd	1.77
R.B. Agarwalla & Company	3.10
RSI Limited	0.10
Serampore Industries Pvt. Ltd	0.54
Super Iron Foundry	1.08
Uma Iron & Steel Company	1.81

E. Import Mechanism (Sale of Licenses)

The GOI allows companies to transfer certain types of import licenses to other companies in India. In prior administrative reviews of this order, the Department has found the sale of these licenses to be an export subsidy, and thus countervailable, because companies receive these licenses based on their status as exporters. *See, e.g., 1996 Indian Castings Final Results* at 64051. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding. Therefore, in accordance with sections 771(5)(D) and (E) of the Act, we continue to find this program countervailable because it results in a financial contribution by the government and provides a benefit in the amount of revenue received on the sale of the license. Moreover, because receipt of the license is contingent upon export performance, we continue to find the program to be an export subsidy under section 771(5A)(B) of the Act.

During the POR, two of the respondent companies sold Special Import Licenses. Special Import Licenses are issued to exporters classified as export houses, trading houses, and star trading houses by the Ministry of Commerce. Special Import Licenses are effective for a period of 12 months and are issued at a certain percentage of f.o.b. value of exports. Because the sale of the Special Import Licenses were not tied to specific shipments, we calculated the net subsidy rates by dividing the total amount of proceeds each company received from the sale of the licenses by the total f.o.b. value of its exports of all products to all markets. We preliminarily determine the net countervailable subsidies from the sale of the Special Import Licenses to be as follows:

Producers/exporters which used the program during the POR	Ad valorem rates (percentages)
Kajara Iron Castings Ltd	0.16
Serampore Industries Pvt. Ltd	0.47

F. Passbook Scheme

On April 1, 1996, the GOI introduced the Passbook Scheme which provided exporters with credits that could be used to pay the countervailing and custom duties levied on imported products. The Passbook Scheme was available to certain categories of exporters, *i.e.*, those manufacturer and merchant exporters which were granted the status of export house, trading house, star trading house, or super star trading house. Upon the export of finished goods, which were produced with indigenous raw materials, and not imported materials, the exporter was eligible to claim credits which could be used to pay customs duties on subsequent imports. The passbook scheme was only applicable for those exported products for which standard input/output norms had been fixed. The standard input/output norms set out quantities of imported raw materials needed to produce one unit of finished output. The credit in the passbook scheme was calculated on the basis of input/output norms for the deemed input content of the exported product. The Indian Customs Authority (ICA) determined the basic customs duty payable against the input as if it had been imported and not sourced from the domestic market. A company's passbook account was then credited for the amount equivalent to the basic customs duty payable on such deemed imports. The company could then utilize the credits in its passbook account to pay the countervailing and customs duty levied on imported goods. Any good which was not included in the Negative List of Imports could be imported under the Passbook Scheme. Payment of the duties was made through a debit entry in the company's passbook account by the ICA.

The GOI reported, and we verified, that it was not mandatory for the passbook holder to consume the goods, imported with passbook credits, in the production of exported products. There was no relation between the imported goods and the production of the exporter and no relation between the standard input/output norms of the export product and the goods being imported with passbook credits. The norms were simply used to calculate the credits. A company could not transfer or sell passbook credits received, but the goods imported with passbook credits could be transferred or sold in the domestic market. *See Memorandum to David Mueller: Verification of the Questionnaire Responses Submitted by the Government of India,* (September 9, 1999), at page 3–4, (public document on file in CRU) (*GOI Verification Report*).

The Passbook Scheme was terminated effective April 1, 1997, with the introduction of the Duty Entitlement Passbook Scheme (*see* ''Duty Entitlement Passbook Scheme'' section below) . Exports made on or before March 31, 1997, were eligible for passbook credits. The last day a company could apply for passbook credits was December 31, 1997. A company had until June 30, 1999, to use the passbook credits to pay import duties.

The Illustrative List of Export Subsidies, incorporated as Annex I of the Subsidies Agreement, under item (i) specifies that the remission or drawback of import charges in excess of those levied on imported inputs that are consumed in the production of the exported product constitutes an export subsidy. The SAA states that, though the Illustrative List has no direct application to the CVD portion of the Subsidies Agreement, the Department will adhere to the List, except where it is inconsistent with the principles set forth in the Act. *See* SAA at 928. Therefore, to determine whether inputs are consumed in the production process, the Department establishes whether the government of the exporting country has in place a system to confirm which inputs are consumed in the production process of the exported product. With respect to the Passbook Scheme, no such system existed. The credits granted to passbook holders were calculated on the basis of standard input/output norms independently of whether the inputs were imported, whether duty was paid on them, or whether the inputs were actually used for export production. Moreover, the passbook holder was under no obligation to either import the inputs used to produce the exported product against which the credits were received or consume the imported goods in the production of exported goods. Under the Passbook Scheme, upon the export of a finished product, a exporter was simply granted an amount of credit based on the amount of customs duty which would have been paid on the input materials had they been imported.

Based on these facts, in accordance with sections 771 (5)(D), (E), and (5A)(B) of the Act, we preliminarily determine that the Passbook Scheme is a countervailable export subsidy. Within the meaning of section 771(5)(D) of the Act, a financial contribution was provided by the government in the form of customs duty revenue forgone. The amount of customs duty which should have been paid by the company to

import the goods constitutes the benefit under section 771(5)(E) of the Act. Because receipt of the passbook credits was contingent upon export performance, we preliminarily find the program to be an export subsidy under section 771(5A)(B) of the Act. During the POR, Calcutta Ferrous Ltd., Kajaria Iron Castings Ltd. (Kajaria Iron Castings), and Nandikeshwari Iron Foundry Pvt. Ltd. used passbook credits to import goods duty free.

To calculate the benefit conferred by this program, we summed the amount of passbook credits each respondent company used during the POR to pay the customs duty on goods imported. We then divided the benefit by each company's f.o.b. value of total exports for 1997. On this basis, we preliminarily determine the net countervailable subsidies from the Passbook Scheme to be as follows:

Producers/exporters which used the program during the POR	Ad valorem rates (percentages)
Calcutta Ferrous Ltd	7.27
Kajaria Iron Castings Ltd	3.60
Nandikeshwari Iron Foundry Pvt. Ltd	9.82

G. Duty Entitlement Passbook Scheme

The Duty Entitlement Passbook Scheme (DEPB) was introduced on April 1, 1997, to replace the Passbook Scheme. Like the Passbook Scheme, receipt of DEPB credits is contingent upon export performance. The DEPB provides credits to passbook holders either on a pre-export or post-export basis. All merchant and manufacturing export units are eligible for DEPB credits. A company which exported during a three-year period prior to submitting an DEPB application is eligible for pre-export credits. DEPB on a pre-export basis assists an exporter in obtaining import materials required for the production of an exported good. DEPB on a post-export basis is virtually identical to the Passbook Scheme. Post-export credits, which are granted against exports already made, are allowed at a percentage of f.o.b. value of exports which is announced by the Ministry of Commerce. The DEPB percentage rates are determined on the basis of the standard input/output norms table, which sets forth the average amount of inputs required for the manufacture of one unit of finished product. The percentage of f.o.b. value at which castings exporters can claim DEPB credits is 6.0 percent. During the POR, those castings exporters which used the program received DEPB credits on a post-export basis. To calculate a castings exporter's DEPB credits on a post-export basis, the GOI simply multiplies the company's total f.o.b. value of exports by 6.0 percent. The company's passbook account is then credited in an amount equivalent to 6.0 percent of its total f.o.b. value of exports. DEPB credits, received on a post-export basis, are valid for a period of 12 months and can be used to pay the import duties on any good (*i.e.*, raw material or capital good), except those included on the Negative List of Imports. The goods imported with DEPB credits can either be incorporated in the production of a domestic or export good, or directly sold on the domestic market. Similarly, DEPB credits earned on a post-export basis can be sold in the form of a license on the domestic market. During the POR, no respondent used DEPB credits to import goods, but three castings exporters sold DEPB licenses.

Like the Passbook Scheme, we preliminarily find that DEPB on a post-export basis is not a permitted drawback or substitution drawback scheme. The GOI does not have in place a system or procedure to confirm whether the imported inputs are consumed in the production of an exported product. When a company exports goods, it is granted DEPB credits which can be used without restriction. With DEPB credits earned on a post-export basis, a company has the option of using the credits to: (1) import goods for domestic or export production, (2) import goods for domestic sale, or (3) sell the credits in the form of a license to another company.

Therefore, in accordance with sections 771(5)(D), (E), and (5A)(B) of the Act, we preliminarily determine that DEPB on a post-export basis is a countervailable export subsidy. Within the meaning of section 771 (5)(D) and (E) of the Act, a financial contribution is provided and the amount of revenue received on the sale of the DEPB license constitutes the benefit. Moreover, because receipt of the subsidy is contingent upon export performance, we preliminarily find the program to be an export subsidy under section 771(5A)(B) of the Act. During the POR, Dinesh Brothers (Pvt.) Ltd., Nandikeshwari Iron Foundry Pvt. Ltd., and Victory Castings sold DEPB credits on the domestic market.

To calculate the benefit conferred by this program, we summed the revenue each company received from the sale of the DEPB post-export credits. If the DEPB credits were received on the basis of exports of subject merchandise to the United States, then we divided the benefit by the company's f.o.b. value of export of subject merchandise to the United States for 1997. For DEPB credits received on the basis of all exports, we divided the benefit by the company's f.o.b. value of total exports for 1997. On this basis, we preliminarily determine the net countervailable subsidies from DEPB on a post-export basis to be as follows:

Producers/exporters which used the program during the POR	Ad valorem rates (percentages)
Dinesh Brothers (Pvt.) Ltd	0.11
Nandikeshwari Iron Foundry Pvt. Ltd	1.46
Victory Castings Ltd	1.06

II. Programs Preliminarily Determined Not To Be Countervailable

A. Long-Term Financing From ''All-India Development Banks''

In their ''Additional Subsidy Allegations'' submission of November 6, 1998, petitioners allege that the GOI is providing long-term, low-interest financing to certain Indian producers/exporters through a number of All-India Development Banks. The All-India Development Banks include the following financial institutions: Industrial Development Bank of India (IDBI), Industrial Investment Bank of India (IIBI), Industrial Credit and Investment Corporation of India, Industrial Financial Corporation of India, and Life Insurance Corporation (LIC). In their submission, petitioners allege that these financial institutions, which are either wholly- or majority-owned by the GOI, are ''non-conventional'' and ''non-commercial'' in nature. They contend that financial assistance provided by the All-India Development Banks is export-related and, therefore, specific.

In its questionnaire responses, the GOI reported and we verified that the All-India Development Banks function as the principal financial institutions for promoting and developing industries. These credit agencies assist and promote industrial development, reconstruction and revival, and undertake the rehabilitation of medium- and large-sized industrial units by providing assistance and operating schemes. Financial assistance is provided under a number of schemes, such as: project finance, equipment finance, asset credit, corporate loan, working capital loan, and equipment lease. With respect to the project finance scheme, the program under which two respondent companies received loans, the financial institutions provide long- and medium-term credits to promoters/

entrepreneurs who want to construct new industrial units, expand existing units, and rehabilitate sick units in India. Any company, a domestic producer or exporting unit, in any industrial sector can receive a term loan under the project finance scheme provided that the borrower is creditworthy and the proposed project is financially and commercially viable. Receipt of a loan is not contingent upon exportation.

When deciding whether to grant a loan, the financial institutions examine the following financial indicators of the company: debt-to-equity ratio, debt services coverage ratio, gross profit, operating profit, break-even ratio, internal rate of return, and cost of capital. In addition, the financial institutions request data regarding a borrower's sales information, which does include export data, market opportunities (both domestic and international), and domestic and international competition. This information is collected so the banks can assess the commercial viability of the promoters' project and the borrowers' financial health and thus, ability to repay the loan. *See GOI Verification Report* at 5.

During the POR, Kajaria Iron Castings had outstanding project finance term loans from the IDBI, IIBI, and LIC, and Kiswok Industries had outstanding a project finance term loan from the IDBI. At verification, we meet with IDBI, IIBI, and LIC bank officials to discuss the number and types of companies to which the financial institutions have extended long-term loans under the project finance scheme over the period 1993 through 1997, in particular exporters and the basic metals sector. The officials stated that the banks do not maintain databases which indicate the number of loans and loan amounts granted specifically to exporters; however, their lending patterns to industrial borrowers are presented in their annual reports.

At verification, we reviewed the banks' annual reports which discuss industry-wide term loan assistance provided from fiscal year 1993–1994 through fiscal year 1997–1998. *See GOI Verification Report* at Exhibit 2. We noted that the institutions extended loans to a wide and diverse range of industries, including: food manufacturing, cotton textiles, paper and paper products, rubber products, chemical and pharmaceutical, fertilizers, cement, basic metals which includes iron, steel, and non-ferrous metals, metal products, machinery (other than electrical), electrical machinery/equipment, transport equipment, electricity generation, services including hotels, and others. The officials explained that the institutions lend long-term loans to a wide range of industries because the institutions' exposure to any one industry cannot exceed 15 percent of the total loan amount granted in a fiscal year.

We analyzed whether the financial assistance provided by the All-India Development Banks is export-related. Based on the fact that a company, whether a domestic producer or exporting unit, can receive a long-term loan from the All-India Development Banks and that the financing is not contingent upon export performance, we preliminarily determine that financing provided by the IDBI, IIBI, and LIC is not an export subsidy under section 771(5A)(B) of the Act.

We also analyzed whether the long-term financing provided by the All-India Development Banks is specific in law (*de jure* specificity), or in fact (*de facto* specificity), within the meaning of section 771(5A)(D)(i) and (iii) of the Act. *See also* SAA, H. Doc. No. 316, Vol. 1, 103d Cong. 2d Sess. 932 (1994). First, we examined the respective banking acts for the IDBI, IIBI, and LIC. We noted that the banking act for each financial institution did not, in any way, limit the industries or companies to which the institutions can provide financial assistance or instruct the institutions to provide financial assistance to exporting units. We also examined the specifications for receipt of a term loan under the project finance scheme. We noted that any industrial concern is eligible for assistance. An industrial concern is defined as any concern engaged, or to be engaged in, a number of areas, including, but not limited to:

(i) The manufacture, preservation or processing of goods; (ii) shipping; (iii) mining including development of mines; (iv) the hotel industry; (v) the transport of passengers of goods by road or by water or air; (vi) the generation, storage, or distribution of electricity of any other form or energy; (vii) providing medical, health, or other allied services, etc. *See* The Industrial Development Bank of India Act, 1964, and the Industrial Reconstruction Bank of India Act, 1984, for a complete description of an industrial concern, submitted as Annexure II and Annexure III, respectively, in the GOI's June 22, 1999 response. Based on our analysis, we preliminarily determine that long-term loans provided by the IDBI, IIBI, and LIC are not *de jure* specific under section 771(5A)(D)(i) of the Act.

We then examined data on the distribution of long-term loans under the project finance scheme by the financial institutions to determine whether the provision of the loans meet the criteria for *de facto* specificity under section 771(5A)(D)(iii) of the Act. We found that term loans provided under the project finance scheme were distributed to a large number of companies in a wide variety of industries. The basic metals sector did not receive a disproportionate amount of the loans provided by the financial institutions. We also found that the GOI did not exercise any discretion over the financial institutions with respect to their lending decisions. Based on these facts, we preliminarily determine that long-term loans provided by the IDBI, IIBI, and LIC are not *de facto* specific under section 771(5A)(D)(iii) of the Act. Therefore, based on our analysis, we preliminarily determine that long-term financial assistance provided by the All-India Development Banks is not countervailable.

B. Long-Term Loan From the West Bengal Industrial Finance Corporation

Petitioners allege that the regional government of West Bengal is providing various subsidies to companies located in the region through such development policies as the West Bengal Incentive Scheme (*see* ''West Bengal Incentive Scheme'' section below) and agencies such as the West Bengal Industrial Development Corporation and West Bengal Financial Corporation (WBFC). With respect to this review, petitioners requested the Department to examine the long-term loan which Victory Iron Works received from the WBFC.

In 1996, Victory Iron Works received a long-term loan from the WBFC under the equipment refinance scheme (ERS) for upgrading machinery and for pollution and quality control equipment. At verification, we met with officials of the WBFC to discuss the nature and purpose of the state institution. We learned that the objective of the WBFC, like other state corporations, is to promote the industrial development of the region, in particular by providing financing to companies. They stated that the WBFC provides assistance to all small- and medium-sized manufacturing units in West Bengal in the form of term loans, working capital term loans, and consultancy, guidance, and counseling for preparation of project reports, market surveys, etc. To receive a loan under the ERS, a company must satisfy the following criteria: (1) The company must have been in operation for at least four years prior to the application date.

(2) The company must have earned a profit (declared dividends) in the two fiscal years prior to the application date. (3) The company must not have defaulted with a financial institution during its existence. (4) The financial assistance sought must be used for the purchase of machinery and equipment (*i.e.*, loans under the ERS are provided for specific purchases). (5) The company's promoters must be able to contribute 25 percent of the total project's cost. (6) The project for which financing is sought must be commercially and economically viable. *See Memorandum to David Mueller: Verification of the Questionnaire Responses Submitted by the Regional Government of West Bengal*, (September 9, 1999), at 5–6, (public version is on file in the CRU) (*WB Verification Report*).

At verification, we also discussed the number and types of companies to which the WBFC lends funds under the equipment refinance scheme. The officials provided data regarding the WBFC's lending pattern under the ERS for the years 1996–97, 1997–98, and 1998–99. *See WB Verification Report* at Exhibit 10. We noted that, in granting the term loans, the WBFC did not give preference to any particular industrial sector or extend disportionate financing to companies located in the backward regions of West Bengal. The WBFC provides financing to a wide range of industries, including, but not limited to: chemicals, basic metals, engineering, food processing, metal products, paper & paper products, printing and packaging, rubber, pharmaceuticals, services, and textiles.

We analyzed whether the long-term financing provided by the WBFC is specific in law (*de jure* specificity), or in fact (*de facto* specificity), within the meaning of section 771(5A)(D)(i) and (iii) of the Act. *See also* SAA, H. Doc. No. 316, Vol. 1, 103d Cong. 2d Sess. 932 (1994). We examined a profile of the WBFC, which was submitted as Annexure WB–III of the GOI's June 22, 1999 response. We noted that the WBFC provides financial assistance to new and existing industrial units in the small and medium sectors, which intend to expand, modernize, diversify, and upgrade their activities. We also examined the specifications for receipt of a term loan under the equipment refinance scheme. We noted that any small- or medium-sized concern is eligible for assistance provided the unit meets the criteria outlined above. Based on our analysis, we preliminarily determine that term loans provided by the WBFC are not *de jure* specific under section 771(5A)(D)(i) of the Act.

We then examined data on the distribution of term loans under the equipment refinance scheme to determine whether the provision of the loans meet the criteria for *de facto* specificity under section 771(5A)(D)(iii) of the Act. We found that term loans provided under the scheme were distributed to a large number of companies in a wide variety of industries located across West Bengal. The basic metals sector did not receive a disproportionate amount of the loans provided by the institution. We also found that neither the regional government of West Bengal nor the GOI exercised any discretion over the WBFC with respect to its lending decisions. Based on these facts, we preliminarily determine that term loans provided by the WBFC are not *de facto* specific under section 771(5A)(D)(iii) of the Act. Therefore, we preliminarily determine that term loan assistance provided by the WBFC is not countervailable.

C. Leasing of Land From the Regional Government of West Bengal

Petitioners allege that the regional government of West Bengal through the West Bengal Incentive Scheme of 1993, and the West Bengal Industrial Development Corporation (WBIDC), is providing subsidies to manufacturers and/or exporters of the subject merchandise. In their ''Additional Subsidy Allegations'' submission of November 6, 1998, petitioners noted that Kajaria Iron Castings acquired land from the government of West Bengal for the construction of a pig iron plant and requested the Department to examine the land purchase. In its June 4, 1999 questionnaire response, Kajaria Iron Castings reported that the company has not purchased land under the West Bengal Incentive Scheme of 1993, or from the WBIDC. Rather, the company is leasing industrial land in Durgapur from the Asansol Durgapur Development Authority (ADDA), an agency of the regional government of West Bengal.

According to section 771(5)(E)(iv) of the Act, the adequacy of remuneration with respect to a government's provision of a good or service ''shall be determined in relation to prevailing market conditions for the good or service being provided or the goods being purchased in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of purchase or sale.'' Particular problems can arise in applying this standard when the government is the sole or predominant supplier of the good or service in the country or within the area where the respondent is located. In these situations, there may be no alternative market prices available in the country (*e.g.*, private prices, competitively-bid prices, import prices, or other types of market reference prices). Hence, it becomes necessary to examine other options for determining whether the good has been provided for less than adequate remuneration. This consideration of other options does not indicate a departure from our preference for relying on market conditions in the relevant country, specifically market prices, when determining whether a good or service is being provided at a price which reflects adequate remuneration.

With respect to the leasing of land, some of the possible factors we can consider are whether the government has covered its costs, whether it has earned a reasonable rate of return in setting its rates, and whether it applied market principles in determining its prices. *See Final Affirmative Countervailing Duty Determination: Steel Wire Rod From Germany*, 62 FR 54990, 54994 (October 22, 1997). In the instant case, we attempted to obtain information on the market prices for leasing of industrial land in West Bengal through independent research and a private land broker in India. However, we have found no alternative market reference prices to use in determining whether the government is leasing the land for less than adequate remuneration. As such, we have examined whether the government's price was determined according to the same market factors that a private lessor would use in determining whether to lease land to a company. During the verification of this review, we met with officials of the ADDA to discuss the development authority's leasing of industrial land in West Bengal. *See Memorandum to David Mueller: Verification of the Questionnaire Responses Submitted by the Asansol Durgapur Development Authority*, (September 9, 1999), (public document on file in the CRU).

In December 1995, Kajaria entered into a lease agreement with the ADDA to lease 132 acres of industrial land in Durgapur for the construction of a pig iron plant. The ADDA presently manages 60,000 acres of land. Of the total land acreage only 600 acres are being used for industrial purposes. The majority of the land being leased by the ADDA is residential land. The ADDA is currently leasing industrial land to approximately 120 small-scale companies.

The lease rates for industrial land in West Bengal are established by the ADDA. The ADDA takes into consideration the following factors to determine the price per acre of industrial land: (1) The cost of acquiring the land; (2) the cost of constructing needed infrastructure on the land (*e.g.*, building roads, drainage facilities, electricity transformers); (3) the cost of filling the land; and (4) the authority's cost of capital. Because the topography, location, and types of infrastructure built on various tracks of land differ, the price per acre land, classified as either ''high land'' or ''low land'' by the ADDA, may vary. However, the factors examined by the ADDA to determine the leasing prices paid by all companies across West Bengal are uniform. The ADDA's prices per acre of land are set prices which are non-negotiable. The ADDA's price per acre of land does not vary with respect to the type of industry or company leasing the land. The ADDA advertizes in national and local newspapers the industrial land which is available for lease and the price per acre of high and low land. With this information a prospective lessee can compare the leasing prices of the ADDA to the price of land being sold by private land owners.

The ADDA uses a standard agreement to lease industrial land to all companies in West Bengal. All companies which lease land from the ADDA must pay 50 percent of the total lease amount up-front to execute the lease agreement (the amount was 30 percent in 1995). After the lease agreement is executed a company then makes annual installment payments. The number of payments a company must make is outlined in the lease agreement. All companies must also make a yearly rent payment of 10 rupees per acre of land.

At verification, we found that a large number of companies are currently leasing industrial land from the ADDA. These enterprises represent a wide variety of industries, *e.g.*, auto parts, ceramics, chemicals, electronic switches, engineering parts, fertilizers, glass, paints and polishes, pig iron, and tire retreading. The ADDA does not extend special leasing provisions or show a pricing preference to any particular industry or industries. We also ascertained that Kajaria Iron Castings is paying a standard lease rate which the ADDA charges all companies leasing land in West Bengal. The price per acre of industrial land is set in reference to market factors. Therefore, based on these facts, we preliminarily determine that Kajaria Iron Castings' lease rate is not countervailable.

III. Programs Preliminarily Found Not To Be Used

We examined the following programs and preliminarily find that the producers/exporters of the subject merchandise did not apply for or receive benefits under these programs during the POR:

A. West Bengal Incentive Scheme 1993

Petitioners allege in their ''Additional Subsidy Allegations'' submission of November 6, 1998, that the West Bengal Incentive Scheme 1993 (Scheme 1993), a regional development policy, provides various benefits including a waiver of electricity duty, a state capital investment subsidy, a development subsidy, and sales tax deferments. They claim that both new and expanding industrial projects can receive benefits under the scheme. Petitioners assert that assistance provided under Scheme 1993 is specific insofar as it is provided in inverse proportion to the development level of areas within West Bengal.

The regional government of West Bengal reported that Scheme 1993 was introduced by the WBIDC on April 1, 1993. Though the program was terminated effective March 31, 1999, assistance is still being provided under the scheme. The objective of Scheme 1993 is to assist in the growth of medium- and large-scale industries, the tourism industry, the expansion of existing units, and revival of sick units in the state of West Bengal through the provision of incentives. All industrial projects which receive an industrial license, registration certificate, and term loans from a financial institution are eligible to receive benefits under Scheme 1993. The program offers various incentives and tax concessions to entrepreneurs and industrial units to assist them in the construction of new units or expansion of existing units, and the building of infrastructure in the backward areas of West Bengal. The amount of financial assistance an industrial unit is eligible to receive is determined by its location in West Bengal. The regional government reported that West Bengal is divided into four groups: Group A (*i.e.*, Calcutta) is classified as developed while Groups B through D are categorized as less developed, with Group D deemed the most backward. Industrial units located in the more backward areas receive greater monetary assistance than those units located in the more developed areas. For example, financial assistance provided in the form of a state capital investment subsidy is as follows: Eligible units in Group B are entitled to receive a subsidy at the rate of 15 percent of the fixed capital investment made in the approved project or Rs. 15 lakh, whichever is less. Eligible units in Group C are entitled to receive a subsidy at the rate of 20 percent of the fixed capital investment made in the approved project or Rs. 20 lakh, whichever is less. Eligible units in Group D are entitled to receive a subsidy at the rate of 20 percent of the fixed capital investment made in the approved project or Rs. 30 lakh, whichever is less.

In its responses, the regional government reported that both Carnation Industries Ltd. (Carnation Industries) and Kajaria Iron Castings received state capital investment subsidies under Scheme 1993 (*see* ''State Capital Investment Subsidy,'' section below). Kajaria Iron Castings also received a bridge loan (*see* ''Program Preliminarily Found To Be De Minimis—Bridge Loan'' section below).

1. *State Capital Investment Subsidy*

The regional government reported that state capital investment subsidies are provided by the WBIDC to industrial units as an incentive for the construction of new industries in the backward areas of West Bengal, where infrastructure is poor and industrialization is weak. The amount of cash payment a company is entitled to receive is based on the total capital investment cost and location of the project (*see*, ''West Bengal Incentive Scheme 1993'' section above). Of the total sanctioned grant amount, 85 percent may be disbursed in two or three installments, as funds are available, before the start of commercial production. The balance of the grant amount is disbursed after the commencement of production.

In their questionnaire responses, Carnation Industries and Kajaria Iron Castings reported that they applied for and received state capital investment subsidies from the WBIDC. In November 1996, Carnation Industries was approved for a grant in connection with the construction of a new ductile iron plant in Uluberia, which is located in Group B. The company took receipt of the first disbursement of the subsidy in November 1997. The second disbursement of the subsidy occurred in 1998. The company reported that the following criteria had to be satisfied for receipt of the subsidy: (1) Receipt of a registration certificate from the Directorate of Industry of the State Government; (2) submission of detailed feasibility and project report; and (3) approval of the project and receipt of financial assistance from a commercial bank.

At verification, we examined Carnation Industries' application for incentives under Scheme 1993 and the corresponding eligibility certification. We confirmed that Carnation Industries applied for and received a grant for the construction of a spheroidal graphite and malleable cast iron castings facility (*i.e.*, ductile iron plant). *See Memorandum to David Mueller: Verification of the Questionnaire Responses Submitted by Carnation Industries Ltd.*, (September 9, 1999), at 1–3 (public version on file in the CRU) (*Carnation Verification Report*). During verification, we discussed with WBIDC officials whether, at the point of bestowal, a state capital investment subsidy is tied to the production of a particular product or tied to a particular production facility. We learned that a state capital investment subsidy is tied to the production of that product/facility for which the company applied for an eligibility certificate. *See WB Verification Report* at 4.

In regard to Carnation Industries, the company applied for incentives under Scheme 1993 specifically for the manufacture of spheroidal graphite CI castings and malleable cast iron at its Uluberia facility. All assistance Carnation receives under the scheme is for the manufacture of spheroidal graphite CI castings and malleable cast iron at its Uluberia facility. The WBIDC officials stated, at verification, that each company which receives assistance must submit a progress report on their facility which describes the types of products being produced. *See Id*.

The scope of this order covers gray iron castings and not ductile iron castings, the goods produced at the Uluberia facility. At the point of bestowal, the grant was connected to the production of ductile iron castings, which is non-subject merchandise. Based on these facts, we preliminarily determine that the state capital investment subsidy which Carnation Industries received provides no benefits to the production and exportation of the subject merchandise, and therefore, the program was not used.

With respect to Kajaria Iron Castings, the company was approved for a state capital investment subsidy in December 1995, for the construction of a pig iron plant in Durgapur (Group C). The first disbursement of the subsidy was received in 1998, which is outside the period of this review.

B. Market Development Assistance (MDA)
C. Rediscounting of Export Bills Abroad (EBR)
D. International Price Reimbursement Scheme (IPRS)
E. Cash Compensatory Support Program (CCS)
F. Programs Operated by the Small Industries Development Bank of India (SIDBI)
G. Export Promotion Replenishment Scheme (EPRS) (IPRS Replacement)
H. Export Promotion Capital Goods Scheme
I. Benefits for Export Oriented Units and Export Processing Zones
J. Special Imprest Licenses
K. Special Benefits
L. Duty Drawback on Excise Taxes
M. Payment of Premium Against Advance Licenses
N. Pre-Shipment Export Financing in Foreign Currency (PCFC)
O. Subsidies Provided by the State of Orissa
P. Advance Licenses

IV. Program Preliminarily Found To Be De Minimis

Bridge Loan

The WBIDC provides bridge loans to entrepreneurs who are granted state capital investment subsidies under the West Bengal Incentive Scheme to bridge the time lag between the approval of the grant and the disbursement of the money. If the WBIDC anticipates a late disbursement of the grant, the agency encourages companies encountering financial difficulties to apply for a bridge loan. Not all companies awaiting a state capital investment subsidy are eligible to receive a bridge loan. To receive a bridge loan, a company must be financially solvent and be promoting a commercially viable project. A company which receives a bridge loan must use the funds for the advancement of the project. *See WB Verification Report*, at 2–3.

The loans are provided against the grant receivable and are repaid when the grant is disbursed. Only those companies which have been approved for a grant are eligible to receive a bridge loan. At verification, we learned that the WBIDC charges a fixed interest rate of 20.0 percent against a bridge loan. However, if a company makes timely interest payments, then the interest rate is reduced to 16.0 percent. Typically, bridge loans are short-term loans which are extended for a period up to the date of disbursement of the grant. *See Id*.

Because receipt of the its grant was delayed, Kajaria Iron Castings applied for a short-term bridge loan with the WBIDC in September 1997. Kajaria Iron Castings took receipt of the loan in 1997, and made an interest payment during the POR. *See Memorandum to David Mueller: Verification of the Questionnaire Responses Submitted by Kajaria Iron Castings Ltd.*, (September 9, 1999), at 4–5 (public version on file in the CRU) (*Kajaria Verification Report*).

As discussed in the ''Pre-Shipment Export Finance'' section above, the short-term benchmark interest rate for the POR is 16.31 percent. To determine the benefit provided by the loan, we compared the cash credit benchmark rate to the interest rate charged on the bridge loan. We found that the interest paid on the bridge loan was less than the interest the company would have paid on a comparable short-term commercial loan. We calculated that the bridge loan provided a benefit of less than 0.005 percent *ad valorem* during the POR. Because the benefit provided by the bridge loan is less than 0.005 percent *ad valorem* and has no affect on the net countervailable subsidy rate for Kajaria Iron Castings, we preliminarily determine that it is not necessary, at this time, to analyze whether bridge loans provided under the West Bengal Incentive Scheme are specific. *See Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom*, 63 FR 18367, 18370 (April 15, 1998).

V. Programs Preliminarily Found Not To Exist

A. State Value-Added Tax ''Set-Off'' Program

The GOI reported in its February 1, 1999 questionnaire response that a state value-added tax ''set-off'' program does not yet exist. They reported that the state value-added tax scheme is only a concept at this time and has not yet been implemented.

B. Interest Rate Surcharge Exemption

In its February 1, 1999 questionnaire response, the GOI stated that the RBI introduced an interest rate surcharge on import finance in October 1995. The surcharge was 15.0 percent over the cash credit rate and was exempt on packing credit provided for exports. The GOI further reported that the interest rate surcharge was withdrawn effective July 24, 1996. In its July 14, 1999 response, the GOI submitted official documentation of the RBI, which announced the termination of the interest rate surcharge.

Preliminary Results of Review

In accordance with section 777A(e)(1) of the Act, we calculated an individual *ad valorem* subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1997 through December 31, 1997, we preliminarily determine the

net countervailable subsidy rates for the reviewed companies to be as follows:

Producers/exporters	Ad valorem rates (percentages)
Bengal Export Corporation	8.35
Calcutta Ferrous Ltd.	9.28
Calcutta Iron Foundry	0.42
Carnation Industries Ltd.	0.72
Commex Corporation	2.71
Crescent Foundry Co. Pvt. Ltd.	0.84
Delta Corporation Ltd.	27.65
Dinesh Brothers (Pvt.) Ltd.	1.71
Ganapati Suppliers Pvt. Ltd.	5.17
Kajaria Iron Castings Ltd.	5.19
Kiswok Industries Pvt. Ltd.	14.90
Nandikeshwari Iron Foundry Pvt. Ltd.	13.72
Rangilal & Sons	0.00
R.B. Agarwalla & Company	3.56
RSI Limited	0.90
Seramapore Industries Pvt. Ltd.	1.51
SSL Exports	27.65
Super Iron Foundry	1.08
Thames Engineering	27.65
Trident International	27.65
Uma Iron & Steel Company	2.10
Victory Castings Ltd.	1.88

If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service (Customs) to assess countervailing duties as indicated above. The Department also intends to instruct Customs to collect cash deposits of estimated countervailing duties as indicated above of the f.o.b. invoice price on all shipments of the subject merchandise from reviewed companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and the Torrington Company* v. *United States*, 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e) (now 19 CFR 351.212(c)), the antidumping regulation on automatic assessment, which is identical to 19 CFR section 355.22(g)). Therefore, the cash deposit rates for all companies, except those covered by this review, will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the URAA. *See 1996 Indian Castings Final Results.* If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See 1993 Indian Castings Final Results.* These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1997 through December 31, 1997, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to the parties of this proceeding within five days after the date of publication of this notice, the calculations performed in this review. Interested parties may request a hearing not later than 30 days after the date of publication of this notice. Pursuant to 19 CFR 309, interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted five days after the time limit for filing the case brief. Parties who submit argument in this proceeding are requested to submit with the argument (1) A statement of the issue and (2) a brief summary of the argument. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review and notice are issued and published in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), 19 CFR 351.213.

Dated: November 1, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–29204 Filed 11–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–063]

Revocation of Countervailing Duty Order: Iron Metal Castings From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Revocation of Countervailing Duty Order: Iron Metal Castings From India.

SUMMARY: Pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the International Trade Commission (''the Commission'') determined that revocation of the countervailing duty order on iron metal castings from India would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 58442 (October 29, 1999)). Therefore, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(e)(4), the Department of Commerce (''the Department'') is publishing notice of the revocation of the countervailing duty order on iron metal castings from India. Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2)(ii), the effective date of revocation is January 1, 2000.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of

Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 2, 1998, the Department initiated, and the Commission instituted, a sunset review (63 FR 58709 and 63 FR 58765, respectively) of the countervailing duty order on iron metal castings from India pursuant to section 751(c) of the Act. As a result of this review, the Department found that revocation of the countervailing duty order would likely lead to continuation or recurrence of a countervailable subsidy and notified the Commission of the net countervailable subsidy likely to prevail were the order revoked (*see Final Results of Expedited Sunset Review: Iron Metal Castings From India,* 64 FR 30316 (June 7, 1999) and *Amended Final Results of Expedited Sunset Review: Iron Metal Castings From India,* 64 FR 37509 (July 12, 1999)).

On October 29, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the countervailing duty order on iron metal castings from India would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Iron Metal Castings From India; Heavy Iron Construction Castings From Brazil; and Iron Construction Castings From Brazil, Canada, and China,* 64 FR 58442 (October 29, 1999), and USITC Pub. 3247, Inv. Nos. 303–TA–13; 701–TA–249; and 731–TA–262, 263, and 265 (October 1999)).

Scope

The merchandise subject to this countervailing duty order is manhole covers and frames, clean-out covers and frames, and catch basin grates and frames from India. These articles are commonly called municipal or public works castings and are used for access or drainage for public utility, water, and sanitary systems. These articles must be of cast iron, not alloyed, and not malleable. This merchandise is currently classifiable under item numbers 7325.10.0010 and 7325.10.0050 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The HTSUS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Determination

As a result of this determination by the Commission that revocation of this countervailing duty order would not be likely to lead to continuation or recurrence of material injury to an industry in the United States, the Department, pursuant to section 751(d)(2) of the Act, is revoking the countervailing duty order on iron metal castings from India. Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2)(ii), the effective date of revocation is January 1, 2000. The Department will instruct the U.S. Customs Service to discontinue suspension of liquidation and collection of cash deposits on entries of the subject merchandise entered or withdrawn from warehouse on or after January 1, 2000 (the effective date). The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: November 5, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–29606 Filed 11–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110899E]

Groundfish Tagging Program

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce

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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 11, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patsy A. Bearden, National Marine Fisheries Service, Alaska Region, P.O. Box 21668, Juneau, Alaska 99802, 907–586–7228.

SUPPLEMENTARY INFORMATION:

I. Abstract

The groundfish tagging program provides scientists with information necessary for effective conservation, management, and scientific understanding of the groundfish fishery off Alaska and the Northwest Pacific. The program area includes the Pacific Ocean off Alaska (the Gulf of Alaska, the Bering Sea and Aleutian Islands Area, the Alexander Archipelago of Southeast Alaska), California, Oregon, and Washington. Population dynamics, non-linear optimization, likelihood function, and stock reduction analyses are used to estimate recruitment parameters and to assess stock sizes.

II. Method of Collection

This is a volunteer program requiring the actual tag from the fish to be returned, along with recovery information. Reporting forms with pre-addressed and postage-free envelopes are distributed to processors and catcher vessels. The tag information will be edited and entered into the computer data base. Each person returning a tag will receive information on the release site, growth, and depth and area changes, as well as a reward of a cap.

III. Data

OMB Number: 0648–0276.
Form Number: N/A.
Type of Review: Regular submission.
Affected public: Individuals or households; State, Local, or Tribal governments.
Estimated Number of Respondents: 1,167.
Estimated Time Per Response: 5 minutes.
Estimated Total Annual Burden Hours: 336.
Estimated Total Annual Cost to Public: $0.

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: November 4, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Chief Information Officer.

[FR Doc. 99–29615 Filed 11–10–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 990910254–9254–01; ID 1108999B]

General Advisory Committee; Scientific Advisory Subcommittee; International Dolphin Conservation Program in the Eastern Tropical Pacific Ocean (ETP)

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

ACTION: Notice of intent; request for nominations.

SUMMARY: In accordance with the Tuna Conventions Act, as amended by the International Dolphin Conservation Program Act (IDCPA), NMFS is appointing a General Advisory Committee and a Scientific Advisory Subcommittee that will provide advice on achieving the objectives of the Tuna Conventions Act, the IDCPA, and the Agreement on the International Dolphin Conservation Program (Agreement). To assist it in developing the General Advisory Committee and the Scientific Advisory Subcommittee, NMFS is requesting nominations for members to these committees.

As directed in the Tuna Conventions Act, the General Advisory Committee will examine and provide comments and recommendations on all aspects of the Inter-American Tropical Tuna Commission (IATTC) and the International Commission for the Scientific Investigation of Tuna and will be invited to attend all meetings of the U.S. sections of these commissions.

The Scientific Advisory Subcommittee will advise the General Advisory Committee, the U.S. Commissioners to the IATTC, and the U.S. Commissioners to the International Commission for the Scientific Investigation of Tuna on all scientific matters regarding the long-term conservation and management of marine resources in the ETP and the entire ETP ecosystem. The Scientific Advisory Subcommittee will jointly serve as the National Scientific Advisory Committee, a committee which NMFS is required to appoint under the Agreement.

DATES: Nominations must be submitted on or before January 11, 2000.

ADDRESSES: Nominations should be submitted to Katie S. Moore, Office of Protected Resources, NMFS, 1315 East-West Hwy., Room 13756, Silver Spring, MD, 20910 or by fax to Katie Moore at 301–713–0376.

FOR FURTHER INFORMATION CONTACT: J. Allison Routt, 562–980–4019; or Katie S. Moore, 301–713–2322, ext. 157.

SUPPLEMENTARY INFORMATION: The Tuna Conventions Act (16 U.S.C. 951 *et seq.*), as amended by the IDCPA (Pub. L. 105–42), requires that the Secretary of Commerce, in consultation with the U.S. Commissioners to the IATTC and the U.S. Commissioners to the International Commission for the Scientific Investigation of Tuna appoint a General Advisory Committee and a Scientific Advisory Subcommittee. In addition, the Agreement requires the Secretary to establish a National Scientific Advisory Committee. These committees will provide advice on achieving the objectives of the Tuna Conventions Act, the IDCPA, and the Agreement on the International Dolphin Conservation Program (Agreement). NMFS is seeking nominations for both the General Advisory Committee and the Scientific Advisory Subcommittee. NMFS intends for members of the Scientific Advisory Subcommittee to jointly serve as members of the National Scientific Advisory Committee.

General Advisory Committee

The General Advisory Committee will be composed of five to 15 qualified experts, operating in their individual capacities, from the public and private sectors, and from non-governmental organizations. It will have balanced representation from the various groups participating in the fisheries included under the conventions, and from non-governmental conservation organizations. The General Advisory Committee will be invited to send representatives to all non-executive meetings of the U.S. sections and will be given full opportunity to examine and to be heard on all proposed programs of investigations, reports, recommendations, and regulations of the IATTC and the International Commission for the Scientific Investigation of Tuna. The General Advisory Committee may attend all meetings of the international commissions to which they are invited by such commissions.

As required by the Tuna Conventions Act, members of the General Advisory Committee will not receive compensation for their services as members of this committee.

Scientific Advisory Subcommittee

The Scientific Advisory Subcommittee will be composed of no less than five nor more than 15 qualified scientists with balanced representation from the public and private sector, including non-governmental organizations. The Scientific Advisory Subcommittee will, as requested by the General Advisory Committee, the U.S. Commissioners to the IATTC, or the U.S. Commissioners to the International Commission for the Scientific Investigation of Tuna, perform functions and provide assistance required by formal agreements entered into by the United States for the ETP fishery, including the International Dolphin Conservation Program (Program). These functions include: (1) reviewing data from the Program, including data received from the IATTC; (2) making recommendations on research needs, including ecosystems, fishing practices, and gear technology research, including the development and use of selective, environmentally safe and cost-effective fishing gear, and on the coordination and facilitation of such research; (3) making recommendations concerning scientific reviews and assessments required under the Program and engaging, as appropriate, in such reviews and assessments; and (4) consulting with other experts as needed and recommending measures to assure the regular and timely full exchange of data among the parties to the Program and each nation's National Scientific Advisory Committee (or its equivalent).

As required by the Tuna Conventions Act, members of the Scientific Advisory Subcommittee will not receive compensation for their services as members of this committee.

National Scientific Advisory Committee

NMFS intends for the Scientific Advisory Subcommittee to also function as the National Advisory Scientific Committee (NATSAC) under the Agreement. The functions of the

NATSAC, established in accordance with Article XI of the Agreement, are, among other things, to:

1. Receive and review relevant data, including the data provided to NMFS by the IATTC;
2. Advise and recommend to the U.S. Commissioners to the IATTC on measures and actions that should be undertaken to conserve and manage stocks of living marine resources in the Agreement area;
3. Make recommendations to the U.S. Commissioners to the IATTC on research needs (including research concerning ecosystems, the effects of climatic, environmental and socioeconomic factors, and the effects of fishing), measures contemplated in the Agreement, fishing techniques and practices, and gear technology research, including the development and use of selective environmentally-safe and cost-effective fishing gear, and the coordination and facilitation of this research;
4. Conduct scientific reviews and assessments regarding progress toward the year 2001 objective of achieving a per-stock, per-year cap of 0.1 percent of the minimum population estimate, and make appropriate recommendations concerning these reviews and assessments, as well as additional assessments in the year 2001, consistent with this Agreement;
5. Ensure the regular and timely full exchange of data among the Parties to the Agreement and the NATSACs on catch of tuna and associated species and bycatch, including dolphin mortality data, for the purposes of developing conservation and management recommendations as well as recommendations for enforcement and scientific research while not violating the confidentiality of business confidential data;
6. Consult with other experts as necessary to gather as much information as possible that might be useful for achieving the objectives of the Agreement; and
7. Perform other functions as assigned.

Reports of the NATSAC, including reports of their cooperative meetings, will be made available to the Parties to the Agreement and to the public, in a manner consistent with applicable confidentiality requirements.

Meetings of the NATSAC will take place at least once a year in conjunction with the ordinary meeting of the Parties to the Agreement. These meetings regularly occur in the United States or abroad as hosted by another Party to the Agreement. The Director of the IATTC may convene meetings, in addition to the regular meetings required by the Agreement, to facilitate consultation among the NATSACs of the Parties to the Agreement. The functions of the meetings of the NATSAC are to: (1) Exchange information; (2) review IATTC research to achieve the objectives of the Agreement; and (3) make recommendations to the Director of the IATTC concerning the future research program to achieve the objectives of the Agreement.

The Scientific Advisory Committee/National Scientific Advisory Committee (SAC/NATSAC) should be comprised of scientists with definable interests in the Program and/or the ETP yellowfin tuna fishery and related industries, environmental community, academia, governmental and quasi-governmental entities. Members of the SAC/NATSAC will be invited to send representatives to all non-executive meetings of the U.S. sections of the IATTC and the General Advisory Committee, and will be given full opportunity to examine and to be heard on all proposed programs of scientific investigations, scientific reports, and scientific recommendations of the IATTC. Representatives of the SAC/NATSAC may attend meetings of the IATTC in accordance with the rules of the IATTC.

Procedures and Guidelines of the General Advisory Committee and the SAC/NATSAC

Each appointed member of the General Advisory Committee and the SAC/NATSAC will serve for a term of 3 years, with one-third of the members rotating out each year. Members will be eligible for reappointment.

NMFS will provide the necessary administrative support, including technical assistance, for the Committees; however, NMFS will not compensate members for participating on the Committees, for travel or other living expenses, because no funds were appropriated for this purpose.

Procedure for Submitting Nominations

Submit nominations for the General Advisory Committee and the Scientific Advisory Subcommittee/NATSAC to NMFS (see **ADDRESSES**). The criteria for nominations include: (1) Experience in the commercial purse seine fishing industry involved in catching tuna in the ETP; (2) experience in the connected industries (e.g., gear, fishing techniques and practices, or gear technology research); and/or (3) former or current representative of a private, regional, state, national, or international organization which deals with issues related to the ETP purse seine fishery.

Nominations for the General Advisory Committee or the SAC/NATSAC should include:

1. The name of the nominee and a description of their interest in or connection with the Tuna Conventions Act, the IDCPA, the Marine Mammal Protection Act, the tuna fishery of the ETP, the international dolphin conservation program of the ETP, or a particular species of dolphin or tuna involved in that fishery;
2. A statement of background;
3. A statement of qualifications; and
4. A written commitment that the applicant or nominee will actively participate in good faith in the tasks of General Advisory Committee or the SAC/NATSAC.

Dated: November 5, 1999.

Andrew Kemmerer,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–29613 Filed 11–10–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100499E]

Atlantic Coastal Fisheries Cooperative Management Act; Meeting; Correction

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

ACTION: Coordination meeting; correction.

SUMMARY: NMFS and the U.S. Fish and Wildlife Service (USFWS) will hold a joint meeting to discuss coordination of activities that support Atlantic States Marine Fisheries Commission coastal fisheries management plans under the Atlantic Coastal Fisheries Cooperative Management Act and the Atlantic Striped Bass Conservation Act. The original meeting was announced in the **Federal Register** on October 12, 1999. The meeting date has changed.

FOR FURTHER INFORMATION CONTACT: Anne Lange, Intergovernmental and Recreational Fisheries, NMFS, 8484 Georgia Avenue, Silver Spring, MD 20910. Telephone: (301) 427–2014.

Correction

In the **Federal Register** of October 12, 1999, in FR Doc. 99–26548, on page 55254, in the second column, correct the ''**DATES**'' caption to read:

DATES: The meeting will convene on Monday, December 20, at 10:00 a.m. and

will adjourn at approximately 3:00 p.m. The meeting is open to the public.

All other information pertaining to this document remains the same.

Dated: November 8, 1999.

Richard H. Schaefer,

Chief, Staff Office for Intergovernmental and Recreational Fisheries, National Marine Fisheries Service.

[FR Doc. 99–29614 Filed 11–10–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110599B]

Mid-Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold a public meeting.

DATES: The meeting will be held on Monday, November 22, 1999 to Tuesday, November 23, 1999. On Monday, November 22nd, Council will meet from 1:00–5:00 p.m. On Tuesday, November 23rd, Council will meet from 8:00 a.m. until 5:00 p.m.

ADDRESSES: This meeting will be held at the Crowne Plaza Meadowlands, Two Harmon Plaza, Secaucus, NJ; telephone: 201–348–6900.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The Council will address and, if necessary, comment on NMFS' proposed rules regarding implementation of the Council's commercial fishing specification for 2000 regarding squid, mackerel, butterfish, surfclam, ocean quahogs, summer flounder, scup, black sea bass, and bluefish. Should proposed rules not be available, the Council will review and evaluate scup management measures and options previously proposed to the Agency. The Council will also review and, if appropriate, provide comments on the Agency's notice to finalize its interim final rule to implement Essential Fish Habitat provisions of the Sustainable Fisheries Act. The Council will receive the Tilefish Committee Report and consider adoption of the Tilefish Fishery Management Plan for Secretarial submission. It is anticipated that this session will be the last session for the public to comment on the Council's Draft Tilefish FMP.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, these issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: November 5, 1999.

Richard W. Surdi,

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

[FR Doc. 99–29496 Filed 11–10–99; 8:45 am]

BILLING CODE 3510–22–F

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 18 November 1999 at 10 a.m. in the Commission's offices at the National Building Museum (Pension Building), Suite 312, Judiciary Square, 441 F Street, NW, Washington, DC 20001. Items of discussion will include designs for projects affecting the appearance of Washington, DC, including buildings and parks.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, November 8, 1999.

Charles H. Atherton,

Secretary.

[FR Doc. 99–29572 Filed 11–10–99; 8:45 am]

BILLING CODE 6330–01–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade: Proposed Amendments to the Speculative Position Limit Provisions of the Municipal Bond Index Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of proposed amendments to the terms and conditions of commodity futures contract.

SUMMARY: The Chicago Board of Trade (CBOT or Exchange) has submitted a proposed amendment to the speculative position limit provision of its Municipal Bond Index futures and futures option contracts. Under the proposal, the subject futures and option contracts would be subject to a joint 4,000-contract spot month position limit, with no exemptions allowed, that would be in effect during the last three trading days prior to expiration.

The Acting Director of the Division of Economic Analysis (Division), acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comments must be received on or before November 29, 1999.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the proposed amendments to the CBOT Municipal Bond Index futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Michael Penick of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, 20581, telephone (202) 418–5279.

Facsimile number: (202) 418–5527. Electronic mail: mpenick@cftc.gov.

SUPPLEMENTARY INFORMATION: The Municipal Bond Index futures contract is settled on the last day of trading based on the level of the Municipal Bond Index as calculated by Bond Buyer, an independent third party, on the last trading day. The contract is currently listed for trading in the March, June, September, and December quarterly cycle.

Under current rules, the subject contracts are subject to a joint all-months-combined speculative position limit of 5,000 futures-equivalent contracts. Bona fide hedgers and certain other qualified position holders are eligible for exemptions from this speculative position limit. The Exchange is proposing to adopt, in addition to the all-months-combined limit, a spot month position limit of 4,000 contracts applicable during the last three trading days. This limit would apply to all positions and no exemptions, for hedging or other enumerated positions, would be permitted. (*See*, Commission Rule 150.5(d).)

The CBOT proposes to implement the proposal for application to existing contract months, including the December 1999 contract month, shortly after receipt of Commission approval. The December 1999 contract month expires on Tuesday, December 21, 1999. Thus, the proposed spot month position limit would go into effect on Friday, December 17, 1999. The CBOT issued a notice of the proposed amendment and implementation plan on November 1, 1999.

The Division requests comment on the proposed amendment and implementation plan.

Copies of the proposal will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW, Washington, DC 20581. Copies of the proposal can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the CBOT may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposal, or with respect to other materials submitted by the CBOT, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21 St., NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on November 5, 1999.

John R. Mielke,

Acting Director.

[FR Doc. 99–29578 Filed 11–10–99; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Proposed Amendments to Chicago Board of Trade Rough Rice Futures Contract Regarding Quality Specifications for Deliverable Rough Rice

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of proposed amendments.

SUMMARY: The Chicago Board of Trade (CBT or Exchange) has proposed amendments to the Chicago Board of Trade rough rice futures contract. The proposed amendments were submitted under the Commission's 45-day Fast Track procedures which provides that, absent any contrary action by the Commission, the proposed amendments may be deemed approved on December 16, 1999. 45 days after the Commission's receipt of the proposals. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comments must be received on or before November 29, 1999.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street, NW Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the proposed amendments to the CBT rough rice futures contract.

FOR FURTHER INFORMATION CONTACT: John Bird of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581, telephone (202) 418–5274. Facsimile number: (202) 418–5527. Electronic mail: jbird@cftc.gov.

SUPPLEMENTARY INFORMATION: The existing terms of the rough rice futures contract provide for the delivery of rough rice meeting the official U.S. grade standards promulgated by the United States Department of Agriculture for U.S. No. 2, or better, long grain rice. The standards for U.S. No. 2 grade rice specify a maximum level for stained rice of 1.5 percent, which is equivalent to approximately 300 stained kernels in a 500 gram sample containing approximately 20,000 kernels. The standards for U.S. No. 2 grade rice also permit two heat-damaged kernels in a 500-gram sample.

The proposed amendments will reduce the quantity of stained rice permitted in rough rice deliverable on the futures contract and will prohibit delivery of rough rice which contains heat-damaged rice. The proposed amendments will specify that deliverable rough rice may contain no more than 10 stained and light stained kernels in a 500-gram sample and that no more than five kernels of these 10 kernels may be stained. No heat-damaged kernels will be permitted in deliverable rice.

The Exchange intends to apply the proposed amendments to all newly listed contract months following Commission approval.

The CBT indicates that the proposed amendments will improve the pricing accuracy and efficiency of the rough rice futures market. The Exchange notes, in this regard, that the futures contract's existing terms provide for the delivery of rough rice containing a maximum of about 300 kernels of stained rice and two heat damaged kernels in each 500 gram sample of rice. The CBT indicates, however, that the vast majority of rough rice traded in the domestic and export markets is free of stained and heat damaged kernels. The Exchange also notes that rice which contains any amount of stained beyond five lightly stained kernels is normally traded at prices significantly below that of rice that is free of stain. The Exchange indicates that futures prices currently may reflect the value of rough rice containing stained/heat damaged rice in excess of normal cash market standards, since deliverers have tended to deliver

such rice on the futures contract. The CBT indicates that, as a result, the proposed standards for stained and heat damaged rice will allow the futures contract's prices to reflect more closely the majority of rough rice traded in the cash market.

The Commission is especially interested in comments regarding the degree to which the proposed specifications reflect specifications ordinarily observed in the cash market and the extent to which, if any, the proposed amendments will affect deliverable supplies for the futures contract.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581. Copies of the proposed amendments can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the Internet on the CFTC website at www.cftc.gov under ''What's Pending''.

Other materials submitted by the CBT in support of the proposal may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments, or with respect to their other materials submitted by the CBT, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on November 5, 1999.

John R. Mielke,

Acting Director.

[FR Doc. 99–29579 Filed 11–10–99; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Thursday, November 18, 1999, 10:00 a.m.

LOCATION: Room 420, East-West Towers, 4330 East-West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

Bunk Beds: The staff will brief the Commission on options concerning whether the Commission should issue a final rule addressing entrapment of children in the structure of bunk beds.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East-West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: November 8, 1999.

Sadye E. Dunn,

Secretary.

[FR Doc. 99–29626 Filed 11–8–99; 4:15 pm]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Thursday, November 18, 1999, 2:00 p.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report: The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: November 8, 1999.

Sadye E. Dunn,

Secretary.

[FR Doc. 99–29627 Filed 11–8–99; 4:15 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form Numbers, and OMB Number: Defense Federal Acquisition Regulations Supplement (DFARS) Part 245, Government Property, and Related Clauses in DFARS Part 252; DD Forms 1149, 1149C, 1342, 1419, 1637, 1639, 1640, 1662; OMB Number 0704–0246.

Type of Request: Extension.

Number of Respondents: 14,862.

Responses Per Respondent: 3 (approximately).

Annual Responses: 42,497.

Average Burden Per Response: 1.18 hours.

Annual Burden Hours: 50,170.

Needs and Uses: The Department of Defense needs this information to keep an account of Government property in the possession of contractors. Property administrators, contracting officers, and contractors use this information to maintain property records and material inspection, shipping, and receiving reports. This requirement provides for the collection of information related to providing Government property to contractors; contractor use and management of Government property; and reporting, redistribution, and disposal of contractors inventory. This information collection covers the requirements relating to DFARS Part 245 and related clauses and forms.

Affected Public: Business or Other For-Profit; Not-For-Profit Institutions.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to M. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing. Written requests for copies of the information collection proposal should be sent to M. Cushing. WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: November 5, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 99–29498 Filed 11–10–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Ballistic Missile Defense Advisory Committee

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Ballistic Missile Defense (BMD) Advisory Committee will meet in closed session at the Embassy Suites, Crystal City, 1300 Jefferson Davis Highway, Arlington, Virginia 22202 on November 30, 1999 and also on December 1, 1999 at Jefferson Plaza 2, Crystal City, 1421 Jefferson Davis Highway, Arlington, Virginia 22202.

The mission of the BMD Advisory Committee is to advise the Secretary of Defense and Deputy Secretary of Defense, through the Under Secretary of Defense (Acquisition, Technology, and Logistics), on all matters relating to BMD acquisition, system development, and technology.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended by 5 U.S.C., Appendix II, it is hereby determined that this BMD Advisory Committee meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly this meeting will be closed to the public.

Dated: November 5, 1999.

Linda M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–29499 Filed 11–10–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, November 18, 1999.

ADDRESSES: The meeting will be held at the Army Research Laboratory (ARL), Adelphi Laboratory Center, Physical Science Facility, Room 4D–38, 2800 Powder Mill Road, Adelphi, MD 20783–1145.

FOR FURTHER INFORMATION CONTACT: Mr. Eliot Cohen, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. § 10(d) (1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: November 5, 1999.

L.M. Bynum,

Alternate, OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–29500 Filed 11–10–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Air Force A–76 Initiatives Cost Comparisons and Direct Conversions (As of 30 September 1999)

The Air Force is in the process of conducting the following A–76 initiatives. Cost comparisons are public-private competitions. Direct conversions are functions that may result in a conversion to contract without public competition. These initiatives were announced and in-progress as of 30 September 1999, include the installation and state where the cost comparison or direct conversion is being performed, the total authorizations under study, public announcement date and actual or anticipated solicitation date. The following initiatives are in various stages of completion.

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation issued or scheduled date
COST COMPARISONS					
ANDERSEN	GUAM	SUPPLY AND TRANSPORTATION	317	25–Jun–98	28–May–99.
ANDREWS	MD	AIRCRAFT MAINTENANCE AND SUPPLY	815	25–Jul–97	26–May–99.
ANDREWS	MD	GROUNDS MAINTENANCE	9	17–Dec–98	17–Nov–99.
ANDREWS	MD	HEATING SYSTEMS	22	17–Dec–98	17–Nov–99.
BARKSDALE	LA	PROTECTIVE COATING	13	14–Dec–98	31–Oct–99.
BEALE	CA	BASE OPERATING SUPPORT	383	08–Sep–99	07–Mar–01.
BOLLING	DC	SUPPLY AND TRANSPORTATION	164	01–Dec–98	03–Jan–00.
CARSWELL	TX	BASE OPERATING SUPPORT	69	13–Jun–96	30–Dec–99.
CHEYENNE MTN	CO	CIVIL ENGINEERING	139	08–May–98	01–Aug–00.
DOVER	DE	HEATING SYSTEMS	11	07–Jan–99	03–Jan–00.
EDWARDS	CA	BASE OPERATING SUPPORT	553	09–Dec–98	08–Nov–00.
EDWARDS	CA	TRANSIENT AIRCRAFT MAINTENANCE/ AEROSPACE GROUND EQUIPMENT.	136	06–Nov–98	16–Dec–99.
EGLIN	FL	ADMINISTRATIVE SUPPORT	52	22–Sep–99	TBD.
EGLIN	FL	CIVIL ENGINEERING	200	03–Dec–96	21–Jul–98.
EIELSON	AK	HOUSING MANAGEMENT	16	17–Nov–97	18–May–99.
ELMENDORF	AK	BASE SUPPLY	210	26–Mar–99	17–Jan–00.
FAIRCHILD	WA	HEATING SYSTEMS	15	16–Mar–99	31–Oct–99.
GREATER PITTSBURG	PA	BASE OPERATING SUPPORT	77	13–Jun–96	14–Nov–99.
GRISSOM	IN	BASE OPERATING SUPPORT	133	13–Jun–96	01–Oct–99.

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation issued or scheduled date
HANSCOM AFB	MA	BASE SUPPLY	70	10–Nov–98	30–Oct–99.
HILL AFB	UT	BASE OPERATING SUPPORT	730	30–Sep–98	20–Sep–00.
HOLLOMAN AFB	NM	MILITARY FAMILY HOUSING MAINTENANCE.	66	12–May–97	01–Oct–99.
HOMESTEAD	FL	BASE OPERATING SUPPORT	106	13–Jun–96	15–Jan–00.
HURLBURT COM FL	FL	ADMINISTRATIVE SUPPORT	41	28–Apr–99	09–Mar–01.
HURLBURT COM FL	FL	BASE SUPPLY	43	15–Jul–98	01–Jan–00.
HURLBURT COM FL	FL	COMMUNICATION FUNCTIONS	50	31–Jul–98	19–Jun–00.
KEESLER	MS	MULTIPLE SUPPORT FUNCTIONS	726	21–Sep–99	TBD.
KIRTLAND	NM	BASE COMMUNICATIONS	228	06–Nov–97	04–Jun–99.
KIRTLAND	NM	ENVIRONMENTAL	32	24–Nov–98	15–Dec–99.
LACKLAND	TX	MULTIPLE SUPPORT FUNCTIONS	1587	26–Jan–99	10–Nov–99.
LANGLEY	VA	GENERAL LIBRARY	11	22–Dec–98	04–Oct–99.
LANGLEY	VA	MILITARY FAMILY HOUSING MAINTENANCE.	16	24–Nov–97	11–Jun–99.
LOS ANGELES	CA	COMMUNICATIONS OPERATIONS AND MAINTENANCE FUNCTIONS.	85	01–Jul–97	25–Nov–98.
MALMSTROM	MT	BASE COMMUNICATIONS	85	06–Oct–97	01–Dec–99.
MARCH	CA	BASE OPERATING SUPPORT	195	13–Jun–96	15–Nov–99.
MAXWELL	AL	MULTIPLE SUPPORT FUNCTIONS	814	28–Apr–98	22–Mar–99.
MCCHORD	WA	GROUNDS MAINTENANCE	11	14–Jun–99	05–Jun–00.
MCCHORD	WA	HEATING SYSTEMS	11	23–Sep–97	30–Mar–99.
MCCHORD	WA	MILITARY FAMILY HOUSING MAINTENANCE.	15	23–Sep–97	03–Mar–99.
MINN/ST PAUL	MN	BASE OPERATING SUPPORT	83	13–Jun–96	11–Aug–98.
MULTIPLE INSTLNS		ADMINISTRATIVE SWITCHBOARD	44	19–Jun–97	31–Dec–99.
CROUGHTON	UK				
FAIRFORD	UK				
LAKENHEATH	UK				
MILDENHALL	UK				
MOLESWORTH	UK				
MULTIPLE INSTLNS		ADMINISTRATIVE SWITCHBOARD	50	19–Jun–97	31–Dec–99.
RAMSTEIN	GERMY				
SEMBACH	GERMY				
SPANGDAHLEM	GERMY				
MULTIPLE INSTLNS		COMMUNICATION FUNCTIONS	141	11–Mar–99	11–Nov–99.
GRISSOM	IN				
GENERAL MITCHELL	WI				
MINN/ST PAUL	MN				
NEW ORLEANS NAS	LA				
CARSWELL	TX				
HOMESTEAD	FL				
MARCH	CA				
WESTOVER	MA				
YOUNGSTOWN MUNI	OH				
WILLOW GROVE	PA				
GREATER PITTSBURG	PA				
MULTIPLE INSTLNS		COMMUNICATION FUNCTIONS	208	03–Aug–99	01–May–00.
LANGLEY	VA				
HILL AFB	UT				
MULTIPLE INSTLNS		EDUCATION SERVICES	153	07–Jan–99	15–Nov–99.
HOWARD	PANMA				
MOODY	GA				
MINOT	ND				
MT HOME	ID				
NELLIS	NV				
SHAW	SC				
WHITEMAN	MO				
LAJES	AJORE				
ELLSWORTH	SD				
SEYMOUR JOHNSON	NC				
HOLLOMAN AFB	NM				
DYESS	TX				
DAVIS MONTHAN	AZ				
CANNON	NM				
BARKSDALE	LA				
KEFLAVIK	ICELD				
LANGLEY	VA				
BEALE	CA				
MULTIPLE INSTLNS		EDUCATION/TRAINING AND PERSONNEL	94	25–Mar–98	24–May–99.
BUCKLEY	CO				
F E WARREN	WY				

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation issued or scheduled date
PATRICK	FL				
PETERSON	CO				
FALCON	CO				
VANDENBERG AFB	CA				
MULTIPLE INSTLNS		MULTIPLE SUPPORT FUNCTIONS	124	14–Jul–99	30–Dec–00.
CROUGHTON	UK				
FAIRFORD	UK				
MOLESWORTH	UK				
MULTIPLE INSTLNS		PRECISION MEASUREMENT EQUIPMENT LABORATORY (PMEL).	1516	24–Sep–98	29–Oct–99.
MULTIPLE INSTLNS		TRANSIENT AIRCRAFT MAINTENANCE	24	07–Jul–99	01–Apr–00.
RAMSTEIN	GERMY				
SPANGDAHLEM	GERMY				
MULTIPLE INSTLNS		TRANSIENT AIRCRAFT MAINTENANCE	15	07–Jul–99	01–Apr–00.
LAKENHEATH	UK				
MILDENHALL	UK				
NEW BOSTON	NH	BASE OPERATING SUPPORT	48	03–Dec–97	01–Nov–99.
NEW ORLEANS NAS	LA	BASE OPERATING SUPPORT	45	13–Jun–96	01–Dec–99.
OFFUTT	NE	BASE OPERATING SUPPORT	1608	30–Sep–98	31–Jan–00.
PATRICK	FL	SUPPLY AND TRANSPORTATION	43	14–May–98	01–Jun–00.
ROBINS	GA	ADMINISTRATIVE TELEPHONE SWITCHBOARD.	17	17–Mar–99	23–Dec–99.
ROBINS	GA	BASE SUPPLY	133	01–Apr–99	30–Jan–00.
ROBINS	GA	EDUCATION SERVICES	57	07–Jan–99	30–Sep–99.
SCOTT	IL	PERSONNEL SERVICES	236	25–Jun–99	19–Feb–01.
SCOTT	IL	ADMINISTRATIVE SWITCHBOARD	86	05–Aug–99	TBD.
SCOTT	IL	BASE SUPPLY	102	03–Jun–97	28–Aug–98.
SCOTT	IL	COMMUNICATIONS OPERATIONS AND MAINTENANCE FUNCTIONS.	178	19–Mar–98	10–Nov–99.
SCOTT	IL	MEDICAL FACILITY MAINTENANCE	8	09–Jan–98	05–Aug–98.
SEMBACH	GERMY	COMMUNICATION FUNCTIONS	48	18–Dec–98	30–Nov–99.
SHAW	SC	PROTECTIVE COATING	12	14–Dec–98	02–Jul–99.
SHEPPARD	TX	MULTIPLE SUPPORT FUNCTIONS	540	21–Sep–99	TBD.
TINKER	OK	BASE SUPPLY	152	30–Nov–98	08–Oct–99.
TINKER	OK	CIVIL ENGINEERING	567	15–Apr–97	26–Mar–98.
TINKER	OK	EDUCATION SERVICES	54	16–Nov–98	08–Oct–99.
TINKER	OK	ENVIRONMENTAL	53	24–Nov–98	08–Oct–99.
TRAVIS	CA	VEHICLE OPERATIONS AND MAINTENANCE.	131	15–Jul–98	23–Dec–99.
USAF ACADEMY	CO	BASE OPERATING SUPPORT	108	08–May–98	15–Jan–00.
USAF ACADEMY	CO	CIVIL ENGINEERING	497	01–Dec–98	15–Feb–00.
USAF ACADEMY	CO	COMMUNICATION FUNCTIONS	120	20–May–99	19–May–00.
USAF ACADEMY	CO	FOOD SERVICES	297	08–May–98	21–Apr–99.
USAF ACADEMY	CO	SERVICES ACTIVITIES	75	08–May–98	17–Sep–99.
VANDENBERG AFB	CA	TRAINER FABRICATION	12	24–Nov–97	15–Aug–99.
WHITEMAN	MO	UTILITIES PLANT	11	18–Aug–99	14–Aug–00.
WILLOW GROVE	PA	BASE OPERATING SUPPORT	52	13–Jun–96	28–Sep–98.
WRIGHT PATTERSON	OH	CIVIL ENGINEERING	104	21–Aug–98	03–Mar–00.
WRIGHT PATTERSON	OH	CIVIL ENGINEERING	698	15–Aug–97	27–Aug–99.
WRIGHT PATTERSON	OH	COMMUNICATION FUNCTIONS	319	21–Aug–98	18–Oct–99.
WRIGHT PATTERSON	OH	LABORATORY SUPPORT SERVICES	127	21–Aug–98	22–Oct–99.
YOUNGSTOWN MUNI	OH	BASE OPERATING SUPPORT	92	13–Jun–96	14–Sep–98.
DIRECT CONVERSIONS					
ALTUS	OK	MEDICAL STENOGRAPHY	2	17–Nov–97	01–Jul–98.
ANDERSEN	GUAM	AIR TRAFFIC CONTROL	12	14–Sep–99	27–May–00.
ANDREWS	MD	MEDICAL FACILITY MAINTENANCE	11	09–Oct–97	22–Sep–99.
ASHEVILLE	NC	COMPUTER SYSTEMS MAINTENANCE	10	17–Feb–99	01–Mar–00.
BARKSDALE	LA	ADMINISTRATIVE SWITCHBOARD	10	04–Aug–98	01–Nov–99.
BARKSDALE	LA	HOSPITAL SERVICES	3	01–Dec–97	15–Jul–99.
BEALE	CA	ADMINISTRATIVE SWITCHBOARD	10	07–Jul–99	30–Nov–99.
CANNON	NM	PROTECTIVE COATING	2	07–Jan–99	15–Dec–99.
CANNON	NM	TRANSIENT AIRCRAFT MAINTENANCE/AEROSPACE GROUND EQUIPMENT.	13	27–Aug–98	10–Nov–99.
CHEYENNE MTN	CO	COMMUNICATION FUNCTIONS	385	08–May–98	13–Aug–99.
DAVIS MONTHAN	AZ	PROTECTIVE COATING	9	24–Jun–98	01–Dec–99.
DAVIS MONTHAN	AZ	RAILROAD TRANSPORTATION SERVICES	2	11–Aug–98	01–Dec–99.
DYESS	TX	ADMINISTRATIVE TELEPHONE SWITCHBOARD.	9	12–Nov–98	30–Nov–99.
ELLSWORTH	SD	ENVIRONMENTAL	7	05–Nov–98	23–Dec–98.
ELLSWORTH	SD	GENERAL LIBRARY	7	16–Jul–98	30–Sep–99.

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation issued or scheduled date
F E WARREN	WY	BASE COMMUNICATIONS	93	30–Oct–97	15–Dec–99.
GRAND FORKS	ND	MUNITIONS MAINTENANCE	5	17–May–99	13–Oct–00.
KIRTLAND	NM	CIVIL ENGINEERING	360	09–Dec–98	18–Nov–99.
KIRTLAND	NM	EDUCATION SERVICES	12	26–Oct–98	15–Nov–99.
KIRTLAND	NM	GENERAL LIBRARY	4	12–Jan–99	15–Dec–99.
KIRTLAND	NM	RECREATIONAL SUPPORT	9	12–Jan–99	15–Dec–99.
LANGLEY	VA	AIRCRAFT FLEET SERVICES	11	29–Jun–99	15–Dec–99.
LANGLEY	VA	COMMUNICATION FUNCTIONS	8	23–Mar–99	01–Aug–00.
LANGLEY	VA	GROUNDS MAINTENANCE	9	04–May–99	20–Aug–99.
LANGLEY	VA	TRANSIENT AIRCRAFT MAINTENANCE	21	27–Aug–98	27–Aug–99.
LOS ANGELES	CA	PACKING AND CRATING	4	01–Jul–97	12–Mar–99.
MAXWELL	AL	EDUCATION SERVICES	35	31–Jul–98	01–Jul–99.
MCGUIRE	NJ	FURNISHINGS MANAGEMENT	2	14–May–99	05–Feb–00.
MCGUIRE	NJ	HEATING SYSTEMS	6	04–May–99	31–Aug–00.
MINOT	ND	ADMINISTRATIVE SWITCHBOARD	6	07–Jan–99	01–Oct–99.
MINOT	ND	GROUNDS MAINTENANCE	9	18–May–99	19–Dec–99.
MT HOME	ID	GROUNDS MAINTENANCE	6	20–Jul–99	09–Jul–00.
MT HOME	ID	TRANSIENT AIRCRAFT MAINTENANCE	7	27–Aug–98	29–Jul–99.
MULTIPLE INSTLNS		LINEN	11	17–Jun–99	05–Dec–99.
RAMSTEIN	GERMY				
SPANGDAHLEM	GERMY				
LAKENHEATH	UK				
MILDENHALL	UK				
MULTIPLE INSTLNS		RADAR	106	12–Nov–98	16–Apr–99.
CANNON	NM				
SEYMOUR JOHNSON	NC				
SHAW	SC				
NELLIS	NV	COMMUNICATION FUNCTIONS	9	22–Dec–98	03–Nov–99.
NELLIS	NV	TRANSIENT AIRCRAFT MAINTENANCE/ AEROSPACE GROUND EQUIPMENT.	18	27–Aug–98	09–Aug–99.
OFFUTT	NE	COMPUTER OPERATIONS	76	17–Feb–99	01–Mar–00.
OFFUTT	NE	DATA AUTOMATION	67	27–Aug–98	01–Jul–99.
PATRICK	FL	BASE WEATHER OBSERVING	5	17–Mar–98	01–Jun–99.
PATRICK	FL	RANGE MAINTENANCE	32	19–May–98	01–Jun–99.
PATRICK	FL	RANGE MAINTENANCE	31	19–May–98	01–Jun–99.
POPE	NC	FURNISHINGS MANAGEMENT	1	07–Oct–98	17–Nov–99.
PORTLAND	OR	ADMINISTRATIVE SWITCHBOARD	2	22–Dec–98	10–Oct–99.
RANDOLPH	TX	COURSEWARE DEVELOPMENT	38	30–Sep–99	TBD.
RANDOLPH	TX	FLYING TRAINING	26	01–Jun–98	21–May–99.
RANDOLPH	TX	FLYING TRAINING	45	20–Jan–98	03–Aug–98.
SCHRIEVER	CO	FOOD SERVICES	18	02–Sep–99	01–Nov–00.
SCOTT	IL	FURNISHINGS MANAGEMENT	3	08–Jul–98	01–Jul–00.
SCOTT	IL	MISCELANEOUS ACTIVITIES	2	18–Mar–99	13–Jan–00.
SEYMOUR JOHNSON	NC	TRANSIENT AIRCRAFT MAINTENANCE	8	12–Nov–97	29–Jul–99.
SHAW	SC	COMMUNICATION FUNCTIONS	3	18–May–99	09–May–00.
SHAW	SC	LIBRARY	7	27–Aug–98	25–Aug–99.
SHAW	SC	TRANSIENT AIRCRAFT MAINTENANCE	11	28–Aug–98	16–Jul–99.
TINKER	OK	GRAPHIC ARTS	13	14–Jan–99	14–Jul–99.
TRAVIS	CA	FACILITIES SERVICES MAINTENANCE	2	20–Apr–98	01–Dec–99.
TRAVIS	CA	HEATING SYSTEMS	5	20–Apr–98	15–Nov–99.
VANDENBERG AFB	CA	MISSILE STORAGE & MAINTENANCE	66	14–Apr–99	18–Jan–00.
WHITEMAN	MO	ADMINISTRATIVE SWITCHBOARD	9	22–Dec–98	03–Sep–99.
WHITEMAN	MO	GROUNDS MAINTENANCE	5	08–Dec–98	01–Nov–99.
WHITEMAN	MO	HOSPITAL SERVICES	2	17–Apr–98	17–Nov–98.
WHITEMAN	MO	PROTECTIVE COATING	8	06–Apr–99	22–Nov–99.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–29524 Filed 11–10–99; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Navy

Availability of Government-Owned Inventions for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy.

Copies of patents cited are available from the Commissioner of Patents and Trademarks, Washington, DC 20231, for $3.00 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $6.95 each ($10.95 outside North American Continent).

Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the copies of patent applications sold to avoid premature disclosure.

The following patents and patent applications are available for licensing:

Patent 5,738,737: PROCESS FOR MAKING SUPERPLASTIC STEEL POWDER AND FLAKES; filed 5 November 1991; patented 14 April 1998.//Patent 5,889,688: FREQUENCY DOMAIN KERNEL PHASE PROCESSOR; filed 30 September 1997; patented 30 March 1999.//Patent 5,890,414: STOP CYLINDER AND PISTON ASSEMBLY; filed 12 August 1997; patented 6 April 1999.//Patent 5,890,681: METHOD FOR CONTROLLING MICROTURBULENCE; filed 1 May 1997; patented 6 April 1999.//Patent 5,891,575: GROWING AND RELEASING DIAMONDS; filed 22 February 1996; patented 6 April 1999.// Patent 5,892,067: SYNTHESIS OF ENERGETIC VINYL-TERMINATED POLYMERS; filed 9 June 1997; patented 6 April 1999.//Patent 5,892,765: SYSTEM AND METHOD FOR EFFECTUATING COMMUNICATIONS BETWEEN NETWORKS OPERATING ASYNCHRONOUSLY WITH RESPECT TO ONE ANOTHER; filed 15 November 1996; patented 6 April 1999.//Patent 5,892,773: RADIO FREQUENCY CABLE TO OPTICAL FIBER CABLE CONVERTER/INTERFACE; filed 29 June 1992; patented 6 April 1999.//Patent 5,892,810: X-RAY SOURCE FOR LITHOGRAPHY; filed 9 May 1990; patented 6 April 1999.//Patent 5,892,901: SECURE IDENTIFICATION SYSTEM; filed 10 June 1997; patented 6 April 1999.//Patent 5,894,000: ELECTRO-RHEOLOGICAL FLUID COMPOSITION HAVING POLYMERIC SPONGE PARTICULATES; filed 30 September 1992; patented 13 April 1999.//Patent 5,894,451: IMPULSIVE SNAP-THROUGH ACOUSTIC PULSE GENERATOR; filed 21 October 1997; patented 13 April 1999.//Patent 5,894,552: METHOD AND APPARATUS FOR MANUALLY SWITCHING TO A SECURED NETWORK; filed 15 August 1997; patented 13 April 1999.//Patent 5,894,902: SELF-PROPELLED WHEEL FOR WHEELED VEHICLES; filed 5 September 1996; patented 20 April 1999.//Patent 5,897,794: METHOD AND APPARATUS FOR ABLATIVE BONDING USING A PULSED ELECTRON; filed 30 January 1997; patented 27 April 1999.//Patent 5,898,109: STRUT-MOUNTED DRAG BALANCE; filed 25 March 1997; patented 27 April 1999.//Patent 5,898,791: SPINNING FOCAL PLANE ARRAY CAMERA PARTICULARLY SUITED FOR REAL TIME PATTERN RECOGNITION; filed 26 August 1997; patented 27 April 1999.//Patent 5,899,443: PASSIVE-ACTIVE VIBRATION ISOLATION; filed 22 October 1996; patented 4 May 1999.// Patent 5,900,036: MULTI-CYLINDER APPARATUS FOR MAKING OPTICAL FIBERS, PROCESS AND PRODUCT; filed 30 August 1996; patented 4 May 1999.//Patent 5,900,831: METHOD FOR PRODUCING VARIABLE DENSITY/ ELECTRIC DIPOLE PROPERTY CHAFF DECOY MATERIAL; filed 26 March 1974; patented 4 May 1999.//Patent 5,901,272: NEURAL NETWORK BASED HELICOPTER LOW AIRSPEED INDICATOR; filed 24 October 1996; patented 4 May 1999.//Patent 5,901,556: HIGH-EFFICIENCY HEAT-DRIVEN ACOUSTIC COOLING ENGINE WITH NO MOVING PARTS; filed 26 November 1997; patented 11 May 1999./ /Patent 5,902,396: AMMONOTHERMAL GROWTH OF CHALCOGENIDE SINGLE CRYSTAL MATERIALS; filed 5 November 1997; patented 11 May 1999./ /Patent 5,902,952: ANTI TIP-OFF DEVICE; filed 30 September 1997; patented 11 May 1999.//Patent 5,902,953: MINIATURE, LOW POWER, ELECTROMECHANICAL SAFETY AND ARMING DEVICE; filed 16 March 1992; patented 11 May 1999.//Patent 5,903,349: FIBER OPTIC ACCELEROMETER SENSOR AND A METHOD OF CONSTRUCTING SAME; filed 21 April 1997; patented 11 May 1999.//Patent 5,903,684: INDEPENDENT CONTROL OF ONE OF NORMALLY INTERDEPENDENT LIGHT TRANSMISSION CHARACTERISTICS OF OPTICAL FIBER; filed 12 August 1997; patented 11 May 1999.//Patent 5,903,693: FIBER OPTIC CABLE FURCATION UNIT; filed 30 September 1997; patented 11 May 1999.//Patent 5,903,883: PHASE DETECTION USING NEURAL NETWORKS; filed 10 March 1997; patented 11 May 1999.//Patent 5,904,977: ELECTROSET COMPOSITE ARTICLES AND PROCESS; filed 17 August 1993; patented 18 May 1999.// Patent 5,904,990: AMINO FUNCTIONAL POLY (PARA-PHENYLENE VINYLENE)S AS PROTECTIVE COATINGS; filed 13 March 1998; patented 18 May 1999.// Patent 5,905,204: TEST SPECIMEN DESIGN INCORPORATING MULTIPLE FRACTURE SITES AND MULTIPLE STRAIN MATERIAL FRACTURES; filed 18 March 1998; patented 18 May 1999./ /Patent 5,905,211: LOAD MONITOR SHEAVE; filed 15 December 1997; patented 18 May 1999.//Patent 5,905,693: ISOLATION MOUNT FOR AN ACOUSTIC DEVICE; filed 31 March 1998; patented 18 May 1999.//Patent 5,905,867: APPARATUS FOR MONITORING ENVIRONMENTAL PARAMETERS AT NETWORK SITES; filed 12 November 1996; patented 18 May 1999.//Patent 5,906,147: WRENCH-TO-BOLT COUPLING ASSEMBLY; filed 8 April 1998; patented 25 May 1999.// Patent 5,908,566: MODIFIED PLASMA TORCH DESIGN FOR INTRODUCING SAMPLE AIR INTO INDUCTIVELY COUPLED PLASMA; filed 17 September 1997; patented 1 June 1999.//Patent 5,908,982: TEST APPARATUS FOR ROTARY DRIVE; filed 18 March 1998; patented 1 June 1999.//Patent 5,909,409: METHOD AND APPARATUS FOR UNDERWATER ACOUSTIC DETECTION AND LOCATION OF AN OBJECT; filed 8 January 1969; patented 1 June 1999.//Patent 5,909,520: NOISE CODING PROCESSOR; filed 25 August 1997; patented 1 June 1999.// Patent 5,911,172: RETRACTABLE UNDERWATER TURRET; filed 24 March 1997; patented 8 June 1999.// Patent 5,911,405: MULTI-PORTED DIVERTER VALVE ASSEMBLY; filed 9 May 1997; patented 15 June 1999.// Patent 5,911,568: REGULATED GAS SOURCE FOR UNDERWATER GUN OPERATION; filed 17 October 1997; patented 15 June 1999.// Patent 5,912,286: SILICONE-CONTAINING FLUOROPOLYMERS FOR CONTROLLED RELEASE OF ORGANIC LEACHANTS; filed 29 August 1997; patented 15 June 1999.//Patent 5,912,823: METHOD FOR DETERMINING THE VELOCITY OF A THREE-DIMENSIONAL FLUID FLOW OVER A SUBMERGED BODY; filed 6 October 1991; patented 15 June 1999.// Patent 5,913,976: FIBER OPTIC HANDLING AND COATING FIXTURE; filed 9 September 1996; patented 22 June 1999.//Patent 5,914,912: SONAR ARRAY POST PROCESSOR; filed 28 November 1997; patented 22 June 1999./ /Patent 5,916,510: CHANNELED CERAMIC STRUCTURE AND PROCESS FOR MAKING SAME; filed 7 October 1998; patented 29 June 1999.//Patent 5,917,970: WAVELENGTH MULTIPLEXED, ELECTRO-OPTICALLY CONTROLLABLE, FIBER OPTIC MULTI-TAP DELAY LINE; filed 21 April 1998; patented 29 June 1999.// Patent 5,918,307: UNDERWATER PROJECTILE LAUNCHER; filed 7 August 1997; patented 29 June 1999.// Patent application 08/925,994: ORGANIC WASTE DISPOSAL SYSTEM; filed 9 September 1997.// Patent application 08/992,070: REAL-TIME DATA ACQUISITION; filed 17 December 1997.//Patent application 09/

012,016: OILY WASTE WATER TREATMENT SYSTEM; filed 22 January 1998.//Patent application 09/137,870: MULTILINE TOW CABLE ASSEMBLY INCLUDING SWIVEL AND SLIP RING; filed 12 August 1998.//Patent application 09/226,614: ELECTRICAL OUTLET SPLASH PROTECTOR; filed 21 December 1998.//Patent application 09/226,620: ILLUMINATING ELECTRICAL FUSE; filed 21 December 1998.//Patent application 09/226,621: NON-SLIP SAFETY GLASSES; filed 21 December 1998.//Patent application 09/226,624: TWO MAN LOADING PLATFORM FOR USE ON SUBMARINES; filed 21 December 1998.//Patent application 09/226,625: ACOUSTIC SOUND SPEED PROFILING SYSTEM; filed 21 December 1998.// Patent application 09/226,632: LANDMASS FLY-AROUND BOUNDARY GENERATION; filed 21 December 1998.//Patent application 09/294,445: ADJUSTABLE AND LOCKING RIFLE MOUNTING SYSTEM; filed 31 March 1999.//

FOR FURTHER INFORMATION CONTACT: Mr. John G. Wynn, Staff Patent Attorney, Office of Naval Research (Code 00CC), Arlington, VA 22217–5660, telephone (703) 696–4004.

(Authority: 35 U.S.C. 207; 37 CFR Part 404)

Dated: November 2, 1999.

J. L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, Navy Federal Register Liaison Officer.

[FR Doc. 99–29523 Filed 11–10–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Open Meeting of the Ocean Research Advisory Panel

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Ocean Research Advisory Panel (ORAP) will meet to discuss National Oceanographic Partnership Program (NOPP) activities. All sessions of the meeting will remain open to the public.

DATES: The meeting will be held on Tuesday, November 30, 1999 from 8:30 a.m. to 4:30 p.m. In order to maintain the meeting time schedule, members of the public will be limited in their time to speak to the Panel. Members of the public should submit their comments one week in advance of the meeting to the meeting Point of Contact.

ADDRESSES: The meeting will be held at The Carnegie Endowment, Choate Room, 1779 Massachusetts Avenue, NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Dr. Steven E. Ramberg, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5660, telephone (703) 696–4358.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). The purpose of this meeting is to discuss NOPP activities. The meeting will include discussions on ocean observations, current and future NOPP activities, and other current issues in the ocean sciences community.

Dated: November 2, 1999.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 99–29522 Filed 11–10–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by November 24, 1999.

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ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: November 5, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Chief Information Officer

Type of Review: New.

Title: Post-January 1st, 2000 Evaluation Survey of Education Sector.

Abstract: The Department of Education (ED) is actively participating on the President's Council on Year 2000 (Y2K) Conversion and this Post Y2K Evaluation Survey is an ED, as well as, a Council initiative. Previous Y2K assessment surveys have raised major concerns about the Y2K readiness of our nation's schools. ED's most recent surveys, completed in October, show more than one-third of the nation's school districts and postsecondary institutions were not yet fully Y2K compliant and much work remained to be done before the New Year. Additionally, four percent of school districts did not believe they would be ready by January 1st. ED is taking a

proactive approach in evaluating the status of the nation's schools after January 1st through a random sample survey of 1,200 elementary/secondary school districts and 1,950 postsecondary institutions located in the 50 states, Puerto Rico, Virgin Islands, and the District of Columbia. Information obtained from this survey will help assess the status of the nation's schools after the year 2000 transition. Survey results will be reported not only to ED's management, but also to The President's Council on Year 2000 Conversion's Information Coordination Center, Office of Management and Budget, major education associations, and other Year 2000 oversight authorities, as well as the public.

Additional Information: This survey is being submitted for emergency clearance, as it is a year 2000 related data collection assessment effort. The year 2000 is less than two months away and recent surveys have raised major concerns about the Y2K readiness of the nation's schools. In order to best prepare the school districts and postsecondary institutions selected in the random sample, notifications and survey instructions need to be mailed in early December to ensure there is sufficient time for the surveys to be completed and results reported in January. Based on these circumstances, we are requesting the 60-day and 30-day waiver for **Federal Register** Notices. This waiver is requested per emergency clearance of year 2000 surveys under the Paperwork Reduction Act. Clearance is requested no later than November 24, 1999.

Frequency: One-time data collection conducted in January 2000.

Affected Public: State, local or Tribal government, SEAs or LEAs; business or other for-profit; not-for-profit institutions (elementary/secondary school districts and postsecondary education institutions).

Reporting and Recordkeeping Burden: Responses: 2,520 Burden Hours: 1,470

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov, or should be faxed to 202–708–9346.

Written comments or questions regarding burden and/or the collection activity requirements should be directed to Kathy Axt at 703–426–9692 or by e-mail at kathy__axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–29536 Filed 11–10–99; 8:45 am]

BILLING CODE 4000–1–P

DEPARTMENT OF ENERGY

[Docket No. EA–153–A]

Application to Export Electric Energy; Citizens Power Sales

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Citizens Power Sales (CP Sales) has applied for renewal of its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before December 13, 1999.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: On October 1, 1997, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized CP Sales to transmit electric energy from the United States to Canada as a power marketer using the international electric transmission facilities owned and operated by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Detroit Edison, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power and Light Co., Inc., Minnkota Power, New York Power Authority, Niagara Mohawk Power Corp., Northern States Power, and Vermont Electric Transmission Company. That two-year authorization expired on October 1, 1999. On October 28, 1999, CP Sales filed an application with FE for renewal of this export authority and requested that the Order be issued for an additional five-year term.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the CP Sales request to export to Canada should be clearly marked with Docket EA–153–A. Additional copies are to be filed directly with Mr. Joseph C. Bell, Jolanta Sterbenz, Hogan & Hartson L.L.P., 555 Thirteenth Street, NW, Washington, DC 20004–1109, and Geoffrey Mathews, Esq., Associate Counsel, Electricity Trading, Citizens Power Sales, 160 Federal Street, Boston, Massachusetts 02110.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order EA–153. Consequently, DOE believes that its has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–153–A proceeding.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select ''Regulatory Programs,'' then ''Electricity Regulation,'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on November 5, 1999.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 99–29568 Filed 11–10–99; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Record of Decision: Hanford Comprehensive Land-Use Plan Environmental Impact Statement (HCP EIS)

AGENCY: Department of Energy.

ACTION: Record of Decision.

SUMMARY: The Department of Energy (DOE) is issuing this Record of Decision (ROD) to adopt a Comprehensive Land-Use Plan (CLUP) for its Hanford Site in Washington. The purpose of this land-use plan and its implementing policies

and procedures is to facilitate decision-making about the site's uses and facilities over at least the next 50 years. The Department's decision seeks to balance the Department's continuing land-use needs at Hanford with its desire to preserve important ecological and cultural values of the site and allow for economic development in the area. This land-use plan consists of several key elements which are included in the Department's Preferred Alternative in the Final Hanford Comprehensive Land-Use Plan Environmental Impact Statement (HCP EIS). These elements are a land-use map that addresses the Hanford Site as five geographic areas—the Wahluke Slope, the Columbia River Corridor, the Central Plateau, All Other Areas of the Site, and the Fitzner-Eberhardt Arid Lands Ecology (ALE) Reserve—and depicts the planned future uses for each area; a set of nine land-use designations that define the permissible uses for each area of the site; and the planning and implementing policies and procedures that will govern the review and approval of future land uses. Together these four elements create the Hanford CLUP.

FOR FURTHER INFORMATION CONTACT: For further information on the Hanford Comprehensive Land Use Plan Environmental Impact Statement (HCP EIS) or to receive a copy of the HCP EIS or other information related to this ROD, contact: Thomas W. Ferns, HCP EIS Document Manager, U.S. Department of Energy, Richland Operations Office, P.O. Box 550, MSIN HO–12, Richland, Washington 99352. You may call (509) 372–0649 or send e-mail to thomas__w__ferns@rl.gov or a fax to (509) 376–4360. The HCP EIS is available electronically on the DOE NEPA Web (http://tis-nt.eh.doe/nepa/) under DOE NEPA Analyses, at http://nepa.eh.doe.gov/eis/eis0222.html.

For information on the DOE National Environmental Policy Act of 1969 (NEPA) process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0119, (202) 586–4600, or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

I. Purpose and Need for Agency Action

DOE has assigned elements of each of its four principal missions (National Security, Energy Resources, Environmental Quality, and Science) to the Hanford Site, and has established and maintains several capabilities to support these missions. These Hanford Site capabilities also support applications for other federal agencies and organizations in accordance with national priorities and policies. Today, the Hanford Site has diverse site-specific missions associated with environmental restoration, waste management, and science and technology. These missions have competing land-use needs and management values, and governments and stakeholders within the region have an interest in the management of Hanford resources over the long term. DOE needs to assess the relative qualities of Hanford's resources, compare the priorities and needs of Hanford's missions, and reach decisions such as the identification and disposal of excess lands. DOE Order 430.1a, Life Cycle Asset Management, and Public Law 104–201, Section 3153, National Defense Authorization Act for Fiscal Year 1997, require a land-use plan for the Hanford Site. The Final HCP EIS provides the analysis needed to adopt a land-use plan. Once adopted, the land-use plan will provide a framework for making land-use and facility-use decisions.

This ROD, after considering extensive public comment and cooperating agency input, adopts a land-use map, land-use designations, planning policies, and implementing procedures that the Department believes will best meet its mission needs for at least the next 50 years. This ROD begins the implementation of the CLUP, as described in the HCP EIS. There are four elements to the CLUP implementation:

(1) The DOE Preferred Alternative land-use map, that depicts land uses for areas of the Hanford site, including the Wahluke Slope, Columbia River Corridor, Central Plateau, Fitzner/Eberhardt Arid Lands Ecology (ALE) Reserve, and All Other Areas of the Hanford Site. The Preferred Alternative land-use map reflects the expansion of the proposed U.S. Fish and Wildlife Service (USFWS) wildlife refuge for preservation as well as for Hanford Site buffer zone uses. This expanded wildlife refuge includes the entire geographic areas of the Wahluke Slope, the Columbia River islands not in Benton County, the Riverlands, the McGee Ranch, and the ALE Reserve. The Preferred Alternative land-use map also allows full implementation of DOE mission elements assigned to Hanford, and will allow expansion of operations at Hanford as the need arises.

(2) The land-use designations that define the purpose, intent, and principal use(s) of each of the land-use designations on the CLUP Preferred Alternative land-use map.

(3) The land-use policies that direct land-use actions. The policies will help to ensure that individual land use actions collectively advance the CLUP Preferred Alternative map, goals, and objectives over time.

(4) The land-use plan implementing procedures that include administrative procedures for reviewing and approving use requests; a Site Planning Advisory Board (SPAB) consisting of representatives of DOE, cooperating agencies of the HCP EIS, and affected Tribal governments; and actions to be undertaken under the land-use plan to align and coordinate Hanford site management plans.

II. Hanford Site Features

Key features of the Hanford Site that form the basis for the five geographic areas used in the environmental impacts analysis and land-use plan are summarized as follows.

- The Wahluke Slope. The area north of the Columbia River encompasses approximately 357 km² (138 mi²) of relatively undisturbed or recovering shrub-steppe habitat. The Wahluke Slope is managed for DOE by both state and federal agencies under permit agreements. The western portion of the Wahluke Slope is managed by the USFWS as the Saddle Mountain National Wildlife Refuge. The USFWS has recently taken over management of most of the remainder of the Wahluke Slope from the WDFW. Current permit conditions require the Saddle Mountain National Wildlife Refuge to be closed to the public as part of a security zone for the N Reactor (now shut down), and as a buffer zone for the current K Basins spent nuclear fuel (SNF) removal project. The area continues to serve as a buffer and security area for several nuclear materials management and cleanup activities. Various levels of public access for recreational activities are allowed on the Wahluke Slope.
- Columbia River Corridor. The 111.6 km² (43.1 mi²) Columbia River Corridor, which is adjacent to and runs through the Hanford Site, is used by the public and Tribes for boating, water skiing, fishing, and hunting of upland game birds and migratory waterfowl. While public access is allowed on certain islands, access to other islands and adjacent areas is restricted because of unique habitats and the presence of cultural resources.

Along the southern shoreline of the Columbia River Corridor, the 100 Areas occupy approximately 68 km² (26 mi²). The facilities in the 100 Areas include nine retired plutonium production

reactors, associated facilities, and structures. Resource Conservation and Recovery Act of 1976 (RCRA) closure permit restrictions have been placed in the vicinity of the 100–H Area, which is associated with the 183–H Solar Evaporation Basins. Additional deed restrictions or covenants for activities that potentially extend more than 4.6 m (15 ft) below ground surface are expected for the Comprehensive Environmental Restoration, Compensation, and Liabilities Act of 1980 (CERCLA) remediation areas.

The area within the Columbia River Corridor known as the Hanford Reach includes an average of a 402 m (1,320 ft) strip of public land on either side of the Columbia River. The Hanford Reach is the last free flowing, nontidal segment of the Columbia River in the United States.

• Central Plateau. The 200 East and 200 West Areas occupy approximately 51 km ^{2} (19.5 mi ^{2}) in the Central Plateau of the Hanford Site. Facilities located in the Central Plateau were built to process irradiated fuel from the plutonium production reactors. The operation of these facilities resulted in the treatment, storage, disposal, and unplanned release of radioactive and nonradioactive waste. The Environmental Restoration Disposal Facility for CERCLA cleanup wastes is located in the Central Plateau. Other federal agencies, such as the Department of the Navy, also use Hanford nuclear waste treatment, storage or disposal facilities. Deed restrictions or covenants for activities that potentially may extend more than 4.6 m (15 ft) below ground surface are expected for CERCLA remediation areas in the Central Plateau.

In 1964, a 410 ha (1,000 ac) tract was leased to the State of Washington to promote nuclear-related development. A commercial low-level radioactive waste disposal facility, run by U. S. Ecology, Inc., currently operates on 41 ha (100 ac) of the recently reduced leasehold.

• All Other Areas. All Other Areas comprise 689 km ^{2} (266 mi ^{2}) and contain the 300, 400, and 1100 Areas, Energy Northwest facilities, and a section of land currently owned by the State of Washington for the disposal of hazardous substances.

The Hanford 1100 Area and the Hanford railroad southern connection (from Horn Rapids Road to Columbia Center) have been transferred from DOE ownership to Port of Benton ownership to support future economic development. Although the 1100 Area is no longer under DOE control, it is included in the HCP EIS to support the local governments with their State Environmental Policy Act (SEPA) EIS analyses of the Hanford sub-area of Benton County under the State of Washington's Growth Management Act.

The 300 Area is located just north of the City of Richland and covers 1.5 km ^{2} (0.6 mi ^{2}). The 300 Area is the site of former reactor fuel fabrication facilities and is also the principal location of nuclear research and development facilities serving the Hanford Site.

The 400 Area, located southeast of the 200 East Area, is the site of the Fast Flux Test Facility, which is being evaluated in an ongoing EIS. The proposed mission for the 400 Area is reactor operations and irradiation services with attendant support functions including fuel and target fabrication, target processing, and interim storage.

Energy Northwest currently operates Washington Nuclear Plant Number 2 on leased land approximately 10 km (6 mi) north of the 1100 Area. Originally leased for the operation of three nuclear power plants, construction of two of the plants was halted and now other industrial options are being considered.

In 1980, the Federal government sold a 259 ha (640 ac) section of land south of the 200 East Area, near State Route 240, to the State of Washington for the purpose of nonradioactive hazardous waste disposal. To date, this parcel has not been used for hazardous waste disposal, and it is undeveloped and uncontaminated (although the underlying groundwater is contaminated). The deed requires that if it is used for any purpose other than hazardous waste disposal, ownership would revert to the Federal government.

Additional activities in the All Other Areas include: A specialized training center. The Hazardous Materials Management and Emergency Response (HAMMER) Volpentest Training and Education Center is used to train hazardous materials response personnel. It is located north of the 1100 Area and covers about 32 ha (80 ac). A regional law-enforcement training facility. The Hanford Patrol Training Academy provides a range of training environments including classrooms, library resources, practice shoot houses, an exercise gym, and an obstacle course. A national research facility. The Laser Interferometer Gravitational Wave Observatory (LIGO), built by the National Science Foundation for scientific research, is designed to detect cosmic gravitational waves. The facility consists of two optical tube arms, each 4 km (2.5 mi) long, arrayed in an ''L'' shape, and is extremely sensitive to vibrations.

• Fitzner/Eberhardt Arid Lands Ecology Reserve (ALE Reserve). The ALE Reserve encompasses 308.7 km ^{2} (119.2 mi ^{2}) in the southwestern portion of the Hanford Site and is managed as a habitat and wildlife reserve and environmental research center.

The mineral rights to a 518 ha (1,280 ac) area on the ALE Reserve are owned by a private company. The company has been free to enter this area and explore for oil or gas since 1977.

Public access to the ALE Reserve has been restricted since 1943, resulting in high quality shrub-steppe habitat.

III. The Hanford Site and Its Missions:

The Hanford Site occupies 1,517 square kilometers (km ^{2}) (586 square miles [mi ^{2}]) in southeastern Washington. DOE has assigned elements of each of its four principal missions (National Security, Energy Resources, Environmental Quality, and Science) to the Hanford Site, and has established and maintains several capabilities to support these missions. These Hanford Site capabilities also support applications for other federal agencies and organizations in accordance with national priorities and policies. Today, the Hanford Site has diverse site-specific missions associated with environmental restoration, waste management, and science and technology. These missions have resulted in the growing need for a comprehensive, long-term approach to planning and development for the Site.

To meet this need, the HCP EIS analyzes the potential environmental impacts of alternative land-use plans for the Hanford Site and considers the land-use implications of ongoing and proposed activities. DOE is currently engaged in other NEPA reviews that include the Hanford Site as an alternative location for the proposals under consideration such as possible new missions for the Fast Flux Test Facility. These other NEPA reviews include programmatic and project-specific environmental impact statements and are listed in the Final HCP EIS in Table 1–1, NEPA Reviews Affecting the Hanford Site, along with their potential land-use impacts. Since these other environmental impact statements identify potential new or expanded activities for the Hanford Site, DOE needs to retain infrastructure at the Hanford Site pending completion of these reviews and corresponding decision documents. DOE expects that, in the future, new programs, projects, and facilities will be proposed for the Hanford Site, or will consider the Hanford Site as an alternative site for such facilities or activities. These new proposals will be analyzed in programmatic or project-specific NEPA reviews. Subsequent DOE decisions on these proposals may amend this ROD.

IV. 1996 Draft EIS Emphasized Remediation

After a public scoping process, DOE issued the Draft Hanford Remedial Action Environmental Impact Statement and Comprehensive Land-Use Plan (HRA–EIS) (DOE/EIS–0222D) for public review and comment on September 13, 1996. The public comment period for the Draft HRA–EIS initially ran through November 1, 1996, and was extended through December 10, 1996. During the public comment period, DOE held informational meetings and public hearings to receive comments in Richland, Seattle, and Mattawa, Washington; and in Portland and Hood River, Oregon.

V. Revised Draft Emphasized Land-Use Planning

As a result of public comments received, and changes in DOE's NEPA/CERCLA/RCRA integration policies, DOE focused the document on land-use planning. Pursuant to DOE's NEPA Regulations at 10 CFR Part 1021, DOE invited local and Federal governments to participate as cooperating agencies, and the affected Tribal governments to participate in preparing the EIS. Because DOE, the cooperating agencies and Tribal governments significantly revised the Draft HRA–EIS and its alternatives, DOE issued a Revised Draft HRA–EIS for public comment. Since land use was within the scope of the original Draft HRA–EIS, no further scoping was held.

VI. Public Review of the Revised Draft HRA–EIS

On April 23, 1999, the Department of Energy published a Notice of Availability in the **Federal Register** (64 FR 19983) for the Revised Draft HRA–EIS, starting a 45-day public comment period that ended on June 7, 1999. Public hearings on the Revised Draft HRA–EIS were held on May 18, 1999, in Portland, OR; May 20, 1999, in Richland, WA; June 2, 1999, in Mattawa, WA; and June 3, 1999, in Spokane, WA. DOE considered all comments on the Revised Draft HRA–EIS in preparing the Final EIS. DOE received more than 400 letters, postcards, questionnaires, surveys and electronic mail messages. In addition, more than 200 pages of transcripts were generated during the four public hearings.

In the Revised Draft EIS, DOE requested public comment on a proposal to change the name of the document to more accurately reflect its focus on land-use planning. Public comments supported this proposal and DOE changed the name of the September 1999 final document to the Final Hanford Comprehensive Land-Use Plan Environmental Impact Statement (HCP EIS).

VII. Cooperating Agencies and Consulting Governments

Nine cooperating agencies and consulting Tribal governments participated in preparing the HCP EIS: the U.S. Department of the Interior (Bureau of Land Management [BLM], Bureau of Reclamation, and the USFWS); the City of Richland, Washington; Benton, Franklin, and Grant Counties; the Nez Perce Tribe, Department of Environmental Restoration and Waste Management; and the Confederated Tribes of the Umatilla Indian Reservation (CTUIR). Each of the EIS action alternatives represents a land-use vision of one or more of the cooperating and consulting agencies.

VIII. The Proposed Action and Alternatives Considered

The proposed action for the HCP EIS is to develop and implement a comprehensive land-use plan (CLUP) for the Hanford Site. The elements of the CLUP include a land-use map, land-use designations, land-use policies, and a set of procedures for plan implementation. DOE and the cooperating agencies and consulting governments analyzed six alternative land-use maps, including the No-Action Alternative, the DOE Preferred Alternative, and four other Alternatives, using the nine land-use designations. The land-use designations and land-use plan policies and implementation procedures described in Section IX do not apply to the No-Action Alternative.

IX. Land-Use Designations

The land-use designations used in the evaluation process are as follows:

- Industrial-Exclusive: An area suitable and desirable for treatment, storage, and disposal of hazardous, dangerous, radioactive, nonradioactive wastes, and related activities.
- Industrial: An area suitable and desirable for activities such as reactor operations, rail, barge transport facilities, mining, manufacturing, food processing, assembly, warehouse, distribution operations and related activities.
- Agricultural: An area designated for the tilling of soil, raising of crops and livestock, and horticulture for commercial purposes along with all those activities normally and routinely involved in horticulture, the production of crops and livestock, and related activities.
- Research and Development: An area designated for conducting basic or applied research that requires the use of a large-scale or isolated facility or smaller scale time-limited research conducted in the field or in facilities that consume limited resources. This designation includes related activities.
- High-Intensity Recreation: An area allocated for high-intensity, visitor-serving activities and facilities (commercial and governmental), such as golf courses, recreational vehicle parks, boat launching facilities, Tribal fishing facilities, destination resorts, cultural centers, museums, and related activities and facilities.
- Low-Intensity Recreation: An area allocated for low-intensity, visitor-serving activities and facilities, such as improved recreational trails, primitive boat launching facilities, permitted campgrounds, and related activities and facilities.
- Conservation (Mining and Grazing): An area reserved for the management and protection of archeological, cultural, ecological, and natural resources. Limited and managed mining (*e.g.*, quarrying for sand, gravel, basalt, and topsoil for governmental purposes only) and grazing could occur as a special use (i.e., a permit would be required) within appropriate areas. Limited public access would be consistent with resource conservation. This designation includes related activities.
- Conservation (Mining): An area reserved for the management and protection of archeological, cultural, ecological, and natural resources. Limited and managed mining (e.g., quarrying for sand, gravel, basalt, and topsoil for governmental purposes only) could occur as a special use (i.e., a permit would be required) within appropriate areas. Limited public access would be consistent with resource conservation. This designation includes related activities.
- Preservation: An area managed for the preservation of archeological, cultural, ecological, and natural resources. No new consumptive uses (i.e., mining or extraction of non-renewable resources) would be allowed within this area. Limited public access would be consistent with resource preservation and DOE's need to provide a buffer zone. This designation includes related activities.

X. Alternatives Considered

The six alternative land-use maps analyzed in the HCP EIS include the No-Action Alternative, DOE's Preferred

Alternative, and four other Alternatives that were developed by cooperating agencies and consulting Tribal governments. The major differences in environmental impacts among alternatives are potential cultural, biological, and geological impacts due to consumptive land-use practices; socioeconomic effects due to Hanford Site employment changes; and human health risk impacts related to allowable land uses. The six alternatives are:

- No-Action Alternative. The No-Action Alternative represents the current status of land use at the Hanford Site and no change from current land management processes or intergovernmental relationships with the cooperating agencies. Specific land-use decisions for Hanford would continue to be made under the NEPA process, based on the current Hanford Strategic Plan (Mission Plan) and on a project-by-project basis, based on the Tri-Party Agreement (TPA) remediation decision-making process.
- DOE's Preferred Alternative. DOE's Preferred Alternative anticipates multiple uses of the Hanford Site, including future DOE missions, non-DOE federal missions, and other public and private-sector land uses. DOE's Preferred Alternative will do the following: Consolidate waste management operations on 50.1 km^2 (20 mi^2) in the Central Plateau of the site; allow industrial development in the eastern and southern portions of the Hanford Site and allow an increase in recreational access to the Columbia River; designate a portion of the Hanford Site for preservation and a buffer zone by allowing for expansion of the existing Saddle Mountain National Wildlife Refuge overlay to include all of the Wahluke Slope (North Slope) of the Hanford Site (consistent with the Department of Interior's [DOI] 1994 Hanford Reach of the Columbia River Comprehensive River Conservation Study and Final EIS, and 1996 Hanford Reach ROD); the Columbia River islands not in Benton County; the Riverlands; the McGee Ranch; and the ALE Reserve. It will also ensure that, where practicable, withdrawn Bureau of Land Management lands are clean enough to support BLM's multiple-use mandate.
- Alternative One (Natural Resources Trustee). The USFWS's alternative emphasizes a Federal stewardship role for managing the natural resources at Hanford. This alternative considers these resources in a regional context, and would allow for expansion of the existing Saddle Mountain National Wildlife Refuge to include all of the Wahluke Slope (North Slope), all of the Columbia River Islands including a 402 meter (quarter-mile) buffer on the Benton County side of the river, the Riverlands, the McGee Ranch, and the ALE Reserve (e.g., all of the Hanford lands north and east of the Columbia River and west of State Highways 240 and 24, and the Hanford Reach study area). Alternative One would conserve the Hanford Site shrub-steppe ecosystem and protect the Hanford Reach.
- Alternative Two (Nez Perce Tribe, Department of Environmental Restoration and Waste Management). The Nez Perce alternative calls for preservation of natural and cultural resources and traditional Tribal uses at the site. Future DOE missions would be constrained to the Central Plateau, 300 Area, and 400 Area. Both this alternative and Alternative Four reflect Tribal visions and views of Tribal members' treaty rights and traditional Tribal uses of Hanford lands. The Tribes and DOE have ''agreed to disagree'' on the interpretation of treaty rights on Hanford lands in the interest of moving the EIS process forward. Each party reserves the right to assert its respective interpretation of treaty rights at Hanford.
- Alternative Three (Cities and Counties). This local governments' alternative anticipates multiple uses and is based on the individual planning efforts of local agencies and organizations under the state's Growth Management Act including Benton County, Franklin County, Grant County, and the City of Richland. Alternative Three emphasizes the economic development potential of the Hanford Site. Alternative Three would allow dryland (non-irrigated) agricultural and grazing activities, and irrigated agriculture on the Hanford Site. The land-use designations contained in Alternative Three were developed consistent with local availability of infrastructure, nearness of urban areas, soils capabilities, and current use patterns.
- Alternative Four (Confederated Tribes of the Umatilla Indian Reservation [CTUIR]). This CTUIR alternative calls for preservation of natural resources and areas of religious importance to the CTUIR as well as traditional Tribal uses at the Site. Both this alternative and Alternative Two reflect Tribal visions and views of Tribal members' treaty rights and traditional Tribal uses of Hanford lands.

XI. Environmentally Preferable Alternative

The Council on Environmental Quality (CEQ) NEPA Regulations (40 CFR 1505.2) require a ROD to identify the ''environmentally preferable alternative''—that is, the alternative that causes the least damage to the biological and physical environment and best protects, preserves, and enhances historic, cultural, and natural resources. After considering impacts to each resource area by alternative, DOE has identified Alternative One as the Environmentally Preferable Alternative. Alternative One represents a Federal stewardship role for managing natural resources on the Hanford Site with the acknowledged consumptive treaty-reserved rights from Article 3 of the Yakama and Nez Perce Treaties, ''the right of taking fish at all usual and accustomed places in common with citizens of the Territory; and of erecting temporary buildings for curing''; as well as the similar language from Article 1 of the CTUIR Treaty, ''the exclusive right of taking fish in the streams running through and bordering said reservation is hereby secured to said Indians, and at all other usual and accustomed stations in common with citizens of the United States, and of erecting suitable buildings for curing the same.'' Alternative One does not, however, include the tribal vision of consumptive non-fishing activities by tribal members exercising their reserved treaty rights, implicit in Alternatives Two and Four. Specifically, these asserted consumptive rights are from Article 3 of the Yakama and Nez Perce Treaties, ''together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land,'' as well as the similar language from Article 1 of the CTUIR treaty, ''the privilege of hunting, gathering roots and berries and pasturing their stock on unclaimed lands in common with citizens, is also secured to them.''

XII. Environmental Impacts of the DOE Preferred Alternative

In making its decision, DOE balanced environmental impacts with other factors, including meeting DOE mission needs and allowing regional economic development. DOE analyzed the potential impacts that might occur to land, water, air, ecological and biological resources, human health, environmental justice, cultural resources, socioeconomic values, infrastructure, and waste management for the six alternatives. DOE considered the impacts that might occur from use of special nuclear materials, facility accidents, and other materials associated with Hanford Site operations. DOE considered the impacts of projects and activities, the irreversible or irretrievable commitments of resources, and the relationship between short-term

uses of the environment and the maintenance and enhancement of long-term productivity. The highest resource impacts, as with any other alternative, will be to cultural, biological, and geological resources from consumptive land-use practices. Under DOE's Preferred Alternative, the following resources potentially would be affected: geologic, water, biologic, cultural, visual, noise, and socioeconomic. Generally, the environmental impacts from the preservation and conservation aspects of this alternative would be environmentally beneficial. Any negative environmental impacts would be more likely for biological, cultural, and geological resources as a consequence of consumptive land uses. The impacts of the DOE Preferred Alternative that we are adopting today are discussed fully in Chapter 5 of the HCP EIS. Additionally, mitigation of these impacts would occur through the resource management plans identified in Chapter 6 of the HCP EIS. (See ''Mitigation Measures'' that follow.)

DOE also evaluated the environmental justice and human health impacts of this alternative.

- Environmental Justice: DOE expects no environmental justice impacts from the operation of the Hanford Site under the Preferred Alternative (*i.e.*, projected impacts from the Preferred Alternative would not be disproportionately high and adverse for minority or low-income populations in the area). As a general matter, the human health effects from any of the alternatives is expected to be small. DOE analyzed human health impacts from exposure through special pathways, including ingestion of game animals, fish, native vegetation, surface waters, sediments, and local produce; absorption of contaminants in sediments through the skin; and inhalation of plant materials. The special pathways have the potential to be important to the environmental justice analysis because some of these pathways may be more important or viable for the traditional or cultural practices of minority populations in the area. In this case, however, these special pathways would not be expected to result in disproportionately high and adverse impacts to minority or low-income populations. Increased access to the Columbia River would potentially increase exposure. Minority or low-income populations may be more prone to adopt a subsistence lifestyle, but the adoption of such a lifestyle would not be expected to result in disproportionately high and adverse impacts. Areas of cultural value to Tribal members would be protected, but development would be allowed within the viewscapes of some of those areas. Economic development of Hanford Site lands would not impose disproportionately high and adverse impacts on low-income and minority communities within the assessment area. Prohibiting agriculture on the Wahluke Slope would not change the current socioeconomic condition.
- Human Health: Land uses under the Preferred Alternative, like any other alternative, could indirectly affect human health. New developments on the Hanford Site under the Preferred Alternative could lead to an increase in occupational injuries and fatalities associated with sand, gravel and basalt mining and industrial activities, and increased recreational activities could increase the risk of injury from recreational accidents. DOE's current monitoring program data do not indicate that adverse health impacts would be associated with consumption of fish and game.

The alternatives considered in the HCP EIS, including the Preferred Alternative, were developed based on the assumption that human health risks associated with contamination at the Hanford Site will continue to be addressed through the RCRA and CERCLA processes. These processes are expected to reduce human health risk to acceptable levels through remedial actions and administrative controls, such as deed restrictions, which are imposed by CERCLA RODs. DOE has also assumed that the future land uses under the Preferred Alternative would not be allowed until remediation has reduced human health risk to levels acceptable for the intended land uses, or DOE has followed the process described in Chapter 6 of the HCP EIS that would modify that land use while maintaining institutional controls.

XIII. Mitigation Measures

Future uses of the Hanford Site will be subject to mitigation under the CLUP policies and procedures or the NEPA/CERCLA/RCRA integrated processes. All proposals of land use potentially affecting resources will be required to comply with the applicable resource-specific requirements. The CLUP policies and procedures will provide resource management plans to advise the project proponent on strategies to avoid or minimize environmental impacts. Plan policies and procedures, as conveyed by resource management plans and area management plans, will be developed and integrated to support an overall mitigation strategy. Mitigation for specific actions, such as sand, gravel and basalt mining, would be controlled through the issuance of special use permits. Mitigation efforts that may be required by DOE include, avoidance of impacts, replacement of topsoil, soil stabilization techniques to control wind erosion, and documentation of unique features before mining. To reduce the impacts on water resources, the following tactics can be employed: using silt fences around development sites to contain soil erosion and minimize silt release near surface water, requiring a demonstration of no adverse impact on groundwater due to increased infiltration and transportation of vadose zone contamination resulting from development, and minimizing the use of groundwater so that water withdrawal will not alter groundwater flow and influence existing contamination plumes.

All proposals of land use potentially affecting sensitive biological resources are required to comply with applicable statutes, such as the Endangered Species Act of 1973. Some mitigation efforts that could reduce impacts to biological resources include minimizing disturbance of wetlands and replacing disturbed wetlands through purchase, construction, or restoration; reclamation of disturbed areas using native vegetation; and scheduling activities to avoid critical nesting, roosting, leking (*i.e.*, mating), breeding, and fawning times.

Impacts to cultural resources of specific project proposals will be evaluated through the resource management plan process, including potential impacts on American Indian treaty rights and known archaeological and historic sites. To reduce impacts to cultural resources, DOE will continue to schedule activities to avoid conflicts with American Indian traditional and religious uses, and will continue to conduct consultations with the DOE Richland Operations Office Cultural Resources Program Manager, the Washington State Historic Preservation Office, affected Tribal governments, and Wanapum Band representatives to identify additional mitigation measures or project alternatives.

Potential mitigation for aesthetic resources include: site reclamation, implementing dust control measures, covering loads when hauling materials away from project sites, siting development or sand, gravel and basalt mining activities in areas where these activities least impact the viewshed from basalt outcrops or their talus slopes such as Gable Butte and Gable Mountain, and minimizing noise impacts to wildlife by restricting activities that generate noise.

XIV. Discussion of Comments on the Final Hanford Comprehensive Land-Use Plan Environmental Impact Statement

DOE made the Final HCP EIS publicly available and distributed approximately 500 copies to Congressional members and Committees, the States of Washington and Oregon, various American Indian Tribal governments and organizations, local governments, other Federal agencies, and interested organizations and individuals. DOE received three comment letters on the Final HCP EIS from three sources: (1) Washington Department of Fish and Wildlife (WDFW), (2) an individual commenter, and (3) National Center for Environmental Health.

WDFW Comment: In a letter dated 10/25/99, the WDFW commended DOE for designating the ALE Reserve, McGee Ranch/Riverland Site, and the North Slope (Wahluke Slope) as Preservation consistent with national wildlife refuge management, stating that ''With these actions, USDOE will strengthen the integrity of Hanford's terrestrial ecosystem and further the protection of important aquatic resources with the Hanford Reach.'' WDFW also applauded DOE for designating both shorelines of the Columbia River as Preservation, and for removing grazing from the Preferred Alternative. WDFW stated that, ''These actions are consistent with USDOE's stewardship role and policies on ecosystem management.''

WDFW was disappointed that the Final HCP EIS does not address several concerns that WDFW had expressed earlier. It was ''generally concerned about the fate of biological resources that occur within central Hanford but outside the Preservation and Conservation designation delineated in the Preferred Alternative specifically shrub-steppe habitat, a priority habitat for WDFW, and attendant biological resources in the subject areas remain vulnerable to development. Further, it appears that the probable listing of Washington's sage grouse population under the Endangered Species Act has not been considered by USDOE. Even without a Federal ESA listing action, we view the shrub-steppe habitats of the Hanford Site as invaluable elements in the recovery of Washington's sage grouse.''

DOE Response: DOE believes that it is premature to consider the potential specific impacts of a petitioned Endangered Species Act (ESA) listing until the listing and associated conditions are issued. However, it should be noted that the McGee Ranch, which WDFW considers as habitat critical to the natural reestablishment of sage grouse populations on ALE, is designated Preservation under the Preferred Alternative. In addition, grazing, which has been identified as a threat to sage grouse, has been deleted from the Preferred Alternative as an allowable land use for this area. The wildlife agencies managing the areas of the Hanford Site designated Preservation may decide to attempt to reintroduce sage grouse within those areas.

WDFW Comment: ''Our largest area of concern lies in the southeast corner of the site, where Industrial, and Research and Development designations overlay Level II (shrub steppe) resources. The FEIS relies on the Draft Hanford Site Biological Resource Management Plan (BRMaP) and its sub-tier document the Draft Hanford Site Biological Resources Mitigation Strategy Plan (BRMiS) to describe biological resources and to make decisions about mitigation requirements. The current drafts of BRMaP and BRMiS would require avoidance and minimization of impacts to Level II resources but would not require compensatory mitigation for unavoidable impacts. This single loophole puts more than 80,000 acres of shrub steppe habitat at risk. The FEIS calls for revisions to the two biological plans but there is no commitment to the outcome. We request that the ROD include a commitment to use the full mitigation hierarchy, as defined by the Council on Environmental Quality (CEQ), wherever impacts to biological resources occur at Hanford.''

DOE Response: DOE will continue its policy to mitigate impacts in areas disturbed by new activities, as appropriate. Specific commitments and Mitigation Action Plans will be developed on a case-by-case basis during project-specific NEPA reviews. For any specific new proposals, DOE will consider in its decision making all appropriate types of mitigation defined by CEQ.

WDFW Comment: WDFW maintains that ''it is inappropriate for USDOE to invoke Irretrievable and Irreversible language to avoid the responsibility to mitigate for impacts to shrub steppe and other biological resources (See specific FEIS response RL318–44). Unavoidable adverse impacts can be substantially reversed and habitat functions restored through implementation of CEQ's mitigation hierarchy. There are many disturbed areas and old fields within Conservation designations where compensatory mitigation can be conducted. Especially with the potential ESA listing of sage grouse, USDOE and other federal agencies should exercise all practical means to contribute to the protection and restoration of sage grouse habitat.''

DOE Response: Irretrievable and irreversible commitments of resources could effect CERCLA natural resources damages assessment liabilities, and such potential commitments are discussed in the HCP EIS as required by NEPA regulations. To the extent that such irretrievable and irreversible commitments of resources are made in the future as described in Chapter 6 of the HCP EIS, it does not mean that DOE would not voluntarily mitigate potential injuries to natural resources. This land-use plan ensures that the mitigations taken will be coordinated and located in appropriate areas. For example, mitigation could be conducted in areas designated for Conservation or Preservation as allowed under the CLUP or the administering wildlife agencies' management plans.

WDFW Comment: ''Our final concern also relates to potential shrub steppe impacts, due to the lack of a thorough NEPA analysis of geologic source sites. The current EIS process seemed to be the logical place for such an analysis, but no biological surveys were included for any of the source sites mentioned. We strongly endorse ''a coordinated NEPA analysis to address the gravel quarries on a site-wide basis'' (specific FEIS response #445–21). We request that USDOE commit to this analysis in the ROD, thereby honoring earlier commitments made in the Tank Waste Remediation System Environmental Impact Statement and addressing Hanford Natural Resource Trustee Council concerns expressed by letter to Mr. Paul Dunigan, USDOE, dated August 13, 1999.''

DOE Response: In addition to the ALE soil and basalt quarry site that was evaluated in Appendix D, the HCP EIS designates general areas for consideration as potential sources of geological material (Conservation [Mining]). DOE intends to honor the commitment in the Tank Waste Remediation System EIS to perform a NEPA analysis addressing gravel quarries.

Individual Commenter: ''Now that the Final Hanford CLUP–EIS designates areas for industrial land use, I expect the numeric cleanup levels to increase significantly in those areas designated for 'industrial use.' I disagree with USDOE's response to my comment (Comment Response Document response number RL 154–08) that this 'is a TPA issue.'''

DOE Response: The CLUP is to provide guidance to all of Hanford's land-use activities, including the clean-

up mission. The CLUP may be used by the regulators to help establish clean-up goals during the CERCLA/RCRA process. However, land-use is only one of several criteria the TPA regulators may use to determine clean-up levels. The TPA governs selection of specific remedies, including numeric clean-up levels for those remedies. The TPA has its own public involvement process during which these clean-up levels would be subject to public comment. There is also a regulatory link between the state's Model Toxics Control Act and the state's Growth Management Act (as represented by Alternative Three) that could also affect clean-up levels. DOE will forward this comment letter to the appropriate TPA contacts at EPA and Ecology.

Individual Commenter: ''It is requested that the Final Hanford CLUP–EIS ROD include language which identifies the USDOE the primary environmental steward for all Hanford Site areas regardless of land-use designation. In addition, it is requested that the Final Hanford CLUP–EIS ROD identify a commitment to ensure applicable contamination pathways (groundwater and surface water) will be taken into consideration for establishment of all future cleanup levels.''

DOE Response: Environmental stewardship responsibilities are clearly assigned by Federal law and Executive Order to DOE for lands under its executive control. Consideration of applicable contamination pathways would occur under the TPA process.

Individual Commenter: ''My comment (number 15 of my May 27, 1999 letter numbered RL 154–06 by the Comment Response Document) regarding disclosure of remaining soil contamination during the conveyance of ownership was not addressed.''

DOE Response: Transfer of federal lands where hazardous substances have been used is controlled by section 120(h) of CERCLA where a notice of the type and quantity of hazardous substances that have been on the property is required before transfer. Additionally, for economic development transfers, please refer to page 1–42 of the Final HCP EIS, Table 1–4, ''Regulations Affecting Land Transfer'' (under Approvals), which states: ''Section 3154 of the Hall Amendment of the Defense Authorization Act of 1994 requires Secretary approval or designee plus Administrator of EPA for NPL Site or appropriate State official'' before the land can be transferred.

National Center for Environmental Health Comment: The National Center for Environmental Health Comment thanked DOE for the opportunity to review and comment on the FEIS and requested a copy of any future environmental impact statements which may indicate potential public health impacts that are developed under the National Environmental Policy Act (NEPA).

DOE'S Decision

DOE's decision is to adopt the DOE Preferred Alternative land-use map as shown in the HCP EIS and to implement the DOE Preferred Alternative using the policies and procedures described in Chapter 6 of the HCP EIS. DOE is selecting the Preferred Alternative over the other alternatives, including the Environmentally Preferable Alternative (Alternative One) because it offers the best balance between DOE's mission needs, including economic development, and the need to protect environmental resources. In response to comments received during the public review of the Revised Draft EIS, DOE modified its Preferred Alternative in the Final EIS, bringing it closer to the Environmentally Preferable Alternative by increasing natural resource protection while still providing for anticipated DOE mission needs. These modifications include changing all Conservation (Mining and Grazing) designations to Conservation (Mining) and extending the national wildlife refuge designation (from the Environmentally Preferable Alternative, Alternative One) to include the entire geographic areas of the Wahluke Slope, the Columbia River islands not in Benton County, the Riverlands, the McGee Ranch, and the ALE Reserve. Future individual project land-use requirements would be irreversible and irretrievable committed through appropriate NEPA or, NEPA, CERCLA, or RCRA integrated processes as described in Chapter 6 of the HCP EIS. DOE's decision is detailed by geographic area as follows:

The Wahluke Slope

The Wahluke Slope is currently managed under a 1971 permit by both state and Federal agencies for DOE. DOE will continue a permit arrangement for management of the Wahluke Slope. The Wahluke Slope has been administered for wildlife and recreation as the Saddle Mountain National Wildlife Refuge and the Wahluke Wildlife State Recreation Area under permits granted by DOE to the USFWS and WDFW, respectively. Section 2 of the 1971 permit allows the USFWS and WDFW to adjust their respective management responsibilities and boundaries on the Wahluke Slope as long as they notify the Department within thirty days of such adjustment. In accordance with that provision, in April 1999, the WDFW and the USFWS notified DOE of their intent to modify their management responsibilities on the Wahluke Slope, leaving only a small portion (about 324 ha [800 ac]) northwest of the Vernita Bridge under WDFW management. In August 1999, USFWS notified DOE that it had taken over management of the entire Wahluke Slope except for those portions retained by the WDFW northwest of the Vernita Bridge. The USFWS informed DOE that it intends to allow essentially the same uses permitted by the State of Washington under the WDFW's management of the Wahluke Slope. Therefore, adjusting the management responsibility for the Wahluke Slope involved only a change in the agency managing the property and did not involve any change in the management activities for the Wahluke Slope.

DOE's Preferred Alternative will allow expansion of the existing Saddle Mountain National Wildlife Refuge as an overlay wildlife refuge within the Hanford buffer zone to include all of the Wahluke Slope, consolidating management of the Wahluke Slope under the USFWS. An overlay wildlife refuge is one where the land belongs to one or more Federal or state agencies, but is managed by the USFWS. Management of the Wahluke Slope by the USFWS as an overlay wildlife refuge is consistent with the 1996 DOI Hanford Reach EIS ROD. That ROD recommended that the Wahluke Slope be designated a wildlife refuge and the Hanford Reach a Wild and Scenic River, and that the wildlife refuge be managed by the USFWS.

The entire Wahluke Slope will be designated Preservation, with the exceptions near the Columbia River as discussed in the Columbia River Corridor section that follows. The major reason for designating this area as Preservation is to provide protection for sensitive areas or species of concern (*e.g.*, wetlands, sand dunes, steep slopes, or the White Bluffs) from impacts associated with intensive land-disturbing activities.

A Comprehensive Conservation Plan for the Wahluke Slope will be developed by USFWS in accordance with the National Wildlife Refuge System Improvement Act of 1997. This Act provides significant guidance for management and public use of refuges allowing for wildlife-dependent recreation uses such as hunting, fishing, wildlife observation and photography, and environmental education and interpretation. The USFWS will consult

with DOE during the development of this plan to ensure necessary and appropriate buffer zones for ongoing and potential future missions at the Hanford Site. Pursuant to its role as the underlying land owner, and under the terms of the use permit granted to the USFWS, DOE reserves the right to approve or disapprove this plan.

The Columbia River Corridor

The Columbia River Corridor has historically contained reactors and associated buildings to support Hanford's former defense production and energy research missions. Nevertheless, remediation planning documents, public statements of advisory groups, and such planning documents as the Decommissioning of Eight Surplus Production Reactors at the Hanford Site (DOE–EIS–0119, December 1991) have resulted in determinations that remediation and restoration of the Columbia River Corridor will return the corridor to an undeveloped, natural condition over a 75-year period. Restrictions on certain activities may continue to be necessary to prevent the mobilization of contaminants, the most likely example of such restrictions being on activities that discharge water to the soil or excavate below 4.6 m (15 ft). Although the Surplus Reactor EIS ROD calls for the reactor buildings to be demolished and the reactor blocks to be moved to the Central Plateau, this action might not take place until 2068 or until a new Tri-Party Agreement milestone is negotiated. As a result, the reactor buildings could remain in the Columbia River Corridor and be considered a pre-existing nonconforming land use into the 50-year-plus planning period addressed by the HCP EIS. The reactor hazards drive DOE to retain an appropriate buffer zone for eventual remediation activities.

The Columbia River Corridor will include High-Intensity Recreation, Low-Intensity Recreation, Conservation (Mining), and Preservation land-use designations. The river islands and a quarter-mile buffer zone will be designated as Preservation to protect cultural and ecological resources. Those islands not in Benton County will be designated Preservation and made available for inclusion in the overlay wildlife refuge. Those islands within Benton County will be designated Preservation, but will not be included in the proposed overlay wildlife refuge at this time. Four sites, away from existing contamination, will be designated High-Intensity Recreation to support visitor-serving activities and facilities development. DOE will allow the B Reactor to be converted into a museum and the surrounding area will be made available for museum-support facilities. The High-Intensity Recreation area near Vernita Bridge (where the current Washington State rest stop is located) will be expanded across State Highway 240 and to the south to include a boat ramp and other visitor-serving facilities. Two areas on the Wahluke Slope will be designated as High-Intensity Recreation for potential exclusive Tribal fishing villages. Six areas will be designated for Low-Intensity Recreation. The area west of the B Reactor will be used as a corridor between the High-Intensity Recreation areas associated with the B Reactor and the Vernita Bridge rest stop and boat ramp. A second area near the D/DR Reactors site will be used for visitor services along a proposed recreational trail as conceptualized on Alternative Three's map. The third and fourth areas, the White Bluffs boat launch, and its counterpart on the Wahluke Slope, are located between the H and F Reactors and will be used for primitive boat launch facilities. A fifth area, near the old Hanford High School, will accommodate visitor facilities and access to the former town site and provide visitor services for hiking and biking trails that could be developed along the Hanford Reach. A sixth site, just north of Energy Northwest (formerly known as Washington Public Power Supply System), will also provide visitor services for recreational trails (*e.g.*, hiking and biking) along the Hanford Reach. On the Wahluke Slope side of the Columbia River, the White Bluffs boat launch will remain managed as is, with a Low-Intensity Recreation designation. A Low-Intensity Recreation designation for the water surface of the Columbia River will be consistent with current management practices and the wishes of many stakeholders in the region. The remainder of land within the Columbia River Corridor outside the quarter-mile buffer zone will be designated for Conservation (Mining). This designation will allow for DOE-permitted sand, gravel and basalt mining activities and support BLM's mission of multiple use. Sand, gravel and basalt mining will be permitted only in support of governmental missions or to further the biological function of wetlands (*e.g.*, conversion of a gravel pit to a wetland by excavating to groundwater). A Conservation (Mining) designation will allow DOE to provide protection to sensitive cultural and biological resource areas, while allowing access to geologic resources. A Preservation land-use designation for the Columbia River islands is consistent with the DOI's Hanford Reach EIS ROD and will provide additional protection to sensitive cultural areas, wetlands, flood plains, three federally listed stocks of anadromous salmon and steelhead, and bald eagles from impacts associated with intensive land-disturbing activities. Remediation activities will continue in the 100 Areas (*i.e.*, 100–B/C, 100–KE, 100–KW, 100–N, 100–D, 100–DR, 100–H, and 100–F), and will be considered a pre-existing, nonconforming land use in the Preservation land-use designation.

The Central Plateau

The Central Plateau (200 Areas) geographic area will be designated Industrial-Exclusive. An Industrial-Exclusive land-use designation will allow for continued Waste Management operations within the Central Plateau geographic area consistent with past NEPA, CERCLA, and RCRA commitments that have established numerous waste management treatment, storage and disposal facilities such as, low-level waste burial grounds, hazardous wastes burial grounds, transuranic treatment and storage facilities, liquid wastes treatment, storage and disposal facilities, transuranic separation facilities, isotopic separation facilities, vitrification facilities, etc. This designation will also allow expansion of existing facilities or development of new compatible facilities. Designating the Central Plateau as Industrial-Exclusive will be consistent with the Hanford Future Site Working Group's 1992 recommendations, current DOE management practice, other governments' recommendations, and many public stakeholder values throughout the region.

All Other Areas

Within the All Other Areas geographic area, the Preferred Alternative will include Industrial, Research and Development, High-Intensity Recreation, Low-Intensity Recreation, Conservation, and Preservation land-use designations. The majority of the All Other Areas will be designated Conservation (Mining) to support a possible BLM mission of multiple use and sand, gravel and basalt mining for DOE and other governmental purposes such as facility aggregate, road aggregate, remediation backfill, remediation cover materials, *etc.*

Several areas that will be designated as Conservation (Mining) will be unable to fulfill the designated land use, such as:

- A Notice of Deed Restriction has been placed in those areas where vadose zone contamination remained in-place,

according to the CERCLA ROD or RCRA Closure Permit (*e.g.*, the Horn Rapids Landfill asbestos trench, Central Waste Complex asbestos trench, 183–H Solar Basins, etc.), foreclosing the sand, gravel and basalt mining option. New areas may be restricted as new CERCLA RODs or RCRA Closure Permits are completed.

Other land-use designations will further define how the All Other Areas will be managed. These designations and the areas affected are as follows:

- Two distinct areas, one located east of the 200 Areas (*i.e.*, May Junction) and the other located north of Richland, will be designated for Industrial use to support new DOE missions or economic development. This designation will provide additional industrial development and/or expansion area for current facilities.
- An area west of State Highway 10 and east of State Highway 240 will be designated for Research and Development (R&D) to support economic diversification and DOE's Energy Research mission. This area will allow for the development of R&D facilities, such as LIGO, which could require substantial buffer zones for operation. In addition, R&D facilities not requiring large areas for operation will also be located within this area.
- A small area at the junction of State Highway 10 and State Highway 240 will be designated High Intensity Recreation to allow for visitor serving facilities at the gateway to the Hanford Reach, ALE, Horn Rapids Park and other recreational areas.
- Gable Mountain, Gable Butte, the area west of State Highway 240 from the Columbia River across Umtanum Ridge to the ALE Reserve, and the active sand dunes areas will be designated for Preservation, which will provide additional protection of these sensitive areas. The extant railroad grade across the Riverlands area will be considered an active permitted infrastructure to clarify its status with respect to policy section 6.3.5. Utility and Transportation Corridors in the Final HCP EIS.

The Fitzner/Eberhardt Arid Lands Ecology Reserve (ALE Reserve)

All of the ALE Reserve will be included in the proposed overlay wildlife refuge. Nearly all of the ALE Reserve geographic area will be designated as Preservation. This designation is consistent with current management practices of the Rattlesnake Hills Research Natural Area and the USFWS permit. A portion of the ALE Reserve will be managed as Conservation (Mining) during the remediation of the Hanford Site. This basalt and soil mining area was identified to DOE by several parties as an alternative minerals materials location during discussions with the cooperating agencies and after public comment. The ALE site was identified as a suitable area in Appendix D of the HCP EIS that could fulfill DOE's requirement for remediation materials while preserving a wildlife corridor through the McGee Ranch area where suitable soils had been identified, while concurrently preserving basalt outcrops where both biological and cultural resources were at risk.

Basis for the Decision

DOE has considered the environmental and other relevant concerns presented by cooperating agencies and consulting Tribal governments, organizations, officials, and individuals on the proposed action to establish a CLUP for the Hanford Site.

DOE has decided to implement the DOE Preferred Alternative land-use map that is shown in Figure 3–3 of the Final HCP EIS, along with the land-use designations and CLUP policies and implementing procedures that are described in Chapter 6 of the Final HCP EIS. DOE's selection and implementation of the Preferred Alternative allows DOE to most effectively balance the elements of each of its four principal missions (National Security, Energy Resources, Environmental Quality, and Science) that have been assigned by DOE to the Hanford Site, while considering the diverse interests of cooperating agencies, consulting Tribal governments, organizations, officials, and individuals in Hanford Site resources. From DOE's perspective, the Preferred Alternative balances DOE's cleanup mission, economic development mission, and natural resources trustee mission to a greater extent than do any of the other Alternatives considered.

Designation of the Wahluke Slope and the Columbia River Corridor buffer zone and river islands for Preservation, and the expansion of the wildlife refuge, are consistent with the DOI ROD for the Hanford Reach EIS, allowing DOE to meet its natural resource trustee mission and safety and buffer zone needs, while protecting cultural resources, sensitive areas and species of concern, and providing for increased High-Intensity and Low-Intensity Recreation in the Columbia River Corridor. The designating of the major portion of the ALE Reserve for Preservation and allowing the incorporation of the ALE Reserve in the proposed wildlife refuge is consistent with current management practices and allows DOE to protect biological and cultural resources. The DOE Preferred Alternative provides for a wildlife corridor through the McGee Ranch, while also allowing DOE to obtain geologic resources at ALE for use in site remediation activities. Designation of the major portion of these areas of the Hanford Site for Preservation allows DOE to more effectively protect the biological, cultural, and aesthetic resources in these areas than would designating the major portion of these areas for Agriculture, Conservation (Mining), Conservation (Mining and Grazing) or Low-Intensity or High-Intensity Recreation, as in Alternative Three. Pursuant to its role as underlying land owner, and under the terms of the use permits granted to the USFWS, DOE reserves the right to approve or disapprove all USFWS management plans for these areas.

The designation of the Central Plateau for Industrial Exclusive use is consistent with its current management and operation and allows DOE to continue Waste Management operations in this area of the site and to expand existing facilities or develop new facilities to meet future mission needs. The designation of the All Other Areas of the Hanford Site to include Industrial, Research and Development, High-Intensity Recreation, Low-Intensity Recreation, and Conservation (Mining) is consistent with a possible BLM multiple-use mission; it lets DOE meet current and future Science missions while allowing economic development in the eastern and southern portions of the site, and recreational access to the Columbia River, and it assures protection of sensitive areas including Gable Mountain, Gable Butte, and active sand dune areas.

The No-Action Alternative fails to implement regional planning with the cooperating agencies and fails to provide DOE with a systematic process to ensure that DOE lands are put to their highest and best use.

DOE did not select Alternative One, which is the environmentally preferable alternative, primarily because DOE considers the amount of area that would be designated for Low-and High-Intensity Recreation, Conservation (Mining) and Industrial and Research and Development land use under Alternative One to be too limited to allow DOE to effectively meet its current Hanford Science and Technology mission or economic development mission. Furthermore, the DOE Preferred Alternative reserves space and infrastructure to support potential National Security and Energy Resources missions. The shoreline and islands of

Benton County that are included in Alternative One's proposed wildlife refuge boundary are not included in the Preferred Alternative because they are still subject to planned remediation activities and are not yet appropriate to be included in a national wildlife refuge.

DOE selected the Preferred Alternative over Alternative Two primarily because DOE considers the amount of area that would be designated for Low-Intensity Recreation, High-Intensity Recreation, Industrial, and Research and Development land use under Alternative Two to be too limited to allow DOE to effectively meet its current Hanford Science and Technology mission or economic development mission. In Alternative Two, Conservation (Mining) is absent as a land use which would restrict DOE from using existing site sand, gravel and basalt resources needed for site activities such as remediation, road building, and building foundations. Furthermore, the DOE Preferred Alternative reserves space and infrastructure to support potential National Security and Energy Resources missions. One of the implicit consumptive uses associated with the Alternative Two's reserved treaty rights (e.g., grazing) conflicted with a strongly expressed stakeholder value not to allow grazing on the Hanford Site.

Alternative Three provides DOE with appropriate Industrial, Research and Development, and Industrial Exclusive areas to effectively meet its current Hanford Science and Technology mission or economic development mission. Furthermore, Alternative Three reserves space and infrastructure appropriate to support potential DOE National Security and Energy Resources missions. However, Alternative Three does not adequately address DOE's resource trustee mission. The DOE Preferred Alternative designates the major portion of the Hanford Site for Preservation, allowing DOE to more effectively protect the biological, cultural, and aesthetic resources than would be possible under the Agriculture, Conservation (Mining), Conservation (Mining and Grazing), Low-Intensity or High-Intensity Recreation designations presented in Alternative Three.

Alternative Four provides less area for Low-Intensity Recreation, High-Intensity Recreation, Industrial, Research and Development, and Conservation (Mining) than does the Preferred Alternative. The area reserved for Conservation (Mining) is appropriate for gravel resources, but not for fine soils or basalt. DOE selected the Preferred Alternative over Alternative Four primarily because DOE considers the amount of area that would be designated for Low-Intensity Recreation, High-Intensity Recreation, Industrial, and Research and Development land use under Alternative Two to be too limited to allow DOE to effectively meet its current Hanford Science and Technology mission or economic development mission. Additionally the DOE Preferred Alternative reserves space and infrastructure to support potential National Security and Energy Resources missions. One of the implicit consumptive uses associated with the Alternative Four's reserved treaty rights (e.g., grazing) conflicted with a strongly expressed stakeholder value to not allow grazing.

Conclusion

DOE has considered the environmental and relevant concerns presented by the cooperating agencies and tribal governments, organizations, officials, and individuals on the proposed action to establish a CLUP for the Hanford Site. DOE has decided to implement the DOE Preferred Alternative map with stated land-use designations and implementing policies and procedures as presented in Chapter 6 of the HCP EIS.

Dated: November 2, 1999.

Carolyn L. Huntoon,

Assistant Secretary for Environmental Management, U.S. Department of Energy.

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DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: This notice announces a meeting of the Secretary of Energy Advisory Board's National Ignition Facility Laser System Task Force. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation.

Name: Secretary of Energy Advisory Board—National Ignition Facility Laser System Task Force.

DATES: Monday, November 15, 1999, 8:30 am–3:30 pm and Tuesday, November 16, 1999, 8:30 am–11:45 am.

ADDRESSES: Lawrence Livermore National Laboratory (LLNL), Conference Room A, Building 123, 7000 East Avenue, Livermore, California 94551–0808. Note: For their convenience, members of the public who plan to attend this open meeting are requested to contact Ms. Kathleen Moody of the LLNL Protocol Office in advance of the meeting in order to facilitate access to the meeting site. Ms. Moody may be reached at (925) 423–5948 or via e-mail at moody2@llnl.gov.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–1709 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION: The purpose of the NIF Task Force is to provide independent external advice and recommendations to the Secretary of Energy Advisory Board on the options to complete the National Ignition Facility (NIF) Project; to recommend the best technical course of action; and to review and assess the risks of successfully completing the NIF Project. The NIF Task Force will focus on the engineering and management aspects of the proposed method for accomplishing the assembly and installation of the NIF laser system. The Task Force's review will cover the full scope of assembly and installation and the ability, within the proposed approach, to achieve the cleanliness requirements established for the operation of the laser. The review will also address: (1) the engineering viability of the proposed assembly and activation method; (2) the assembly and installation cleanliness protocols; (3) the management structure; and (4) the adequacy of the cost estimating methodology.

Tentative Agenda

Monday, November 15, 1999

8:30–8:45 a.m.—Opening Remarks, Introductions & Objectives—Dr. John McTague, Task Force Chairman
8:45–9:00 am—LLNL Welcome & Orientation
9:00–9:45 am—Briefing & Discussion: Defense Programs' Overview, NIF Mission Requirements and Parameters
9:45–10:15 am—Briefing & Discussion: State of the NIF Project
10:15–10:30 am—Break
10:30–11:00 am—Briefing & Discussion: NIF Experimental Plan
11:00–12:30 pm—Briefing & Discussion: NIF Project Engineering Overview
12:30–1:15 pm—Lunch
1:15–2:15 pm—Briefing & Discussion: NIF Project Management Overview
2:15–3:15 pm—Briefing & Discussion: Integration of Conventional Facilities and Laser Systems
3:15–3:30 pm—Public Comment Period

3:30 pm—Adjourn

Tuesday, November 16, 1999

8:30–8:35 a.m.—Opening Remarks & Objectives—Dr. John McTague, Task Force Chairman
8:35–9:15 am—Briefing & Discussion: Laser System Performance Requirements
9:15–10:15 am—Briefing & Discussion: Laser System Elements
10:15–10:30 am—Break
10:30–11:15 am—Briefing & Discussion: Optics Development Plan and Requirements
11:15–11:45 a.m.—Public Comment Period
11:45 am—Adjourn

This tentative agenda is subject to change. The final agenda will be available at the meeting.

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the NIF Task Force and submit written comments or comment during the scheduled public comment periods. The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Livermore, California, the Task Force welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Task Force will make every effort to hear the views of all interested parties. You may submit written comments to Betsy Mullins, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes: A copy of the minutes and a transcript of the meeting will be made available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 A.M. and 4:00 P.M., Monday through Friday except Federal holidays. Further information on the Secretary of Energy Advisory Board and its subcommittees may be found at the Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on November 9, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–29698 Filed 11–10–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–2–21–001]

Columbia Gas Transmission Corp.; Notice of Filing of Report

November 5, 1999.

Take notice that on October 21, 1999, Columbia Gas Transmission Corporation (Columbia) tendered for filing its final report under an interim proposal accepted by the Commission on September 16, 1998, in Docket No. TM98–2–21–000. Pursuant to a settlement in Docket No. RP95–408 *et al.*, Columbia was to transfer its products extraction facilities to MarkWest Hydrocarbons (MarkWest). Columbia reports that it has resolved matters with MarkWest. Consequently, Columbia states that it is terminating its products extraction service, and commencing on November 1, 1999, providing to MarkWest all of the 650,000 Dth annual quantities collected by Columbia through its Retainage Adjustment Mechanism.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before November 15, 1999. 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29567 Filed 11–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–59–000]

Crossroads Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

November 5, 1999.

Take notice that on November 2, 1999, Crossroads Pipeline Company (Crossroads) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the revised tariff sheets listed below for effectiveness on December 2, 1999:

First Revised Sheet No. 9
First Revised Sheet No. 19
First Revised Sheet No. 25.2
First Revised Sheet No. 27
First Revised Sheet No. 43
First Revised Sheet No. 48
Second Revised Sheet No. 66
Second Revised Sheet No. 74
Original Sheet No. 76A
Original Sheet No. 76B

Crossroads states that the purpose of this filing is to set forth in its tariff a negotiated rates provision pursuant to the Alternative Rates Policy Statement (74 F.E.R.C. ¶ 61,076 (1996)).

Crossroads further states that copies of its filing have been served on its customers under Rate Schedules FT–1, IT–1 and GPS/GLS and on the regulatory agencies of the states on Indiana and Ohio.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceedings. 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29560 Filed 11–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP94–72–009, FA92–59–007, RP97–126–015 and RP97–126–000]

Iroquois Gas Transmission System, L.P.; Notice of Informal Settlement Conference

November 5, 1999.

Take notice that an informal conference will be convened in this proceeding on Friday, November 12,

1999, at 10:00 a.m., for the purpose of exploring settlement of the above-referenced dockets, including: those legal defense cost issues pending before the Commission from the court remand in *Iroquois* v. *FERC,* 145 F.3d 398 (D.C. Cir. 1998); those Docket No RP97–126 rate case issues currently pending appeal in D.C. Cir. Nos. 99–1175 and 99–1177; and general rate level changes and related rate change moratoria covering future years. The conference will be held at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Any party, as defined by 18 CFR 385.102(a), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Hollis J. Alpert (202) 208–0783 or Lorna J. Hadlock at (202) 208–0737.

David P. Boergers,

Secretary.

[FR Doc. 99–29557 Filed 11–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES00–5–000]

Midwest Independent Transmission System Operator, Inc.; Notice of Application

November 5, 1999.

Take notice that on October 29, 1999, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted an application, under Section 204 of the Federal Power Act, for authorization to assume short-term debt and/or obtain loans, lines of credit or other evidences of indebtedness, as necessary, regardless of the source of such loans, lines of credit or other evidences of indebtedness, from time to time for a period of 364 days from the date of an order from the Commission authorizing such issuance, with no more than $50 million outstanding at any one time. The Midwest ISO also requests that the Commission waive its competitive bidding or negotiated placement requirements of 18 CFR 34.2.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, 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 385.214). All such motions and protests should be filed on or before November 18, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29556 Filed 11–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–046]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 5, 1999.

Take notice that on October 29, 1999, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets to be effective November 1, 1999:

First Revised Sheet No. 8E
First Revised Sheet No. 8F
Second Revised Sheet No. 8G
First Revised Sheet No. 8H
Original Sheet No. 8I
Original Sheet No. 8J
Original Sheet No. 8K
Original Sheet No. 8L

REGT states that the purpose of this filing is to reflect the implementation of new negotiated rate contracts and the expiration of existing negotiated rate contracts.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29558 Filed 11–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–18–000]

South Georgia Natural Gas Company; Notice of Request Under Blanket Authorization

November 5, 1999.

Take notice that on October 28, 1999, South Georgia Natural Gas Company (South Georgia), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed a request with the Commission in Docket No. CP00–18–000, pursuant to Sections 157.205, and 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to abandon measurement and pipeline facilities at certain delivery point locations authorized in blanket certificate issued in Docket No. CP82–406–000, all as more fully set forth in the request on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

South Georgia proposes to abandon the Occidental #1 Meter Station, the Occidental #3 Meter Station, and the Occidental #4 Meter Station. South Georgia states that the facilities at these three locations have become corroded and that a new meter station will be constructed to provide service upon abandonment of the three existing meter stations. South Georgia states that the abandonment of the facilities would not result in any termination or interruption of existing service.

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.

David P. Boergers,

Secretary.

[FR Doc. 99–29555 Filed 11–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–58–000]

Southwest Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

November 5, 1999.

Take notice that on November 1, 1999, Southwest Gas Storage Company (Southwest) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed on Appendix A attached to the filing, to be effective December 15, 1999.

Southwest states that the purpose of this filing, made in accordance with the provisions of Section 154.204 of the Commission's Regulations, is to replace Southwest's Original Volume No. 1 tariff in its entirety with the First Revised Volume No. 1, to reflect Commission rulemakings and Regulations concerning open access service. Specifically, the open access rate schedules contained in Southwest's Original Volume No. 1 are transferred to the First Revised Volume No. 1 and reformatted to comply with Part 154, Subpart B—Form and Composition of Tariff of the Commission's Regulations, as well as Order No. 636, Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations in Docket No. RM91–11–000, et al., and Order No. 587, Standards for Business Practices of Interstate Natural Gas Pipelines in Docket No. RM96–1–000, et al. and other housekeeping changes.

Southwest states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–29559 Filed 11–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 5, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of license.

b. *Project No.:* 298–040.

c. *Date Filed:* October 22, 1999.

d. *Applicant:* Southern California Edison Co. (SCE).

e. *Name of Project:* Kaweah Hydroelectric Project.

f. *Location:* On the Kaweah River and its tributaries in Tulare County, California, near the towns of Three Rivers, Hammond, Oakgrove, and Tulare.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant's Contact:* Terri Loun, 300 N. Lone Hill Ave., San Dimas, CA 91773, (909) 394–8717.

i. *FERC Contact:* Any questions on this notice should be addressed to Doan Pham at (202) 219–2851 or e-mail address *doan.pham@ferc.fed.us.*

j. *Deadline for Filing Comments, Motions To Intervene, or Protests:* 45 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Please include the Project Number (298–040) on any comments, protests, or motions filed.

k. *Description of Amendment:* SCE filed an application to remove certain transmission facilities from the project because they are part of SCE's interconnected system and are no longer necessary for project's operation and maintenance. SCE also proposed to add to the project boundary certain appurtenant facilities, such as telephone lines, steam gages, water tanks, and other miscellaneous equipments, that are used for the project.

l. *Locations of the Application:* A copy of the applicant is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Application specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file

comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boerger,

Secretary.

[FR Doc. 99–29561 Filed 11–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 5, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Amendment of license for the non-project use of project lands and waters: the reconstruction and expansion of an existing boating facility on Lake Martin formerly known as the Castaway Island marina.

b. *Project No.:* 349–058.

c. *Date Filed:* October 22, 1999.

d. *Applicant:* Alabama Power Co.

e. *Name of Project:* Martin Dam.

f. *Location:* Elmore County, Alabama. The marina site does not occupy federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, § 16 U.S.C. 791(a) to 825(r).

r. *Applicant Contact:* Mr. James R. Schauer, Alabama Power Co., 600 North 18th Street, P.O. Box 2641, Birmingham, AL 35291; Telephone (205) 257–1401.

i. *FERC Contact:* Any questions on this notice should be addressed to Jim Haimes at (202) 219–2780, or e-mail address: james.haimes@ferc.fed.us.

j. *Deadline for Filing Comments and/or Motions:* 30 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (P–349–058) on any comments or motions filed.

k. *Description of Proposal:* Alabama Power Co., licensee, requests Commission authorization to permit Anchor Bay Marina, Inc. (permitee) to reconstruct and expand an existing marina on Lake Martin. This 65-year-old facility, formerly known as Castaway Island, experienced deferred maintenance as well as extensive damage in 1995 as the result of Hurricane Opal. The permitee proposes to implement a three-year development plan to include the following elements: (1) Replace the existing wooden fuel float dock with a new concrete and steel structure containing a double-containment, above-ground fuel storage tank; (2) remove 22 existing deteriorated wetslips; (3) construct five docks containing a total of 120 covered boat slips, a new parking area, and a restroom facility at the site of the existing wetslips and at an adjacent cleared area currently used as a parking lot; (4) construct, adjacent to the existing boat ramp, a new administrative building to include a boat showroom, offices for marina staff, and modern public restrooms; (5) replace the existing boat service building with a new parts and service center and two small stack storage buildings; (6) construct near the stack storage buildings a new, year-round boat launching facility with a poured concrete seawall, and a transient docking area providing a 2,000-gallon marine sanitary pump-out facility; (7) construct on the north-eastern portion of the site a year-around, full-service restaurant with 24 adjacent wetslips for the use of boaters who dine there; and (8) construct at the north-western portion of the site four to six 1,600-square-foot, wood frame, transient dwelling units.

l. *Locations of the Applications:* Copies of the application are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application also may be viewed on the Web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance. Copies of the application also are available for inspection and reproduction at the addresses in item h above.

m. Individuals desiring to be included on the Commission's mailing list for the proposed amendment of license should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions To intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–29562 Filed 11–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application to Amend License, and Soliciting Comments, Motions to Intervene, and Protests

November 5, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Application to amend license for the Kern River No. 1 Project.

b. *Project No.:* 1930–028.

c. *Date Filed:* August 25, 1999.

d. *Applicant:* Southern California Edison (SCE).

e. *Name of Project:* Kern River No. 1 Project.

f. *Location:* the Project is located on Kern River in Kern County, California. The project does utilize lands of the United States.

g. *Field Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Ms. Terri Loun, SCE, 300 N. Lone Hill Ave., San Dimas, CA 91773, (909) 394–3817.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Vedula Sarma at (202) 291–3273 or by e-mail at vedula.sarma@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* December 13, 1999.

All documents (original and eight copies) should be filed with: David Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (1930–028) on any comments or motions filed.

k. *Description of Filing:* Southern California Edison proposes to delete non-jurisdictional transmission facilities from the project license. The license filed revised exhibits A,F, and G to reflect changes to the transmission and other revisions to project facilities to reflect as-built conditions of the project. Project boundaries were modified accordingly to reflect these changes. The acreage of federal lands encompassed by the Project will be reduced by 1.96 acres.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm [call (202) 208–2222 for assistance]. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', RECOMMENDATIONS FOR TERMS AND CONDITIONS,'' ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–29563 Filed 11–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

November 5, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a *Type of Application:* New major license.

b. *Project No.:* 2110–003.

c. *Date Filed:* June 26, 1998.

d. *Applicant:* Consolidated Water Power Co.

e. *Name of Project:* Stevens Point Hydroelectric Project.

f. *Location:* On the Wisconsin River, at river mile 236, in the town of Stevens Point, Portage County, Wisconsin. There are three parcels of federal lands, partially inundated islands totaling about 15.6 acres, located within the project boundary.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Mark Anderson, Consolidated Water Power Company, P.O. Box 8050, Wisconsin Rapids, WI 54495–8050, (715) 422–3927.

i. *FERC Contact:* Any questions on this notice should be addressed to Michael Spencer, e-mail address, michael.spencer@ferc.fed.us, or telephone (202) 219–2846.

j. *Deadline for Comments, Recommendations, Terms and Conditions, and Prescriptions:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time.

l. *Description of the Project:* The project consists of the following existing facilities: (1) A 28-foot-high main dam comprised of 1,889 feet of concrete gravity walls in four sections, a spillway section containing 15 Taintor gates, and a total of 4,090 feet of earth dikes, on both the east and west banks of the river; (2) an auxiliary 2,000-foot-long concrete uncontrolled overflow spillway (Rocky Run) and 5,000 feet of associated earth dikes, located about 1.25 miles upstream of the main dam; (3) a 12-mile-long, 3,915-acre impoundment at the normal maximum water surface elevation of 1,087.4 feet msl, and a maximum storage capacity of 27,000 acre-feet; (4) a powerhouse integral with the dam containing six vertical Francis turbine units for a total installed capacity of 3,840 kW and an annual energy generation of 28.4 GWh; (5) switchgear consisting of a single power transformer for the six units; and (6) appurtenant facilities.

m. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address shown in item h.

Filing and Service of Responsive Documents—The application is ready

for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.3(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of complies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to the Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b),and 385.2010.

David Boergers,

Secretary.

[FR Doc. 99–29564 Filed 11–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

November 5, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New major license.

b. *Project No.:* 2161–006.

c. *Date Filed:* June 26, 1998.

d. *Applicant:* Rhinelander Paper Co.

e. *Name of Project:* Rhinelander Hydroelectric Project.

f. *Location:* On the Wisconsin River, at river mile 357, in the townships of Tomahawk, Newbold, Pine Lake, and Pelican, Oneida County, Wisconsin. There are no federal lands located within the project area.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Bruce Olson, Utility Superintendent, Rhinelander Paper Company, 515 West Davenport Street, Rhinelander, Wisconsin 54501, (715) 369–4244.

i. *FERC Contact:* Any questions on this notice should be addressed to Michael Spencer, e-mail address, michael.spencer@ferc.fed.us, or telephone (202) 219–2846.

j. *Deadline for Comments, Recommendations, Terms and Conditions, and Prescriptions:* 60 days from the issuance of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time.

l. *Description of the Project:* The project consists of the following existing facilities: (1) A main dam comprised of 370 feet of earth embankments, in two sections to the left and right of a spillway section containing two 10.7-foot-wide steel roller gates; (2) a 965-foot-long power canal, with a single 36-foot-wide Taintor gate spillway structure located downstream of a 14-gate canal inlet structure, located adjacent to the right embankment of the dam; (3) an 8.5-mile-long, 3,576-acre impoundment with a normal water surface elevation of 1,555.45 feet above mean sea level (msl), and a normal storage capacity of 21,500 acre-feet; (4) a brick powerhouse located at the downstream end of the power canal, containing three horizontal Francis turbine units for a total installed capacity of 2,120 kilowatts (kW) and an average annual energy production of 10.692 gigawatt-hours (GWh); (5) switchgear connections with the adjacent paper mill; and (6) appurtenant facilities.

m. *Locatioins of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address shown in item h.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 10 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set fort in the heading the name of the applicant and

the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 99–29565 Filed 11–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

November 5, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Amendment of license for the non-project use of project lands and waters: to permit the Smiths Water and Sewer Authority (Authority) to increase water withdrawals at its existing pumping station at Lake Oliver.

b. *Project No:* 2177–037.

c. *Date Filed:* September 16, 1999.

d. *Applicant:* Georgia Power Co.

e. *Name of Project:* Middle Chattahoochee Project.

f. *Location:* Lee County, AL.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Mike Phillips, Georgia Power Co., Bin 10151, 241 Ralph McGill Blvd. NE, Atlanta, GA 30308–3374; (404) 506–2392.

i. *FERC Contact:* Any questions on this notice should be addressed to Jim Haimes at (202) 219–2780, or e-mail address: james.haime@ferc.fed.us.

j. *Deadline for Filing Comments and or Motions:* 30 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (P–2177–037) on any comments or motions filed.

k. *Description of Project:* The licensee requests Commission authorization to permit the Authority to increase the rate of water withdrawal at its existing pumping station at Lake Oliver reservoir from 5.0 million gallons per day currently to 8.0 million gallons per day. Existing pumps at the site are able to accommodate this increased water withdrawal; consequently, the proposed action would not involve any new construction activity.

l. *Locations of the Application:* Copies of the application are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application also may be viewed on the Web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance. Copies of the application also are available for inspection and reproduction at the addresses in item h above.

m. Individuals desiring to be included on the Commission's mailing list for the proposed amendment of license should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–29566 Filed 11–10–99; 8:45 am]

BILLING CODE 6717–-01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6474–3]

Agency Information Collection Activities: Proposed Collection; Comment Request; Valuing Inland Water Quality Improvements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Valuing Inland Water Quality Improvements (ICR number 1914.01). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 11, 2000.

ADDRESSES: Dr. Alan Carlin, Office of Policy and Reinvention, Mail Code 2172, U.S. Environmental Protection Agency, Washington, DC 20460, e-mail Carlin.alan@epa.gov, phone 202–260–5499, FAX 202–260–7875. The survey as it will be received by subjects can be obtained without charge by mailing or e-mailing a request to Jason Bell listed below. Be sure to include name, address, telephone number, e-mail if

available, and delivery preference (diskette by mail, or e-mail delivery of the survey). A file containing the survey can also be downloaded from the following Website under What's New: http://www.epa.gov/economics.

FOR FURTHER INFORMATION CONTACT:

Jason Bell, Fuqua School of Business, Duke University, Durham, NC 27708–0120, phone 919–599–1338, fax 919–684–8742, e-mail jbb@acpub.duke.edu.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are individuals who agree to participate in the survey. Participation is voluntary and subjects will be compensated for their time and effort. Recruiting will be done by Consumer Pulse, in a manner described in the abstract below.

Title: Valuing Inland Water Quality Improvements (EPA ICR number 1914.01).

Abstract: The purpose of this project is to develop economic benefit values for water quality improvements for lakes, rivers, and streams. These estimates are of substantial academic interest since past studies have been based on a water quality ladder, which is believed not to be as scientifically valid a construct for assessing water quality. The estimates may also be useful to the Agency in complying with the requirements of Executive Order 12866 requiring cost-benefit analysis of major Federal regulations. This project will explore how valuations are affected by use of the current EPA approach of specifying different dimensions of water quality such as swimming, fishing, and broader aquatic ecological effects. The findings will be pertinent to economists studying water quality changes, particularly with respect to the task of assessing benefit values for water quality policies. We will use data collected with the survey in determining the value of water quality improvements to households in the United States. We plan to recruit subjects randomly across the United States through telephone recruiting. Subjects will be asked to complete a computer survey from a disk, which will be mailed to them. Subjects without convenient access to a personal computer will be referred to a national commercial facility with computer access nearest their home for the purpose of completing the survey. Subjects will return the survey disk by mail when completed. Participation in the survey is voluntary. Respondents will have to expend time, effort, and in many cases travel expense to participate in the study. Avoiding bias in the sample towards individuals and groups who can more easily take the survey is an important concern. As a result, we will compensate subjects for their time (and travel if necessary) to avoid the selection bias that might otherwise result. This survey is innovative both in terms of the survey methodology and the substantive economic focus. On both of these dimensions the survey is breaking new ground. To maximize the research value of the survey, we will proceed iteratively. The version of the survey available now will undergo at least two pre-tests after OMB approves the ICR. These pretests will be designed to identify programming complications arising from the nature of the survey, as well as survey questions that can be refined to promote greater clarity and convergence in the iterative choice process used. The final structure of the survey will depend on how people respond to the draft questions. For example, on any initial pairwise choice question, the researchers seek to present an initial tradeoff where half of subjects to choose each alternative, in order to maximize convergence on tradeoff rates in the least possible number of iterative questions. After the pre-tests are completed, recruiting will proceed as described above. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. We solicit comment on all aspects of the questionnaire, and specifically solicit comment on the following issues:

(i) 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;

(ii) 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;

(iii) The quality, utility, and clarity of the information to be collected; and

(iv) Minimization of 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.

Burden Statement: The total national burden estimate for all parts of the questionnaire process is 3170 hours. It should be emphasized, however, that this is extremely uncertain given the new proposed approach to be used and the highly experimental nature of the survey. The burden estimates are based on administration of 2800 completed questionnaires and an assumed response rate of 70 percent. We estimate that each subject will require, on average, one minute to refuse to participate in the phone recruiting process, 10 minutes to respond favorably to the phone recruiting process, 30 minutes to complete the survey, and another 10 minutes to mail the completed survey disk in a provided envelope. We estimate that as many as half of the sample may not have access to a personal computer in the home or at work. For these subjects, an additional 15 minutes are estimated if using a neighbor's computer (assumed to be one-sixth of the completed sample), or an additional 30 to 60 minutes round trip to a national commercial facility with computer access if necessary (assumed to be one-third of the completed sample). Given these assumptions, the total burden for the survey in terms of participant time (3170 hours) valued at $13.18 (the average hourly earnings for May 1999 according to the Bureau of Labor Statistics) is estimated to be $41,781 prior to the payment of the proposed compensation. We stress again that participation by subjects in the survey is voluntary and that subjects will be compensated for their time and effort. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: August 24, 1999.

Brett Snyder,

Director, Economy and Environment Division.

[FR Doc. 99–29584 Filed 11–10–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6474–2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Community Right-to-Know Reporting Requirements Under Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Community Right-to-Know Reporting Requirements under sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA), OMB Control Number 2050–0072, expiring January 31, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 13, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1352.07.

SUPPLEMENTARY INFORMATION:

Title: Community Right-to-Know Reporting Requirements under sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA), OMB Control Number 2050–0072, EPA ICR No. 1352.07 expiring January 31, 2000. This information collection is an extension of a currently approved collection.

Abstract

The authority for these requirements is sections 311 and 312 of the Emergency Planning and Community Right-to-Know ACT (EPCRA), 1986 (42 U.S.C. 11011, 11012). EPCRA Section 311 requires owners and operators of facilities subject to OSHA HCS to submit a list of chemicals or MSDSs (for those chemicals that exceed thresholds, specified in 40 CFR part 370) to the State Emergency Response Commission (SERC), Local Emergency Planning Committee (LEPC) and the local fire department (LFD) with jurisdiction over their facility. This is a one-time requirement unless a new facility becomes subject to the regulations. EPCRA section 312 requires owners and operators of facilities subject to OSHA HCS to submit an inventory form for those chemicals that exceed the thresholds to the SERC, LEPC, and LFD with jurisdiction over their facility. This activity is to be completed on March 1 of each year, on the inventory of chemicals in the previous calendar year.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on August 5, 1999 (64 FR 42689); three commenters submitted comments on this information collection.

Burden Statement: The average burden for MSDS reporting under 40 CFR 370.21 is estimated at 1.6 hours for new and newly regulated facilities and approximately 0.6 hours for those existing facilities that obtain new or revised MSDSs or receive requests for MSDSs from local governments. For new and newly regulated facilities, this burden includes the time required to read and understand the regulations, to determine which chemicals meet or exceed reporting thresholds, and to submit MSDSs or lists of chemicals to SERC, LEPCs, and local fire departments. For existing facilities, this burden includes the time required to submit revised MSDSs and new MSDSs to local officials. The average reporting burden for facilities to perform Tier I or Tier II inventory reporting under 40 CFR 370.25 is estimated to be approximately 3.1 hours per facility, including the time to develop and submit the information. There are no recordkeeping requirements for facilities under EPCRA sections 311 and 312 although it is assumed that they will maintain a copy of annual reports to use for future filings. The recordkeeping for MSDSs is mandated under OSHA rules.

The average burden for state and local governments to respond to requests for MSDSs or Tier II information under 40 CFR 370.30 is estimated to be 0.17 hours per request. The average burden for managing and maintaining the reports and MSDS files is estimated to be 32.25 hours. The average burden for maintaining and updating a 312 database is estimated to be 320 hours.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners and operators of facilities subject to OSHA HCS.

Estimated Number of Respondents: 563,460.

Frequency of Response: Section 311 respondents will have to comply with requirements only once, unless a new chemical is present above threshold quantity. Section 312 respondents will have to comply with the requirements annually.

Estimated Total Annual Hour Burden: 1,873,800 hours.

Estimated Total Annualized Capital and Operating & Maintenance Cost Burden: $6,403,600.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1352.07 and OMB Control No. 2050–0072 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW., Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: November 5, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–29585 Filed 11–10–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6247–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR www.epa.gov/oeca/ofa.

Weekly receipt of Environmental Impact Statements

Filed November 01, 1999 Through November 05, 1999

Pursuant to 40 CFR 1506.9.

EIS No. 990418, FINAL EIS, JUS, AL, Center for Domestic Preparedness (CDP), Expand Training for State and Local Emergency First Responders, Located at Fort McClellan, Calhoun, Cleburne, Randolph, Clay, Talladega, St. Clair, Etowah and Cherokee Counties, AL, Due: December 06, 1999, Contact: LZ Johnson (256) 847–2112.

The above JUS EIS should have appeared in the 11/05/99 **Federal Register**. The 30-day Comment Period is Calculated from 11/05/99.

EIS No. 990419, FINAL EIS, USA, AR, Fort Chaffee Disposal and Reuse, Implementation, Ozark Mountains, Sebastian, Crawford, Franklin, Smith, Barling and Greenwood Counties, AR, Due: December 13, 1999, Contact: Richard Proietto (703) 693–7554.

EIS No. 990420, DRAFT EIS, TVA, TN, Tim Ford Reservoir Land Management and Disposition Plan, Implementation, Tim Ford Reservoir, Franklin and Moore Counties, TN, Due: December 27, 1999, Contact: Harold M. Draper (423) 632–6889.

EIS No. 990421, DRAFT EIS, BLM, WY, Horse Creek Coal Lease Application (Federal Coal Lease Application WYW–141435), Implementation, Campbell and Converse Counties, WY, Due: January 11, 2000, Contact: Jon Johnson (307) 775–6116.

EIS No. 990422, DRAFT SUPPLEMENT, UAF, FL, CA, Evolved Expendable Launch Vehicle Program, Updated Information, To Allow the Addition of up to Five Strap-on Solid Rocket Motors (SRM) to the Atlas V and Delta IV Lift Vehicle, Launch Locations are Cape Canaveral Air Station, Brevard County, FL and Vandenberg Air Force Base (AFB), Santa Barbara County, CA, Due: December 27, 1999, Contact: Jonathan D. Farthing (210) 536–3668.

Amended Notices

EIS No. 990229, DRAFT EIS, AFS, MT, NB, WY, ND, SD, Dakota Prairie Grasslands, Nebraska National Forest Units and Thunder Basin National Grassland, Land and Resource Management Plans 1999 Revisions, Implementation, MT, NB, WY, ND and SD, Due: November 29, 1999, Contact: Pam Gardner (308) 432–0300.

Published FR 10–01–99—Review Period Extended from 11–15–99 to 01–13–2000.

EIS No. 990410, DRAFT EIS, DOE, CA, National Ignition Facility Project Specific Analysis, Construction and Operation at the Lawrence Livermore National Laboratory, Livermore, CA, Due: December 20, 1999, Contact: Richard Scott (925) 423–3022.

Published FR 11–05–99—Correction to Title.

EIS No. 990414, DRAFT EIS, NPS, AZ, Chiricahua National Monument, General Management Plan, To Protect Certain National Formations, Known as ''the Pinnacles', AZ, Due: January 30, 2000, Contact: Chris Marvel (303) 969–2840.

Published FR 11–05–99—Correction to Contact Person Name and Telephone.

Dated: November 9, 1999.

William D. Dickerson,

Director, Office of Federal Activities.

[FR Doc. 99–29707 Filed 11–10–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6248–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 25, 1999 Through October 29, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1999 (63 FR 17856).

Draft EISs

ERP No. D–AFS–K65220–NV Rating LO, Cave Rock Management Direction, Implementation, Lake Tahoe Basin Management Unit, Douglas County, NV.

Summary: EPA had no objections to the proposed project, and encouraged the Forest Service to continue consulting with the Washoe Tribe.

ERP No. D–AFS–L65329–AK Rating, Skipping Cow Timber Sale, Harvesting Timber, South half of Zarembo Island, Tongass National Forest, Wrangell Ranger District.

Summary: EPA Region 10 used a screening tool to conduct a limited review of this action. Based on this screen, EPA does not foresee having any environmental objections to the proposed project. Therefore, EPA will not be conducting a detailed review.

ERP No. D–BLM–K61148–NV Rating LO, Red Rock Canyon National Conservation Area (RRCNCA), General Management Plan (GMP), Amendment to the Las Vegas Resource Management Plan, Las Vegas, NV.

Summary: EPA expressed a lack of objections to the proposed General Management Plan, but recommended that BLM develop more specific plans to address water quality and vegetation impacts from wild horses and burros.

ERP No. D–BLM–K67050–NV Rating EC2, South Pipeline Mine Project, Proposal to Extend Gold Mining Operations, Implementation, Lander County, NV.

Summary: EPA expressed concerns regarding the project's potential impacts to vegetation and waters of the U.S. EPA requested additional information be provided on pit backfiling design, pit lake geochemistry, air impacts, reclamation and bonding, and mitigation measures.

ERP No. D–COE–E39051–FL Rating EC2, Lake Okeechobee Regulation Schedule Study, To Maintain or Improve Existing Water Storage, St. Lucie and Caloosahatchee River Estuaries, FL.

Summary: EPA expressed environmental concern about changing the water release schedule of Lake Okeechobee via implementation of the Water Supply and Environmental alternative, but believes that the additional information being developed can address outstanding issues.

ERP No. D–DOE–E09804–FL Rating EC2, JEA Circulating Fluidized Bed (CFB) Combustor Project, 300 Megawatt-Electric, Coal and Petroleum Coke-Fired, CFB Combustor and Boiler to Repower an existing Steam Turbine at JEA's North-side Generating Station Construction and Operation, Funding, Jacksonville, Duval County, FL.

Summary: EPA has environmental concerns with the Clean Coal Technology (CCT) Program demonstration project draft EIS. EPA requests that DOE provide additional information on noise impacts and mitigation, air quality, and health-based criteria in the Final EIS.

ERP No. D–DOE–L00007–00 Rating EC2, Sodium-Bonded Spent Nuclear Fuel for the Treatment and

Management, Candidate Sites are Argonne National Laboratory—West (ANL–W) Located within the boundaries of the Idaho National Laboratory I and the Savannah River Sites (SRS) F-Area and L Area, SC.

Summary: EPA expressed concerns about the lack of a demonstrated need to treat spent nuclear fuels at the present time. Moreover, DOE issued the draft EIS before finishing its final testing on the cost and treatment-effectiveness of the electrometallurgical process, a process proposed in five of the six action alternative. EPA requested that information related to these issues be included in the EIS.

ERP No. D–FHW–J40149–CO Rating EC2, Colorado Forest Highway 80, Guanella Pass Road (also known as Park County Road 62/Clear Creek County Road 381/Forest Development Road 118) from US 285 in Grant to Georgetown, Improvements, Funding and COE Section 404, NPDES and Special Use Permits Issuance, Park and Clear Creek Counties, CO.

Summary: EPA expressed concerns regarding potential impacts to the alpine environment, especially wetlands, sediment control and wild life. EPA also recommended that the 404 CWA permit process be integrating with the FEIS.

ERP No. D–FHW–J54000–CO Rating EC2, Southeast Corridor Multi-Modal Project, To Improve Travel between Central and Southeast Corridors, Light Rail Transit (LRT), Colorado Metropolitan Area, Denver, CO.

Summary: EPA expressed concern regarding air quality, wetland and potential cumulative impacts. EPA required additional information and clarification related to these issues.

ERP No. D–FHW–K40236–HI Rating EC2, Kihei-Upcounty Maui Highway, Transportation Improvements, Funding and COE Section 404 Permit, County of Maui, HI.

Summary: EPA expressed environmental concerns regarding potential impacts to water quality and wetlands. EPA recommended that FHWA and the Hawaii Transportation Department design, construct and operate the project to avoid and minimize adverse impacts to water resources to the fullest extent possible.

ERP No. D–FTA–K40237–CA Rating LO, Orange County CenterLine Project, Transportation Improvements, Advanced Rail Transit in the Heart of Orange County, Funding and COE Section 404 Permit, Orange County, CA.

Summary: EPA had no comments on the proposed light rail project.

ERP No. D–FTA–K40238–CA Rating LO, Downtown Sacramento—Folsom Corridor, To Improve Transit Services, US 50/Folsom Boulevard, COE Section 404 Permit, Transportation Systems Management (TSM) and Light Rail Transit (LRT), City and County of Sacramento, CA.

Summary: EPA has no objection to the proposed action.

ERP No. D–NPS–L65328–AK Rating EO2, Spruce Creek Access Project, Construct and Operation. Denali National Park and Preserve, NPDES and COE Section 404 Permits, AK.

Summary: EPA objected to the proposed action, as there are other viable options that would be less impacting to fish habitat and water quality. EPA has no objections to the air access alternative or the no action alternative. EPA recommended that additional, protect-level information be included in the EIS, along with additional analysis/discussion of road maintenance and potential implications on Park management plans and policies.

ERP No. D–USN–A10072–00 Rating EC2, Surveillance Towed Array Sensor System (SURTASS) Low Frequency Active (LFA), To Improved Capability to Detect Quiter and Harder-to-Find Foreign Submarines, Implementation.

Summary: EPA expressed concerns about the potential impacts to marine animals and recommended that the information from the biological opinion rendered from the Department of Commerce's National Marine Fisheries Service be included in the final EIS.

ERP No. D–USN–K11099–NV Rating EC2, Fallon Naval Air Station (NAS), Proposal for the Fallon Range Complex Requirements, Federal and Private Lands, Churchill, Eureka, Lander, Mineral, Nye and Washoe Counties, NV.

Summary: EPA expressed concerns regarding cumulative impacts to lands given the long history of bombing and gunnery activity. EPA requested that more comprehensive information about past contamination, clean up, and future potential impacts be included in the Final EIS.

Final EISs

ERP No. F–AFS–E65051–AL Longleaf Restoration Project, Implement a Systematic Five-Year Program for Restoration of the Native Longleaf Pine, Conecuh National Forest, Conecuh Ranger District, Covington and Escambia Counties, AL.

Summary: EPA has no objections to the project, provided that the mitigation measures and monitoring programs are implemented as described in the FEIS.

ERP No. F–AFS–L67036–OR Nicore Mining Project, Implementation, Plan-of-Operations, Mining of Four Sites, Road Construction, Reconstruction, Hauling and Stockpiling of Ore, Rough and Ready Creek Watershed, Illinois Valley Ranger District, Siskiyou National Forest, Medford District, Josephine County, OR.

Summary: EPA expressed lack of objections.

ERP No. F–FHW–G40149–NM US 84/285 Highway Transportation Improvements from Alamo Drive in Santa Fe to Viarrial Street in Pojoaque, Right-of-Way Acquisition, NPDES Permit and COE Section 404 Permit, Santa Fe County, NM.

Summary: No formal comment letter sent to lead agency.

ERP No. F–FHW–K40229–HI Saddle Road (HI–200) Improvements between Mamalahoa Highway (HI–190) to Milepost 6 near Hilo, Funding, NPDES and COE Section 404 Permit, Hawaii County, HI.

Summary: EPA continues to be concerned about quantities and quality of mitigation for significant individual direct and indirect adverse impacts to water quality, wetlands, and threatened and endangered species habitats.

ERP No. F–FHW–L40211–AK C Street Corridor Project, Improvements from O'Malley Road to International Airport Road, NPDES and COE Section 404 Permits, Municipality of Anchorage, AK.

Summary: No formal comment letter sent to the lead agency.

ERP No. F–FRC–J05078–MT Missouri-Madison Hydroelectric (FERC No. 2188) Project, Issuing a New license (Relicense) for Nine Dams and Associated Facilities, MT.

Summary: EPA expressed environmental concerns regarding FERC's rejection of certain State and Federal fish and wildlife agency recommendations, and the need to establish Madison River thermal success criteria. EPA also requested that license conditions be included to allow the license to be re-opened if thermal success criteria are not adequately attained by the proposed mitigation.

ERP No. F–NRS–K36126–HI Lower Hamakua Ditch Watershed Plan, To Provide a Stable and Affordable Supply of Agricultural Water to Farmer and Other, COE Section 404 Permit, Watershed Protection and Flood Prevention, Hawaii County, HI.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FS–NOA–B91005–00 Northeast Multispecies Fishery Management Plan, Updated Information concerning Overfishing of Red Hake and Silver Hake Fishiers, Northeast United States.

Summary: EPA had no comments on the project.

Dated: November 9, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–29708 Filed 11–10–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00280; FRL–6391–3]

Notice of Availability of FY 2000 Grant Funds for the Support of a Pollution Prevention Information Network

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA expects to have approximately $1 million available in fiscal year 2000 to fund grant proposals supporting a nation-wide network of pollution prevention information providers. The Pollution Prevention Act provides funds to States to strengthen the efficiency and effectiveness of State technical assistance programs in providing source reduction information to businesses. These funds will be targeted for applicants that are willing to work as part of a collective service providing pollution prevention information to State and local governments' technical assistance providers. Grantees will collect, organize and disseminate pollution prevention (P2) information, make their information available electronically, publically report use of their information services, and utilize State representatives to guide and evaluate their information services as part of a nationwide resource. Grants/cooperative agreements will be awarded under the authority of the Pollution Prevention Act of 1990.

DATES: Applications must be postmarked by April 10, 2000.

FOR FURTHER INFORMATION CONTACT: Beth Anderson, Pollution Prevention Division, (7409) Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460, telephone number: (202) 260–2602, e-mail address: anderson.beth@epa.gov. Access information about this grant program at http://www.epa.gov/p2.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to State governments, State programs or departments, as well as other State institutions, such as universities. If you have any questions regarding the applicability of this action consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section of this notice.

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

Electronically. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register** --Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

II. Scope and Purpose of this Grant Program

1. *Scope—The Pollution Prevention Act of 1990.* This solicitation is made under the Pollution Prevention Act of 1990, (the Act) (Public Law 101–508) which established as national policy that pollution should be prevented or reduced at the source whenever feasible. Section 6603 of the Act defines source reduction as any practice that:

(1) Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal.

(2) Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants.

EPA further defines pullution prevention (P2) as the use of other practices that reduce or eliminate the creation of pollutants through: increased efficiency in the use of raw materials, energy, water or other resources, protection of natural resources, or protection of natural resources by conservation.

Section 6605 of the Act authorizes EPA to make matching grants to States to promote the use of source reduction techniques by businesses. In evaluating grant applications, the Act directs EPA to consider whether the proposed State program will:

(1) Make technical assistance available to businesses seeking information about source reduction opportunities, including funding for experts to provide on-site technical advice and to assist in the development of source reduction plans.

(2) Target assistance to businesses for whom lack of information is an impediment to source reduction.

(3) Provide training in source reduction techniques.

2. *Purpose of national pollution prevention information network.* Currently there are few mechanisms or systems to coordinate the development, review, and dissemination of pollution prevention information among Federal, State, and local agencies, or universities involved in promoting source reduction technologies. Access to P2 information and assistance varies across the United States. In addition, not all programs providing assistance to small businesses have access to pollution prevention information that may be useful and relevant to their clientele. The purpose of this request for proposals is to coordinate work among new and existing grantees in order to minimize duplication of effort in information collection and synthesis, training for the promotion of pollution prevention technologies, and establish information standards that will facilitate information exchange among centers.

The development of a P2 information network of regional centers would allow State P2 information needs to be addressed on a regional basis and allow for improved information exchange among States. Coordination of regional centers could facilitate information exchange and decrease duplicative research that might be conducted in each State by developing systems to: coordinate information needs, determine types of P2 information that need to be developed, coordinate the production of relevant P2 information, disseminate this information among small business assistance providers, and evaluate the effectiveness of the information being disseminated in changing business practices to incorporate pollution prevention.

EPA believes that investing in coordinating and standardizing P2 information collection, synthesis, and dissemination will benefit State P2 technical assistance providers as well as other small business assistance programs, such as the Small Business Development Centers and the National Institutes of Standards and Technology Manufacturing Extension Partnerships. Regional P2 information centers could benefit by allowing for specialization in expertise, where this expertise can be shared nationally. Regional centers could be more responsive to the common information needs of the States being served and allow States to focus resources on issues unique to each State. EPA believes that some of the

benefits of a coordinated P2 information network could be:

(1) Improved access to P2 information for all State business assistance programs.

(2) Increased availability of P2 technical assistance to all States, through sharing research, synthesis, and training in current P2 information nationally.

(3) Increased partnerships among State entities serving small businesses by providing a forum for defining and meeting common program objectives.

3. *EPA's prior efforts to promote P2 information sharing.* On August 20 and 21, 1992, EPA sponsored a subcommittee meeting of the ''National Advisory Council for Environmental Policy and Technology, State and Local Programs Committee.'' At this meeting, the delivery of P2 technical information to State and local technical assistance programs was discussed in the context of the national data base, Pollution Prevention Information Exchange System and the Pollution Prevention Information Clearinghouse that EPA was operating. This initial meeting raised issues of information quality, roles for a national clearinghouse, and priority information needs or functions for State P2 technical assistance programs. In 1994 EPA created a website dedicated to users of pollution prevention and cleaner production solutions called Envirosense. A current description of the site is at http://es.epa.gov/describe.html.

In October 1993, EPA funded a proposal from the National Roundtable of State Pollution Prevention Programs (now called the National Pollution Prevention Roundtable (NPPR)) to ''develop a design and management plan for a national network of pollution prevention information providers.'' In February 1995, NPPR submitted its final report. In this report, based on the results of survey and telephone interviews, the functions of an information network that would best support pollution prevention technical assistance programs were:

- Make information readily accessible and easy to search.
- Collect and update technical information.
- Identify experts or other sources of information.
- Provide technical information in a synthesized format (which might include case studies, process information, bibliography, vendor information, etc.).

In October 1994, EPA funded a 4–year pilot proposal to establish a model program for interstate cooperation on pollution prevention information sharing. Three organizations agreed to participate in the pilot to coordinate information collection, synthesis, peer review, and dissemination: Northeast Waste Management Officials Association, the Illinois Hazardous Waste Research and Information Center (now called the Illinois Waste Management and Research Center, and the Wisconsin Solid and Hazardous Waste Education Center. Under this pilot program, State focus groups were formed to determine pollution prevention information needs. In September 1995, the States in the Northeast approved a 5–year plan to aid in the collection, organization, and distribution of pollution prevention technical information in the Northeast. The Great Lakes States developed a management plan for the Great Lakes Pollution Prevention Information Clearinghouse and set up a listserve system (P2TECH) to assist pollution prevention technical assistance programs nationwide in finding answers to technical assistance problems. Four pollution prevention technical information packets were written and peer-reviewed to summarize P2 technical solutions for technical assistance providers. These four documents on the printing industry, primary metals industry, metal finishing industry and metal painting and coating operations are posted on the Internet at http://www.wmrc.uiuc.edu/packets/. These three organizations also collaborated on three different data bases: vendor, bibliographic, and case study data bases.

4. *Existing Regional P2 Information Centers.* EPA awarded nine grants in response to the first **Federal Register** notice on the establishment of a Pollution Prevention Information Network published on February 5, 1997 (62 FR 5393) (FRL–5582–5). The 9 grantees represented all 10 of the USEPA Regions. These regional P2 information centers are only partially funded by this grant program and represent a variety of organizations. The grantees are all State entities (this includes State environmental departments as well as universities, see Unit IV.1. of this notice-- *Applicants*). In some cases the grantees are also funded by other Federal technical assistance programs, such as the Small Business Administration or the National Institute of Standards and Technology Manufacturing Extension Partnership, State and Local governments, or their Regional EPA office. Some grantees subcontract work to non-profits or to other States for specific activities. Grantees vary in the number of States they serve. There are 2 centers that each serve 4 States and another center that serves 14 States.

The first solicitation for this grant program was intended to establish new regional centers (where needed) or give additional funds to existing centers to: (1) improve communication between centers, (2) minimize duplication of efforts in creating and disseminating P2 information, and (3) promote information standards that would facilitate P2 information dissemination nationwide. Over the past 2 years, grantees have enhanced networking among centers and improved nationwide interaction on P2 information projects through monthly conference calls, biannual meetings, websites, listserves and databases. Frequent communication among grantees has built familiarity with other regional resources and their mode of operation. The grantees have formed a group they call the ''Pollution Prevention Resource Exchange'' (P2Rx). More information about the P2Rx centers can be found on the Internet at: http://www.epa.gov/p2/p2rxdir.htm. Each of these grantees have developed web sites to improve access to regional P2 information. The current nine grantees are now in their third year of funding. Given the variety of resources and approaches in the existing regional centers, this small grant program does not intend to fund all of the regional centers' current activities.

One of the regional centers serves as ''P2Rx coordinator.'' The term of the P2Rx coordinator is 2 years. The P2Rx coordinator/regional center receives additional funding from EPA, separate from the P2 information grant to fund tasks such as: facilitating communication and consensus among regional centers, surveying centers to collect information on specific projects or activities, and cataloguing the services and resources available at each center. This coordinator uses meetings, conference calls, subcommittees, surveys or white papers to help the regional centers to work together in developing activities or guidelines to meet their objectives. Over the past 2 years the Pacific Northwest Pollution Prevention Resource center has served as coordinator for EPA and the grantees. For the next 2 years, EPA has funded the Great Lakes Regional Pollution Prevention Information Center which will serve as coordinator for current grantees and for FY 2001 grantees. New grantees will be included in national meetings and monthly conference calls. Past experience has demonstrated the importance of personal affiliation as well as the usefulness of electronic

communication and web sites to build a national information system. Regional centers and their States, who contribute to the regional information centers, promote the availability of P2 information and provide opportunities for other States to leverage resources. This collaboration allows information to be accessed and shared nationally, particularly through Internet based P2 information projects.

III. National Program Objectives

1. *Purpose*. EPA is inviting proposals from the existing Pollution Prevention Resource Exchange (P2Rx) centers as well requesting new applicants, who should coordinate their proposed work with the existing P2Rx centers where possible. Proposals should describe how pollution prevention information will be collected and organized so that it can be easily and quickly retrieved nationally. This nationwide system will depend on the participation of individual States as well as regional centers to supply P2 information and expertise. EPA is seeking to provide more efficient support to P2 technical assistance providers by providing for regional centers that have specialized areas of information they collect and disseminate from a number of States. For example, case studies from each State could be submitted to one regional center, key information put into a uniform case study format and then disseminated. Currently, State grant funds may be used to create P2 manuals for businesses in each State without knowledge of similar efforts in other States. Nationwide coordination could allow States to build on existing P2 information and share materials, databases, or training where applicable. National coordination of regional P2 information specialty areas could allow State assistance providers to focus resources on priority industries or needs and use existing P2 information collected in regional centers for other industries.

Over the past 2 years the expansion of information on the Internet has challenged businesses and business assistance providers alike in the search for information that is accurate, useful, and timely. The growth of information available on the Internet provides both an opportunity and a challenge. While the Internet offers a relatively inexpensive delivery platform for P2 information (compared to paying staff to answer phones or compose and print P2 fact sheets), not all P2 information customers will use the Internet. At this point it appears a nationwide P2 information network must use both electronic dissemination as well as people to act as guides that can efficiently locate P2 information based on their knowledge of regional, State, and electronic resources. As regional centers become more knowledgeable about State resources and P2 initiatives, they will be more effective in providing information to their State customers. A regional P2 information center can more efficiently provide resources to State technical assistance providers if it is based on personal familiarity with the resources available at all of the other regional centers.

EPA is seeking proposals that will contribute to the organization and efficient retrieval of P2 information. Such a system could be based on current web sites, enhancing how information is organized on a web site, links between web sites, or a shared database. There are many ways information could be organized and presented on the Internet: by topic, by format of information (such as case studies, fact sheets, journal articles), by audience the information is written for, by industry or process the information addresses, etc. Presently much P2 information is organized by industry or service sectors, based on the businesses that may need the information. Information is also collected and organized based on the Federal, State or Local government needs for P2 information, such as the Department of Defense/State P2 partnerships. Applicants should be willing to work with other grantees for the common purpose of facilitating access to P2 information on the Internet. Such efforts may include agreements on metadata standards for electronic information on the Internet or agreements on electronic database structure to facilitate information sharing nationally. Applicants may propose tasks supporting their regional P2 information activities such as: supporting a web site which targets State or local government technical assistance providers, creating databases relevant to their regional information needs, or electronically disseminating regionally important P2 information. The regional centers should continue to operate as hubs for State P2 information collection. Applicants may describe other activities which support collecting P2 information from a number of States. Applicants should include letters of support from other States or organizations supporting the proposal. Proposals should be coordinated with existing EPA Regional P2 information centers, where possible.

2. *Required tasks for all proposals*—

i. *Identification of expertise*. Applicants should identify the areas of expertise they will develop. Proposals should describe the basis and rationale for the proposed approach to collecting, organizing or developing P2 information that can be accessed nationwide, as well as the need for such information. Organizing information by industry, process, service sector or audience are all approaches that have been used to organize P2 information. Currently, the Agency is invested in a variety of industry and service sector efforts. Examples of current Agency programs addressing key services or industries include: compliance assistance centers, the Sustainable Industries program, and the Design for Environment program.

ii. *Participation in a voluntary network*. Current grantees have formed a voluntary network of regional P2 information providers called the Pollution Prevention Resource Exchange (P2Rx). P2Rx has acted as a forum for the regional centers to exchange information and approaches for various regional services. The face to face meeting has played an important role in allowing regional centers to learn from each other and work collaboratively. EPA will continue to fund a coordinator position that will serve to facilitate communication among new and continuing grantees. EPA wants to promote a forum for coordinating regional P2 information services and projects on a national level. Applicants under this solicitation should include activities related to participation in national meetings, monthly conference calls, and subcommittees. Opportunities to organize P2 information, select appropriate areas of expertise and develop cooperative projects can be discussed in this forum.

iii. *Reporting on P2 information services*. Applicants should provide a draft format for reporting use of their information services twice a year. Applicants should consider posting grant activities and web site usage reports on their website to facilitate communication with EPA and States. All grantees should work together to develop common metrics that will illustrate each grantee's contribution to the P2 information network.

iv. *Customer satisfaction*. Applicants should propose some way of utilizing State representatives to guide, evaluate, and provide feedback on the information services the applicant is proposing. Applicants are encouraged to make use of existing regional organizations to provide feedback over the course of the grant. Monthly conference calls, meetings tied into existing regional meetings, or web site comments could be used as a source of customer feedback. Applicants should

clearly identify the customer base they propose to reach.

IV. Eligibility

1. *Applicants.* In accordance with the Pollution Prevention Act of 1990, eligible applicants for purposes of funding under this grant program include the 50 States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, any territory or possession of the United States, any agency or instrumentality of a State including State universities and all federally recognized Indian tribes. For convenience, the term ''State'' in this notice refers to all eligible applicants. Local governments, private universities, private non-profit entities, private businesses, and individuals are not eligible. State applicants are encouraged to establish partnerships with other business and environmental assistance providers in order to more seamlessly deliver pollution prevention technical assistance. In many cases partnerships can make the most efficient use of Federal/State government funding.

2. *Availability of FY 2000 funds.* With this publication, EPA is expecting the availability of $1 million in cooperative agreement funds for FY 2000. These awards will be made through a competitive process for amounts not to exceed $150,000.00 per year. Proposals may include up to 2 years in their schedule and budget.

3. *Matching requirements.* Under the Pollution Prevention Act of 1990, the Federal Government will provide up to half of the total allowable costs of the project, and the State will provide the remainder. For example, a project costing $200,000 could be funded by a grant for up to $100,000 from the Federal government. The State is responsible for providing the remainder. State contributions may include cash, in-kind goods and services and third party contributions.

4. *Catalogue of Federal Domestic Assistance.* The number assigned to this program in the Catalogue of Federal Domestic Assistance is 66.708 (formerly 66.900).

V. Applications

Grant guidance can be obtained by contacting Beth Anderson, Office of Pollution Prevention and Toxics, Mail Code 7409, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460, telephone number: (202) 260–2602, e-mail address: anderson.beth@epa.gov. Access information about this grant program at http://www.epa.gov/p2. Federal forms for grant applications can be downloaded from: http://www.epa.gov/glnpo/fund/appforms.html. Note that this Internet site is for the ''Great Lakes Funding Program'' and not all of these forms or directions apply to this grant program. Federal forms that should be included for this grant program are: Application for Federal assistance OMB form 424; Budget information form 424A; Construction assurances form 424B: Certification regarding debarment, etc form 5700–49; Certification regarding lobbying; and EPA Civil rights form 4700–4. The basic contents of a proposal should include:

(1) A description of the proposed statement of work, including a statement of the problems or issues the proposal addresses.

(2) A description of the tasks that will be carried out, the estimated cost of each task and estimated completion dates.

(3) A description of deliverables that will be produced and estimated completion dates.

(4) A description of the measures or activities that will be reported to reflect the effectiveness of each of the proposed tasks.

(5) A proposed format for biannual reports, including information that will be posted on the web site.

(6) Letters of support from State or local programs which provide technical assistance to small businesses.

VI. Process for Evaluation of Proposals

A national panel, comprised of EPA representatives from both Headquarters and the EPA Regions, will evaluate each proposal. Acceptable proposals, meeting the eligibility requirements in Unit IV of this notice, will be reviewed according to the following criteria:

(1) Relevance and justification for the proposed pollution prevention area of expertise.

(2) Adequacy of activities that address participation in a voluntary network of grantees, measures of customer satisfaction, and reporting pollution prevention information services.

(3) Feasibility of the activities being proposed, taking into account the commitments from other States or programs that will be participating in the proposal.

(4) Qualifications and experience of the applicant and the program manager in serving regional pollution prevention information needs and reporting results under previous grants.

(5) Appropriateness of the proposed budget for each task, deliverables and dates of completion for the activities being proposed.

(6) Level of additional support for the applicant from other sources, including State or Federal funds.

List of Subjects

Environmental protection.

Dated: November 3, 1999.

William H. Sanders, III,

Director, Office of Pollution Prevention and Toxics, Environmental Protection Agency.

[FR Doc. 99–29587 Filed 11–10–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51936; FRL–6390–7]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of the Toxic Substances Control Act (TSCA), EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from September 27, 1999 to October 8, 1999, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

FOR FURTHER INFORMATION CONTACT: Christine M. Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone numbers: (202) 554–1404 and TDD: (202) 554–0551; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific

entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. *Electronically*. You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at *http://www.epa.gov/*. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register** -- Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

B. *In person*. The Agency has established an official record for this action under docket control number OPPTS–51936. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

III. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from September 27, 1999 to October 8, 1999, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

IV. Receipt and Status Report for PMNs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II above to access additional non-CBI information that may be available.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 47 Premanufacture Notices Received From: 09/27/99 to 10/08/99

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0001	10/01/99	12/30/99	CBI	(S)foam insulation	(G) Aromatic polyether polyol
P–00–0002	10/01/99	12/30/99	BASF Corporation	(G) Surfactant	(G) Polymeric mdi based polyurethane
P–00–0003	10/01/99	12/30/99	BASF Corporation	(G) Surfactant	(G) Polymeric mdi based polyurethane
P–00–0004	10/01/99	12/30/99	BASF Corporation	(G) Surfactant	(G) Polymeric mdi based polyurethane
P–00–0005	10/01/99	12/30/99	BASF Corporation	(G) Surfactant	(G) Polymeric mdi based polyurethane
P–00–0006	10/01/99	12/30/99	BASF Corporation	(G) Surfactant	(G) Polymeric mdi based polyurethane
P–00–0007	10/05/99	01/03/00	Monsanto Company Kelco Biopolymers	(S) Oil field drilling fluid; oil field spacer fluid; oil field cementing; cementitious packaged products (grouts, concrete); concrete (floors, bridges, underwater repair, geotechnical; foams (fire fighting, landfill)	(S) D-glucuronic acid, polymer with 6-deoxy-l-mannose and *d*-glucose, acetate, calcium magnesium potassium sodium salt*
P–00–0008	10/05/99	01/03/00	CBI	(G) Open non-dispersive (binding agents)	(G) Emulsion Polymer*
P–00–0009	10/05/99	01/03/00	Ashland Chemical Company	(G) Adhesive - open, non dispersive use	(G) Copolymer of acrylic esters, acrylic acid and dibromostyrene
P–00–0010	10/05/99	01/03/00	CBI	(G) Component of printing ink	(G) Polyurethane
P–00–0011	10/06/99	01/04/00	CBI	(G) Household cleaning agent additive	(G) Alcohols, ethoxylated propoxylated
P–00–0012	10/05/99	01/03/00	Cardolite Corporation	(S) Expoxy curing agent	(G) Amine functional epoxy curing agent
P–00–0013	10/07/99	01/05/00	CBI	(G) Intermediate for exterior coating for aluminum beer and beverage can ends	(G) Maleic anhydride polyester

I. 47 Premanufacture Notices Received From: 09/27/99 to 10/08/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0014	10/07/99	01/05/00	CBI	(G) For use as an exterior coating for aluminum ''easy open ends'' for the beer and beverage can market	(G) Acrylic polyester resin
P–00–0015	10/07/99	01/05/00	CBI	(G) Additive, open, non-dispersive use	(G) Polyoxyalkylene polyester urethane block polymer, salt with phosphorylated polyester
P–00–0016	10/07/99	01/05/00	CBI	(G) Open, non-dispersive (resin)	(G) Aqueous dispersion of a polyester polyurethane
P–00–0017	10/07/99	01/05/00	Zeon Chemicals L.P.	(S) Pressure sensitive adhesives; hot melt adhesives; rubber compounds; road markings	(S) Cyclopentene, polymer with 1,3-butadiene, 1-butene, (2*e*)-2-butene, (2*z*)-2-butene, 2-methyl-1-propene and 1,3-pentadiene*
P–00–0018	10/07/99	01/05/00	Zeon Chemicals L.P.	(S) Pressure sensitive adhesives; hot melt adhesives; rubber compounds; road markings	(S) Benzene, ethenyl-, polymer with 1-butene, (2*e*)-2-butene, (2*z*)-2-butene, cyclopentene, 2-methyl-1-propene and 1,3-pentadiene*
P–00–0019	10/07/99	01/05/00	Zeon Chemicals L.P.	(S) Pressure sensitive adhesives; hot melt adhesives; rubber compounds; road markings	(S) 4,7-methano-1*h*-indene, 3*a*,4,7,7*a*-tetrahydro-, polymer wtih 1-butene, (2*e*)-2-butene, (2*z*)-2-benzene, cyclopentene, ethenylbenzene, ethenylmethylbenzene, 1*h*-indene, (1-methylethenyl)benzene, 2-methyl-1-propene, 1,3-pentadiene and 1-propenylbenzene*
P–00–0020	10/07/99	01/05/00	Zeon Chemicals L.P.	(S) Pressure sensitive adhesives; hot melt adhesives; rubber compounds; road markings	(S) 4,7-methano-1*h*-indene, 3*a*,4,7,7*a*-tetrahydro-, polymer wtih 1-butene, (2*e*)-2-butene, (2*z*)-2-benzene, cyclopentene, ethenylbenzene, ethenylmethylbenzene, 1*h*-indene, 2-methyl-1,3-butadiene, (1-methylethenyl)benzene, 2-methyl-1-propene, 1,3-pentadiene and 1-propenylbenzene*
P–00–0021	10/07/99	01/05/00	Zeon Chemicals L.P.	(S) Pressure sensitive adhesives; hot melt adhesives; rubber compounds; road markings	(S) 2,5-furandione, polymer with 1-butene, (2*e*)-2-butene, (2*z*)-2-butene, cyclopentene, ethenylbenzene, 2-methyl-1-propene and 1,3-pentadiene*
P–00–0022	10/07/99	01/05/00	Zeon Chemicals L.P.	(S) Pressure sensitive adhesives; hot melt adhesives; rubber compounds; road markings	(S) Benzene, ethenyl-, polymer with 1-butene, (2*e*)-2-butene, (2*z*)-2-butene, cyclopentene, 2-methyl-1,3-butadiene, 2-methyl-1-propene and 1,3-pentadiene*
P–00–0023	10/07/99	01/05/00	Zeon Chemicals L.P.	(S) Pressure sensitive adhesives; hot melt adhesives; rubber compounds; road markings	(S) Benzene, ethenyl-, polymer with cyclopentene and 2-methyl-1,3-butadiene*
P–00–0024	10/08/99	01/06/00	CBI	(G) Destructive use	(G) Aluminum alkylamide
P–00–0025	10/08/99	01/06/00	CBI	(G) Destructive use	(G) Dilithium salt of methane bridged substituted bis cyclopentadiene
P–00–0026	10/08/99	01/06/00	CBI	(G) Open non-dispersive (resin)	(G) Polyisocyanate prepolymer
P–00–0027	10/08/99	01/06/00	CBI	(G) Capacitor ingredient	(G) Substituted imidazolium salt
P–00–0028	10/08/99	01/06/00	CBI	(G) Open, non-dispersive use	(G) Modified acrylic polymer
P–99–1387	09/27/99	12/26/99	FMC Corporation	(S) Chemical intermediate	(G) Substituted aliphatic carboxylic acid
P–99–1389	09/28/99	12/27/99	CBI	(S) Basestock for automotive lubricants; fuel additive for mogas and/or diesel formulations	(G) Trimethylolpropane esters
P–99–1390	09/27/99	12/26/99	CIBA Specialty Chemicals Corporation	(G) Textile dye	(G) Alanine, *n*-[3-(acetylamino)-4-[(substituted)azo]phenyl]-*n*-ethyl-, ethyl ester
P–99–1391	09/28/99	12/27/99	CBI	(G) Open, non-dispersive use	(G) Modified acrylic polymer
P–99–1392	09/28/99	12/27/99	CBI	(G) Open, non-dispersive use	(G) Hydroxy functional oligomer
P–99–1393	09/28/99	12/27/99	CBI	(G) Non-dispersive use.	(G) Blocked aromatic isocyanate
P–99–1394	09/27/99	12/26/99	H. B. Fuller Company	(S) Moisture-cure adhesive; volumes are predicted values for each substance.	(G) Polyester polyether isocyanate polymer

I. 47 Premanufacture Notices Received From: 09/27/99 to 10/08/99—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–1395	09/27/99	12/26/99	H. B. Fuller Company	(S) Moisture-cure adhesive; volumes are predicted values for each substance.	(G) Polyester polyether isocyanate polymer
P–99–1396	09/27/99	12/26/99	H. B. Fuller Company	(S) Moisture-cure adhesive; volumes are predicted values for each substance.	(G) Polyester polyether isocyanate polymer
P–99–1397	09/27/99	12/26/99	H. B. Fuller Company	(S) Moisture-cure adhesive; volumes are predicted values for each substance.	(G) Polyester polyether isocyanate polymer
P–99–1398	09/30/99	12/29/99	CBI	(G) Paper softener	(G) Quaternary ammonium compound
P–99–1399	09/30/99	12/29/99	CBI	(G) Thermoset resin	(G) Aromatic epoxide resin
P–99–1400	09/30/99	12/29/99	CBI	(G) Resin coating	(G) Rubber modified epoxy acrylate
P–99–1401	09/30/99	12/29/99	CBI	(G) Additive, open, non-dispersive use	(G) Salt of acidic polymers
P–99–1402	09/30/99	12/29/99	CBI	(G) Additive, open, non-dispersive use	(G) Acrylic acid ester copolymer with vinylimidazole, grafted with styrene-acrylnitril copolymer
P–99–1403	09/29/99	12/28/99	CBI	(S) Ingredient in fragrance compound	(S) Cyclohexanemethanol, 2-hydroxy-′,′,4-trimethyl-, (1*r*,2*s*,4*r*)-*
P–99–1404	09/29/99	12/28/99	CBI	(S) Ingredient in fragrance compound	(S) Cyclohexanemethanol, 2-hydroxy-′,′,4-trimethyl-, (1*r*,2*r*,4*r*)-*
P–99–1405	09/29/99	12/28/99	CBI	(S) Ingredient in fragrance compound	(S) Cyclohexanemethanol, 2-hydroxy-′,′,4-trimethyl-, (1*s*,2*r*,4*r*)-*
P–99–1406	09/29/99	12/28/99	CBI	(S) Ingredient in fragrance compound	(S) Cyclohexanemethanol, 2-hydroxy-α,α,4-trimethyl-, (1*s*,2*s*,4*r*)-*

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 28 Notices of Commencement From: 09/27/99 to 10/08/99

Case No.	Received Date	Commencement/Import Date	Chemical
P–91–1408	10/08/99	07/15/99	(G) Triethylamine-dimethylethanolamine salt of styrene-acrylate copolymer with epoxy ester
P–95–0396	10/07/99	10/01/99	(G) Polyester polyether isocyanate
P–95–0672	09/28/99	09/07/99	(S) A polymer of 1,2-ethanediol; 1,4-benzenedicarboxylic acid; 2,6-naphthalenedicarboxylic acid, dimethyl ester; 2,2′-oxybisethanol*
P–98–0119	10/07/99	09/18/99	(G) Alkoxysilyl-functional polydimethylsiloxane
P–98–0289	10/08/99	09/09/99	(G) Metal phenate/sulfonate/salicylate complex
P–98–0631	10/05/99	09/14/99	(G) 1*h*- imidazolium, 1,1′[alkanediylbis[4,1-phenylazo(1,2-dihydro-6-hydroxy-alkyl-2-oxo-3,5-pyridindiyl)]]bis3-[alkyll, salt with alkanoic acid*
P–98–0632	10/05/99	09/14/99	(G) 1*h*- imidazolium, 1,1′[alkanediylbis[4,1-phenylazo(1,2-dihydro-6-hydroxy-alkyl-2-oxo-3,5-pyridindiyl)]]bis3-[alkyll, salt with alkanoic acid*
P–98–1008	09/27/99	09/01/99	(G) Substituted azetidine sulfonyl chloride
P–98–1042	10/08/99	09/17/99	(G) Styrenated epoxy acrylate polymer
P–99–0079	10/07/99	06/13/99	(S) 2-propenoic acid, 2-methyl-, monoester with 1,2-propanediol, polymers with hydroxy-terminated acrylonitrile-butadiene polymer, 4,4′-(1-methylethylidene)bis[cyclohexanol] and 4,4-tdi*
P–99–0328	10/05/99	09/22/99	(G) Polyester polyol
P–99–0535	10/05/99	10/01/99	(G) Acrylic uva polymer
P–99–0545	09/28/99	09/20/99	(S) Octadecanoic acid, compound with 2-(2-aminoethoxy) ethanol (1:1)*
P–99–0546	09/28/99	09/16/99	(S) Isooctadecanoic acid, compound with 2-(2-aminoethoxy) ethanol (1:1)*
P–99–0579	10/05/99	09/24/99	(G) Fatty acid esters
P–99–0584	09/28/99	09/17/99	(S) Dodecanoic acid, compound with 2-(2-aminoethoxy)ethanol (1:1)*
P–99–0606	10/05/99	09/20/99	(G) Perfluoroalkylethyl amphoteric
P–99–0608	10/05/99	09/10/99	(G) Perfluoroalkylethyl amine
P–99–0609	10/05/99	09/09/99	(G) Perfluoroalkylethyl ester
P–99–0615	10/07/99	09/28/99	(G) Allyl ester oligomer; allyl ester resin
P–99–0666	09/27/99	09/10/99	(G) Sulfonyl urea
P–99–0723	09/27/99	09/20/99	(G) Phenoxazin-5-ium, 3-substituted-7-substituted, salt
P–99–0737	10/01/99	09/21/99	(G) Acrylic polymer
P–99–0944	10/07/99	09/23/99	(G) Xylyl phosphate

II. 28 Notices of Commencement From: 09/27/99 to 10/08/99—Continued

Case No.	Received Date	Commencement/Import Date	Chemical
P–99–0948	10/05/99	09/20/99	(S) Dodecanedioic acid, polymer with 1,4-butanediol, hexanedioic acid, 1,6-hexanediol, α-hydro-omega-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 1,1′-methylenebis[4-isocyanatobenzene] and 2-oxepanone*
P–99–0949	10/05/99	09/23/99	(S) 1,3-benzenedicarboxylic acid, polymer with 1,4-benzenedicarboxylic acid, 1,4-butanediol, dodecanedioic acid, hexanedioic acid, 1,6-hexanediol, 1,1′-methylenebis[isocyanatobenzene] and 2,2′-oxybis[ethanol]*
P–99–0954	09/29/99	09/23/99	(G) Modified polyacrylate
P–99–1002	10/05/99	09/30/99	(S) Phenol, 4,4′-(1-methylethylidene)bis-, polymer with (chloromethyl)oxirane and α,α′,α′′-1,2,3-propanetriyltris[omega-(oxiranylmethoxy)poly[oxy(methyl-1,2-ethanediyl)]*

List of Subjects

Environmental protection, Premanufacture notices.

Dated: October 26, 1999.

Deborah A. Williams,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 99–29586 Filed 11–10–99; 8:45 am]

BILLING CODE 6560–50–F

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Tuesday, November 16, 1999, at 2:00 p.m. (Eastern Time).

PLACE: Clarence Mitchell Conference Room on the 9th Floor of the EEOC Office Building, 1801 ''L'' Street, N.W., Washington, D.C. 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. Announcement of Notation Votes, and

2. Reports to the Commission by the Office of General Counsel and Office of Field Programs.

Note: Any matters not discussed or concluded may be carried over to a later meeting. (In addition to published notices on EEOC Commission meeting in the **Federal Register** the Commission also provides recorded announcement a full week in advance on future Commission meetings). Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TDD) at any time for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: November 9, 1999.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 99–29709 Filed 11–9–99; 2:28 pm]

BILLING CODE 6750–06–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–2237]

2000 Maximum Reimbursement Fee for Amateur Operator Examinations

October 29, 1999.

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This Public Notice announces that, effective January 1, 2000, the maximum allowable reimbursement fee for an amateur operator license examination will be $6.66. This amount is based on a 2.6% increase in the Department of Labor Consumer Price Index between September, 1998, and September, 1999.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Washington, DC 20554, (202) 418–0690.

DATES: Effective January 1, 2000.

SUPPLEMENTARY INFORMATION: Effective January 1, 2000, the maximum allowable reimbursement fee for an amateur operator license examination will be $6.66. This amount is based on a 2.6% increase in the Department of Labor Consumer Price Index between September, 1998, and September, 1999.[1]

Volunteer examiners (VEs) and volunteer-examineer coordinators (VECs) may charge examinees for out-of pocket expenses incurred in preparing, processing, administering, or coodinating examinations for amateur operator licenses. The amount of any such reimbursement fee from any one examinee for any one examination session, regardless of the number of elements administered, must not exceed the maximum allowable fee. Where the VEs and the VEC both desire reimbursement, they jointly decide upon a fair distribution of the fee.

This announcement is made pursuant to § 97.527 of the Commission's Rules, 47 CFR 97.527.

Federal Communications Commission.

D'wana R. Terry,

Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 99–29551 Filed 11–10–99; 8:45 am]

BILLING CODE 6712–01–P

[1] Consumer Price Index Detailed Report, U.S. Department of Labor, Bureau of Labor Statistics (September 1999).

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 26, 1999.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Steven A. and Rolande K. Petterson, San Luis Obispo, California; Dale L. and Carolee Petterson, Menlo Park, California; Evelyn V. Hels, Santa Barbara, California; and Tres Pueblo Partnership, San Luis Obispo, California; all to retain voting shares of First Bancshares, Inc., San Luis Obispo, California, and thereby indirectly retain voting shares of First Bank of San Luis Obispo, San Luis Obispo, California.

Board of Governors of the Federal Reserve System, November 8, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–29608 Filed 11–10–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 6, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Main Street Trust, Inc., Champaign, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of BankIllinois Financial Corporation, Champaign, Illinois, and thereby indirectly acquire BankIllinois, Champaign, Illinois; and First Decatur Bancshares, Inc., Decatur, Illinois, and thereby indirectly acquire The First National Bank of Decatur, Decatur, Illinois, and First Trust Bank of Shelbyville, Shelbyville, Illinois.

In connection with this application, Applicant also has applied to acquire FirsTech, Inc., Decatur, Illinois, and thereby engage in data processing and data transmission services, pursuant to § 225.28(b)(14) of Regulation Y.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. CountryBanc Holding Company, Edmond, Oklahoma; to acquire 90 percent of the voting shares of American Heritage Bancorp, Inc., El Reno, Oklahoma, and thereby indirectly acquire American Heritage Bank, El Reno, Oklahoma.

Board of Governors of the Federal Reserve System, November 5, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–29541 Filed 11–10–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 26, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Deutsche Bank AG, Frankfurt (Main) Federal Republic of Germany; to engage *de novo* through DB Advisors L.L.C. (DB Advisors), New York, New York, in acting as a commodity pool operator for private limited partnerships and/or trusts organized as commodity pools investing in assets (Assets) in which a bank holding company is permitted to invest, pursuant to § 225.24(a)(3) of Regulation Y; in acting as investment advisor to the investment vehicles organized by Notificant to invest in the Assets, pursuant to § 225.28(b)(6) of Regulation Y; and in providing administrative services, currently provided to open-end investment companies by Notificant, to closed-end investment companies. These activities will be conducted worldwide.

Board of Governors of the Federal Reserve System, November 5, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–29540 Filed 11–10–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 991 0244]

Dominion Resources, Inc., et al.; 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 December 7, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania. Ave., NW, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Richard Parker or Norman Armstrong, FTC/H–374, 600 Pennsylvania. Ave., NW, Washington, D.C. 20580. (202) 326–2574 or 326–2682.

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 thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for November 5, 1999), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. 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 Agreement Containing Consent Orders To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from Dominion Resources, Inc. (''Dominion'') and Consolidated Natural Gas Company (''CNG''), which is designed to remedy the anticompetitive effects resulting from Dominion's acquisition of CNG. Under the terms of the agreement, Dominion will be required to divest Virginia Natural Gas, Inc. (''VNG''), a subsidiary of CNG, which provides local gas distribution service within the Commonwealth of Virginia, within the time period set forth in the Stipulation entered into between the staff of the State Corporation Commission of the Commonwealth of Virginia, Dominion, and CNG in State Corporation Case No. PUA990020.

The proposed Consent Agreement has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make final the Decision & Order.

Pursuant to an Agreement and Plan of Merger dated March 31, 1999, amended May 11, 1999, Dominion agreed to acquire 100 percent of the issued and outstanding voting securities of CNG for $5.3 billion. The Commission's Complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the market for the generation of electric power in southeastern Virginia.

Dominion, through its subsidiary Virginia Power, accounts for more than 70 percent of the electric power generation capacity in the Commonwealth of Virginia. CNG, through its VNG subsidiary, is the primary distributor of natural gas in southeastern Virginia. Natural gas is one of a limited number of fuels that are used in the operation of an electric generating facility that supplies electric power to residential and commercial customers. The generation of electric power in the Commonwealth of Virginia is regulated by the Virginia State Corporation Commission and the Federal Energy Regulatory Commission. Deregulation of the electric power generation business in Virginia is slated to begin on January 1, 2002.

The market for the generation of electric power is highly concentrated, and the proposed acquisition would combine the dominant provider of electric power in the Commonwealth of Virginia with the primary distributor of natural gas in southeastern Virginia. With the acquisition of CNG by Dominion, entry into the electric power generation market in southeastern Virginia by companies unaffiliated with Dominion may be deterred because of Dominion's control over VNG. Dominion's control over VNG would likely deter or disadvantage new entry into the electric power generation market because Dominion may be able to raise the costs of entry and production to new entrants. The proposed acquisition would therefore allow Dominion to exercise market power unilaterally in southeastern Virginia, increasing the likelihood that purchasers of electric services would be forced to pay higher prices.

Substantial barriers to new entry exist in the market for the generation of electric power. Entry into the electric power generation market in southeastern Virginia by construction of plants that use fuels other than natural gas is unlikely to occur due to environmental restrictions. Natural gas is increasingly the fuel of choice for new electric generation plant construction. With Dominion's acquisition of CNG and its subsidiary VNG, Dominion may be able to deter new entry by raising the costs of entry and production. The market for the delivery of natural gas in southeastern Virginia is also characterized by high barriers to entry. It would be costly and time consuming for other natural gas transportation companies to extend pipelines from their existing network to southeastern Virginia. Moreover, other pipelines near the relevant area lack sufficient excess capacity to support a new pipeline into the area, and VNG has substantial excess capacity. Because of the difficulty of entry into the natural gas distribution market in southeastern Virginia, new entry is unlikely to deter or counteract the anticompetitive effects of the transaction.

The Consent Agreement effectively remedies the acquisition's anticompetitive effects in the market for the generation of electric power by requiring Dominion to divest VNG pursuant to the terms of the Stipulation entered into by Dominion and the staff of the State Corporation Commission of the Commonwealth of Virginia in State Corporation Case No. PUA990020. Under the Stipulation, Dominion has one year to divest VNG to a third party, and if it is unable to find a suitable purchaser, Dominion must spin off VNG to its shareholders. The Federal Trade Commission's Consent Agreement requires Dominion to comply with the terms of the Stipulation, and further prohibits any Dominion shareholder from receiving more than 5 percent of the voting shares of VNG. In order to ensure that VNG remains a viable, independent competitor pending its divestiture, the Federal Trade Commission has issued on Order to Hold Separate. Under the Order to Hold Separate, Dominion and CNG shall continue to provide services to VNG that CNG is currently being provided until VNG is divested. The Order to Hold Separate further provides that the Federal Trade Commission may appoint an independent auditor to monitor Dominion's and CNG's compliance with their obligations to hold VNG separate and independent.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the Consent Agreement or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–29569 Filed 11–10–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 98D–0316 and 98D–0317]

''Guidance for Industry: Providing Regulatory Submissions to the Center for Biologics Evaluation and Research (CBER) in Electronic Format-Biologics Marketing Applications [Biologics License Application (BLA), Product License Application (PLA)/ Establishment License Application (ELA) and New Drug Application (NDA)]''; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled ''Guidance for Industry: Providing Regulatory Submissions to the Center for Biologics and Research (CBER) in Electronic Format-Biologics Marketing Applications [Biologics License Application (BLA), Product License Application (PLA)/Establishment License Application (ELA) and New Drug Application (NDA)].'' The guidance document provides information regarding the electronic submission of license applications, i.e., BLA, PLA/ELA, NDA, and supplements and amendments to those applications intended for submission to Center for Biologics Evaluation and Research (CBER). This guidance document is part of CBER's effort to develop an efficient process for electronic submissions of regulatory information relating to the development and marketing of biological products. Submissions in electronic format are voluntary.

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the guidance entitled ''Guidance for Industry: Providing Regulatory Submissions to the Center for Biologics and Research (CBER) in Electronic Format-Biologics Marketing Applications [Biologics License Application (BLA), Product License Application (PLA)/Establishment License Application (ELA) and New Drug Application (NDA)]'' to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Astrid L. Szeto, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 400N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled ''Guidance for Industry: Providing Regulatory Submissions to the Center for Biologics and Research (CBER) in Electronic Format-Biologics Marketing Applications [Biologics License Application (BLA), Product License Application (PLA)/Establishment License Application (ELA) and New Drug Application (NDA)].'' This guidance document is intended to provide a degree of uniformity for electronically submitted biologics marketing applications to assure timely review, archiving, and retrieval processes for agency reviewers, and to describe those electronic formats that CBER is currently able to support for review and archive purposes. The guidance announced in this notice finalizes the two draft guidances entitled ''Draft Guidance for Industry: Electronic Submissions of a Biologics License Application (BLA) or Product License Application (PLA)/ Establishment License Application (ELA) to the Center for Biologics Evaluation and Research,'' and ''Draft 'Guidance for Industry: Electronic Submissions of Case Report Forms (CRF's), Case Report Tabulations (CRT's) and Data to the Center for Biologics Evaluation and Research,''' which were announced in the **Federal Register** of June 1, 1998 (63 FR 29741 and 29739, respectively). In the **Federal Register** of January 28, 1999 (64 FR 4433), FDA announced the availability of a document entitled ''Guidance for Industry on General Considerations for Providing Regulatory Submissions in Electronic Format'' which provided a list of guidance documents that are under development regarding electronic submissions, and guidance on general issues relevant to all electronic submissions.

In the **Federal Register** of March 20, 1997 (62 FR 13430), FDA published the electronic records; electronic signatures final rule, which provided for the voluntary submission of parts or all of an application, as defined in the relevant regulations, in electronic format without an accompanying paper copy (21 CFR part 11). FDA also established public docket number 92S–0251 to provide a permanent location for a list of the agency units that are prepared to receive electronic submissions and the specific types of regulatory records that can be accepted in electronic format (62 FR 13467, March 20, 1997). CBER will identify in this public docket any submission type that can be reviewed and archived in an electronic format as they become available. This public docket can be accessed on the Internet at http://www.fda.gov/ohrms/dockets/dockets/92s0251/92s0251.htm.

This guidance document represents the agency's current thinking with regard to regulatory submissions in electronic format. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

II. Comments

Interested persons, may at any time, submit written comments to the Dockets Management Branch (address above) regarding this guidance document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at http://www.fda.gov/cber/guidelines.htm.

Dated: November 5, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–29549 Filed 11–10–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 99D–4575 and 99D–4576]

Draft Guidances for Industry on Food-Contact Substance Notification System; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of two draft guidance documents entitled ''Preparation of Premarket Notifications for Food Contact Substances: Chemistry Recommendations,'' and ''Preparation of Premarket Notifications for Food Contact Substances: Toxicology Recommendations.'' These documents are intended to provide guidance for industry regarding the preparation of premarket notifications (PMN's) for food-contact substances (FCS's). In addition, FDA Form No. 3480 entitled ''Notification for New Use of a Food Contact Substance'' is being made available as an attachment to each of these guidance documents. This form is provided for comment as part of the collection of information for the notification system for FCS's. FDA is providing these draft guidances as part of its implementation of the PMN process for FCS's established by the FDA Modernization Act of 1997 (FDAMA) (Public Law 105–115).

DATES: Submit written comments concerning these draft guidances by February 14, 2000. Submit written comments concerning the collection of information by January 11, 2000.

ADDRESSES: Submit written comments concerning these draft guidances and the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document. Submit written requests for single copies of the draft guidances to the Office of Premarket Approval (HFS–200), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3100, FAX 202–418–3131. All requests should identify the draft guidances by the titles listed above. See the **SUPPLEMENTARY INFORMATION** section for electronic access to these draft guidances.

FOR FURTHER INFORMATION CONTACT: Mitchell A. Cheeseman, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3083.

SUPPLEMENTARY INFORMATION:

I. Background

FDAMA amended section 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348) to establish a PMN process as the primary method for authorizing new uses of food additives that are FCS's. A ''food contact substance'' is defined in section 409(h)(6) of the act as ''any substance intended for use as a component of materials used in manufacturing, packing, packaging, transporting, or holding food if such use is not intended to have any technical effect in such food.'' Once the PMN process begins to operate (see section 409(h)(5) of the act), FDA expects most new uses of FCS's that previously would have been regulated by issuance of a listing regulation in response to a food additive petition (FAP) or would have been exempted from the requirement of a regulation under the threshold of regulation (TOR) process will be the subject of PMN's. FDA is announcing the availability of two draft guidance documents entitled ''Preparation of Premarket Notifications for Food Contact Substances: Chemistry Recommendations,'' and ''Preparation of Premarket Notifications for Food Contact Substances: Toxicology Recommendations.'' These documents are intended to provide guidance for industry regarding the preparation of PMN's for FCS's. FDA is providing these draft guidances as part of its implementation of the PMN process for FCS's established by FDAMA.

II. Significance of Guidance

These two draft guidance documents represent the agency's current thinking on the data and information that should be submitted in a PMN for the use of an FCS. These draft guidance documents do not create or confer any rights for or on any person and do not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations. These two draft guidance documents are level 1 guidances under the agency's good guidance practices (62 FR 8961, February 27, 1997).

III. Electronic Access

The draft guidances may also be accessed via the Internet at the Center for Food Safety and Applied Nutrition website at http://www.fda.gov/cfsan.

IV. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (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 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 set forth 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.

Title: Food-Contact Substances Notification System

Description: Section 409(h) of the Federal Food, Drug, and Cosmetic Act (the act) establishes a premarket notification process for FCS's. Section 409(h)(6) of the act defines a ''food contact substance'' as ''any substance intended for use as a component of materials used in manufacturing, packing, packaging, transporting, or holding food if such use is not intended to have any technical effect in such food.'' Section 409(h)(3) of the act requires that the notification process be

utilized for authorizing the marketing of FCS's, except where FDA determines that the submission and premarket review of an FAP under section 409(b) of the act is necessary to provide adequate assurance of safety. Section 409(h)(1) of the act requires that a notification include information on the identity and the intended use of the FCS and the basis for the notifier's determination that the FCS is safe under the intended conditions of use. Because section 409(h)(1) of the act references the general safety standard for food additives, the data in a PMN should be comparable to the data in an FAP. FDA is announcing the availability for comment of two draft guidance documents that are part of the agency's implementation of the PMN program, which will largely replace the FAP process for those food additives that are FCS's. The information to be collected is information on the manufacture and intended use of the FCS, studies relating to the safety of the FCS, and other information necessary to demonstrate that the FCS is safe under the intended conditions of use.

FDA is also making available for comment FDA Form No. 3480 entitled ''Notification for New Use of a Food Contact Substance'' for a notification for a new use of a FCS. FDA believes that this form will facilitate both preparation and review of notifications since the form will serve to organize information necessary to support the safety of the use of the FCS. The burden of filling out the appropriate form has been included in the burden estimate for the notification.

Description of Respondents: Manufacturers of food-contact substances.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

Form	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
FDA 3480 [2]	200	1	200	25	5,000
FDA 3480 [3]	125	2	250	120	30,000
FDA 3480 [4]	45	2	90	150	13,500
FDA 3480 [5]	16	1	16	150	2,400
Total					50,900

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Duplicate notifications for uses of FCS's.
[3] Notifications for uses that would currently be the subject of exemptions under 21 CFR 170.39 or very simple FAP's.
[4] Notifications for uses that would currently be the subject of moderately complex FAP's.
[5] Notifications for uses that would currently be the subject of more complex FAP's.

The above estimate is based on the types of submissions that FDA currently receives for FCS's in the TOR and the FAP processes and the following assumptions and information:

1. FDA estimates that the likely increase in PMN's over the number of FAP's and TOR requests will be approximately four times the highest recent influx of these submissions (50 and 54, respectively). This factor is based on an analysis of the number of companies producing various types of FCS's and the types of FCS's for which FAP's and TOR's are most commonly submitted to FDA.

2. FDA also has included 200 expected duplicate submissions in the second lowest tier. FDA expects that the burden for preparing these notifications will primarily consist of the notifier filling out FDA Form No. 3480, verifying that a previous notification is effective, and preparing necessary documentation.

3. Based on the amount of data typically submitted in FAP's and TOR requests, FDA identified three other tiers of PMN's that represent escalating levels of burden required to collect information.

4. FDA estimated the median number of hours necessary for collecting information for each type of notification within each of the three tiers, and the cost of developing necessary data based on input from industry sources.

V. Comments

Interested persons may, on or before February 14, 2000, submit to the Dockets Management Branch (address above) written comments regarding the two draft guidance documents. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket numbers found in brackets in the heading of this document. Submit written comments concerning this collection of information to the Dockets Management Branch by January 11, 2000. The draft guidance documents and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Received comments will be considered when determining whether to amend the guidance.

Dated: November 1, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–29493 Filed 11–10–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of December 1999.

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: December 1, 1999; 9:00 a.m.–5:00 p.m.

Place: Parklawn Building, Conference Rooms G & H, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.

The full Commission will meet on Wednesday, December 1, 1999, from 9:00 a.m. to 5:00 p.m. Agenda items will include, but not be limited to: A discussion of the Government Accounting Office Report; a discussion of the six-month severity criteria to allow compensation for injuries, such as Intussusception; updates from the Department of Justice and the National Vaccine Program Office; and routine program reports.

Public comment will be permitted before lunch and at the end of the Commission meeting on December 1, 1999. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in

providing an oral presentation should submit a written request, along with a copy of their presentation to: Ms. Shelia Tibbs, Principal Staff Liaison, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–46, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–6593. Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time.

Persons who do not file an advance request for a presentation, but desire to make an oral statement, may sign-up in Conference Rooms G and H on December 1, 1999. These persons will be allocated time as time permits.

Anyone requiring information regarding the Commission should contact Ms. Tibbs at (301) 443–6593.

Agenda items are subject to change as priorities dictate.

Dated: November 4, 1999.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–29492 Filed 11–10–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel I in November and December 1999.

A summary of the meetings and a roster of the members may be obtained from: Ms. Coral Sweeney, Review Specialist, SAMHSA, Office of Policy and Program Coordination, Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–2998.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meetings will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, these meetings are concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b© (6) and 5 U.S.C. App.2, § 10(d).

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: November 15–19, 1999.

Place: Bethesda Marriott 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: November 15–19, 1999, 8:30 a.m.–5:00 p.m./adjournment.

Panel: Community Treatment Program, PA 99–050.

Contact: Michael Koscinski, Room 17–89, Parklawn Building, Telephone: 301–443–6094 and FAX: 301–443–3437.

Committee Name: SAMHSA Special Emphasis Panel I (SEP I).

Meeting Dates: December 13–15, 1999.

Place: Bethesda Marriott 5151 Pooks Hill Road Bethesda, MD 20814.

Closed: December 13–15, 1999 8:30 a.m.–5:00 p.m./adjournment.

Panel: Substance Abuse and Mental Health Services Administration Conference Grant PA 98–090(a).

Contact: Boris Aponte, Room 17–89, Parklawn Building, Telephone: 301–443–9912 and FAX: 301–443–3437.

Dated: November 1, 1999.

Coral Sweeney,

Review Specialist, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–29491 Filed 11–10–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–45]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) Its intention to declare the property excess to the agency's needs, or (3) A statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, the property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for

use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AIR FORCE: Ms. Barbara Jenkins, Air Force Real Estate Agency, (Area-MI), Bolling Air Force Base, 112 Luke Avenue, Suite 104, Building 5683, Washington, DC 20332–8020; (202) 767–4184; ARMY: Mr. Jeff Holste, Military Programs, U.S. Army Corps of Engineers, Installation Support Center, Planning & Real Property Branch, ATTN: CEMP–IP, 7701 Telegraph Road, Alexandria, VA 22315–3862; (703) 428–6318; COE: Ms. Shirley Middleswarth, Army Corps of Engineers, Management & Disposal Division, Pulaski Building, Room 4224, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000; (202) 761–0515; DOT: Mr. Rugene Spruill, Principal, Space Management, SVC–140, Department of Transportation, 400 7th Street, SW, Room 2310, Washington, DC 20590; (202) 366–4246; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; NAVY: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: November 4, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 11/12/99

Suitable/Available Properties

Buildings (by State)

Arizona

Bldgs. 43101–43109
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 21199940001
Status: Excess
Comment: 969 sq. ft. per unit, 2-units per bldg., wood/stucco, presence of asbestos/lead paint, most recent use—housing, off-site use only

Hawaii

5 Bldgs.
Schofield Barracks #P1521, 1522, 1524, 1525, 1526
Wahiawa Co: HI 96786–
Landholding Agency: Army
Property Number: 21199940010
Status: Unutilized
Comment: 6708 sq. ft. each, 2-story, (4-units per bldg.), poor condition, most recent use—family housing, off-site use only

Illinois

Army Reserve Center
1881 East Fremont Street
Galesburg Co: Knox IL 61401–
Landholding Agency: GSA
Property Number: 54199940008
Status: Excess
Comment: 2 brick buildings (6117 & 1325 sq. ft.), utilities turned off, need repairs, most recent use—storage
GSA Number: 1–D–IL–720

Kansas

Bldg. S–287
Fort Riley
Ft. Riley Co: Manhatten KS 66442–
Landholding Agency: Army
Property Number: 21199940011
Status: Unutilized
Comment: 800 sq. ft., most recent use—storage, off-site use only

Bldg. T347
Fort Riley
Ft. Riley Co: Manhatten KS 66442–
Landholding Agency: Army
Property Number: 21199940012
Status: Unutilized
Comment: 2888 sq. ft., most recent use—storage, off-site use only

Project Residence
Perry Lake Drive
Perry Co: Jefferson KS 66073–9727
Landholding Agency: COE
Property Number: 31199940001
Status: Excess
Comment: 1440 sq. ft., off-site use only

Louisiana

Bldg. 4960 A–F
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199940013
Status: Unutilized
Comment: 4412 sq. ft., most recent use—housing, off-site use only

Bldg. 5143 A–D
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199940014
Status: Unutilized
Comment: 4109 sq. ft., most recent use—housing, off-site use only

Bldg. 5179 A–F
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199940015
Status: Unutilized
Comment: 8969 sq. ft., most recent use—housing, off-site use only

Bldg. 5253 A–D
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199940016
Status: Unutilized
Comment: 4109 sq. ft., most recent use—housing, off-site use only

Bldg. 5846 A–E
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199940017
Status: Unutilized
Comment: 3919 sq. ft., most recent use—housing, off-site use only

Bldg. 5903 A–F
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199940018
Status: Unutilized
Comment: 5719 sq. ft., most recent use—housing, off-site use only

Bldg. 5909 A–B
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199940019
Status: Unutilized
Comment: 2025 sq. ft., most recent use—housing, off-site use only

Bldg. 6169 A–D
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199940020
Status: Unutilized
Comment: 2850 sq. ft., most recent use—housing, off-site use only

Bldg. 6475 A–B
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199940021
Status: Unutilized
Comment: 5100 sq. ft., most recent use—housing, off-site use only

Bldg. 6477 A–D
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199940022

Status: Unutilized
Comment: 5972 sq. ft., most recent use—housing, off-site use only

Bldg. 6704 A–D
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199940023
Status: Unutilized
Comment: 5972 sq. ft., most recent use—housing, off-site use only

Bldg. 6810 A–D
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199940024
Status: Unutilized
Comment: 6193 sq. ft., most recent use—housing, off-site use only

Maryland

Bldgs. 2454–2457
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21199940025
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, presence of asbestos, most recent use—admin./health clinics, off-site use only

Bldg. 2478
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21199940026
Status: Unutilized
Comment: 2534 sq. ft., needs rehab, presence of asbestos, most recent use—health clinic, off-site use only

Bldg. 2845
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21199940027
Status: Unutilized
Comment: 6104 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—admin., off-site use only

Washington Court Apartments
Maryland Rt. 755
Edgewood Co: Harford MD 21040–
Landholding Agency: GSA
Property Number: 54199940005
Status: Excess
Comment: 55 bldgs. housing 276 apartments, (2 to 4 bedrooms), need repairs, presence of lead based paint
GSA Number: 4–D–MD–559

Massachusetts

Bldg. 001
Air Natl Guard Station
50 Skyline drive
Worcester Co: MA 01605–2898
Landholding Agency: Air Force
Property Number: 18199940001
Status: Excess
Comment: 37,557 sq. ft., most recent use—shops/vehicle maintenance

Bldg. 002
Air Natl Guard Station
50 Skyline drive
Worcester Co: MA 01605–2898
Landholding Agency: Air Force
Property Number: 18199940002
Status: Excess
Comment: 5,580 sq. ft., most recent use—office/shops

Bldg. 003
Air Natl Guard Station
50 Skyline drive
Worcester Co: MA 01605–2898
Landholding Agency: Air Force
Property Number: 18199940003
Status: Excess
Comment: 3,840 sq. ft., most recent use—warehouse

Bldg. 004
Air Natl Guard Station
50 Skyline drive
Worcester Co: MA 01605–2898
Landholding Agency: Air Force
Property Number: 18199940004
Status: Excess
Comment: 225 sq. ft., most recent use—shop

Bldg. 005
Air Natl Guard Station
50 Skyline drive
Worcester Co: MA 01605–2898
Landholding Agency: Air Force
Property Number: 18199940005
Status: Excess
Comment: 8000 sq. ft., most recent use—warehouse

New Mexico

68 Housing Units
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 21199940028
Status: Unutilized
Comment: 1269 sq. ft. ea., needs major repair, presence of asbestos, most recent use—housing, off-site use only

Facility 11230
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 21199940029
Status: Unutilized
Comment: 1620 sq. ft., needs major repair, presence of asbestos, most recent use—housing unit, off-site use only

3 Facilities
White Sands Missile Range
#00651, 00637, 00716
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 21199940030
Status: Unutilized
Comment: 1509 sq. ft. ea., needs major repair, presence of asbestos, most recent use—housing units, off-site use only

17 Garages
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 21199940031
Status: Unutilized
Comment: 598 sq. ft., needs major repair, presence of asbestos, most recent use—garages, off-site use only

37 Garages
White Sands Missile Range
White Sands Co: Dona Ana NM 88002–
Landholding Agency: Army
Property Number: 21199940032
Status: Unutilized
Comment: 312 sq. ft., needs major repair, presence of asbestos, most recent use—garages, off-site use only

North Dakota

Bldg. 401
Stanley R. Mickelsen
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 21199940033
Status: Unutilized
Comment: 3431 sq. ft., requires renovation, presence of asbestos, most recent use—police station, off-site use only

Bldg. 460
Stanley R. Mickelsen
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 21199940034
Status: Unutilized
Comment: 399 sq. ft., requires renovation, presence of asbestos, most recent use—guard house, off-site use only

Bldg. 801
Stanley R. Mickelsen
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 21199940035
Status: Unutilized
Comment: 3431 sq. ft., potential asbestos/lead paint, most recent use—control facility, off-site use only

Bldg. 820
Stanley R. Mickelsen
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 21199940036
Status: Unutilized
Comment: 75,015 sq. ft., possible asbestos/lead paint, most recent use—utility house, off-site use only

Bldg. 825
Stanley R. Mickelsen
Nekoma Co: Pembina ND 58355–
Landholding Agency: Army
Property Number: 21199940037
Status: Unutilized
Comment: 294 sq. ft., possible asbestos/lead paint, most recent use—access, off-site use only

Bldg. 3115
Stanley R. Mickelsen
Langdon Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 21199940038
Status: Unutilized
Comment: 38 sq. ft., possible asbestos/lead paint, most recent use—guard house, off-site use only

Pennsylvania

Bldg. T884
Carlisle Barracks
Carlisle Co: Cumberland PA 17013–
Landholding Agency: Army
Property Number: 21199940039
Status: Unutilized
Comment: 1500 sq. ft., needs major repair, presence of asbestos, most recent use—storehouse, off-site use only

Bldg. T889
Carlisle Barracks
Carlisle Co: Cumberland PA 17013–
Landholding Agency: Army
Property Number: 21199940040
Status: Unutilized
Comment: 1500 sq. ft., needs major repair, presence of asbestos, most recent use—storehouse, off-site use only

Bldg. T894
Carlisle Barracks
Carlisle Co: Cumberland PA 17013–
Landholding Agency: Army
Property Number: 21199940041
Status: Unutilized
Comment: 1555 sq. ft., needs major repair, presence of asbestos, most recent use—maint. facility, off-site use only

Bldg. T879
Carlisle Barracks
Carlisle Co: Cumberland PA 17013–
Landholding Agency: Army
Property Number: 21199940042
Status: Unutilized
Comment: 1850 sq. ft., needs major repair, presence of asbestos, most recent use—storehouse, off-site use only

Bldg. T895
Carlisle Barracks
Carlisle Co: Cumberland PA 17013–
Landholding Agency: Army
Property Number: 21199940043
Status: Unutilized
Comment: 1500 sq. ft., needs major repair, presence of asbestos, most recent use—maint. facility, off-site use only

Residence/Office
Cowanesqe Lake Project
Lawrenceville Co: Tioga PA 16929–
Landholding Agency: COE
Property Number: 31199940002
Status: Unutilized
Comment: 1653 sq. ft., residence, and 2,640 sq. ft. storage bldg., need major repairs, no operating sanitary facilities

Virginia

Bldgs. SS0320 thru SS0343
Fort A.P. Hill
Bowling Green Co: Caroline VA 22428–
Landholding Agency: Army
Property Number: 21199940045
Status: Unutilized
Comment: 528 sq. ft., need rehab, most recent use—enlisted UPH, off-site use only

Bldg. 178
Fort Monroe
Ft. Monroe Co: VA 23651–
Landholding Agency: Army
Property Number: 21199940046
Status: Unutilized
Comment: 1180 sq. ft., needs repair, most recent use—storage, off-site use only

Bldg. T246
Fort Monroe
Ft. Monroe Co: VA 23651–
Landholding Agency: Army
Property Number: 21199940047
Status: Unutilized
Comment: 756 sq. ft., needs repair, possible lead paint, most recent use—scout meetings, off-site use only

Unsuitable Properties

Buildings (by State)

Alabama

Bldg. 3218
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 21199940048
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 7142
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 21199940049
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

California

Bldg. 124
Presidio of Monterey
Monterey Co: CA 93944–
Landholding Agency: Army
Property Number: 21199940050
Status: Unutilized
Reason: Extensive deterioration.

24 Garages
Presidio of Monterey
Monterey Co: CA 93944–
Landholding Agency: Army
Property Number: 21199940051
Status: Unutilized
Reason: Extensive deterioration.

Bldg. 184
Sierra Army Depot
Herlong Co: Lassen CA 96113–
Landholding Agency: Army
Property Number: 21199940052
Status: Unutilized
Reason: Secured Area

Bldg. 186
Sierra Army Depot
Herlong Co: Lassen CA 96113–
Landholding Agency: Army
Property Number: 21199940053
Status: Unutilized
Reason: Secured Area

Bldg. 188
Sierra Army Depot
Herlong Co: Lassen CA 96113–
Landholding Agency: Army
Property Number: 21199940054
Status: Unutilized
Reason: Secured Area

Bldg. 189
Sierra Army Depot
Herlong Co: Lassen CA 96113–
Landholding Agency: Army
Property Number: 21199940055
Status: Unutilized
Reason: Secured Area

Bldg. 190
Sierra Army Depot
Herlong Co: Lassen CA 96113–
Landholding Agency: Army
Property Number: 21199940056
Status: Unutilized
Reason: Secured Area

Colorado

Matteson Warehouse
Commerce City Co: Adams CO 80022–
Landholding Agency: GSA
Property Number: 54199940007
Status: Surplus
Reason: Landlocked
GSA Number: 7–Z–CO–642

Georgia

Bldg. 2427
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199940057
Status: Unutilized
Reason: Extensive deterioration

Bldg. 2429
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199940058
Status: Unutilized
Reason: Extensive deterioration

Bldg. 2431
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199940059
Status: Unutilized
Reason: Extensive deterioration

Bldg. P8121
Fort Stewart
Ft. Stewart Co: Liberty GA 31314–3913
Landholding Agency: Army
Property Number: 21199940060
Status: Excess
Reason: Extensive deterioration

Hawaii

Bldg. P408 (A&B)
Wheeler Army Airfield
Wahiawa Co: HI 96857–
Landholding Agency: Army
Property Number: 21199940061
Status: Unutilized
Reason: Extensive deterioration

Kentucky

Bldg. 82
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 21199940062
Status: Excess
Reason: Extensive deterioration

Bldg. 847
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 21199940063
Status: Excess
Reason: Extensive deterioration

Bldgs. 1062, 1065, 1067
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 21199940064
Status: Excess
Reason: Extensive deterioration

Bldg. 2198
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 21199940065
Status: Excess
Reason: Extensive deterioration

Bldgs. 2350, 6715
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 21199940066
Status: Excess
Reason: Extensive deterioration

Bldgs. 2602, 2605
Fort Knox
Ft. Knox Co: Hardin KY 40121–

Landholding Agency: Army
Property Number: 21199940067
Status: Excess
Reason: Extensive deterioration

Bldg. 4122
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 21199940068
Status: Excess
Reason: Extensive deterioration

6 Bldgs.
Fort Knox
#4880, 5328, 5330, 7490, 7520, 7762
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 21199940069
Status: Excess
Reason: Extensive deterioration

Bldg. 5911
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 21199940070
Status: Excess
Reason: Extensive deterioration

Bldg. 6141
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 21199940071
Status: Excess
Reason: Extensive deterioration

Bldg. 6648
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 21199940072
Status: Excess
Reason: Extensive deterioration

Bldgs. 00870, 00872
Fort Campbell
Chirstian Co: KY 42223–
Landholding Agency: Army
Property Number: 21199940073
Status: Unutilized
Reason: Extensive deterioration

Louisiana

Bldgs. 2630–2637
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199940074
Status: Underutilized
Reason: Floodway

Bldg. 2644
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199940075
Status: Underutilized
Reason: Floodway

Bldg. 5901 A–F
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199940076
Status: Underutilized
Reason: Floodway

Bldg. 5907 A–B
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199940077
Status: Underutilized
Reason: Floodway

Bldg. 5911 A–D
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199940078
Status: Underutilized
Reason: Floodway

Bldg. 5913 A–D
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199940079
Status: Underutilized
Reason: Floodway

Bldg. 5915 A–F
Fort Polk
Ft. Polk Co: Vernon Parish LA
Landholding Agency: Army
Property Number: 21199940080
Status: Underutilized
Reason: Floodway

Bldg. 5935 A–B
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199940081
Status: Underutilized
Reason: Floodway

Bldg. 5937 A–D
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199940082
Status: Underutilized
Reason: Floodway

Bldg. 5939 A–B
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199940083
Status: Underutilized
Reason: Floodway

Maryland

Bldg. 2470
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21199940084
Status: Underutilized
Reason: Extensive deterioration

Bldg. 2801
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21199940085
Status: Underutilized
Reason: Extensive deterioration

Bldg. 2476
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21199940086
Status: Underutilized
Reason: Extensive deterioration

Bldg. 6512
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21199940087
Status: Underutilized
Reason: Extensive deterioration

Bldg. 6513
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21199940088
Status: Underutilized
Reason: Extensive deterioration

Michigan

Bldg. 776
Selfridge ANG Base
Selfridge Co: MI 48045–
Landholding Agency: Army
Property Number: 21199940089
Status: Unutilized
Reason: Secured Area

Bldg. 915
Selfridge ANG Base
Selfridge Co: MI 48045–
Landholding Agency: Army
Property Number: 21199940090
Status: Unutilized
Reason: Secured Area

Bldg. 943
Selfridge ANG Base
Selfridge Co: MI 48045–
Landholding Agency: Army
Property Number: 21199940091
Status: Unutilized
Reason: Secured Area

Bldg. 29507
Selfridge ANG Base
Selfridge Co: MI 48045–
Landholding Agency: Army
Property Number: 21199940092
Status: Unutilized
Reason: Secured Area

Bldg. 29601
Selfridge ANG Base
Selfridge Co: MI 48045–
Landholding Agency: Army
Property Number: 21199940093
Status: Unutilized
Reason: Secured Area

New Jersey

Bldg. 267
Armament Research
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199940094
Status: Unutilized
Reason: Unexploded ordinance; Extensive deterioration

Bldg. 268
Armament Research
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199940095
Status: Unutilized
Reason: Unexploded ordinance; Extensive deterioration

4 Bldgs.
Armament Research
#282A, 282B, 282C, 282D
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199940096
Status: Unutilized
Reason: Unexploded ordinance; Extensive deterioration

Bldg. 301
Armament Research
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199940097

Status: Unutilized
Reason: Unexploded ordinance

Bldg. 3213
Armament Research
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199940098
Status: Unutilized
Reason: Unexploded ordnance

Bldg. 3236
Armament Research
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199940099
Status: Unutilized
Reason: Unexploded ordnance

New Mexico

Bldg. S732
Roswell Industrial Air Ctr
Roswell Co: Chaves NM 88202–2122
Landholding Agency: Army
Property Number: 21199940100
Status: Underutilized
Reason: Within airport runway clear zone

Bldg. S733
Roswell Industrial Air Ctr
Roswell Co: Chaves NM 88202–2122
Landholding Agency: Army
Property Number: 21199940101
Status: Underutilized
Reason: Within airport runway clear zone

New York

Bldg. 202
Fort Hamilton
Brooklyn Co: Kings NY 11252–
Landholding Agency: Army
Property Number: 21199940102
Status: Unutilized
Reason: Extensive deterioration

Cottage
Coast Guard Station
Wellesley Island Co: Jefferson NY 13640–
Landholding Agency: DOT
Property Number: 87199940001
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

North Dakota

Bldg. 440
Stanley R. Mickelsen
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 21199940103
Status: Unutilized
Reason: Extensive deterioration

Bldg. 455
Stanley R. Mickelsen
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 21199940104
Status: Unutilized
Reason: Extensive deterioration

Bldg. 456
Stanley R. Mickelsen
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 21199940105
Status: Unutilized
Reason: Extensive deterioration

Bldg. 3101
Stanley R. Mickelsen
Langdon Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 21199940106
Status: Unutilized
Reason: Extensive deterioration

Bldg. 3110
Stanley R. Mickelsen
Langdon Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 21199940107
Status: Unutilized
Reason: Extensive deterioration

Oregon

Duplex
Cape Blanco
Sixes Co: Curry OR 97465–
Landholding Agency: DOT
Property Number: 87199940002
Status: Unutilized
Reason: Extensive deterioration

Pennsylvania

Bldg. 3
Defense Distribution Depot
New Cumberland Co: York, PA 17070–5002
Landholding Agency: Army
Property Number: 21199940108
Status: Unutilized
Reason: Secured area

Bldg. 102
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21199940109
Status: Unutilized
Reason: Secured area

Bldg. 104
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21199940110
Status: Unutilized
Reason: Secured area

Bldg. 153
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21199940111
Status: Unutilized
Reason: Secured area

Bldg. 260
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21199940112
Status: Unutilized
Reason: Secured area

Bldg. 32
Tobyhanna Depot
Tobyhanna Co: Monroe PA 18466–
Landholding Agency: Army
Property Number: 21199940113
Status: Unutilized
Reason: Extensive deterioration

Texas

Portion-Port O'Connor Housing
1125 Brook Hollow Drive
Port Lavaca Co: Calhoun TX 77979–
Landholding Agency: GSA
Property Number: 54199940006
Status: Excess
Reason: Extensive deterioration
GSA Number: 7–U–TX–1056

Virginia

Bldg. 00341
Fort Belvoir
Ft. Belvoir Co: VA 22060–5231
Landholding Agency: Army
Property Number: 21199940117
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00359
Fort Belvoir
Ft. Belvoir Co: VA 22060–5231
Landholding Agency: Army
Property Number: 21199940118
Status: Unutilized
Reason: Extensive deterioration

Bldg. 401
Tobyhanna Depot
Tobyhanna Co: Monroe PA 18466–
Landholding Agency: Army
Property Number: 21199940114
Status: Unutilized
Reason: Extensive deterioration

Bldg. 404
Tobyhanna Depot
Tobyhanna Co: Monroe PA 18466–
Landholding Agency: Army
Property Number: 21199940115
Status: Unutilized
Reason: Extensive deterioration

Bldg. 704
Tobyhanna Depot
Tobyhanna Co:
Monroe PA 18466–
Landholding Agency: Army
Property Number: 21199940116
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00382
Fort Belvoir
Ft. Belvoir Co: VA 22060–5231
Landholding Agency: Army
Property Number: 21199940119
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00480
Fort Belvoir
Ft. Belvoir Co: VA 22060–5231
Landholding Agency: Army
Property Number: 21199940120
Status: Unutilized
Reason: Extensive deterioration

Bldg. 01910
Fort Belvoir
Ft. Belvoir Co: VA 22060–5231
Landholding Agency: Army
Property Number: 21199940121
Status: Unutilized
Reason: Extensive deterioration

Bldg. 01911
Fort Belvoir
Ft. Belvoir Co: VA 22060–5231
Landholding Agency: Army
Property Number: 21199940122
Status: Unutilized
Reason: Extensive deterioration

Bldg. 02845
Fort Belvoir
Ft. Belvoir Co: VA 22060–5231
Landholding Agency: Army
Property Number: 21199940123
Status: Unutilized
Reason: Extensive deterioration

Bldg. 02846
Fort Belvoir
Ft. Belvoir Co: VA 22060–5231
Landholding Agency: Army

Property Number: 2119940124
Status: Unutilized
Reason: Extensive deterioration

Bldg. 07356
Fort Belvoir
Ft. Belvoir Co: VA 22060–5231
Landholding Agency: Army
Property Number: 21199940125
Status: Unutilized
Reason: Extensive deterioration

Bldg. 07357
Fort Belvoir
Ft. Belvoir Co: VA 22060–5231
Landholding Agency: Army
Property Number: 21199940126
Status: Unutilized
Reason: Extensive deterioration

Bldg. 07399
Fort Belvoir
Ft. Belvoir Co: VA 22060–5231
Landholding Agency: Army
Property Number: 21199940127
Status: Unutilized
Reason: Extensive deterioration

Bldgs. T1103, T1104, T1105
Fort Lee
Ft. Lee Co: Prince George, VA 23801–
Landholding Agency: Army
Property Number: 21199940128
Status: Unutilized
Reason: Extensive deterioration

Bldg. T8019
Fort Lee
Ft. Lee Co: Prince George, VA 23801–
Landholding Agency: Army
Property Number: 21199940129
Status: Unutilized
Reason: Extensive deterioration

Bldgs. T10200, T10204
Fort Lee
Ft. Lee Co: Prince George, VA 23801–
Landholding Agency: Army
Property Number: 21199940130
Status: Unutilized
Reason: Extensive deterioration

Bldg. T11620
Fort Lee
Ft. Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 21199940131
Status: Unutilized
Reason: Extensive deterioration

Quarters 1125
Fort Eustis
Ft. Eustis Co: VA 23604–
Landholding Agency: Army
Property Number: 21199940132
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1717
Fort Eustis
Ft. Eustis Co: VA 23604–
Landholding Agency: Army
Property Number: 21199940133
Status: Unutilized
Reason: Extensive deterioration

Washington

Bldg. 9631
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199940134
Status: Excess
Reason: Extensive deterioration

Land (by State)

Maryland

6 Acres
Naval Air Station
Patuxent River Co: MD 20670–
Landholding Agency: Navy
Property Number: 77199940023
Status: Unutilized
Reason: Secured Area

[FR Doc. 99–29321 Filed 11–10–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Applications

AGENCY: Fish and Wildlife Service.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10 (a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Permit No. TE–018180

Applicant: Point Reyes National Seashore, Point Reyes, California

The applicant requests a permit to remove and reduce to possession specimens of *Chorizanthe valida* throughout the range of the species in conjunction with recovery efforts in order to enhance its propagation and survival.

Permit No. TE–821401

Applicant: Brian E. Daniels, Long Beach, California

The permittee requests an amendment to take (locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*) throughout the range of the species in conjunction with monitoring for the purpose of enhancing its survival.

Permit No. TE–813431

Applicant: Peter Famolaro, Spring Valley, California

The permittee requests an amendment to take (color band) the least Bell's vireo (*Vireo bellii pusillus*) along the Sweetwater River, San Diego County, California, in conjunction with scientific research for the purpose of enhancing its survival.

Permit No. TE–018907

Applicant: Stacy Jorgensen, Honolulu, Hawaii

The applicant requests a permit to remove and reduce to possession specimens of *Lipochaeta tenuifolia* throughout the range of the species in conjunction with genetic analysis in order to enhance its propagation and survival.

Permit No. TE–018838

Applicant: Leilani Leach, Corvallis, Oregon

The applicant request a permit to take (harass by survey, capture, handle, collect blood, attach radio transmitters, and band) the Mariana common moorhen (*Gallinula chloropus guami*) throughout the species range in conjunction with scientific research for the purpose of enhancing its survival.

Permit No. TE–789266

Applicant: Patricia Campbell, Temecula, California

The permittee requests an amendment to take (harass by survey, mist net, and band) the southwestern willow flycatcher (*Empidonax trailii extimus*) throughout the range of the species in California in conjunction with surveys for the purpose of enhancing its survival.

Permit No. TE–811615

Applicant: Cynthia Jones, San Diego, California

The permittee requests an amendment to take (harass by survey, collect, and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), San Diego fairy shrimp (*Brachinecta sandiegonensis*), and the Riverside fairy shrimp (*Streptocephalus woottoni*) and take (survey by pursuit) the Quino checkerspot butterfly (*Euphydras editha quino*) throughout the species range in California in conjunction with surveys for the purpose of enhancing their survival.

Permit No. TE–800794

Applicant: Zentner and Zentner, Roseville, California

The applicant requests an amendment to take (harass by survey, collect, and sacrifice) the San Diego fairy shrimp (*Brachinecta sandiegonensis*) and the Riverside fairy shrimp (*Streptocephalus woottoni*) throughout the species range in California in conjunction with

surveys for the purpose of enhancing their survival.

Permit No. TE–802450

Applicant: Arthur E. Davenport, Anchorage, Alaska

The permittee requests an amendment to take (harass by survey) the San Bernardino kangaroo rat (*Dipodomys merriami parvus*) and take (survey by pursuit) the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) and Quino checkerspot butterfly (*Euphydryas editha quino*) throughout each species range in California in conjunction with surveys for the purpose of enhancing their survival.

DATES: Written comments on these permit applications must be received on or before December 13, 1999.

ADDRESSES: Written data or comments should be submitted to the Chief-Endangered Species, Ecological Services, Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: November 4, 1999.

Thomas Dwyer,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 99–29543 Filed 11–10–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Noel J Poux, Whitefish, MT, PRT–019060.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Louis F. Spadaccino, Holland, PA, PRT–019232.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Gary R. Fannin, Ashland, KY, PRT–018309.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Oakhill Center for Rare and Endangered Species , Inc., Luther, OK, PRT–019179

The applicant requests a permit to import two captive-bred female cheetahs (*Acinonyx jubatus*) from the DeWildt Wildlife Center, Republic of South Africa, for the purpose of propagation for the enhancement of the survival of the species.

Applicant: Texas Tech University, Lubbock, TX, PRT–019090

The applicant requests a permit to import tissue and blood samples from wild and captive Dwarf Crocodile (*Ostolaemus tetraspis*), Morelet's Crocodile (*Crocodylus moreletii*), and Black Caimen (*Melanosuchus niger*), for scientific research.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 et seq.) and the regulations governing marine mammals (50 CFR 18).

Applicant: USGS, Biological Resources Division, Sirenia Project, Gainesville, FL, PRT–791721.

Permit Type: Scientific research.

Name and Number of Animals: Sirenia, unlimited number.

Summary of Activity to be Authorized: The applicant requests an amendment to their permit to 1) PIT tag up to 100 manatees per year, and 2) tail-notch up to 200 manatees per year.

Source of Marine Mammals: Wild and captive manatees of all sexes and ages throughout its range to be used in scientific research.

Period of Activity: Up to 5 years, if issued.

Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Applicant: Kenneth R. Fair, Lebanon, PA, PRT–019059.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with the application are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the above address within 30 days of the date of publication of this notice.

Pamela Hall,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–29571 Filed 11–10–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Amended Gaming Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Amended Gaming Compact between the Turtle Mountain Band of Chippewa Indians and the State of North Dakota, which was executed on September 29, 1999.

DATES: This action is effective November 12, 1999.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: October 25, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–29548 Filed 11–10–99; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1998 Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Tribal-State Compact For Regulation of Class III Gaming Between the Siletz Indian Tribe and the State of Oregon, which was executed on September 14, 1999.

DATES: This action is effective November 12, 1999.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: October 29, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–29547 Filed 11–10–99; 8:45 am]

BILLING CODE 4310–02–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZA 31073]

Notice of Proposed Withdrawal; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, proposes to withdraw 11,565 acres of National Forest System land to protect the unique prehistoric, recreational, historical, and interpretive integrity of the Perry Mesa area. This notice segregates the land for up to 2 years from location and entry under the United States mining laws. The land will remain open to all other uses which may by law be made of National Forest System land.

DATES: Comments should be received on or before February 10, 2000.

ADDRESSES: Comments should be sent to the Forest Supervisor, Tonto National Forest, 2324 E. McDowell Road, Phoenix, Arizona 85006.

FOR FURTHER INFORMATION CONTACT: Delvin Lopez or Kelly Jardine, Cave Creek Ranger District, 480–595–3300.

SUPPLEMENTARY INFORMATION: On October 25, 1999, the Forest Service filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws, subject to valid existing rights:

Gila and Salt River Meridian

Tonto National Forest

T. 9 N., R. 3 E., (protracted sections)
Secs. 1 and 2;
Secs. 10, 11, and 12;
Secs. 15 and 16;
Sec. 21, W½.
T. 9½ N., R. 3 E.,
Sec. 23, lots 1 to 4, inclusive, and S½;
Sec. 24, lots 1 to 4, inclusive, and S½;
Secs. 25 and 26;
Secs. 35 and 36.
T. 9½ N., R. 4 E.,
Sec. 19, lots 1 to 6, inclusive, E½SW¼, and SE¼;
Sec. 20, lots 1 to 4, inclusive, and S½;
Sec. 29;
Sec. 30, lots 1 to 4, inclusive, E½W½, and E½;
Sec. 31, lots 1 to 4, inclusive, E½W½, and E½.
T. 10 N., R. 4 E.,
Sec. 31, lots 1 to 4, inclusive E½W½, and E½.

The area described contains approximately 11,565 acres in Yavapai County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Forest Supervisor of the Tonto National Forest.

Notice is hereby given that a public meeting in connection with the proposed withdrawal will be held at a later date. A notice of time and place will be published in the **Federal Register** and a newspaper in the general vicinity of the lands to be withdrawn at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Dated: November 1, 1999.

Alvin L. Burch,

Acting Deputy State Director, Resources Division.

[FR Doc. 99–29508 Filed 11–10–99; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1430–06; NEW 119497]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Nebraska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Fish and Wildlife Service (FWS) proposes to withdraw approximately 92.67 acres of public land in Scotts Bluff County, Nebraska, to protect and manage public domain for migratory bird and riparian wildlife habitat. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATE: Comments and requests for a public meeting must be received by February 10, 2000.

ADDRESSES: Comments and requests should be sent to the BLM Wyoming State Director, P.O. Box 1828, Cheyenne, Wyoming 82003–1828.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, 307–775–6124.

SUPPLEMENTARY INFORMATION: On October 20, 1999, a petition/application was approved allowing the Fish and Wildlife Service to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Sixth Principal Meridian, Nebraska

T. 22 N., R. 55 W.,
Sec. 17, lots 10 and 11;
Sec. 20, lot 6;
together with all accreted lands thereto.

The area described contains 92.67 acres, more or less, in Scotts Bluff County, Nebraska.

The purpose of the proposed withdrawal is to protect and manage the public domain for migratory bird and riparian habitat values. The withdrawal would also transfer administrative jurisdiction from the Bureau of Land Management to the Fish and Wildlife Service. For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the BLM.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Wyoming State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are licenses, permits, rights-of-way, cooperative agreements, or discretionary land use authorizations of a temporary nature which would not significantly disturb the surface of the land or impact the existing values of the area.

The temporary segregation of the land in connection with a withdrawal application or proposal shall not affect administrative jurisdiction over the land, and the segregation shall not have the effect of authorizing any use of the land by the Fish and Wildlife Service.

Dated: November 4, 1999.

Alan R. Pierson,

State Director.

[FR Doc. 99–29544 Filed 11–10–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection (OMB Control Number 1010–0048).

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on a proposal to extend the currently approved collection of information discussed below. We intend to submit this collection of information to the Office of Management and Budget (OMB) for approval. The Paperwork Reduction Act of 1995 (PRA) 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.

DATES: Submit written comments by January 11, 2000.

ADDRESSES: Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of the collection of information at no cost.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 251, Geological and Geophysical (G&G) Exploration of the OCS (1010–0048).

Abstract: The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.*, gives the Secretary of the Interior (Secretary) the responsibility to preserve, protect, and develop oil and gas resources in the OCS, consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of the human, marine, and coastal environments; ensure the public a fair and equitable return on the resources of the OCS; and preserve and maintain free enterprise competition.

The OCS Lands Act (43 U.S.C. 1340) also states that ''any person authorized by the Secretary may conduct geological and geophysical explorations in the [O]uter Continental Shelf, which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this OCS Lands Act, and which are not unduly harmful to aquatic life in such area.'' The section further requires that, permits to conduct such activities may only be issued if it is determined that the applicant is qualified; the activities are not polluting, hazardous, or unsafe; they do not interfere with other users of the area; and do not disturb a site, structure, or object of historical or archaeological significance. Applicants for permits are required to submit form MMS–327 to provide the information necessary to evaluate their qualifications.

Regulations at 30 CFR part 251 implement these statutory requirements. We use the information to ensure there is no environmental degradation, personal harm or unsafe operations and conditions, damage to historical or archaeological sites, or interference with other uses; to analyze and evaluate

preliminary or planned drilling activities; to monitor progress and activities in the OCS; to acquire G&G data and information collected under a Federal permit offshore; and to determine eligibility for reimbursement from the Government for certain costs. The information is necessary to determine if the applicants for permits or filers of notices meet the qualifications specified by the OCS Lands Act. MMS uses information collected to understand the G&G characteristics of oil-and-gas bearing physiographic regions of the OCS. It aids the Secretary in obtaining a proper balance among the potentials for environmental damage, the discovery of oil and gas, and adverse impacts on affected coastal states. Information from permittees is necessary to determine the propriety and amount of reimbursement.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR parts 250, 251, and 252. No items of a sensitive nature are collected. Responses are mandatory or required to obtain or retain a benefit.

Frequency: The frequency of reporting is on occasion, annually, or as specified in permits.

Estimated Number and Description of Respondents: Primarily, approximately 200 Federal OCS permittees or notice filers.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: The currently approved annual reporting burden for this collection is 10,604 hours, which averages 53 hours per respondent. There are no recordkeeping burdens.

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no cost burdens for this collection.

Comments: We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments and our consultations with a representative sample of respondents, we will make any necessary adjustments to the burden in our submission to OMB. In calculating the burden, we assumed that respondents perform many of the requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

(1) We specifically solicit your comments on the following questions:

(a) Is the proposed collection of information necessary for us to properly perform our 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 respondents, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

(2) In addition, the PRA requires agencies to estimate the total annual reporting ''non-hour cost'' burden to respondents or recordkeepers resulting from the collection of information. We need to know if you have costs associated with the collection of this information for either total capital and startup cost components or annual operation, maintenance, and purchase of service components. 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: (i) before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: November 4, 1999.

Elmer P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 99–29623 Filed 11–10–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Boundary Revision, Beaumont Unit, Big Thicket National Preserve

DATES: The effective date of this Order shall be November 12, 1999.

SUMMARY: Section 1 of the Act of October 11, 1974, Pub. L. 93–439, 88 Stat. 1254, codified as amended at 16 U.S.C. 698 (1994), authorizes the Secretary of the Interior, after advising the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives, in writing, of his intention to do so and of the reasons therefor, to accept title to any lands or interests in lands located outside the boundaries of the preserve which any private person, organization, or public or private corporation may offer to donate to the United States, if he finds that such lands would make a significant contribution to the purposes for which the preserve was created.

Notice is hereby given that, effective on the date of publication of this notice, the boundary of the Beaumont Unit of Big Thicket National Preserve is being revised pursuant to the above-cited act to include those lands owned by Citgo Pipeline Co., comprised of 26.20 acres of land, depicted as Tract No. 189–38 on land acquisition status map, segment 189, having drawing number 175–30,009, dated May 27, 1999, prepared by Land Resources Program Center, Intermountain Region of the National Park Service.

This map is on file and available for inspection in the office of the National Park Service, Department of the Interior, Land Resources Program Center, Intermountain Region, and the office of the Superintendent, Big Thicket National Preserve.

Dated: September 9, 1999.

John H. King.

Acting Regional Director, Intermountain, National Park Service.

[FR Doc. 99–29619 Filed 11–10–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of an Abbreviated Final Environmental Impact Statement for the Homestead National Monument of America General Management Plan, Gage County, Nebraska

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy

Act (NEPA) of 1969, the National Park Service (NPS) announces the availability of an abbreviated Final Environmental Impact Statement (FEIS) for the Homestead National Monument of America General Management Plan (GMP). This document in conjunction with the Draft General Management Plan/Draft Environmental Impact Statement (DEIS) describes and analyzes the environmental impacts of a proposed action and two action alternatives for the future management of the park. A no action alternative also is evaluated. The DEIS for the proposal was on 60-day public review from May 4, 1999 to July 10, 1999. The abbreviated final document includes responses to public comments on the DEIS and factual corrections to the DEIS.

DATES: A 30-day no action period will begin following release of the abbreviated FEIS. A Record of Decision will be made after this period; no sooner than December 12, 1999.

ADDRESSES: Copies of the abbreviated FEIS are available by request from the Superintendent, Homestead National Monument of America, 8523 West State Highway 4, Beatrice, Nebraska 68310–6743. Telephone 402–223–3514.

FOR FURTHER INFORMATION CONTACT: Superintendent, Homestead National Monument of America, at the address or telephone number above.

SUPPLEMENTARY INFORMATION: The GMP for Homestead National Monument is intended to provide a blueprint to guide park management decisions for the next 10–20 years. In keeping with National Park Service planning policy, the GMP is a holistic, long-term, policy-level view for the future of the monument. The plan does not address site-specific actions, which will be deferred to future implementation planning.

Dated: November 5, 1999.

Catherine A. Damon,

Acting Regional Director, Midwest Region.

[FR Doc. 99–29616 Filed 11–10–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Announcement of Subsistence Resource Commission Meeting

SUMMARY: The Superintendent of Gates of the Arctic National Park and Preserve and the Chairperson of the Subsistence Resource Commission for Gates of the Arctic National Park announce a forthcoming meeting of the Gates of the Arctic National Park Subsistence Resource Commission. The following agenda items will be discussed:

(1) Call to Order (Chairman).

(2) Roll Call.

(3) Approval of summary of meeting in Fairbanks.

(4) Review Agenda.

(5) Superintendent's introductions of guests and staff and review of Commission function and purpose.

(6) Superintendent's Management/Research Report Summary.

a. Administration and Management.

b. Park Operations.

c. Resource Management.

d. Subsistence Program.

(7) Public and other agency comments.

(8) Old Business:

a. October 1999 SRC Chairs Meeting Report.

(1) Customary Trade.

(2) One year residency for eligibility.

(3) Firearm use under a trapping license.

(4) Secretarial delegation of signature authority for Hunting Plan recommendations.

(5) SRC information sharing.

b. SRC information sharing.

(9) New Business:

a. Federal Subsistence Fisheries Management.

b. Review Regional Advisory Council Actions.

c. Hunting Plan Work Session (if necessary)

(10) Set time and place of next SRC meeting.

(11) Adjournment.

DATES: The meeting will begin at 1:30 p.m. on Monday, November 15, 1999, and conclude at approximately 5 p.m. The meeting will reconvene at 8:30 a.m. on Tuesday, November 16, 1999, and adjourn at approximately 12:00 p.m. The meeting will adjourn earlier if the agenda items are completed.

LOCATION: The meeting location is: Wedgewood Resort in Fairbanks, Alaska.

FOR FURTHER INFORMATION CONTACT: Steve Ulvi, Management Assistant, 201 First Avenue, Doyon Bldg., Fairbanks, Alaska 99701. Phone (907) 456–0352.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act. Note that under the Freedom of Information Act (FOIA), transcripts of any person giving public comments may be made available under a FOIA request.

Darwin Aho,

Acting Regional Director.

[FR Doc. 99–29617 Filed 11–10–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Announcement of Subsistence Resource Commission Meeting.

SUMMARY: The Acting Superintendent of Wrangell-St. Elias National Park and Preserve and the Chairperson of the Subsistence Resource Commission for Wrangell-St. Elias National Park announce a forthcoming meeting of the Wrangell-St. Elias National Park Subsistence Resource Commission. The following agenda items will be discussed:

(1) Call to Order (Chairman).

(2) Roll Call: Confirmation of Quorum.

(3) Introduction of Commission members, staff, and guests.

(4) Review Agenda.

(5) Review and approval of minutes from April 20–21, 1999 meeting.

(6) Acting Superintendent's welcome and review of the Commission purpose—Hunter.

(7) Commission membership status.

(8) Public and other agency comments.

(9) Report on October 1999 Chair Workshop.

(10) Acting Superintendent's report.

a. Wrangell-St. Elias National Park and Preserve Superintendent and Yakutat District Ranger Positions.

(11) Wrangell-St. Elias National Park and Preserve staff reports.

a. Mentasta Herd Update.

(12) Old Business:

a. Status report on inclusion of Healy Lake as a resident zone community.

b. Status of EA/rulemaking to add Northway, Tetlin, Tanacross and Dot Lake as resident zone communities.

c. Cordova Public Meeting.

(1) Status of C & T proposals.

(2) Request for resident zone status.

d. Status of Malaspina Forelands ATV study project.

e. Possible restrictions of the harvest of ewe sheep.

f. Subsistence Hunting Program Recommendation 97–01: establish minimum residency requirement for resident zone communities.

g. SRC Chairs Customary Trade Concerns.

h. Status report on Hunting Plan Recommendation 96–1 and 96–2:

migratory bird—fall, spring, and summer harvest.

i. Tolsona resident zone request.

j. Status report on subsistence plan, hunt maps, and subsistence brochure for Wrangell-St. Elias National Park and Preserve.

(13) New Business:

a. Update on Federal Fish Management.

b. Federal Subsistence Program update.

(1) Review actions taken by Federal Subsistence Board during Spring 1999 meeting on Federal Subsistence Program 1999–2000 proposed regulation changes.

(2) Review FSB final version of Individual C&T policy.

(3) Review request for delegating SRC hunting plan recommendation response to the Regional Director in Alaska.

(4) Review 2000–2001 Federal Subsistence Board Proposals for Units 5, 6, 11, 12, and 13.

c. Review FSB response to George Midvag letter—re: Slana C&T.

b. Election of Officers.

(14) Public and other agency comments.

(15) Subsistence Resource Commission work session to develop proposals/finalize recommendations.

(16) Set time and place of next Subsistence Resource Commission meeting.

(17) Adjourn meeting.

DATES: The meeting will begin at 9 a.m. on Tuesday, November 30, 1999, and conclude at approximately 5 p.m. The meeting will reconvene at 9 a.m. on Wednesday, December 1, 1999, and adjourn at approximately 5 p.m. The meeting will adjourn earlier if the agenda items are completed.

LOCATION: The meeting location is: Tazlina Community Hall, Tazlina, Alaska.

FOR FURTHER INFORMATION CONTACT: Hunter Sharp, Acting Superintendent, Wrangell-St. Elias National Park and Preserve, P.O. Box 439, Copper Center, Alaska 99573. Phone (907) 822–5234.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commission is authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operates in accordance with the provisions of the Federal Advisory Committees Act.

Darwin Aho,

Acting Regional Director.

[FR Doc. 99–29618 Filed 11–10–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Information Collection Activities Under OMB Review

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Data Collection Submission.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before December 13, 1999.

ADDRESSES: Comments on this information collection should be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior, 725 17th Street, NW., Washington, DC 20503. A copy of your comments should also be directed to the Bureau of Reclamation, Attention Mr. Jeffrey Addiego, Boulder Canyon Operations Office, PO Box 61470, Boulder City, NV 89006–1470.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the proposed collection of information, contact Mr. Jeffrey Addiego, (702) 293–8525, or e-mail at JAddiego@lc.usbr.gov.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of Reclamation, including whether the information shall have practical use; (b) the accuracy of Reclamation's estimated burden of the proposed collection of information; (c) ways to enhance the quality, use, 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 automated collection techniques or other forms of information technology.

Title: Lower Colorado River Well Inventory.

OMB No.: Reinstatement of OMB No. 1006–0014.

Description of respondents: All diversions of mainstream Colorado River water along the lower Colorado River must be accounted for and, for non-Indian diverters, in accordance with a water use contract with the Secretary of the Interior. Each diverter (including well pumpers) must be identified and their diversion locations and water use determined. This requires an inventory of wells along the lower Colorado River and the gathering of specific information concerning each well.

Frequency: These data will be collected only once for each well owner or operator as long as changes in water use, or other changes that would impact contractual or administrative requirements are not made.

Estimated completion time: An average of 30 minutes is required for Reclamation to interview individual well owners or operators. Reclamation will use the information collected during these interviews to complete the information collection form.

Annual responses: 1,000.

Anual burden hours: 500 hours.

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. Reclamation will display a valid OMB control number on the forms. the **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on May 21, 1999 (64 FR 27806).

OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comment should be submitted to OMB within 30 days in order to assure maximum consideration.

Dated: November 5, 1999.

Murlin Coffey,

Manager, Property and Office Services.

[FR Doc. 99–29545 Filed 11–10–99; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF JUSTICE

Amended Notice of Lodging of Consent Decree Under The Comprehensive Environmental Response, Compensation and Liability Act and The Resource Conversation and Recovery Act

This Amended Notice supersedes the Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act published in the **Federal Register** on October 29, 1999. 64 Fed. Reg. 57652–53 (1999). Accordingly, the thirty day time period for submitting public comments and requesting a hearing on the proposed Consent Decree will begin

with the publication of this Amended Notice.

Under 28 CFR 50.7 and 42 U.S.C. 9622(i), notice is hereby given that on October 5, 1999, a proposed Consent Decree in *United States* v. *ASARCO, Inc., et al.*, Civil Action No. 99–1399, was lodged with the United States District Court for the District of Kansas.

This Consent Decree settles claims against ASARCO, Incorporated, Cyprus Amax Minerals Company, Gold Fields Mining Corporation, Blue Tee Corp., NL Industries, Inc., The Doe Run Resources Corporation and Sun Company, Inc. In this action, brought pursuant to Sections 106 and 107 of Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9696 and 9607 and Section 7003 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6973, on behalf of the United States Environmental Protection Agency (EPA), the United States sought the performance of response work by the defendants at the Baxter Springs and Treece Subsites (the Subsites) of the Cherokee County Superfund Site in Cherokee County, Kansas pursuant to the Record of Decision, dated August 20, 1997 (ROD). Additionally, the United States sought reimbursement of pass response costs as well as future oversight costs. Under the Consent Decree, defendants will perform response work in accordance with the ROD, will provide a cash payment for EPA to perform institutional controls, and will reimburse the United States for one half of future EPA oversight costs. In exchange, defendants will receive a covenant not to sue pursuant to Sections 106 and 107(a) of CERCLA, and Section 7003 of RCRA relating to the Subsites, subject to all standard reservations and reopeners. In addition, defendants will receive contribution protection under Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and will receive forgiveness of EPA's past costs at the Subsites.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. In addition, the United States will provide for a public meeting pursuant to Section 7003(d) of RCRA if requested within thirty days from the date of publication of this notice. Comments or requests for a public meeting should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *ASARCO, Inc. et al.*, D.J. Ref. 90–11–2–06017.

The Consent Decree may be examined at U.S. EPA—Region VII 901 N. 5th Street, Kansas City, Kansas 66101. A copy of the Consent Decree may be obtained by mail from Consent Decree Library, Department of Justice, P.O. Box 7611, Washington, D.C. 20044. In requesting a complete copy with all Attachments, please enclose a check in the amount of $87.00 (25 cents per page reproduction cost) payable to the Consent Decree Library. In requesting a copy of the Consent Decree without Attachments, please enclose a check in the amount of $24.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–29510 Filed 11–10–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice of hereby given that on October 29, 1999, the United States filed a proposed Consent Decree in *United States* v. *USX Corporation*, Civ. Action No. 99–1783, in the United States District Court for the Western District of Pennsylvania.

The United States' claims resolved by the Decree with USX Corporation (''USX'') are described in a Complaint filed contemporaneously with the Decree. The claims arise out of USX's alleged violations of Section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), occurring at USX's Edgar Thomson Steel Mill in Braddock, Pennsylvania (the ''Edgar Thomson Plant''). The Complaint seeks injunctive relief and civil penalties for USX's alleged violations of the federally-enforceable Pennsylvania State Implementation Plan (SIP). Specifically, the Complaint alleges that, in 1996 and 1997, visible emissions from the scrubber stack at the Edgar Thomson Plant exceeded the opacity limits established in the Allegheny County portion of the Pennsylvania SIP. Allegheny County is a co-signatory to the Consent Decree, and a plaintiff-intervenor in the Complaint.

Under the terms of the settlement, USX will pay a civil penalty of $550,000 and will undertake implementation of five Supplemental Environmental Projects (''SEPs'') worth over $1.6 million. These SEPs include: (1) The installation of a continuous caster flux baghouse to capture fluoride in USX's wastewater stream; (2) the injection of natural gas into the liquid steel vessels to reduce the amount of airborne emissions; (3) pavement of plant roadways and upgrade of its scrap metal storage area to reduce emissions; (4) enhancements to its gas cleaning equipment; and (5) replacement of numerous electrical transformers containing a dielectric fluid with polychlorinated biphenyl (PCB) concentration in excess of 50 parts per million.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environmental and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *USX Corporation*, DOJ Ref. 90–5–2–1–2175.

The proposed consent decree may be examined at either U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, Department of Justice, Environmental Enforcement Section, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. In requesting a copy of the Consent Decree, please enclose a check in the amount of $12.25 (25 cents per page reproduction cost) for the Consent Decree alone, and $75.50 for the Consent Decree with all exhibits attached. Checks must be payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–29511 Filed 11–10–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—the ATM Forum

Notice is hereby given that, on April 15, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the ATM Forum has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Oresis Communications, Inc., Portland, OR; Covad

Communications, Santa Clara, CA; 2Wire, Inc., Milpitas, CA; Matra Marconi Space, Toulouse, FRANCE; and Jetstream Communications, Inc., Los Gatos, CA have been added as parties to this venture. The following member of the ATM Form have changed their names: ADC Kentrox to ADC Telecommunications, Inc., Portland, OR; Bellcore to Telcordia Technologies, Red Bank, NJ; Telecommunications Labs, Chunghwa Telecom Co., Ltd. To Chunghwa Telecom Labs, Yang-mei, Taoyuan, TAIWAN; Telia Network Services to Telia Research AB, Farsta, SWEDEN; and Lockheed Martin Telecommunications—Interactive Technology Center to Lockheed Martin Mission Systems, Sunnyvale, CA. Com21, Milpitas, CA; Compaq Computer, Norwood, MA; CSELT, Torino, ITALY; Kent Ridge Digital Labs, Singapore, SINGAPORE; Netro Corporation, San Jose, CA; RAD Data Communications, Tel Aviv, ISRAEL; Tektronix, Beaverton, OR; TTC, Germantown, MD; Diamond Lane Communications, Petaluma, CA; Audiocodes Ltd, Yehuda, ISRAEL; NDS Limited, Hampshire, UNITED KINGDOM; Sonoma Systems, Marina Del Rey, CA; Ficon Technology, Inc., Woodbridge, NJ; and RADCOM Ltd., Tel-Aviv, ISRAEL have downgraded to auditing members. SALIX Technologies, Inc., Rockville, MD; StratumOne, Santa Clara, CA; and Cimaron Communications Corp., Andover, MA have upgraded to principal members. Also, 3M, Austin, TX; AdvanceNet Systems Incorporated, Research Triangle Park, NC; AMCC, San Diego, CA; AMP–MA/COM, Inc., Harrisburg, PA; Anixter Inc., Skokie, IL; Cornell University, Ithaca, NY; Fondazione Ugo Bordoni, Roma, ITALY; Fujikura Technology Amer, Santa Clara, CA; Intel, Santa Clara, CA; Interphase Corporation, Dallas, TX; IPC Information Systems, Fairfield, CT; Korea Telecom, Seoul, KOREA; Matsushita Electric Works Ltd, Minato-ku Tokyo, JAPAN; Microsoft corporation, Redmond, WA; NASA Lewis Research Ctr, Moffett Field, CA NIST, Gaithersburg, MD; Olivetti Research, Cambridge, UNITED KINGDOM; Optical Data Systems, Richardson, TX; Pairgain Technologies, Tustin, CA; Philips Research Labs, Aachen, GERMANY; STMicroelectronics, St. Genis Pouilly, FRANCE; Telco Systems, Norwood, MA; Telecom Italia, Rome, ITALY; Thomson-CSF, 92704 COLOMBES Cedex, FRANCE; Transwitch Corporation, Shelton, CT; TriQuint Semiconductor, Hillsboro, OR; Westell, Aurora, IL; Xerox, Palo Alto, CA; Hubbell Premise Wiring, Stonington, CT; ASCII Laboratories Inc., Tokyo, JAPAN; Certicom Corp, San Mateo, CA; Raytheon, Marlborough, MA; MEGAXESS/ATAnet, Inc., Germantown MD; and DGT,MOTC,Taiwan, Taipei, TAIWAN have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and The ATM Forum intends to file additional written notification disclosing all changes in membership.

On April 19, 1993, The ATM Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 2, 1993 (58 FR 31415).

The last notification was filed with the Department on January 15, 1999. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 99–29515 Filed 11–10–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Bell Communications Research, Inc.

Notice is hereby given that, on February 13, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Bell Communications Research, Inc. (''Bellcore'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) A change in the ownership of Bellcore, (2) its present intention to continue to engage jointly, on a contractual basis, with a variety of other entities, including its former shareholders, in applied research, new service development, generic requirements, testing and standards support, and software systems work, and (3) the nature and objectives of such engagements. The notifications were filed for the purpose of extending the Act's provisions limiting the recorvery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to various joint research projects and the general area of planned activities are described below.

Bellcore is a coropation with its principal place of business and facilities located in the United States. Bellcore's shares were previously held by Ameritech Services, Inc., Bell Atlantic Newwork Services, Inc., BellSouth Telecommunications, Inc., Pacific Bell, Southwestern Bell Telephone Company, Telesector Resources, Group, Inc., and U S WEST Communications, Inc. All of Bellcore's shares were acquired on November 14, 1997 by Science Applications International Corporation, San Diego, CA. Although under new ownership, Bellcore presently intends to continue to engage jointly, on a contractual basis, with a variety of other entities, including its former shareholders, in applied research, new service development, generic requirements, testing and standards support, and software systems work.

In particular, Bellcore continues to engage in a variety of joint research and related projects with its former shareholders to enable these companies and their affiliates to maintain high quality and technologically up-to-date network capabilities to support their provision of exchange and exchange access telecommunications services and such other telecommunications service as these cmpanies authorize by contract with Bellcore. In doing so, Bellcore seeks to create and develop innovative and improved technologies, processes, software systems and service ideas that support its former schareholders and their affiliates as enablers or providers of telecommunications services that allow people and their machines to cost-effectively access information and comumunicate with each other easily, reliably and securely, anywhere, any time, in any medium or combination of media. Bellcore's work for its former shareholders and others encompasses applied research, new service development and related network planning, engineering, training, innovative development and production of software systems and associated economic research.

Bellcore's general areas of ongoing and planned activities include work focused on enterprise efficiency, robust (dependable, flexible, scure) networks and operations, advanced voice and messaging capabilities, personal nomadic communications and information access, public data networking, video dialtone and related services, and network-related support for new information service capabilities.

Bellcore's technical support includes its undertaking of applied research in such fields as physical science,

computer scinece, mathematics and switching and transmission technologies and includes the creating of experimental prototypes as needed for experimental demonstration and testing of research results and technical feasibility. Bellcore then extends its findings of technological possibilities to new or improved technological applications in the networks of its former shareholders or their affiliates, through such activities as the creation and development of new telecommunications network service concepts and related network planning, engineering (including development of technical requirements, testing and support for standards-related activities) and software development and production.

No other changes have been made in either the membership or planned activity of the various research projects. Membership in the research projects remains open, and Bellcore intends to file additional written notifications disclosing all changes in membership.

On January 7, 1985, Bellcore filed its original notification purusant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 30, 1985.

The last notification was filed with the Department on August 18, 1993. A notice was published in the Federal Register pursuant to Section 6(b) of the Act on October 26, 1993 (58 FR. 57622).

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 99–29516 Filed 11–10–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Center for Waste Reduction Technologies (''CWRT''): Phytoremediation Research Project

Notice is hereby given that, on June 3, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Center for Waste Reduction Technologies (''CWRT''): Phytoremediation Research Project has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Center for Waste Reduction Technologies, New York, NY; American Institute of Chemical Engineers, New York, NY; CH2M Hill, Inc., Englewood, CO; The Dow Chemical Company, Midland, MI; HNA Holdings, Inc., Summit, NJ; ICI Canada, Inc., North York, Ontario, CANADA; and Rohm and Haas Company, Philadelphia, PA. The nature and objectives of the venture are to produce a comprehensive non-propriety, compilation of information, data and experience about phytoremediation, and to present the results of this integrated study to the participants in a final report which will stand up to peer review to demonstrate the credibility of its conclusions.

Information regarding participation in this joint venture may be obtained from: Center for Waste Reduction Technologies, American Institute of Chemical Engineers, 3 Part Avenue, New York, NY 10016.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–29521 Filed 11–10–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Product Act of 1993—Cross Industry Working Team (''XIWT'') Project

Notice is hereby given that, on February 11, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Cross Industry Working Team (''XIWT'') Project has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Ameritech, Inc., Chicago, IL; Inverse Network Technology, Sunnyvale, CA; Pitney Bowes Inc., Stamford, CT; and RealNetworks, Inc., Seattle, WA have been added as parties to this venture. Also, Sprint, Kansas City, MO; BBN, Cambridge, MA; and Electric Power Research Institute, Palo Alto, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Cross Industry Working Team (''XIWT'') Project intends to file additional written notification disclosing all changes in membership.

On September 28, 1993, Cross Industry Working Team (''XIWT'') Project filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 17, 1993 (58 FR 66022).

The last notification was filed with the Deparament on June 9, 1997. A notice was published in the **Federal Register** pursuant to Section 6(d) of the Act on September 10, 1997 (62 FR 47690).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–29512 Filed 11–10–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—Enterprise Computer Telephony Forum (''ECTF'')

Notice is here by given that, on April 1, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Enterprise Computer Telephony Forum (''ECTF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Microsoft, Redmond, WA; Speech Works International, Inc., Cambridge, MA; and KPN NV, Leidschendam, HOLLAND have become Principal Members. Bell Actimedia, Scarborough, CANADA; Centigram Communications Corporation, San Jose, CA; Dr. Materna GmbH, Dortmund, GERMANY; Hewlett-Packard, Palo Alto, CA; Marconi Communications Ltd., Coventry, ENGLAND; Magellan Network Systems, Inc., Sunnyvale, CA; Periphonics, Bohemia, NY; Pivotech Systems, Inc., Piscataway, NJ; Registry Magic, Inc., Boca Raton, FL; Teloquent Communications Corp., Billerica, MA;

Texas MicroSystems, Houston, TX; West Interactive Corp., Omaha, NE; and Xerox Corp., Palo Alto, CA have become Auditing Members. Also, Centigram Communications Corporation, San Jose, CA; Comdial Corporation, Charlottesville, VA; Hewlett-Packard, Palo Alto, CA; Junction Inc., Cupertino, CA; Mitel Corporation, Kanata, CANADA; Periphonics, Bohemia, NY; Telinet Technologies, Norcross, GA have been dropped as Principal Members. Alcatel Data Networks, Iikirch, FRANCE; Altigen Communications, Inc., Fremont, CA; Applied Language Technologies, Cambridge, MA; BST Communication Technology, Ltd., Guangzhou, CHINA; Cognotronics Corp., Danbury, CT; Cordell Manufacturing, Inc., Covina, CA; E.T.R.I., Taejon, KOREA; GPT Limited, Coventry, ENGLAND; Linkon Corp., Fairfield, CT; Microlog, Germantown, MD; MTS, Tel Aviv, ISRAEL; NetAccess, Salem, NH; Nuera Communications, San Diego, CA; Racal Recorders, Ltd., Southampton, ENDLAND; Spectrum Signal Processing, Burnaby, CANADA; Telecom Italia S.p.A., Rome, ITALY; and VideoServer, Inc., Burlington, MA have been dropped as Auditing Members.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Enterprise Computer Telephone Forum (''ECTF'') intends to file additional written notification disclosing all changes in membership.

On February 20, 1996, Enterprise Computer Telephony Forum (''ECTF'') filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 13, 1996 (61 FR 22074).

The last notification was filed with the Department on November 19, 1998. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–29514 Filed 11–10–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Product Act of 1993—Gas Utilization Research Forum (''GURF'')

Notice is hereby given that, on April 28, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1933, 15 U.S.C. 4301 *et seq.* (''the Act''), Gas Utilization Research Forum (''GURF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, AEC International, Calgary, Alberta, CANADA has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Gas Utilization Research Forum (''GURF'') intends to file additional written notification disclosing all changes in membership.

On December 19, 1993, Gas Utilization Research Forum (''GURF'') filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(d) of the Act on December 17, 1991 (56 FR 1655).

The last notification was filed with the Department on March 9, 1999. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc 99–29520 Filed 11–10–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—HDP User Group International, Inc.

Notice is hereby given that, on April 12, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), HDP User Group International, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Aspocomp Oy, Helsinki, FINLAND; ChipPac, Santa Clara, CA; CS2, Zaventem, BELGIUM; Dell Computer, Round Rock, TX; International Business Machines Corporation, Endicott, NY; Kyrel EMS Oyj, Kyroskoski, FINLAND; Philips, Eindhoven, THE NETHERLANDS; Sanmina, San Jose, CA; and Alcatel USA, Plano, TX have been added as parties to this venture. Also, Compeq Manufacturing Co., Taoyuan Hsien, TAIWAN; MicroModule Systems, Cupertino, CA; Silicon Graphics Computer Co., Mountain View, CA; Symbosis Logic, Fort Collins, CO; and DSC Communications, Plano, TX have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and HDP User Group International, Inc. intends to file additional written notification disclosing all changes in membership.

On September 14, 1994, HDP User Group International, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 23, 1995 (60 FR 15306).

The last notification was filed with the Department on May 27, 1998. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 29, 1998 (63 FR 51954).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–29519 Filed 11–10–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Message Oriented Middleware Association, Inc.

Notice is hereby given that, on February 5, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Message Oriented Middleware Association, Inc. (MOMA) has filed written notifications simultaneously

with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, AirTouch Cellular, Walnut Creek, CA; ATB, Inc., Monterey, MA; BEA Systems, Liberty Corner, NJ; HIE, Columbus, OH; Liberty Mutual Insurance, Portsmouth, NH; MQ Tech, Inc., Glendale, CA; Primeur Group, Genova, ITALY; SOPRA-DPO, Puteaux, FRANCE; Sun Microsystems, Mountain View, CA; Template Software, Dulles, VA; Applied Communications, Inc., Omaha, NE; Bank of America, Fremont, CA; Boole & Babbage Inc., San Jose, CA; IBM Laboratories, Winchester, Hampshire, ENGLAND; MINT Communication Systems, Inc., New York, NY; NasTel Technologies, Inc., New York, NY; Quantum Technology, Mountain Lakes, NJ; Southwestern Bell, St. Louis, MO; Talarian Corporation, Los Altos, CA; The Standish Group, Dennis, MA; AT&T, Piscataway, NJ; Barclays Network Service, Knutsford, Cheshire, ENGLAND; Candle Corp., Santa Monica, CA; Level 8 Systems, Inc., New York, NY; Motorola, Rolling Meadows, IL; PeerLogic, Inc., San Francisco, CA; Software AG, Reston, VA; SpaceWorks, Inc., Rockville, MD; Technology Investments, Tampa, FL; Verimation, Inc., Woodcliff Lake, NJ; XING, Paris La Defense, FRANCE; and Dave Isherwood, Staten Island, NY have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MOMA intends to file additional written notification disclosing all changes in membership.

On May 15, 1995, MOMA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 13, 1995 (60 FR 57022).

The last notification was filed with the Department on September 17, 1997. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 1997 (62 FR 60531).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–29518 Filed 11–10–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Anitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Wireless Application Protocol, Forum (''WAP'')

Notice is hereby given that, on April 6, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Wireless Application Protocol Forum (''WAP'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, The Fantastic Corporation, Zug, SWITZERLAND; Finnet Association, Helsinki, FINLAND; Giesecke & Devrient GmbH, Munchen, GERMANY; KPN, Leidschendam, HOLLAND; Lucent Technologies, Naperville, IL; Mannesmann, Dusseldorf, GERMANY; Nextel Communications Inc., McLean, VA; Nissan Communications Systems Ltd., Tokyo, JAPAN; Oy Radiolinja AB, Helsinki, FINLAND; ProxiNet Inc, Emeryville, CA; and S K Telecom Co Ltd., Seoul, KOREA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Wireless Application Protocol Forum (''WAP'') intends to file additional written notification disclosing all changes in membership.

On March 18, 1998, Wireless Application Protocol Forum (''WAP'') filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 31, 1998 (63 FR 72333).

The last notification was filed with the Department on January 29, 1999. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations Antitrust Division.

[FR Doc. 99–29513 Filed 11–10–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used

in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts:
MA990001 (Mar. 12, 1999)
MA990002 (Mar. 12, 1999)
MA990007 (Mar. 12, 1999)
MA990018 (Mar. 12, 1999)
New York:
NY990013 (Mar. 12, 1999)

Volume II

None

Volume III

Kentucky:
KY990001 (Mar. 12, 1999)
KY990002 (Mar. 12, 1999)
KY990004 (Mar. 12, 1999)
KY990007 (Mar. 12, 1999)
KY990026 (Mar. 12, 1999)
KY990027 (Mar. 12, 1999)
KY990028 (Mar. 12, 1999)
KY990029 (Mar. 12, 1999)
KY990035 (Mar. 12, 1999)
Tennessee:
TN990001 (Mar. 12, 1999)
TN990002 (Mar. 12, 1999)
TN990003 (Mar. 12, 1999)
TN990005 (Mar. 12, 1999)
TN990018 (Mar. 12, 1999)
TN990038 (Mar. 12, 1999)
TN990039 (Mar. 12, 1999)
TN990040 (Mar. 12, 1999)
TN990042 (Mar. 12, 1999)
TN990045 (Mar. 12, 1999)
TN990048 (Mar. 12, 1999)
TN990062 (Mar. 12, 1999)

Volume IV

Ohio:
OH990002 (Mar. 12, 1999)
OH990003 (Mar. 12, 1999)
OH990012 (Mar. 12, 1999)
OH990018 (Mar. 12, 1999)
OH990028 (Mar. 12, 1999)
OH990029 (Mar. 12, 1999)
OH990034 (Mar. 12, 1999)
OH990035 (Mar. 12, 1999)

Volume V

Arkansas:
AR990001 (Mar. 12, 1999)
AR990003 (Mar. 12, 1999)
AR990008 (Mar. 12, 1999)
AR990023 (Mar. 12, 1999)
New Mexico:
NM990001 (Mar. 12, 1999)
NM990005 (Mar. 12, 1999)
Oklahoma:
OK990013 (Mar. 12, 1999)
OK990014 (Mar. 12, 1999)
OK990035 (Mar. 12, 1999)
OK990041 (Mar. 12, 1999)
Texas:
TX990040 (Mar. 12, 1999)

Volume VI

Utah:
UT990004 (Mar. 12, 1999)
UT990015 (Mar. 12, 1999)
UT990024 (Mar. 12, 1999)
UT990029 (Mar. 12, 1999)
Wyoming:
WY990008 (Mar. 12, 1999)
WY990009 (Mar. 12, 1999)

Volume VII

Nevada:
NV990001 (Mar. 12, 1999)
NV990002 (Mar. 12, 1999)
NV990003 (Mar. 12, 1999)
NV990004 (Mar. 12, 1999)
NV990005 (Mar. 12, 1999)
NV990006 (Mar. 12, 1999)
NV990007 (Mar. 12, 1999)
NV990009 (Mar. 12, 1999)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the State covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 4th day of November 1999.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–29406 Filed 11–10–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Secretary of Labor's Advisory Committee for Veterans' Employment and Training; Notice of Open Meeting

The Secretary's Advisory Committee for Veterans' Employment and Training was established under section 4110 of title 38, United States Code, to bring to the attention of the Secretary, problems and issues relating to veterans' employment and training.

Notice is hereby given that the Secretary of Labor's Advisory Committee for Veterans' Employment and Training will meet on Monday, December 6, 1999, at the U.S. Department of Labor, 200 Constitution Avenue, NW, Room S–2508, Washington, DC 20210 from 9:00 to 5:00 pm.

Written comments are welcome and may be submitted by addressing them to: Ms. Polin Cohanne, Designated

Federal Official, Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW, Room S–1313, Washington, DC 20210.

The primary items on the agenda are:

- Adoption of Minutes of the Previous Meeting
- Transition Assistance Program
- Licensing and Certification
- Workforce Investment Act
- New Veterans Legislation on Small Business
- Marketing
- Legislation

The meeting will be open to the public. Other matters may be discussed.

Persons with disabilities needing special accommodations should contact Ms. Polin Cohanne at telephone number 202–693–4741 no later than December 22, 1999.

Signed at Washington, DC this November 4, 1999.

Espiridion (Al) Borrego,

Assistant Secretary of Labor for Veterans' Employment and Training.

[FR Doc. 99–29574 Filed 11–10–99; 8:45 am]

BILLING CODE 4510–79–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting; Meeting of the Board of Directors Operations and Regulations Committee

TIME AND DATE: The Operations and Regulations Committee of the Legal Services Corporation Board of Directors will meet on November 19, 1999. The meeting will begin at 10:30 a.m. and continue until the Committee concludes its agenda.

LOCATION: Legal Services Corporation, 750 First Street, NE, 9th Floor Conference Room A & B, Washington, DC 20002.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of minutes of the Committee's meeting of June 11, 1999.
3. Consider public comment and act on final rule, 45 CFR Part 1628, Recipient Fund Balance.
4. Consider public comment and act on final rule, 45 CFR Part 1635 Timekeeping Requirement.
5. Consider and act on proposed Property Manual: Acquisition Procedures and Property Standards.
6. Consider and act on LSC's FOIA Handbook.
7. Consider and act on proposed procedures to handle grievances filed against the Corporation's President or its Inspector General.
8. Consider and act on a proposed program of cash awards to individual Corporation employees in recognition of their outstanding performance.
9. Consider and act on other business.
10. Public Comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8800.

Dated: November 8, 1999.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel, and Corporate Secretary.

[FR Doc. 99–29671 Filed 11–9–99; 10:42 am]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting; Sunshine Act Meeting of the Board of Directors Ad Hoc Committee on Performance Reviews of the President and Inspector General

TIME AND DATE: The Ad Hoc Committee on Performance Reviews of the President and Inspector General of the Legal Services Corporation's Board of Directors will meet on November 19, 1999. The meeting will begin at 9:00 a.m. and continue until conclusion of the committee's agenda.

LOCATION: Legal Services Corporation, 750 First Street, NE, 4th Floor Conference Room, Room 4054, Washington, DC 20002.

STATUS OF MEETING: Except for approval of the committee's agenda and any miscellaneous business that may come before the committee, the meeting will be closed to the public. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(2) & (6)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR § 1622.5(a) & (e)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED

Open Session

1. Approval of agenda.

Closed Session

2. Conduct a performance appraisal of the Inspector General of the Corporation.
3. Conduct a performance appraisal of the President of the Corporation.

Open Session

4. Consider and act on other business.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway at (202) 336–8800.

Dated: November 8, 1999.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel, and Corporate Secretary.

[FR Doc. 99–29672 Filed 11–9–99; 10:42 am]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting; Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on November 20, 1999. The meeting will begin at 10:00 a.m. and continue until conclusion of the Board's agenda.

LOCATION: Legal Services Corporation, 750 First Street, NE, 9th Floor Conference Room A & B, Washington, DC 20002.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is or may become a party, and the Board may act on the matters reported. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(10)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR § 1622.5(h)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.

2. Approval of minutes of the Board's meeting of September 18, 1999.
3. Approval of minutes of the executive session of the Board's meeting of September 18, 1999.
4. Chairman's Report.
5. Members' Report.
6. President's Report.
7. Inspector General's Report.
8. Consider and act on the report of the Board's Operations and Regulations Committee:

—Final rule, 45 CFR Part 1628, Recipient Fund Balance.
—Final rule, 45 CFR Part 1635, Timekeeping Requirement.
—Procedures to handle grievances filed against the Corporation's President or its Inspector General.
—LSC FOIA Handbook.
—Revisions to LSC's Personnel Manual.

9. Consider the report of the Board's Committee on Provision for the Delivery of Legal Services.
10. Consider the report of the Board's Annual Performance Reviews Committee.
11. Consider and act on the Board of Directors' Semiannual Report to the Congress.
12. Revive, consider, and act on the Report of the Erlenborn Commission.

Closed Session

13. Briefing[1] by the Inspector General on the activities of the Office of Inspector General.
14. Briefing by the President on internal personnel and operational matters.
15. Consider and act on the General Counsel's report on potential and pending litigation involving the Corporation.

Open Session

16. Consider and act on the resolution authorizing the President to enter into employment agreements with officers of the Corporation.
17. Consider and act on other business.
18. Public Comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8800.

Dated: November 8, 1999.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel, and Corporate Secretary.

[FR Doc. 99–29673 Filed 11–9–99; 10:42 am]

BILLING CODE 7050–01–P

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b) (a)(2) and (b). See also 45 CFR §§ 1622.2 & 1622.3

LEGAL SERVICES CORPORATION

Sunshine Act Meeting; Sunshine Act Meeting of the Board of Directors Committee on Provision for the Delivery of Legal Services

TIME AND DATE: The Committee on Provision for the Delivery of Legal Services of the Legal Services Corporation Board of Directors will meet on November 19, 1999. The meeting will begin at 10:30 a.m. and continue until the Committee concludes its agenda.

LOCATION: Legal Services Corporation, 750 First Street, NE., 4th Floor Conference Room, Room 4054, Washington, DC 20002.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of minutes of the Committee's meeting of September 17–18, 1999.
3. Report by LSC staff on the Corporation's Program Information Survey.
4. Report by LSC staff on State Planning.
5. Presentation by LSC staff on field technology, outlining work that staff is doing training field programs, overseeing state planning for technology and facilitating & coordinating bulk purchases.
6. Presentation by the Project for the Future of Equal Justice, describing the Project's work, including its initiatives in the areas of technology, intake systems, training, and fundraising.
7. Consider and act on other business.
8. Public comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8800.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8800.

Dated: November 8, 1999.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel, and Corporate Secretary.

[FR Doc. 99–29674 Filed 11–9–99; 10:42 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–141]

Centennial of Flight Commission; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration announces a meeting of the Centennial of Flight Commission (PL 105–389).

DATES: Tuesday, November 23, 1999, 9:00 a.m. to 10:00 a.m.

ADDRESSES: Smithsonian Institution, National Air & Space Museum, Director's Conference Room, Independence Avenue at Sixth Street, SW, Washington, DC 20560.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Scheffler, National Air & Space Museum (202) 357–1427.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public, subject to the seating capacity of the room. Seating will be on a first come, first served basis. The agenda for the meeting is as follows:

—Selection of the Sixth Commission Member
—Election of a Chairperson
—Selection of an Executive Director

The meeting will be held on this date to accommodate the scheduling priorities of key participants. Visitors must sign in at the NASM security desk, which is located at the south entrance to the Museum, Independence Avenue at Sixth Street, SW.

Dated: November 5, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–29501 Filed 11–10–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE (99–142)

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Bokam Engineering Inc., 3633 W. MacArthur Blvd., Suite 412, Santa Ana, California 92704, has applied for an exclusive license to practice the invention disclosed in NASA Case No. KSC–11886, entitled ''Extreme Wind Velocity Measurement System,'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Melanie R. Chan, Licensing & Dual Use Manager, John F. Kennedy Space Center.

DATE: Responses to this Notice must be received on or before January 11, 2000.

FOR FURTHER INFORMATION, CONTACT: Melanie R. Chan, Licensing and Dual Use Manager, John F. Kennedy Space Center, Mail Code: MM-E, Kennedy Space Center, FL 32899, telephone (407) 867–6367.

Dated: November 5, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–29553 Filed 11–10–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–143]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective copyright license.

SUMMARY: NASA hereby gives notice that Netlander, Inc., of Titusville, FL 32796, has applied for an exclusive copyright license in NASA Software entitled ''Internet Display of PC GOAL Real-Time Data Using Java (JView),'' which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Melanie R. Chan, Licensing & Dual Use Manager, John F. Kennedy Space Center.

DATES: Responses to this notice must be received by January 11, 2000.

FOR FURTHER INFORMATION CONTACT: Melanie R. Chan, Licensing and Dual Use Manager, John F. Kennedy Space Center, Mail Code MM–E, Kennedy Space Center, FL 32899, telephone (407) 867–6367.

Dated: November 5, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–29552 Filed 11–10–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences; Notice of Meeting

In accordance with Federal Advisory Committee Act (Public Law 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Astronomical Sciences (1186).

Date/Time: January 4–5, 2000; 9:00 a.m.–5:00 p.m.

Place: National Science Foundation, Room 1020, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. James Breckinridge, Program Director, Advanced Technologies and Instrumentation, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 (703) 306–1820, ext. 1912.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Advanced Technologies and Instrumentation in the area of Astronomical Sciences as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b (c)(4) and (6) of the Government in the Sunshine Act.

Dated: November 8, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–29590 Filed 11–13–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special emphasis Panel in Bioengineering and Environmental Systems (1189).

Date/Time: December 7, 1999; 8 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 680, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: A. Frederick Thompson, Program Director, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230, (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Environmental Technology Engineering proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 8, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–29596 Filed 11–10–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (1189).

Date/Time: December 9, 1999; 8:00 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 310, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: A. Frederick Thompson, Program Director, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230, (703) 306–1318.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Environmental Technology Engineering CAREER proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5

U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 8, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–29597 Filed 11–10–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Biological Infrastructure: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Panel for Biological Infrastructure (1215).

Date/Time: December 2–3, 1999; 8:30 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 390, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Greg Farber and Mary Jane Saunders, Program Directors, Biological Instrumentation and Instrument Development, National Science Foundation, 4201 Wilson Boulevard, Room 615, Arlington, VA 22230. Telephone: (703) 306–1472.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposal for acquisition of Biological Instrumentation and Instrument Development for the Instrument Development Biological Research (IDBR) Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 8, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–29595 Filed 11–10–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date/Time: November 15–16, 1999; 8:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 730, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Vijaya Gopu, Program Officer, Large Structures and Building Systems, Division of Civil and Mechanical Systems, National Science Foundation, 4201 Wilson Boulevard, Room 545, Arlington, VA 22230, (703) 306–1361.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY'00 Large Structures and Building Systems Career Panel proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 8, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–29591 Filed 11–10–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date/Time: November 22–23, 1999; 8:00 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Rooms 380 and 390, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Clifford J. Astill, Program Director, Geomechanics and Geotechnical Systems and Geoenvironmental Engineering and Geohazards Mitigation, Division of Civil and Mechanical Systems, National Science Foundation; 4201 Wilson Boulevard, Room 545, Arlington, Virginia 22230. (703) 306–1361.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY'00 Control, Geomechanics and Geotechnical Systems and Geoenvironmental Engineering and Geohazards Career Panel as part of the selection process for awards.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 8, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–29592 Filed 11–10–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation (1194)

Date/Time: December 6–9 and 14–17; 8:00 a.m.–5:30 p.m.

Place: Rooms 310, 320, 330, 340, 360, 365, 370, 390, 530, and 580, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Delcie Durham, Program Director, Material Processes and Manufacturing, Dr. George Hazelrigg, Program Director, Design and Integration Engineering Program, Dr. K.P. Rajurkar, Program Manager, Manufacturing Machines and Equipment Program, Dr. Lawrence Seiford, Program Director, Operations Research and Production Systems Program, (703) 306–1330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Unsolicited proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data such as salaries; and personal information concerning individuals associated with the proposals. These matters that are exempt under 5 U.S.C. 522b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 8, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–29598 Filed 11–10–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communication Systems; Notice of Meeting

Name: Special Emphasis Panel in Electrical and Communication Systems (1196).

Date/Time: November 16–17, 1999; 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 580, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Rajinder Khosla, Program Directors, Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson, Blvd., Room 675, Arlington, VA 22230, (703) 306–1340.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Computational Engineering proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 8, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–29593 Filed 11–10–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Mathematical Sciences (1204).

Date/Time: December 9–10, 1999; 8:30 a.m.–5'00 p.m. and December 11, 1999; 8:30 a.m.–12 noon.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1020, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Alvin Thaler, Program Director, Foundations Program, or Gerald Venema, Program Director, Foundations Program, National Science Foundation, 4201 Wilson Boulevard, Room 1025, Arlington, VA 22230, (703) 306–1870.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Foundations Program, as a part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 8, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–29594 Filed 11–10–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics (1208).

Date/Time: November 29, 1999 through December 1, 1999; 9:00 a.m.–6:00 p.m.

Place: Stanford Linear Accelerator Center, Training and Conference Center, 2575 Sand Hill Road, Menlo Park, CA 94025.

Type of Meeting: Closed.

Contact Person: Dr. Marvin Goldberg, National Science Foundation, 4201 Wilson Blvd, Room 1015, Arlington, VA, 22230. (703) 306–1890; and Ms. Judy Meo, Stanford Linear Accelerator Center, (650) 926–2651.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the Elementary Particle Physics Program for Major Research Equipment funding.

Agenda: To review and evaluate proposals for the Elementary Particle Physics Program.

Reason For Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; information on personnel and proprietary date for present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 8, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–29588 Filed 11–10–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Physics; Notice of Meeting

In accordance with Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Physics (1208).

Date/Time: Sunday, December 5, 6 p.m.–10 p.m.; Monday, December 6, 8:30 a.m.–6 p.m.; Tuesday, December 7, 8:30 a.m.–3 p.m.

Place: National Science Foundation, Room 1020, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Terrence W. Rettig, Program Director for Special Programs/PHY, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1809.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSDF for financial support.

Agenda: To review and evaluate the Research Experiences for Undergraduates (REC) Site as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 8, 1999.

Karen J York,

Committee Management Officer.

[FR Doc. 99–29589 Filed 11–10–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–16]

Notice of Issuance of Amendment to Materials License SNM–2507 Virginia Electric and Power Company; North Anna Independent Spent Fuel Storage Installation

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued Amendment 1 to Materials License SNM–2507 held by Virginia Electric and Power Company (VA Power) for the receipt, possession, transfer, and storage of spent fuel at the North Anna Independent Spent Fuel Storage Installation (ISFSI), located in Louisa County, Virginia. The amendment is effective as of the date of issuance.

By application dated April 5, 1999, as supplemented on August 27, 1999, VA Power requested to amend its ISFSI license to permit the storage of burnable poison rod assemblies and/or thimble plug devices within the TN–32 casks used at North Anna. This amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in

10 CFR Chapter I, which are set forth in the license amendment.

In accordance with 10 CFR 72.46(b)(2), a determination has been made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected. Therefore, the publication of a notice of proposed action and an opportunity for hearing or a notice of hearing is not warranted. Notice is hereby given of the right of interested persons to request a hearing on whether the action should be rescinded or modified.

Also in connection with this action, the Commission prepared an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI). The EA and FONSI were published in the **Federal Register** on October 15, 1999 (64 *FR* 55994).

Documents related to this action are available for public inspection at the Commission's Public Document Room located at the Gelman Building, 2120 L Street, NW, Washington, DC 20555, and at the Local Public Document Room at the Alderman Library, the University of Virginia, Charlottesville, VA 22903.

Dated at Rockville, Maryland, this 30th day of October 1999.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–29575 Filed 11–10–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–2]

Notice of Issuance of Amendment to Materials License SNM–2501 Virginia Electric and Power Company; Surry Independent Spent Fuel Storage Installation

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued Amendment 10 to Materials License SNM–2501 held by Virginia Electric and Power Company (VA Power) for the receipt, possession, transfer, and storage of spent fuel at the Surry Independent Spent Fuel Storage Installation (ISFSI), located in Surry County, Virginia. The amendment is effective as of the date of issuance.

By application dated April 5, 1999, as supplemented on August 27, 1999, VA Power requested to amend its ISFSI license to permit the storage of burnable poison rod assemblies and/or thimble plug devices within the TN–32 casks used at Surry. This amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

In accordance with 10 CFR 72.46(b)(2), a determination has been made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected. Therefore, the publication of a notice of proposed action and an opportunity for hearing or a notice of hearing is not warranted. Notice is hereby given of the right of interested persons to request a hearing on whether the action should be rescinded or modified.

Also in connection with this action, the Commission prepared an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI). The EA and FONSI were published in the **Federal Register** on October 15, 1999 (64 *FR* 55995).

Documents related to this action are available for public inspection at the Commission's Public Document Room located at the Gelman Building, 2120 L Street, NW, Washington, DC 20555, and at the Local Public Document Room at the Swem Library, the College of William and Mary, Williamsburg, VA 23185.

Dated at Rockville, Maryland, this 30th day of October 1999.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–29576 Filed 11–10–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review, Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Form 40–F, SEC File No. 270–335, OMB Control No. 3235–0381

Schedule 13E–4, SEC File No. 270–190, OMB Control No. 3235–0203

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'') has submitted to the Office of Management and Budget requests for approval of extensions on the following:

Form 40–4 is used by certain Canadian issuers to register securities pursuant to Section 12 of the Securities Exchange Act of 1934 (''Exchange Act'') or an annual report pursuant to Section 13(a) or 15(d) of the Exchange Act. The information required under cover of Form 40–F can be used by security holders, investors, broker-dealers, investment banking firms, professional securities analysts and others in evaluating securities and making investment decisions with respect to securities of certain Canadian companies. Form 40–F takes approximately 2 hours to prepare and is filed by an estimated 100 respondents for a total of 200 burden hours. It is estimated that 25% (50 hours) of the 200 hours would be prepared by the company.

Schedule 13E–4 is filed pursuant to Section 13(e)(1) of the Exchange Act by issuers conducting a tender offer. This information is needed to provide full and fair disclosure to the investing public. Schedule 13E–4 takes approximately 232 hours to prepare and is filed by an estimated 121 respondents annually for a total of 28,072 burden hours.

All information provided to the Commission is available to the public for review. Information provided by both Form 40–F and Schedule 13E–4 is mandatory.

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

Written comments regarding the above information should be directed to the following person:

(i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and

(ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 First Street, NW., Washington, DC 20549.

Comments must be submitted to OMB within 30 days of this notice.

Dated: November 3, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–29533 Filed 11–10–99; 8:45 am]

BILLING CODE 8010–01–m

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:
Rule 15c2–7, SEC File No. 270–420, OMB Control No. 3235–0479

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'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Rule 15c2–7 Identification of Quotations

Rule 15c2–7 enumerates the requirements with which brokers and dealers must comply when submitting a quotation for a security (other than a municipal security) to an inter-dealer quotation system. The purpose of Rule 15c2–7 is to ensure that an inter-dealer quotation system clearly reveals where two or more quotations in different names for a particular security represent a single quotation or where one broker-dealer appears as a correspondent. This is accomplished by requiring broker-dealers and inter-dealer quotation systems to disclose with each published quotation the information required pursuant to the rule. The rule permits users of an inter-dealer quotation system to determine the identity of dealers making an inter-dealer market for a security—a fact which may be extremely pertinent in evaluating its marketability.

It is estimated that there are 8,500 brokers and dealers. Industry personnel estimate that approximately 900 notices are filed pursuant to Rule 15c2–7 annually. Based on industry estimates that respondents complying with Rule 15c2–7 spend 30 seconds to add notice of an arrangement and 1 minute to delete notice of an arrangement, and assuming that one-half of the notices given are to add an arrangement and the other half are to delete an arrangement, the staff estimates that, on an annual basis, respondents spend a total of 11.25 hours to comply with Rule 15c2–7 (90×45 seconds=40,500 seconds/60=675 minutes/60=11.23 hours). The Commission staff estimates that the average labor cost associated with this activity is $35 per hour. Therefore, the total labor cost of compliance for all broker-dealers respondents is approximately $394 (11.25 multiplied by $35).

The retention period for the record-keeping requirement under Rule 15c2–7 is three years following the date a quotation is submitted. The record-keeping requirement under this Rule is mandatory to assist the Commission with monitoring brokers and dealers who submit quotations to an inter-dealer quotation system. This rule does not involve the collection of confidential information. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons:

(i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; and

(ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549.

Comments must be submitted to OMB within 30 days of this notice.

Dated: November 2, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc 99–29534 Filed 11–10–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42094; File No. SR–Amex 99–43]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to the Maximum Permissible Number of Equity and Index Option Contracts Executable Through AUTO–EX

November 3, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 28, 1999, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to permit, on a case by case basis, the execution of up to fifty option contracts through AUTO–EX. The text ofthe proposed rule change is available at the Amex Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

1. Purpose

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for the Proposed Rule Change

I. Purpose

In 1985, the Exchange implemented the AUTO–EX system, which automatically executes public customer market and marketable limit orders in options at the best bid or offer displayed at the time the order is entered into the Amex Order File (''AOF''). There are, however, limitations on the number of option contracts that can be entered into or executed by these systems. AOF, which handles limit orders routed to the specialist's book as well as orders routed to AUTO–EX, was recently increased to allow for the entry of orders of up to 250 option contracts. AUTO–EX, however, is only permitted to automatically execute equity option orders of 20 contracts or less (except in emergency situations, in which case up to 50 contracts may be executed) and

[1] 15 USC 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The initial filing of SR–Amex–99–43 received by the Commission on October 21, 1999 serves as the required five day pre-filing notice set forth in Rule 19b–4(f)(6)(iii) under the Act, 17 CFR 240.19B–4(f)(6)(iii). Thus, the filing date of SR–Amex–99–43 is October 28, 1999. *See* Letter from Scott G. Van Hatten, Legal Counsel for Amex, dated October 27, 1999.

index option orders of 30 contracts or less.[4] Therefore, market and marketable limit orders of more than 20 or 30 contracts are routed by AOF to the specialist's book.

The Exchange now proposes to allow for the automatic execution of orders of up to 50 contracts on a case-by-case basis, regardless of whether an emergency condition exists. The Exchange is seeking the flexibility to increase AUTO–EX parameters to better enable it to compete in option classes that are also traded at other exchanges that already have in place similar provisions concerning their respective automatic execution systems.[5] The Exchange represents that its systems capacity is sufficient to accommodate the increased number of automatic executions anticipated as a result of the implementation of the proposed.

The Exchange proposes increasing AUTO–EX in permissible order size to 50 contracts on a case-by-case basis, for an individual option class or for all option classes, when two floor governors or senior floor officials deem such an increase appropriate. At all other times, the permissible order size for AUTO–EX will remain at the current levels.

AUTO–EX has been successful in enhancing execution and operational efficiencies during emergency situations and during other nonemergency situations for certain option classes. The Exchange believes automatic executions of orders for up to 50 contracts will better allow for the quick, efficient execution of public customer orders.

2. Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[6] in general and furthers the objectives of Section 6(b)(5)[7] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.[8]

b. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Data of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule filing has been filed by the Exchange as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A)(i) of the Act[9] and subparagraph (f)(6) of rule 19b–4 thereunder.[10] Consequently, because the foregoing proposed rule change:

(i) Does not significantly affect the protection of investors or the public interest;

(ii) does not impose any significant burden on competition; and

(iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

In this regard the Amex has agreed that the proposal need not become operative for 30 days. In addition, the Amex provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, more than five business days prior to the date of filing of the proposed rule change.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–99–43 and should be submitted by December 3, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–29535 Filed 11–10–99; 8:45 am]

BILLING CODE 8010–01–M

[4] While the maximum permissible number of contracts in an index option order executable through AUTO–EX is generally 30 contracts, there are a few exceptions: the Major Market Index allows for 50 contract orders and the Institutional, Japan and S&P MidCap 400 Indexes allows contract orders.

[5] The Pacific Exchange (''PCX'') and the Chicago Board Options Exchange (''CBOE'') have already received Commission approval to raise the number of options contracts handled by their auto-execution systems to fifty. *See* Securities Exchange Act Release Nos. 41823 (September 1, 1999), 64 FR 49265 (September 10, 1999) and 41821 (September 1, 1999), 64 FR 50313 (September 16, 1999) respectively.

[6] 15 USC 78f(b).

[7] 15 USC 78f(b)(5).

[8] In reviewing this proposal, the Commission has considered its impact on efficiency, competition and capital formation. 15 USC 78c(f).

[9] 15 USC 78s(b)(3)(A)(i).

[10] 17 CFR 240.19b–4(f)(6).

[11] Although the Commission has a degree of comfort with respect to the proposed increase, we note that any proposed increases over fifty contracts may raise additional issues, including such matters as market maker financial exposure, price improvement, and quote dissemination. Because of these concerns, the Commission welcomes the opportunity to review the Exchange's experience with any increase in the maximum order size to fifty contracts. If, in the future, exchanges seek to increase order size levels above fifty contracts, this examination will help us assess whether any such increases are appropriate and, if so,whether we should seek addition assurance regarding such increases.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42110; File No. SR–Amex 99–33]

Self-Regulatory Organizations; Notice of Filings and Order Granting Accelerated Approval of Proposed Rule Change and Amendment Numbers 1 and 2 Thereto by the American Stock Exchange LLC Relating to Revising Section 107B of the Amex Company Guide

November 5, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 19, 1999, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change. The Exchange submitted Amendment No. 1 to its proposal on October 12, 1999,[3] and Amendment No. 2 on October 21, 1999.[4] The proposed rule change, as amended, is described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to revise Section 107B of the Amex Company Guide concerning the listing standards for equity linked notes (''ELNs''). The proposal deals with the minimum term of such securities and substitutes a one-year minimum for all ELNs for the current requirement that the securities have a term of two to seven years (three year maximum for those linked to non-U.S. 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, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 20, 1993, the Exchange received approval to adopt Section 107B of the Amex Company Guide to provide for the listing and trading of ELNs, hybrid instruments whose values are linked to the performance of highly capitalized, actively traded common stock.[5] ELNs are non-convertible debt of an issuer, whose value is based, at least in part, on the value of another issuer's common stock or non-convertible preferred stock.

Section 107B of the Amex Company Guide details the Exchange's listing standards for ELNs. Among other things, these standards require that ELNs have a term of two to seven years, but not more than three years for ELNs based on the price of a non-U.S. issuer. The limits on the terms for ELNs contrast with the Exchange's general requirements of derivative instruments. Specifically, for Currency and Index Warrants (Section 106 of the Annex Company Guide) and Other Securities (Section 107 of the Amex Company Guide), the Exchange requires that the security have either a minimum life of between one and five years or on specified minimum term.

The Exchange has in place surveillance procedures with respect to ELNs and the securities linked to ELNs for the purposes of identifying and determining manipulative trading activity.[6] In conducting its surveillance activities, the Exchange has not found any adverse effects as a result of the trading of ELNs and the securities to which the ELNs are linked. The Exchange notes that these findings are also consistent with the findings of the New York Stock Exchange, Inc. (''NYSE'') in which it noted similar experience with these products as discussed in its proposal to revise term criteria for equity linked notes.[7]

The Exchange believes ELNs complement the trading of underlying stocks, and the continued popularity of the instrument demonstrates its appeal in the market. Thus, the Exchange proposes to apply to ELNs a one-year minimum term requirement regardless of whether the ELN is based on a domestic or non-U.S. equity. The Exchange believes that this rule change will provide issuers with more flexibility with more flexibility in developing ELNs and thus provide greater investment choices in the market. Specifically, the Exchange notes that many corporate debt instruments have terms well in excess of seven years, and that this rule change will allow the structuring of ELNs with terms to maturity comparable to such debt instruments. Furthermore, extending the term of ELNs will provide issuers with the ability to offer variations on ELNs, such as principal protection and call features that may not be as desirable on debt instruments with a shorter term. The Exchange believes that this added flexibility will encourage innovation without having an adverse effect on investor protection.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[8] of the Act in general and furthers the objectives of Section 6(b)(5)[9] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of change, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made technical corrections to its proposed rule language to reflect its current rule language; confirmed that it has surveillance procedures in place to identify and deter manipulative trading activity; and revised the stated purpose of its proposed rule change. *See* Letter from Scott G. Van Hatten, Legal Counsel, Derivative Securities, Amex, to Richard Strasser, Assistant Director, Division of Market Regulation (''Division''), Commission, dated October 8, 1999 (''Amendment No. 1'').

[4] In Amendment No. 2, the Exchange made technical corrections to its proposed rule language; requested accelerated approval of the proposed rule change; and represented that it would notify the Commission in advance if the Exchange intended to list equity linked notes of a non-U.S. company issuer and the issue has a term of more than three years. *See* Letter from Scott G. Van Hatten, Legal Counsel, Derivative Securities, Amex, to Nancy Sanow, Senior Special Counsel, Division, Commission, dated October 20, 1999 (''Amendment No. 2'').

[5] *See* Securities Exchange Act Release No. 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993).

[6] *See* Amendment No. 1, *supra* note 3.

[7] *See* Securities Exchange Act Release No. 41608 (July 8, 1999), 64 FR 38063 (July 14, 1999).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received written comments with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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 in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–99–33 and should be submitted by December 3, 1999.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has reviewed carefully the Amex's proposed rule change and believes, for the reasons set forth below, that the proposal is consistent with the requirements of Section 6 of the Act [10] and in particular, with the requirements of Section 6(b)(5) of the Act.[11] Specifically, the Commission finds that providing for a minimum one-year term for all ELNs is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system.[12]

The Commission notes that since the Exchange has traded ELNs, the Exchange has not discovered any adverse effects of this instrument. In addition, the Exchange has verified that it has surveillance procedures in place for identifying and deterring manipulative trading activity of ELNs as well as the related equity securities. The Exchange has also agreed to notify the Commission in advance if the Exchange intends to list ELNs of a non-U.S. company issuer and the issue has a term of more than three years.[13] The Exchange believes that this rule change will provide issuers with more flexibility in developing ELNs and thus provide greater investment choices in the market. The Commission believes that this added flexibility will encourage innovation without having an adverse effect on investor protection.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.** The Commission notes that the Amex is proposing the same rule change recently approved by the Commission for the YSE.[14] The NYSE submitted a proposed rule change that provided for a one-year minimum term for all equity-linked debt securities. Prior to the NYSE's proposed rule change, the NYSE required that equity-linked debt securities have a term of two to seven years (three year maximum for non-U.S. securities). Because Amex's proposal is consistent with the proposal recently approved by the Commission for the NYSE and because the Commission did not receive any comments on the NYSE's proposal, the Commission finds that granting accelerated approval of the proposed rule change is appropriate and consistent with Section 6 of the Act.[15]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–Amex–99–33), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

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[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(5).

[12] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] *See* Amendment No. 2, *supra* note 4.

[14] *See* Securities Exchange Act Release No. 41992 (October 7, 1999), 64 FR 56007 (October 15, 1999).

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42108; File No. SR–NASD–99–40]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Revising Its Fees for Additional Shares

November 4, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 20, 1999, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to revise the fees it charges Nasdaq National Market and Nasdaq SmallCap Market issuers for listing Additional Shares. Set forth below is the text affected by the proposed rule change. Proposed new language is in italic; proposed deletions are in brackets.

* * * * *

4510. The Nasdaq National Market

(a) Entry Fee

No change

(b) Additional Shares

(1) The issuer of each class of security[, other than the American Depositary Receipts,] *that is a domestic issue* which is listed in the Nasdaq National Market shall pay to The Nasdaq Stock Market, Inc. the fee set forth in subparagraph (2) below in connection with the issuance of additional shares of each class of listed security [set forth in subparagraph (3) below].

(2) The fee in connection with additional shares shall be $2,000 or [$.02] *$.01* per additional share, whichever is higher, up to a maximum of $17,500 per [issuance] *notification and an annual maximum of $35,000 per issuer.*

(3) [The fee in connection with additional shares is applicable to the following issuances of securities:

(A) Acquisitions, mergers or consolidations;

(B) Public offerings;

(C) Rights and subscription offerings;

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(D) Exchange offers; and
(E) Private placements.
(4) Payment of the fee to The Nasdaq Stock Market, Inc. shall be included with] *Calculation of the fee will be based on* the issuer notification to Nasdaq of the issuance of additional shares of securities as required under provisions of Rule 4310(c)(17) [and Rule 4320(e)(15)].
(c)–(d) No change

4520. The Nasdaq SmallCap Market

(a) Entry Fee
No change
(b) Additional Shares
(1) The issuer of each class of security [other than American Depositary Receipts] *that is a domestic issue* which is listed in The Nasdaq SmallCap Market shall pay to The Nasdaq Stock Market, Inc. the fee set forth in subparagraph (2) below in connection with the issuance of additional shares of each class of listed security [set forth in subparagraph (3) below].
(2) The fee in connection with additional shares shall be [$1,000] *$2,000* or $.01 per additional share, whichever is higher, up to a maximum of [$7,500] *$17,500* per [issuance] *notification and an annual maximum of $35,000 per issuer.*
(3) [The fee in connection with additional shares is applicable to the following issuances of securities:
(A) Acquisitions, mergers or consolidations;
(B) Public offerings;
(C) Rights and subscription offerings;
(D) Exchange offers; and
(E) Private placements.
(4) Payment of the fee to The Nasdaq Stock Market, Inc. shall be included with] *Calculation of the fee will be based on* issuer notification to the Association of the issuance of additional shares of securities as required under provisions of Rule 4310(c)(17) [and Rule 4320(e)(16)].
(c)–(d) No change

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NASD proposes to revise the current fee schedule for ''Additional Shares.'' Under the revised fee schedule, issuers would pay a flat fee of $0.01 per share for all issuances of Additional Share, subject to a cap of $17,500 per notification and $35,000 per year. Currently, Nasdaq National Market issuers pay a fee of $0.02 per share for all issuances, subject to a cap of $17,500 per issuance, and Nasdaq SmallCap Market issuers pay a fee of $0.01 per share for all issuances, subject to a cap of $7,500 per issuance. The current fees are charged only for the issuance of shares in certain transactions and are not subject to annual maximum caps. Under the proposal, the minimum fee per notification will be $2,000; Nasdaq SmallCap Market Issuers are currently subject to a minimum fee of $1,000 per issuance and Nasdaq National Market issuers to a minimum fee of $2,000 per issuance.

The NASD believes that this revision of the fee schedule will better spread the costs of issuer-related initiatives across the base of issuers benefiting from such initiatives. Specifically, the revised fee structure recognizes that Nasdaq does not distinguish between National Market issuers and SmallCap Market issuers in providing educational initiatives, issuer service initiatives, or surveillance measures. Accordingly, the per-share fee for National market issuers has been reduced to that of SmallCap Market issuers and the minimum and maximum fees payable by Small Cap Market issuers have been increased to the levels paid by National Market issuers. Furthermore, the revised fee structure eliminate the old fee structure's artificial distinction between transactions eligible to be assessed fees. This distinction caused confusion for issuers and created difficulty for the NASD in its administration of the program for listing Additional Shares.

The proposed fee structure also will allow issuers to file notifications of several issuances with the NASD on a single form and aggregate the fees assessed on those issuances toward the $17,500 maximum fee per notification.[3] Previously, issuers were required to file a separate notification with respect to every transaction that qualified as a fee-assessable listing of Additional Shares and each such transaction was subject to the maximum fee per issuance. Finally, the $35,000 annual cap limits the maximum fee an issuer would be subject to and ensures that no individual issuer would pay, as a result of frequent stock splits or capital raising transactions, a disproportionate share of the costs of initiatives provided by the Nasdaq to all National Market and SmallCap Market issuers.

2. Statutory Basis

The Nasdaq believes that the proposed rule change is consistent with the provisions of Sections 15A(b)(5) and (6)[4] of the Act. The proposed rule change is consistent with Section 15A(b)(5) as it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers using the Nasdaq system. Fees for listing Additional Shares were first put in place at the Nasdaq in 1993.[5] At the time, the NASD indicated that the fees would be used to fund issuer-related operations, including educational initiatives, issuer service initiatives, and NASD surveillance measures to enhance the quality of the Nasdaq Stock Market.[6] Since 1993, expenditures for these initiatives have increased substantially, but funding recouped through the assessment of fees for listing Additional Shares has not increased proportionately. The proposed rule change is consistent with Section 15A(b)(6) as it is designed to promote just and equitable principles of trade and does not permit unfair discrimination between customers, issuers, brokers, or dealers. As noted above, the fee revision reflects the increased costs incurred by Nasdaq with respect to issuer-related initiatives.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory

[3] Each issuance must still be filed no later than 15 days prior to issuance of the underlying shares, as required by NASD Rule 4310(c)(17).

[4] 15 U.S.C. 78o–3(b) (5) and (6).

[5] *See* Securities Exchange Act Release No. 31586 (December 11, 1992), 57 FR 60247 (December 18, 1992).

[6] *Id.*

organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by December 3, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

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[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42095; File No. SR–NASD–99–59]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Transaction Credits

November 3, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4[2] thereunder, notice is hereby given that on October 13, 1999, the National Association of Securities, Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one constituting the establishment or change of a due, fee or other charge imposed by the Association under Section 19(b)(3)(A)(ii)[3] of the Act which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 USC 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 USC 78S(B)(3)(A)(ii).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing a proposed rule change to amend Rule 7010 of the NASD. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

7010 System Services

(a)–(b) No Change.

(c).

(1) Consolidated Quotation Service, Existing Paragraph remains the same.

(2) Listed Securities Transaction Credit. For a pilot period, qualified NASD members that trade securities listed on the NYSE and Amex in over-the-counter transactions reported by the NASD to the Consolidated Tape Association may receive from the NASD transaction credits based on the number of trades so reported. [To qualify for the credit with respect to either Tape A reports or Tape B reports, An NASD member must have accounted for 500 or more average daily Tape A or Tape B reports of over-the-counter transactions (but not in combination) as reported to the Consolidated Tape by the NASD over the period of July 1, 1998 to December 31, 1998, and must continue to average either 500 or more daily Tape A or 500 or more daily Tape B reports (but not in the combination) of over-the-counter transactions reported to the Consolidated Tape by the NASD during the term of the pilot.] *To qualify for the credit with respect to Tape A reports, an NASD member must account for 500 or more average daily Tape A reports of over-the-counter transactions as reported to the Consolidated Tape during the concurrent calendar quarter. To quality for the credit with respect to Tape B reports, an NASD must account for 500 or more average daily Tape B reports of over-the-counter transactions as reported to the Consolidated Tape during the concurrent calendar quarter.* If an NASD member is so qualified to earn credits based either on its Tape A activity, or its Tape B activity, or both, that member may earn credits from one or both pools maintained by the NASD, each pool representing 40% of the revenue paid by the Consolidated Tape Association to the NASD for each of Tape A and Tape B transactions. A qualified NASD member may earn credits from such pools according to the member's pro rata share of the NASD's over-the-counter trade reports in each of Tape A and Tape B for each calendar quarter starting with [October 1, 1998, and ending with the calendar quarter starting on April 1, 1999.] *July 1, 1999, and ending with the calendar quarter starting on October 1, 1999.*[4]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq 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. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Nasdaq is proposing to extend, for an additional six months (from July 1, 1999 through December 31, 1999), its pilot program to provide a transaction credit[5] to NASD members who exceed certain levels of trading activity in exchange-listed securities. The NASD established its transaction credit pilot to assist in finding ways to lower investor costs associated with trading listed securities, and to respond to steps taken by other

[4] Pursuant to a telephone conversation between Thomas P. Moran, Assistant General Counsel, Office of General Counsel, The Nasdaq Stock Market, Inc. and Jennifer L. Colihan, Staff Attorney, Division of Market Regulation, SEC on November 4, 1999, NASD Rule 7010(c)(2) as written in the original filing was deleted. NASD Rule 7010(c)(3) as identified in the original filing was renumbered as NASD Rule 7010(c)(2).

[5] The transaction credit can be applied to any and all charges imposed by NASD or its non-SRO affiliates. Any remaining balance may be paid directly to the member.

exchanges that compete with Nasdaq for investor order flow in those issues.

1. Background

Nasdaq's Third Market is a quotation, communication and execution system which allows NASD members to trade stocks listed on the New York Stock Exchange (''NYSE'') and the American Stock Exchange (''AMEX''). The Third Market competes with regional exchanges like the Chicago Stock Exchange (''CHX'') and the Cincinnati Stock Exchange (''CSE'') for retail order flow in stocks listed on the NYSE and AMEX exchanges.[6] The NASD collects quotations from broker-dealers that trade these securities over-the-counter (''OTC'') and provides such quotations to the Consolidated Quotation System for dissemination. Additionally, the NASD collects trade reports from these broker-dealers trading such securities in the OTC market and provides the trade reports to the Consolidated Tape Association (''CTA/CQA'') for inclusion in the Consolidated Tape. As a participant in the CTA/CQA, the NASD earns a share of those organizations' revenue from trades that it reports in NYSE-listed securities (''Tape A'') and in AMEX-listed securities (''Tape B''). It is from the NASD's share of these revenues that Nasdaq created the credit pools for qualified pilot participants.

Nasdaq's original transaction credit pilot and the proposed extension are intended to lower costs for Third Market Makers, and their customers, who execute trades in exchange-listed stocks through NASD members and Nasdaq facilities. The NASD believes that lowering the cost of trading increases competition among market centers trading listed securities. Continuation of the pilot will also allow Nasdaq to continue to evaluate the efficacy of its revenue sharing model and continue to effectively compete for the retention of Third Market participants with other regional exchanges who have adopted similar revenue distribution methodologies.

2. Pilot Program

Under the original pilot proposal, Nasdaq first calculated two separate pools of revenue from which credits could have been earned. One pool represents 40% of the gross revenues received from the CTA/CQA for providing trade reports in NYSE-listed securities executed in the Third Market for dissemination by CTA/CQA (''Tape A''). The other pool represents 40% of the gross revenue received from CTA/CQA for reporting AMEX trades (''Tape B''). These revenue pools will remain at the same 40% level during the pilot's extension.

In response to requests from market participants to expand eligibility for Tape A and B transaction credits, the NASD has chosen to change the transaction credit program for these transactions. Unlike the original pilot, eligibility for transaction credits during the pilot's extension will not be based on historical trading levels derived from previous calendar quarter measures of trading activity, but instead will be expanded to give new participants the potential to receive transaction credits based on concurrent quarterly trading activity. For example, a Third Market participant that newly entered the market for Tape A or Tape B securities during the third quarter of 1999 and printed either an average of 500 daily trades of Tape A securities, or one who averaged 500 daily Tape B prints during the third quarter, would be eligible to receive transaction credits based on its trades during that quarter. As in the original pilot, only those NASD members who continue to average an appropriate daily execution level during the term of the pilot's extension will be eligible for transaction credits and thus, will be able to receive a pro-rata portion of the 40% revenue pools.[7] The NASD has chosen to create these thresholds to permit the NASD to recover appropriate administrative costs related to NASD members that do not exceed the threshold and to encourage NASD members to actively trade in these securities.

If an NASD member qualifies for a transaction credit, it will be calculated by taking the members' percentage of total Third Market Transactions during the applicable calculation period and providing an equivalent percentage from the appropriate Tape A or B revenue pool. Thus, for each calendar quarter beginning July 1, 1999, the NASD will measure a qualified member's trade reports for that calendar quarter in each of Tape A and B transactions and create a credit for that member based upon such activity. For example, should a qualifying NASD member's transactions represent 10% of the NASD's Tape A transactions, that member would receive a 10% share of the Tape A 40% revenue pool.

It must again be noted that Nasdaq's transaction credit program is being proposed on a pilot basis only. There can be no guarantee that transaction credits will be available to qualifying NASD members beyond the term of the pilot.[8]

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[9] of the Act in that the proposal is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a national market system and, in general, to protect investors and the public interest. Nasdaq's pilot is also consistent with Section 15A(b)(5)[10] of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become immediately effective pursuant to Section 19(b)(3)(A)(ii)[11] of the Act and subparagraph (f)(2) of Rule 19b–4 thereunder[12] in that it establishes or changes a due, fee or other charge imposed by the Association.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

[6] CHX and CSE have established similar programs. *See* Securities Exchange Act Release No. 38237 (February 4, 1997), 2 FR 6592 (February 12, 1997); and Securities Exchange Act Release No. 39395 (December 3, 1997), 62 FR 65113 (December 10, 1997). To remain competitive with these markets, the NASD believes that it must evaluate programs designed to effectively respond to other markets' approaches to trading the same securities.

[7] As explained in Nasdaq's original pilot filing, the qualification thresholds were selected based on Nasdaq's belief that such numbers represent clear examples of a member's commitment to operating in the Third Market and competing for order flow.

[8] Nasdaq also reserves the right to terminate the transaction credit pilot at any time.

[9] 15 USC 78*o*–3(b)(6).

[10] USC 78*o*3(b)(5).

[11] 15 USC 78s(b)(A)(ii).

[12] 17 CFR 240.19–b4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File Number SR–NASD–99–59 and should be submitted by December 3, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–29602 Filed 11–10–99; 8:45 am]

BILLING CODE 8010–01–M

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42093; International Series Release No. 1209; File No. SR–Phlx–99–30]

Self-Regulatory Organizations; Notice of Filing of the Proposed Rule Change and Order Granting Partial Accelerated Approval of Amendment No. 1 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Non-Customized Cross-Rate Foreign Currency Options Margin Levels

November 3, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 5, 1999, the Philadelphia Stock Exchange, Inc. (''Phlx'' and ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Item I, II, and III below which Items have been prepared by the Exchange. On October 26, 1999, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant partial accelerated approval to permit the continued use of the existing four percent add-on margin for non-customized Cross-Rate FCOs until February 4, 2000.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposed to amend Phlx Rule 722(d) to determine the add-on margin levels for non-customized cross-rate foreign currency options (''Cross-Rate FOCs'') using the methodology outlined in Commentary .16 to that Rule, in lieu of the fixed four percent rate that the Exchange currently uses. In the interim, the Exchange requests that the Commission approve, on an accelerated basis, the continued use of the existing four percent add-on margin for non-customized Cross-Rate FCOs until February 4, 2000.[4]

The text of the proposed rule change follows. Proposed new language is *italicized*; proposed deletions are in [brackets].

Margin Accounts

Rule 722 (a)–(c)—No change.

(d) 1–2—No change.

3. Short Positions—Listed Options and Currency, Currency Index or Stock Index Warrants. Subject to the exceptions set forth below, the margin on any put or call option listed or traded on a registered national securities exchange or association and issued by a registered clearing corporation or any currency warrant, currency index warrant or stock index warrant which is issued, guaranteed or carried ''short'' in a customer's account shall be 100% of the current market value of the option or warrant plus the percentage of the current market value of the underlying security, foreign currency or index specified in column II below.

Notwithstanding the margin required below, the minimum margin on any put or call or any warrant issued, guaranteed or carried ''short'' in a customer's account may be reduced by any ''out-of-the-money-amount'' (as defined below), but shall not be less than 100% of the current market value of the option or warrant plus the percentage of the current market value of the underlying security, foreign currency or index specified in column III below with the exception that the minimum margin required on each such put option contract shall not be less than the current option market value plus the minimum percentage set forth in column III of the option's aggregate exercise price amount.

I Type of option	II Initial and/or maintenance margin required (percent)	III Minimum margin required(percent)	IV Underlying component value
(1) Stock	20	10	The equivalent number of shares at current market prices.
(2) Industry Index Stock Group	20	10	The product of the current index group value and the applicable index multiplier.
(a) Super Cap Index	20	10	The product of the current index group value and the applicable index multiplier.
(3) Broad Index stock group	15	10	The product of the current index group value and the applicable index multiplier.
(4) Foreign Currencies	[1]	¾	The product of Units per foreign currency contract and the closing spot price.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange requested accelerated approval from the Commission to temporarily extend the 4% add-on margin for all non-customized cross-rate foreign currency options until February 4, 2000; provided statistical data to substantiate the proposed rule change; and made substantive rule changes to the proposed rule text. *See* Letter from Nandita Yagnik, Counsel, Phlx, to Hong-anh Tran, Attorney, Division of Market Regulation (''Division''), Commission, dated October 25, 1999 (''Amendment No. 1'').

[4] *See* Amendment No. 1, *supra* note 3. Non-customized options carry specific contract terms for features such as contract size, strike price intervals, expiration date, price quoting and premium settlement.

I Type of option	II Initial and/ or maintenance margin required (percent)	III Minimum margin re-quired(percent)	IV Underlying component value
(5) Cross-Rate	[2] [4%]	¾	The product of Units per cross-rate contract and the closing spot price.
(6) Tier I Customized Cross-rate currency options	4	¾	The product of Units per cross-rate contract and the closing spot price.
(7) Tier II Customized Cross-rate currency options	6	¾	The product of Units per cross-rate contract and the closing spot price.
(8) Tier III Customized Cross-rate currency options	7	¾	The product of Units per cross-rate contract and the closing spot price.
(9) Tier IV Customized Cross-rate currency options	17	¾	The product of Units per cross-rate contract and the closing spot price.
(10) Broad Stock Index Warrant	15	10	The stock index group value.
(11) Industry Stock Index Warrant	20	10	The stock index group value.
(12) Currency Warrant			The product of units of underlying currency per warrant and the closing spot price for each of the currencies below.
Australian dollar	4	¾	
British pound	4	¾	
Canadian dollar	4	¾	
German mark	4	¾	
ECU	4	¾	
French franc	4	¾	
Japanese yen	4 [3]	¾	
Swiss franc	4	¾	
(13) Currency Index Warrant	**	**	The currency index group value.

[1] The margin requirement for foreign currency options will be determined pursuant to Commentary .16 of this Rule 722.

[2] *The margin requirement for non-customized cross-rate foreign currency options will be determined pursuant to Commentary .16 of this Rule 722.*

[3] Currency index warrant margin will be determined on a case-by-case basis as approved by the Securities and Exchange Commission.

For purposes of this sub-section (d)(3), ''out-of-the-money amounts'' are determined as follows:

Option Issue—no change.

4.5—No change.

(e)—(i) No change.

Commentary .01—15 No change.

Commentary .16:

.16—The margin requirement for any foreign currency put or call option listed or traded on the Exchange and issued by a registered clearing corporation which is issued, guaranteed or carried ''short'' in a customer's account, [except for cross-rate currency options,] shall be the amount provided in paragraph (d)(3) of this Rule 722 and shall be calculated as follows:

(a) The Exchange will review five day price movements *comparing base currency against the underlying currency* over the most recent three year period for each foreign currency *pair* underlying options traded on the Exchange and will set a margin level which would have covered the price changes over the review period at least 97.5% of the time (''confidence level'').

(b) Subsequent reviews of five day price changes over the most recent three year period will be performed quarterly on the 15th of January, April, July and October of each year.

(c) If the results of subsequent reviews show that the confidence level for any currency has fallen below 97%, the Exchange will increase the margin requirement for that currency up to a 98% confidence level. If the results show a confidence level between 97% and 97.5%, the currency will be monitored monthly until the confidence level exceeds 97.5% for two consecutive months. If the results of a monthly review show that the confidence level has fallen below 97%, the margin requirement will be increased to a 98% confidence level. If the results of any review show that the confidence level has exceeded 98.5%, the margin level would be reduced to a level which would provide a 98% confidence level.

(d) The Exchange will also review each currency *pair* for large price movements outside the margin level (''extreme outlier test''). If the results of any review show a price movement, either positive or negative, of greater than two times the current margin level, the margin requirement for that currency *pair* will be increased to a confidence level of 99%.

(e) Pursuant to paragraph (i)(8) of this Rule 722, the Exchange may also conduct reviews of currency margin levels at any time that market conditions warrant.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change 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 V below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 1991, the Commission approved the Exchange's proposal to list and trade three non-customized Cross-Rate FCOs—German mark/Japanese yen, British pound/German mark and British pound/Japanese yen options.[5] The Commission's 1991 order approved the proposed four percent add-on margin level for the Cross-Rate FCOs for a one-year period only, because FCOs were new products and the Commission was concerned that the volatility in the underlying currencies could change significantly. The Commission also stated that the Exchange should further analyze the add-on margin adequacy and, within nine months, submit the analysis along with a proposed rule change to retain the margin level or establish a new level.

Based on the 1991 Order, the Exchange's customer margin requirements for short positions for non-customized Cross-Rate FCOs equaled the add-on margin of four percent of the

[5] *See* Securities Exchange Act Release No. 29919 (November 7, 1991), 56 FR 58109 (November 5, 1991) (''1991 Order''). The Exchange received approval to list the British pound/Japanese yen Cross-rate FCO, but it has not listed such a contract.

current market value of the underlying FCO contract, plus 100 percent of the current market value of the option's premium, adjusted for ''out-of-the-money-amounts,''[6] not to be less than 100 percent of the current options premium, plus a ''minimum add-on margin amount.''[7] The Exchange represented at the time that this add-on margin level was sufficient to cover each cross-rate product's historical price volatility over seven-day intervals (for the July 30, 1990 to July 30, 1991 time period) with a confidence level of at least 96 percent.

Due to an oversight, the Exchange did not file the required analysis of the adequacy of the add-on margin or the proposed rule change within nine months of the 1991 Order. Following this discovery, the Exchange filed, in 1999, a proposed rule change codifying the four percent add-on margin level for a three-month period while it considered a method of determining add-on margin, on a permanent basis, for all Cross-Rate FCOs.[8] The Commission's 1999 Order permitted the Exchange to apply a four percent add-on margin level for all Cross-Rate FCOs for a six-month period until November 4, 1999.

On August 5, 1999, the Exchange filed the current proposed rule change to determine the add-on margin levels for Cross-Rate FCOs using the methodology outlined in Commentary .16 to Phlx Rule 722, in lieu of the four percent rate that the Exchange currently uses. To apply the Commentary .16 methodology to each currency pair of a Cross-Rate FCO, the Exchange proposes to review five day price movements of the base currency relative to the underlying currency[9] over the most recent three year period and would set an add-on margin level sufficient to cover those price changes at least 97.5 percent of the time. If subsequent quarterly reviews show that the existing add-on margin level for any cross-rate FCO currency pair provides a confidence level below 97 percent, the Exchange would increase the add-on margin requirement for that currency pair to a level that would have covered those price movements at a 98 percent confidence level. If a subsequent quarterly review shows a confidence level between 97 percent and 97.5 percent, the add-on margin level would remain the same but would be subject to monthly follow-up reviews until the confidence level exceeds 97.5 percent for two consecutive months (then the Exchange would put it back on the quarterly review cycle). If a monthly follow-up review showed that the confidence level dropped below 97 percent, the Exchange proposes to increase the add-on margin level to a 98 percent confidence level. Generally, if any review shows that the confidence level exceeds 98.5 percent, the Exchange would reduce the add-on margin level to a 98 percent confidence level. To account for the possibility of unexpectedly large price movements, if any review show that a Cross-Rate FCO currency pair had a five-day price movement, either positive or negative, greater than two times the existing add-on margin level, the Exchange would set the add-on margin requirement for that currency pair to a 99 percent confidence level (''Extreme Outlier Test'').

In addition to the routine reviews described above, the Exchange would continue to have authority to impose a higher margin level at any time, if market conditions so warrant.[10]

Following the quarterly reviews described above and at any time that a particular add-on margin level changes, the Exchange proposes to distribute memoranda to FCO participants announcing the add-on margin levels derived pursuant to the proposed methodology since the actual add-on margin requirements for all Cross-Rate FCOs would no longer be stated in Phlx Rule 722.

The Exchange subsequently filed on October 26, 1999 an amendment to the proposed rule change requesting that the Commission approve the extension of the use of a four percent add-on margin for all non-customized Cross-Rate FCOs until February 4, 2000, to provide additional time for the Commission to consider the proposed rule change.[11] The Exchange requests that the Commission approves the interim extension of the existing four percent rate, on an accelerated basis, to ensure that trading of these products may continue following November 4, 1999, when the existing four percent add-on margin expires.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act[12] in general, and in particular, with Section 6(b)(5),[13] in that it is designed to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by providing a margin level which is directly related to the currency risk incurred by customers trading these Cross-Rate FCO products. In particular, the Exchange believes that the proposal is identical with the method of determining margin calculation for non-customized foreign currency options where the base currency is denominated in U.S. dollars (''non-customized dollar-based FCOs''). The Exchange believes that this margin methodology, coupled with the extreme outlier test, should ensure adequate margin requirements for Cross-Rate FCOs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange 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.

[6] For foreign currency put options, ''out-of-the-money-amounts'' equal the aggregate exercise price of the option minus the product of units per foreign currency contract and the closing spot price. *See* Phlx Rule 722(d).

For foreign currency call options, ''out-of-the-money-amounts'' equal the product of units per foreign currency contract and the closing spot price minus the aggregate exercise price of the option. *See id.*

[7] The minimum add-on margin on any call carried ''short'' in a customer's account is equal to ¾% of the current market value of the underlying FCO contract; the minimum add-on margin on any such put option contract is equal to ¾% of the option's aggregate exercise price amount. *See id.*

[8] *See* Securities Exchange Act Release No. 41365 (May 4, 1999), 64 FR 25946 (May 13, 1999) (SR–Phlx–99–12) (''1999 Order'').

[9] The underlying currency is the currency in which a foreign currency option settles. The base currency is the currency in which premiums are quoted and paid.

[10] *See* Phlx Rule 722(i)(8).

[11] *See* Amendment No. 1, *supra* note 3.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

IV. Commission Findings and Order Granting Accelerated Approval of the Temporary Extension of the Add-On Margin

The Exchange requested that the Commission approve the extension of the four percent add-on margin for non-customized Cross-Rate FCOs until February 4, 2000, prior to the thirtieth day after the publication of the notice of this proposal in the **Federal Register**. The Exchange requested this extension to ensure that trading of these products may continue following November 4, 1999, when the existing four percent add-on margin expires. The Commission finds that the Exchange's request to extend the use of the four percent add-on margin for all non-customized Cross-Rate FCOs until February 4, 2000 is consistent with the requirements of Section 6 of the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] Specifically, the Commission finds that the proposal to temporarily continue to use the four percent add-on margin for all non-customized Cross-Rate FCOs is consistent with Section 6(b)(5) of the Act [15] because it will facilitate transactions in securities, promote just and equitable principles of trade, and protect investors and the public interest. The Exchange has used the existing four percent add-on rate since 1991 to trade Cross-Rate FCOs. The Exchange has recently provided the commission statistical data that indicates that the existing four percent margin has been adequate to cover five-day fluctuations for both currently listed Cross-Rate FCO currency pairs over 97 percent of the time over the past three years. This extension will also provide the Commission with additional time to consider the proposed rule change, while permitting the Exchange to trade these cross-rate FCOs products following November 4, 1999. For these reasons, the Commission finds good cause for approving the request for interim extension of the existing four percent add-on margin prior to the thirtieth day after the publication of notice thereof in the **Federal Register**.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phix. All submissions should refer to File No. SR–Phix–99–30 and should be submitted by December 3, 1999.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the continued use of the existing four percent add-on margin for all non-customized Cross-Rate FCOs until February 4, 2000 is hereby approved on an accelerated basis.[17]

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–29599 Filed 11–10–99; 8:45 am]

BILLING CODE 8010–01–M

[14] In approving the temporary extension of the add-on-margin, the Commission has considered the rule's impact on efficiency, competition and capita formation. 15 U.S.C. 78c(f).

[15] 15 U≤S≤C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(2).

[17] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3156]

Amendment to Culturally Significant Objects Imported for Exhibition; Determinations: ''A Painting in Focus: Nicolas Poussin's Holy Family on the Steps''

DEPARTMENT: United States Department of State.

ACTION: Notice.

This is an amendment to the Notice, Culturally Significant Objects Imported for Exhibition Determinations: ''A Painting in Focus: Nicolas Poussin's Holy Family on the Steps,'' **Federal Register** Doc. 99–28091, 64 FR 57920 (October 27, 1999). The dates of exhibition at the Cleveland Museum of Art are amended to be from on or about November 14, 1999, to on or about January 23, 2000.

Dated: November 3, 1999.

James D. Whitten,

Executive Director, Bureau of Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 99–29624 Filed 11–10–99; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at San Jose International Airport, San Jose, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at San Jose International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 13, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Ralph G. Tonseth, Director of Aviation, city of San Jose, Airport Department, at the following address: 1732 N. First Street, San Jose, CA 95112. Air carriers and foreign air carriers may submit copies of written comments previously provided to the city of San Jose under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose

and use the revenue from a PFC at San Jose International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158). On September 22, 1999, the FAA determined that the application to impose and use a PFC submitted by the city of San Jose was not substantially complete within the requirements of section 158.25 of Part 158. The following items are required to complete the application: Project not shown on an approved Airport Layout Plan, environmental requirements not complete, and the FAA airspace determination not complete. On October 5, 1999, the city of San Jose submitted supplemental information for this application. The FAA will approve or disapprove the application, in whole or in part, no later than February 4, 2000.

The following is a brief overview of the impose and use application No. 99–08–C–00–SJC:

Level of proposed PFC: $3.00.

Proposed change effective date: July 1, 2002.

Proposed charge expiration date: September 1, 2003.

Total estimated PFC revenue: $23,598,250.

Brief description of the proposed project: Interim Federal Inspection Services Facility.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the city of San Jose.

Issued in Hawthorne, California, on October 28, 1999.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 99–29604 Filed 11–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Docket No. FRA–1999–6250

Applicant: Burlington Northern and Santa Fe Railway, Mr. William G. Peterson, Director Signal Engineering, 4515 Kansas Avenue, Kansas City, Kansas 66106.

Burlington Northern and Santa Fe Railway seeks approval of the proposed discontinuance and removal of the ''Rail Keepers'' at each of the conley rail joints, on the Mississippi River Bridge, milepost 231.8, near Fort Madison, Iowa, Line Segment 7000, on the Illinois Division, Chillicothe Subdivision.

The reasons given for the proposed changes are that the ''Rail Keepers'' do not provide any added protection or safety, there is no requirement for these devices, and the weight of the bridge alone holds the conley's in place.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, D.C. 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, S.W., Washington, D.C. 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on November 4, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–29494 Filed 11–10–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236.

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Docket No. FRA–1999–6251.

Applicant: Canadian National Railway, Mr. Kenneth J. Bagby, Manager-Signals & Communications Installation, 2800 Livernois, Suite 310, Troy, Michigan 48007–5025.

The Canadian National Railway (former Grand Trunk and Western Railroad) seeks approval of the proposed discontinuance and removal of the automatic block signal system, on the single main track of the Pontiac Belt Line, between milepost 0.4 and milepost 2.49, and on Track 66–8 of the Cass City Subdivision connection of the Romeo Subdivision, near Pontiac, Michigan, Michigan Division, and govern train movements under the direction of the Pontiac Yard Coordinator.

The reason given for the proposed changes is to eliminate facilities no longer needed for present day operation.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of

the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, D.C. 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, S.W., Washington, D.C. 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on November 4, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–29495 Filed 11–10–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20955]

Stagecoach Holdings plc and Coach USA, Inc., et al.—Control—Golden Isles Coaches of Florida, Inc

AGENCY: Surface Transportation Board.

ACTION: Notice Tentatively Approving Finance Application.

SUMMARY: Stagecoach Holdings plc (Stagecoach) and its subsidiary, Coach USA, Inc. (Coach), noncarriers, and various subsidiaries of each (collectively, applicants), filed an application under 49 U.S.C. 14303 to acquire control of Golden Isles Coaches of Florida, Inc. (Golden Isles), a motor passenger carrier. Persons wishing to oppose the application must follow the rules under 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by December 27, 1999. Applicants may file a reply by January 11, 2000. If no comments are filed by December 27, 1999, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20955 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, send one copy of comments to applicants' representative: Betty Jo Christian, Steptoe & Johnson LLP, 1330 Connecticut Avenue, NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.].

SUPPLEMENTARY INFORMATION: Stagecoach is a public limited company organized under the laws of Scotland. With operations in eight countries, Stagecoach is one of the world's largest providers of passenger transportation services. It had annual revenues for the fiscal year ending April 30, 1999, of $2.475 billion. Coach is a Delaware corporation that currently controls 82 motor passenger carriers.

Stagecoach and its subsidiaries currently control Coach,[1] its noncarrier regional management subsidiaries, and the motor passenger carriers jointly controlled by Coach and the management subsidiaries.[2] In previous Board decisions, Coach management subsidiaries, including Coach USA Southeast, Inc. (Southeast), have obtained authority to control motor passenger carriers jointly with Coach,[3] one of which is ASTI, Inc. (ASTI),[4] the corporate parent and owner of all of the stock of Golden Isles.

Applicants state that, in 1996, when Coach acquired Golden Isles as part of the transaction in which it acquired ASTI, Golden Isles surrendered its federally issued motor carrier operating authority and ceased operating as a carrier. Thus, Coach did not request Board authority to control Golden Isles at that time, as it was not required. According to applicants, Golden Isles has recently obtained new federal operating authority authorizing operations as a motor passenger carrier to conduct charter and special operations.[5] Applicants, therefore, seek Board authority to control Golden Isles.[6]

Applicants have submitted information, as required by 49 CFR 1182.2(a)(7), to demonstrate that the proposed acquisition of control is consistent with the public interest. Applicants state that the proposed transaction will not reduce competitive options, adversely impact fixed charges, or adversely impact the interests of the employees of Golden Isles. They assert that granting the application will allow Golden Isles to continue to take advantage of economies of scale and substantial benefits offered by applicants, including interest cost savings and reduced operating costs. In addition, applicants have submitted all of the other statements and certifications required by 49 CFR 1182.2. Additional information, including a copy of the application, may be obtained from the applicants' representative.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) the effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

On the basis of the application, we find that the proposed acquisition of control is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

[1] Stagecoach controls Coach through various subsidiaries, namely, SUS 1 Limited, SUS 2 Limited, Stagecoach General Partnership, and SCH US Holdings Corp.

[2] *See Stagecoach Holdings plc—Control—Coach USA, Inc., et al.*, STB Docket No. MC–F–20948 (STB served July 22, 1999).

[3] *See Coach USA, Inc. and Coach USA North Central, Inc.—Control—Nine Motor Carriers of Passengers*, STB Docket No. MC–F–20931, *et al.* (STB served July 14, 1999).

[4] ASTI was formerly known as American Sightseeing Tours, Inc. It now operates, pursuant to a name change approved by the Federal Highway Administration in May 1999, as ASTI, Inc., d/b/a Coach USA, Inc.

[5] Golden Isles is a Florida corporation. It holds federally issued operating authority in Docket No. MC–224982, which authorizes it to provide charter and special operations between points in the United States.

[6] Applicants state that the stock of Golden Isles has been placed in an independent voting trust pending disposition of this proceeding. They anticipate that ASTI will reacquire Golden Isles' stock upon approval of this application.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is Ordered

1. The proposed acquisition of control is approved and authorized, subject to the filing of opposing comments.
2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.
3. This decision will be effective on December 27, 1999, unless timely opposing comments are filed.
4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Office of Motor Carrier Safety—HMCE–20, 400 Virginia Avenue, SW, Suite 600, Washington, DC 20024; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW, Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, SW, Washington, DC 20590.

Decided: November 4, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 99–29481 Filed 11–10–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 885]

Appointment of Individuals To Serve as Members of the Performance Review Board (PRB); Senior Executive Service

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Performance Review Board for the Bureau of Alcohol, Tobacco and Firearms (ATF) for the rating period beginning October 1, 1998, and ending September 30, 1999. This notice effects changes in the membership of the ATF PRB previously appointed September 3, 1996 (61 FR 46507). The names and titles of the ATF PRB members are as follows:

John J. Manfreda, Chief Counsel, Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury

John Dooher, Director, Washington Office, Federal Law Enforcement Training Center, Department of the Treasury

Richard J. Hoglund, Deputy Assistant Commissioner, Office of Investigations, U.S. Customs Service, Department of the Treasury

FOR FURTHER INFORMATION CONTACT: Dennis Snyder, Personnel Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone (202) 927–8610.

Signed: November 5, 1999.

John W. Magaw,

Director.

[FR Doc. 99–29577 Filed 11–10–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; comment request

November 4, 1999.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Interested persons may obtain copies of the submission(s) by calling the OTS Clearance Officer listed. Send comments regarding this information collection to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, N W, Washington, DC 20552.

DATES: Submit written comments on or before December 13, 1999.

OMB Number: 1550–0081.

Form Number: Not Applicable.

Type of Review: Reinstatement of an already approved collection.

Title: Release of Non-Public Information.

Description: This information collection provides an orderly mechanism for the expeditious processing of requests from the public (including litigants in lawsuits where OTS is not a party) for non-public or confidential OTS information.

Respondents: General Public, Savings and Loan Associations and Savings Banks.

Estimated Number of Reporters: 72.

Estimated Burden Hours Per Reporter: 5 hours.

Frequency of Response: On Occasion.

Estimated Total Recordkeeping Burden: 360 hours.

Clearance Officer: Mary Rawlings-Milton, (202) 906–6028, Office of Thrift Supervision, 1700 Street, NW, Washington, DC 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

John E. Werner,

Director, Information Management and Services.

[FR Doc. 99–29507 Filed 11–10–99; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register
Vol. 64, No. 218
Friday, November 12, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 130

[Docket No. 97–058–1]

RIN 0579–AA87

Import/Export User Fees

Correction

In proposed rule document 99–25425 beginning on page 52680, in the issue of Thursday, September 30, 1999, make the following corrections:

1. On page 52682, in the second column, under the heading **Hourly Rate User Fees and Minimum Fees for Import and Export Veterinary Services**, in the first paragraph, in the sixth line, after ''fees'' add ''for services''.

2. On page 52683, in the table entitled ''User Fees for Individual Animals and Certain Birds Quarantined in APHIS Animal Import Centers (§ 130.2(a))'', under the column heading ''Animal or Bird'', in the 11th line, which begins ''All other'', ''other'' should read ''others''.

3. On page 52686, in the table entitled ''User Fees for Other Services (§ 130.8(a))—Continued'', immediately below the table, in footnote 1, in the second line, after ''apply.'' remove ''2''.

[FR Doc. C9–25425 Filed 11–10–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 130

[Docket No. 98–006–2]

Veterinary Services User Fees; Import or Entry Services at Ports

Correction

In rule document 99–24817 beginning on page 51421, in the issue of Thursday, September 23, 1999, make the following corrections:

1. On page 51421, in the first column, in the SUPPLEMENTARY INFORMATION: section, under the heading **Background**, in the first paragraph, in the second line, ''(APHS)'' should read ''(APHIS)''.

2. On the same page, in the second column, under the same heading, in the first full paragraph, in the third line, ''borders'' should read ''border''; and in the tenth line, ''entry-belted'' should read ''entry-related''.

3. On the same page, in the same column, under the same heading, in the second full paragraph, in the tenth line, after ''animals.'' remove ''We believe that these user fees are still appropriate for import- or entry-related services for animals.''

4. On the same page, in the same column, under the same heading, in the third full paragraph, in the eighth line, ''$50'' should read ''$56''; in line 13, after ''in'' remove ''the''; in line 15, ''Sunday'' should read ''Sundays''; and in line 19, ''airport'' should read ''airports''.

5. On the same page, in the third column, under the heading **Miscellaneous**, in the second paragraph, in the fifth line, after ''document'' add a period; and ''Executive Order 12866 and Regulatory Flexibility Act.'' should be a bold heading on a new line with the period removed.

6. On the same page, in the same column, under the same heading, in the fourth paragraph, in the sixth line, after ''flat'' add ''rate''.

7. On page 51422, in the first column, under the heading **Executive Order 12988**, in the first paragraph, in the sixth line, ''not'' should read ''no''.

8. On the same page, at the bottom of the same column, in footnote 1, in the first line, ''Profits of sales'' should read ''Profits for sales''.

§ 130.7 [Corrected]

9. On the same page, in the second column, in § 130.7(a), in the tenth line, ''for'' should read ''of''.

[FR Doc. C9–24817 Filed 11–10–99; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41946; File No. SR-NASD-99-50]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Clarifying Web CRD Policies

September 29, 1999.

Correction

In notice document 99–26160, beginning on page 54712, in the issue of Thursday, October 7, 1999, make the following correction:

On page 54712, in the second column, the docket number is corrected to read as set forth above.

[FR Doc. C9–26160 Filed 11–10–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-AGL-53]

Proposed Modification of Class E Airspace; Bemidji, MN

Correction

In document 99–28620, beginning on page 59687, in the issue of Wednesday, November 3, 1999, make the following corrections:

1. On page 59687, in the third column, under the heading **The Proposal**, in the third line ''Bemidiji'' should read ''Bemidji''.

§ 71.1 [Corrected]

2. On page 59688, in the first column, the heading is corrected to read '' **AGL MN E2 Bemidji, MN [Revised]**''.

3. On page 59688, in the first column, under the heading **AGL MN E2 Bemidji, MN [Revised]**, in the first line, ''Bemidiji'' should read ''Bemidji''.

4. On page 59688, in the first column, under the heading **AGL MN E2 Bemidji, MN [Revised]**, in the third line, ''Bemidiji'' should read ''Bemidji''.

5. On page 59688, in the first column, the heading is corrected to read '' **AGL MN E5 Bemidji, MN [Revised]**''.

6. On page 59688, in the first column, under the heading **AGL MN E5 Bemidji, MN [Revised]**, in the first line, ''Bemidiji'' should read ''Bemidji''.

7. On page 59688, in the first column, under the heading **AGL MN E5 Bemidji, MN [Revised]**, in the fifth line, ''Bemidiji'' should read ''Bemidji''.

[FR Doc. C9-28620 Filed 11-10-99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-AGL-54]

Correction

In document 99–28618, beginning on page 59689, in the issue of Wednesday, November 3, 1999, make the following correction:

On page 59689, in the second column, the docket number is corrected to read as set forth above.

[FR Doc. C9-28618 Filed 11-10-99 8:45 am]

BILLING CODE 1505–01–D

federal register

Friday
November 12, 1999

Part II

Department of Labor

Office of the Secretary

29 CFR Part 37

Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998; Final Rule

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 37

RIN 1291–AA29

Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998

AGENCY: Office of the Secretary, Labor.

ACTION: Interim final rule; Request for comments.

SUMMARY: This Interim Final Rule implements Section 188 of the Workforce Investment Act of 1998 (WIA), which contains the statute's equal opportunity and nondiscrimination provisions. The Workforce Investment Act supersedes the Job Training Partnership Act (JTPA) as the Department of Labor's primary mechanism for providing financial assistance for a comprehensive system of job training and placement services for adults and eligible youth. With limited substantive changes described in Section III of this preamble, this rule generally carries over the policies and procedures found in 29 CFR part 34, which implements the nondiscrimination and equal opportunity provisions of JTPA. Section 188(e) of WIA mandates that the Department issue regulations implementing the section within one year of the passage of WIA.

DATES: *Effective Date:* This Interim Final Rule will become effective on November 12, 1999.

Comment Period: Comments must be received on or before December 13, 1999.

ADDRESSES: Comments should be sent to Annabelle T. Lockhart, Director of the Civil Rights Center (CRC), by regular mail at the US Department of Labor, 200 Constitution Avenue NW, Room N–4123, Washington, DC 20210, or by e-mail at CRC–WIA@dol.gov. Brief comments (maximum of five pages) may be submitted by facsimile machine (FAX) to (202) 219–5658. Receipt of submissions, whether by U.S. mail, e-mail, or FAX transmittal, will not be acknowledged; however, the sender may request confirmation that a submission has been received, by telephoning the Civil Rights Center at (202) 219–8927 (VOICE) or (202) 219–6118 or (800) 326–2577 (TTY/TDD).

Comments will be available for public inspection during normal business hours at the above address. Persons who need assistance to review the comments will be provided with appropriate aids such as readers or print magnifiers. Copies of this Interim Final Rule will be made available in the following formats: large print, electronic file on computer disk, and audio tape. To schedule an appointment to review the comments and/or to obtain the Interim Final Rule in an alternate format, contact CRC at the telephone numbers and addresses listed above.

FOR FURTHER INFORMATION CONTACT: Bud West, Senior Policy Advisor, Civil Rights Center, US Department of Labor, 200 Constitution Avenue NW, Room N–4123, Washington, DC 20210, CRC–WIA@dol.gov, telephone (202) 219–8927 (VOICE), or (202) 219–6118 or (800) 326–2577 (TTY/TDD).

SUPPLEMENTARY INFORMATION: The preamble to these regulations is organized as follows:

I. Background—provides a brief description of the development of these proposed regulations.
II. Authority—cites the statutory provisions supporting these regulations, Departmental redelegation authority, and Interagency coordination authority.
III. Overview of the Regulations—summarizes pertinent aspects of the regulatory text and describes its purposes and application.
IV. Regulatory Procedure—sets forth the applicable regulatory requirements and requests comments on specific issues.

I. Background

On August 7, 1998, President Clinton signed the Workforce Investment Act of 1998 (WIA), comprehensive reform legislation that supersedes JTPA. Both WIA and JTPA contain nondiscrimination and equal opportunity provisions. The JTPA nondiscrimination provisions are contained in Section 167 of that statute, and in its implementing regulations codified in 29 CFR part 34. These regulatory provisions generally are carried over in the nondiscrimination and equal employment opportunity provisions of WIA's implementing regulations. The latter regulations are contained in this Interim Final Rule, to be codified in 29 CFR part 37.

This Interim Final Rule prohibits WIA Title I-financially assisted grant applicants and recipients, as defined in Section 37.4, from discriminating on the basis of race, color, religion, sex, national origin, age, disability, or political affiliation or belief. It also protects any beneficiary (person intended by Congress to receive WIA Title I-financially assisted aid, benefits, services, or training) from discrimination based on either that beneficiary's citizenship, or his or her participation in any WIA Title I-financially assisted program or activity. The rule provides procedures for determining and enforcing compliance.

Although the Department wishes to emphasize that it considers the reforms embodied in WIA to be significant, and not ''business as usual,'' the nondiscrimination and equal employment opportunity principles embodied in this Act are substantially similar to those contained in JTPA. Accordingly, there are only limited substantive differences between 29 CFR part 34, implementing the nondiscrimination and equal opportunity provisions of JTPA, and 29 CFR part 37, implementing the similar provisions of WIA. Those substantive changes that have been made are based on the experience of the Civil Rights Center (CRC), the Departmental agency responsible for administering the nondiscrimination provisions of JTPA and WIA, and on feedback provided to CRC by grant applicants and recipients regarding their work with the nondiscrimination and equal opportunity provisions of JTPA and part 34. These substantive changes are described in detail in Section III of this preamble.

Most of the changes the Department has made to the provisions contained in part 34 have been structural, stylistic, and phrasing changes. The changes have been made to enhance the readability of the rule for, and its utility to, recipients who receive financial assistance under WIA Title I; grant applicants who wish to receive such assistance; individuals who wish to file discrimination complaints under WIA Section 188; and other interested parties. The Department seeks specific comments on the enhancements to the rule, and suggestions for improving the rule.

The alterations to the rule fall into two categories: (1) Changes making the rule's obligations consistent with other regulatory obligations WIA Title I recipients might be under; and (2) Changes reducing the ''legalese'' of the JTPA regulations. Generally, neither type of modification is meant to change the substantive content of the underlying rule.

As an example of the first category, the section of the rule regarding recipients' obligations to individuals with disabilities has been amended to follow generally the regulations implementing Title II of the Americans with Disabilities Act of 1990, as amended (ADA). These regulations are found at 28 CFR part 35. This change is not intended to provide a substantive change from the regulations implementing JTPA. It is intended only to clarify the regulations.

The second category of changes was prompted by the June 1, 1998, Presidential Memorandum on Plain Language, which instructed Federal Departments and Agencies to write new regulations in language understandable to most people. The Department has met the intent of the President's memorandum by incorporating stylistic changes into the language and format of these regulations to facilitate their readability without changing their substantive content. An example of such a change is the rewording of subsection topic header statements into the form of questions.

Other examples:

- Some sections have been subdivided, to make the content of individual sections more homogeneous.
- Some sections have been more logically reordered.
- Terminology has been adjusted to use plain language terms. As a result, the term ''shall'' has been replaced in this rule by the terms ''must,'' ''will,'' ''is/are,'' or similar terms, as appropriate. The term ''must'' connotes an obligation, while the term ''will'' indicates a future action. Similarly, the term ''prior to'' has been replaced by the term ''before''; ''pursuant to'' has been replaced, as appropriate, by ''under,'' ''by,'' or ''authorized by''; and ''is deemed'' or ''will be deemed'' has been replaced, as appropriate, by ''is/are considered'' or ''become(s).''

Again, these changes are not intended to alter the meaning of the regulations. Rather, the changes are intended to create a more readable document.

CRC maintains a close relationship and regular contact with the regulated community. The agency holds an annual national conference on equal opportunity, attended by several hundred officials and staff of the State and local agencies that are responsible for ensuring nondiscrimination in the programs receiving financial assistance under JTPA and/or WIA Title I. At this conference, and through other in-person and telephone contacts with CRC, these officials and staff have discussed directly with CRC staff members the effect that the JTPA nondiscrimination regulations have had upon their agencies' operations. Many of the changes, both substantive and stylistic, that were incorporated in this Interim Final Rule resulted from this input. For example, because some of these officials told CRC that the 60-day period provided in the JTPA regulations for recipients to process discrimination complaints was insufficient, the rule extends the relevant time period to 90 days.

The Department is particularly interested in receiving comments regarding any aspects of the Rule that affect the relationship between the Federal government and the States.

II. Authority

A. Statutory Authority

The statutory authorities for this Interim Final Rule are: Sections 134(b), 136(d)(2)(F), 136(e), 172(a), 183(c), 185(c)(2), 185(d)(1)(E), 186, 187 and 188 of the Workforce Investment Act of 1998, Pub. L. 105–220, 12 Stat. 936 (29 U.S.C. 2801 *et seq.*); Title VI of the Civil Rights Act of 1964, as amended, Pub. L. 88–352, 78 Stat. 252 (42 U.S.C. 2000d, *et seq.*); Section 504 of the Rehabilitation Act of 1973, as amended, Pub. L. 93–112, 87 Stat. 390 (29 U.S.C. 794); the Age Discrimination Act of 1975, as amended, Pub. L. 94–135, 89 Stat. 728 (42 U.S.C. 6101); and Title IX of the Education Amendments of 1972, as amended, Pub. L. 92–318, 86 Stat. 373 (20 U.S.C. 1681).

B. Departmental Authorization

Secretary's Order 2–81, Section 5a(2), authorized the Assistant Secretary for Administration and Management, working through the Director, Office of Civil Rights, to establish and formulate all policies, standards, and procedures for, as well as to issue rules and regulations governing, the enforcement of statutes applying nondiscrimination and equal opportunity requirements to programs and activities receiving financial assistance from DOL. On October 12, 1986, the Office of Civil Rights was redesignated the Directorate of Civil Rights by the Assistant Secretary. Effective December 12, 1995, the Assistant Secretary redesignated the Directorate of Civil Rights as the Civil Rights Center (CRC). CRC is authorized to monitor and enforce all nondiscrimination and equal opportunity regulations regarding programs receiving financial assistance from DOL, including Section 188 of WIA.

C. Interagency Coordination

The Department of Justice (DOJ), under Section 1–201 of Executive Order 12250 (45 FR 72995, November 4, 1980), is responsible for coordinating Federal enforcement of most nondiscrimination laws that apply to federally-assisted programs and activities. Executive Order 12067 (43 FR 28967, July 5, 1978) requires consultation with the Equal Employment Opportunity Commission (EEOC) about regulations that involve equal employment opportunity. The Age Discrimination Act of 1975, as amended, assigns the Secretary of Health and Human Services the responsibility for coordinating the Federal enforcement effort of that Act. This Interim Final Rule has been coordinated with the Department of Justice and the Equal Employment Opportunity Commission, as well as the Department of Health and Human Services.

In addition, the Rule has been coordinated with other appropriate Federal grantmaking agencies, including the Departments of Education and Housing and Urban Development.

III. Overview of the Rule

Subpart A—(a) outlines the purpose and application of part 37; (b) provides definitions; (c) outlines prohibited grounds for and forms of discrimination; and (d) establishes enforcement authority and obligations.

Subpart B—sets forth the affirmative obligations of recipients of, and grant applicants for, financial assistance under WIA Title I.

Subpart C—describes a Governor's responsibilities to implement the nondiscrimination and equal opportunity provisions of WIA and this part.

Subpart D—describes procedures for compliance reviews and complaint processing.

Subpart E—describes the procedures for effecting compliance, including (a) actions the Department will take upon making a finding of noncompliance for which voluntary compliance cannot be achieved; (b) the rights of parties upon such a finding; and (c) hearing procedures, sanctions, and post-termination procedures.

Subpart A—General Provisions

The individual sections in this subpart are largely identical to their corresponding sections within the same subpart in part 34. Consistent with plain-language guidelines, one section has been subdivided into separate sections treating different topics. These changes are not intended to alter the overall meaning of this subpart, or the meaning of any of its component sections.

Section 37.1 What is the purpose of this part?

This section is identical to 29 CFR 34.1(a), except that references to JTPA, and to its Section 167, have been changed to refer to WIA and its Section 188.

Section 37.2 To whom does this part apply, and what is the scope of this part?

This section contains requirements similar to those in 29 CFR 34.1(b) and (d). The references to other regulatory sections within part 34 have been changed to reflect the numbering of this Interim Final Rule, and references to JTPA have been changed to refer to WIA. Also, some of the material has been presented in outline form to improve its readability. None of these changes is intended to alter the meaning of the section.

Language has been added to paragraph 37.2(a) to clarify that the requirements in this part apply to programs and activities that are part of the One-Stop delivery system and that are operated by One-Stop partners listed in WIA Section 121(b), including those partners financially assisted by grantmaking agencies other than the Department of Labor, to the extent that the programs and activities are being conducted as part of the One-Stop delivery system. The requirements in 29 CFR part 34 continue to apply to programs and activities that are implemented under and authorized by JTPA.

In those cases in which States that have opted to implement WIA before July 1, 2000, are operating WIA Title I programs and activities simultaneously with programs and activities under JTPA, the WIA Title I programs and activities must comply with the requirements in this part, while the JTPA programs and activities must comply with the requirements in 29 CFR part 34.

Section 37.3 How does this part affect a recipient's other obligations?

This section generally contains the same requirements as 29 CFR 34.1(c). The language of 29 CFR 34.1(c)(6), which dealt with retroactivity, is inapplicable to this Interim Final Rule, and has been omitted; in addition, references to JTPA have been changed to refer to WIA. Other differences between this section and the corresponding paragraphs of the JTPA regulations are listed below.

Paragraph 37.3(b): This paragraph has been amended to incorporate by reference the provisions of Subparts B and C and Appendix A of 29 CFR part 32, which implement the requirements of Section 504 pertaining to employment practices, employment-related training, program accessibility, and accommodations. As a result, the language from 29 CFR 34.1(c)(2) that stated that part 34 did not affect recipients' obligations to comply with those provisions has been omitted.

It is important to understand the distinction between the concept of ''program accessibility,'' referred to in this paragraph, and the separate concept of architectural accessibility, both of which a recipient is required to provide under Subpart C.

The requirement of program accessibility means that when viewed in its entirety, the program or activity provided by the recipient must be readily accessible to qualified individuals with disabilities. 29 CFR 32.27. The recipient must ensure that participants with various physical and mental disabilities will have access to the program or activity. This obligation to make the program or activity accessible in advance exists independent of a request for a particular accommodation by a specific individual. Therefore, even if an individual with a disability requests an accommodation that would impose an undue hardship on the recipient, the recipient still has an overall obligation to make the program or activity accessible.

Architectural accessibility, by contrast, relates to the construction and design of facilities. 29 CFR 32.28. Architectural accessibility standards are similar to building codes. A recipient must comply with the architectural accessibility standards whether or not a particular individual with a disability has requested a reasonable accommodation. 29 CFR 32.13(d). A recipient's obligation to comply with the architectural accessibility standards is also independent of its program accessibility obligations.

Paragraph 37.3(d): This paragraph has been added to parallel Paragraph 37.3(c), and to emphasize that recipients that are also employers, employment agencies, or other entities covered by Title I of the ADA have additional obligations imposed by that title.

Paragraph 37.3(e)(9): This paragraph, which refers to the anti-discrimination provision of the Immigration and Nationality Act, has been added at the request of the Department of Justice. This provision prohibits: (a) Discrimination on the basis of citizenship status and national origin with respect to hiring, firing, or recruitment or referral for employment for a fee; and (b) unfair documentary practices with respect to verification of employment eligibility.

Section 37.4 What definitions apply to this part?

To the extent possible, the definitions contained in this section are consistent with similar terms used in regulations implementing other civil rights legislation that applies to recipients of Federal financial assistance. Similarly, where feasible, this Interim Final Rule uses the terms contained in the proposed WIA program regulations issued by the Department's Employment and Training Administration (ETA). However, because this regulation must be compatible with civil rights enforcement on a broad scale as well as with ETA's WIA program, this rule defines and uses certain terms, such as ''qualified interpreter,'' ''recipient,'' ''registrant,'' and ''applicant,'' as terms of art, not necessarily identical to the definitions that are used elsewhere for the same terms.

The following list explains the definitions that differ in substantive ways, either from their counterparts in 29 CFR 34.2, from ETA's program regulations, or from regulations that implement the nondiscrimination provisions of other legislation providing Federal financial assistance. It also lists definitions that have been borrowed from other civil rights regulations, and explains certain definitions that might appear to differ substantively from their counterparts in 29 CFR 34.2, but that have not been substantively changed. Definitions that obviously would not be substantively different from those in Section 34.2, but that simply would substitute references to WIA for references to JTPA, are not listed.

This list also contains definitions of terms that are not defined in the regulations implementing other civil rights legislation that applies to recipients of Federal financial assistance, or in WIA's program regulations. Generally, these terms either are used solely within this part, or have greater significance within this part than they do within other regulatory systems. With regard to these terms, the list explains the reason each term has been defined, and/or the source of the definition.

Aid, benefits, services, or training: In 29 CFR 34.5, this phrase is used to convey to the reader the comprehensive nature of the areas in which a JTPA-assisted program or activity could not discriminate on the basis of disability. For consistency, the phrase has been adopted throughout part 37; generally, it replaces the phrase ''financial aid, service, or benefit,'' which was used intermittently in part 34, and which has a similar meaning. No substantive change is intended by the use of the phrase.

Section (1) of this definition uses the phrase ''core and intensive services.'' These terms are used in WIA to describe

two of the three general types of employment and training services that are provided to participants under the WIA program (the third type is training services). The terms are defined at length in the WIA statute: a list of ''core services'' is provided in Section 134(d)(2), and a similar list of ''intensive services'' is provided in Section 134(d)(3)(C). Briefly, ''core services'' are those services available at a baseline level to all participants, while ''intensive services'' are those services available to individuals who are assessed as needing additional assistance in order to find or retain employment. *Compare* Section 134(d)(2) *with* Section 134(d)(3)(A).

Section (4) of this definition refers to ''work opportunities.'' This term is intended to encompass On-the-Job Training, subsidized work, internships, or work experience that a participant obtains through a WIA Title I-financially assisted program or activity. See the discussion of the definition of ''On-the-Job Training'' later in this section.

Applicant: The passage of WIA has altered the method by which individuals seeking federally-assisted aid, benefits, services, or training enter the system. The definition of the term ''applicant'' has been changed accordingly, to signify that, for purposes of this part, an individual is considered an ''applicant'' at the point at which s/he submits personal information in response to a request by the recipient for such information. Because ETA's program regulations that implement other provisions of WIA refer to the ''registration'' process, rather than the application process, this part uses the term ''registrant'' interchangeably with ''applicant.'' CRC is particularly interested in receiving comments on this definition and its effect, if any, on the data collection obligations of recipients.

Departmental grantmaking agency: This definition was added in order to help readers distinguish between the meaning of this term and of the terms ''grantmaking agency'' and ''Federal grantmaking agency'' as used in this part. See the discussion of the definitions of the latter terms elsewhere in this section of the preamble.

Discrimination on the ground of citizenship: This definition is identical to the definition of the same term in Section 34.2, except that the term ''asylee'' has been inserted into the list of immigration statuses that are protected against discrimination. In addition, the phrase ''other individuals authorized by the Attorney General to work in the United States'' has been amended to ''other immigrants authorized * * *.'' These changes have been made for consistency with the language of Section 188(a)(5) of WIA.

These regulations are concerned with nondiscrimination and equal opportunity only. They do not limit eligibility or impose preferences for services on the basis of citizenship.

Employment practices: This definition has been moved to the definition section from 29 CFR 34.7(a). Consistent with plain-language guidelines, the definition also has been slightly rewritten, and has been presented in outline form to improve its readability. None of these changes is intended to alter the meaning of the definition.

Employment-related training: This definition has been included in response to questions from a number of recipients who were familiar with the term as it was defined under the Comprehensive Employment and Training Act (CETA), the predecessor statute to JTPA. Under WIA, the term is defined more broadly than it was under CETA.

Entity: This definition is expanded from the definition in 29 CFR 34.2, to encompass current and potential changes in business structures, and to emphasize that such entities as Indian tribes or tribal organizations and Native Hawaiian organizations, all of which are eligible to receive financial assistance under WIA Title I, are included within the definition. See WIA Section 166, ''Native American Programs.''

Facility: This definition is expanded from the definition in 29 CFR 34.2, in order to follow generally the definition of the same term set forth in 28 CFR 35.104, in the regulations implementing Subtitle A of Title II of the ADA. That subtitle prohibits discrimination on the basis of disability by public entities.

The reference to ''indoor constructs'' such as office cubicles and computer kiosks has been added in order to clarify that recipients may be required to alter such constructs to make them accessible to and usable by individuals with disabilities. See paragraph (2)(i) of the definition of ''reasonable accommodation'' in Section 37.4.

Federal grantmaking agency: This definition was added in order to help readers distinguish between the meaning of this term and of the terms ''grantmaking agency'' and ''Departmental grantmaking agency'' as used in this part. See the discussion of the definitions of the latter terms elsewhere in this section of the preamble.

Financial assistance and *Financial assistance under Title I of WIA:* As with the term ''applicant,'' the passage of WIA has altered the type of financial assistance that will be provided under the WIA program, and the way in which that assistance will be provided. The definitions of ''financial assistance'' and ''financial assistance under WIA Title I'' have been drafted accordingly. The Department is particularly interested in receiving comments on these new definitions.

The new definitions have been modeled on the definitions of the term ''financial assistance'' provided in various Federal regulations that also deal with nondiscrimination in programs and activities receiving Federal financial assistance. Examples include the Office of Personnel Management regulations at 5 CFR 900.403(c); the Department of Justice regulations at 28 CFR 42.613(e); and the Department of Health and Human Services regulations at 45 CFR 86.2(g) and 1203.3(c).

Paragraph (5) of the definition of ''financial assistance under WIA Title I'' includes ''[a]ny other agreement, arrangement, contract, or subcontract * * * or other instrument that has as one of its purposes the provision of assistance or benefits under WIA Title I.'' Under this paragraph, ''financial assistance under WIA Title I'' includes such ''agreements or arrangements'' as the Memoranda of Understanding (MOUs) required by Section 121(c) of WIA, and inclusion on a list of eligible training providers. See the discussion of the definition of ''recipient'' later in this section.

Fundamental alteration: This definition is derived from the Supreme Court's interpretation of the term in the ADA Title II case of *Olmstead* v. *Zimring*, 119 S.Ct. 2176, 67 USLW 3683, 67 USLW 4567, 1999 WL 407380 (U.S., June 22, 1999), at 12–13 and n.16.

Grantmaking agency: This term replaces the term ''granting agency'' that was used in 29 CFR part 34. See the discussion of the definitions of ''Departmental grantmaking agency'' and ''Federal grantmaking agency'' elsewhere in this section.

Individual with a disability: The definition of this term is identical to the definition of the same term in Section 34.2, with the following exceptions:

(1) The reference to homosexuality or bisexuality has been deleted. This change is not a substantive change, since Section 1(ii) of the definition of the term ''disability'' retains the explanation that the term ''impairment'' does not include homosexuality or bisexuality. The deletion was made merely to eliminate unnecessary redundancy in the rule.

(2) The list of the individuals to whom the term ''individual with a disability'' does not apply has been expanded to clarify that with regard to employment, there would exist two circumstances under which the term would not apply to an individual who has a currently contagious disease or infection. Such an individual would not be an ''individual with a disability'' either if that disease or infection prevents him or her from performing the duties of the job in question, or if his or her employment, because of that disease or infection, would constitute a direct threat to the health and safety of others. This change has been made for consistency with the definition of ''individual with a disability'' enacted by Congress in Title IV, Section 403 of WIA, the Rehabilitation Act Amendments of 1998, 29 U.S.C. 701, Pub.L. 105–220, Title IV, Section 401 *et seq.*, Aug. 7, 1998, 112 Stat. 1092.

Labor market area: The definition of this term, which appears in the definition of ''population eligible to be served,'' is taken directly from Section 101(18) of WIA.

Local Workforce Investment Area (LWIA) grant recipient: This term is new under WIA. The term describes the entity that receives WIA Title I financial assistance from a Governor. It replaces the terms ''SDA grant recipient'' and ''substate grantee'' that were used under JTPA.

National Programs: This definition has been rewritten to encompass entities receiving financial assistance under Title I, Subtitle D of WIA, and to clarify that Job Corps is a National Program under the definition.

On-the-Job Training: This definition is taken directly from Section 101(31) of WIA. Three words have been added to the definition in order to clarify that such training is ''provided to a paid participant while *the participant* is engaged in productive work.''

Participant and *participation:* The definitions of these terms contain the same elements as the definition of the single term ''participant'' in 29 CFR 34.2. The rule defines the term ''participation'' separately in order to help readers better understand both terms. Also, the new definitions of the terms ''participant'' and ''participation'' clarify that the terms encompass individuals who are receiving aid, benefits, or training under WIA Title I, as well as the ''services'' included in the definition in 29 CFR 34.2. In addition, because the term ''aid, benefits, services, or training'' is defined as including work opportunities obtained through a WIA Title I—financially assisted program or activity, an individual who obtains such opportunities is a ''participant'' under this definition. See the discussion of the definition of ''aid, benefits, services, or training'' earlier in this section.

The definition of ''participant'' in part 34 excluded individuals receiving ''post-termination and follow-up services.'' However, Section 134(d)(2)(K) of the WIA statute includes follow-up services among the list of ''core services'' that participants may receive; as a result, this language has been deleted from the definition of ''participant'' in Section 37.4. It should be noted that this definition differs from the definition of the term that is included in ETA's regulations implementing other provisions of WIA.

The definition in Section 37.4 clarifies that the term ''participant'' includes, but is not limited to, applicants receiving any services under state Employment Service programs, and claimants receiving any services under state Unemployment Insurance programs. Because the definition of the term in the JTPA nondiscrimination regulations also encompassed such individuals, this clarification is not a substantive change. Rather, the clarifying language was included simply to recognize that different recipients may use different terminology to refer to individuals who receive benefits or services under their programs.

It is important to recognize that under the One-Stop system introduced by WIA, various programs and activities that are authorized by Federal laws other than WIA may be part of a One-Stop center that also provides WIA Title I—financially assisted programs and activities. In such cases, any individual who receives aid, benefits, services, or training from the One-Stop center is a participant for purposes of the nondiscrimination and equal opportunity provisions of WIA and this part.

For example, a One-Stop center may include an Employment Services program authorized and financially assisted under the Wagner-Peyser Act, 29 U.S.C. 49, as well as core and intensive service programs authorized under WIA Title I. Under these circumstances, an individual who receives Wagner-Peyser employment services from the One-Stop center will fit the definition of ''participant'' in Section 37.4.

Parties to a hearing: This definition has been amended to clarify that in certain cases, a Governor may be a party to a hearing.

Population eligible to be served: This term is used in the section of this rule that explains recipients' obligations regarding individuals with limited English skills. See the discussion of Section 37.35 in this preamble.

Qualified individual with a disability: This definition has been amended for a number of reasons. First, the definition has been restructured in order to incorporate the term of art ''aid, benefits, services, or training,'' which is introduced and defined in this Interim Final Rule. The term is used in the definition of ''qualified individual with a disability'' to encompass most, if not all, of the circumstances (other than employment) in which a recipient might need to determine the qualifications of an individual with a disability to receive WIA Title I—financially assisted services, financial or other aid, or benefits. See the definition of ''aid, benefits, services, or training'' in Section 37.4, and the discussion in this preamble about that definition.

Second, the definition as amended is intended to underscore the distinction between the test for determining whether an individual with a disability is qualified for such aid, benefits, services, or training—including employment-related training—and the test for determining whether such an individual is qualified for employment. Under paragraph (1) of the definition, such an individual is qualified for employment if, with or without reasonable accommodation, he or she is capable of performing ''the essential functions of the job.'' The definition of the term in 29 CFR 34.2 applied the same test to employment-related training. However, employment-related training programs are not ''employment,'' and therefore the focus in determining whether an individual with a disability is ''qualified'' for such a program should be upon whether the individual meets the essential eligibility requirements for the program. Paragraph (2) of the definition, which relates to aid, benefits, services, or training, has been amended accordingly.

Third, the amended definition is intended to clarify that an individual with a disability who is seeking aid, benefits, services, or training is qualified if he or she meets the essential eligibility requirements for receiving such aid, benefits, services, or training, *with or without reasonable accommodation or modification.* The reference to ''reasonable accommodation or reasonable modification'' has been added in order to clarify that the definition is intended to encompass ''situations where an insistence on continuing past requirements and practices might arbitrarily deprive genuinely qualified (individuals with disabilities) of an

opportunity to participate in a covered program.'' *Brennan* v. *Stewart*, 834 F.2d 1248, 1261 (5th Cir. 1988) (discussing Section 504).

Qualified interpreter: This definition is based on the definition of the same term contained in 28 CFR 35.104, the regulations implementing Title II of the ADA. In this Interim Final Rule, however, the term is used in a broader context, to implement the prohibition of discrimination based on national origin as well as the prohibition of discrimination against qualified individuals with disabilities. In this Rule, the term encompasses the interpretation of spoken and written languages, such as Spanish, for individuals with limited English skills, as well as interpretation of spoken and written languages into symbolic languages, such as American Sign Language, for individuals with disabilities.

Reasonable accommodation: This definition is based on the definition of the same term contained in 29 CFR 1630.2, in the regulations implementing Title I of the Americans with Disabilities Act. Although Title I and its implementing regulations apply the concept of ''reasonable accommodation'' only in the context of employment, this Interim Final Rule requires recipients to provide ''reasonable accommodation'' in the additional contexts of aid, benefits, services, and training. See Section 37.8.

Under the requirements of Section 188 of WIA and this part, as well as under other Federal civil rights laws and their implementing regulations, a recipient must provide both accessible facilities (that is, both program accessibility and architectural accessibility) and reasonable accommodation for individuals with disabilities. It is important to understand the difference between these two requirements.

Providing accessible facilities requires a recipient to take advance actions, in order to be ready when persons with disabilities seek aid, benefits, services, training, or employment from that recipient at some point in the future. See the discussion of ''program accessibility'' and ''architectural accessibility'' in the discussion in this preamble about Paragraph 37.3(b).

By contrast, providing reasonable accommodation for an individual with a disability requires the recipient to make efforts to meet the specific needs of the particular individual who is currently seeking aid, benefits, services, training, or employment from the recipient. Reasonable accommodation may require making specific structural or other modifications to meet the needs of a particular individual for access.

Recipient: This definition has been amended to clarify that where a Governor operates a program or activity, either directly or through a State agency, using discretionary funds apportioned to him/her under WIA Title I (rather than disbursing the funds to another recipient), the Governor is also a recipient. In addition, JTPA-related terminology (such as references to SDA and Substate grant recipients) has been replaced by WIA-related terminology (such as references to LWIA grant recipients), and the list of examples of recipients has been numbered and presented vertically, rather than in paragraph form, for greater ease of reading. Finally, paragraphs (10) and (11) of the definition, ''outreach and admissions agencies'' and ''placement agencies,'' have been amended to clarify that Job Corps contractors that perform these functions are also recipients.

For purposes of this part, entities that participate as partners in a One-Stop delivery system are treated as ''recipients,'' and are subject to the nondiscrimination and equal opportunity obligations of this part, to the extent that they participate in the One-Stop system. Such partners may include, but are not limited to, mandatory and additional partners listed in WIA section 121(b), such as entities providing employment and training activities carried out under the Community Service Block Grant Act (42 U.S.C. 9901 *et seq.*), or programs authorized under section 6(d)(4) of the Food Stamp Act of 1977 (7.U.S.C. 2015(d)(4)), if these entities participate as partners in the One-Stop delivery system.

With regard to issues involving nondiscrimination and equal opportunity, the One-Stop-related programs and activities operated by such partners may fall under the jurisdiction of both CRC and the equal opportunity office of the Federal grantmaking agency. See Section 37.85(c) and the discussion thereof in this preamble. As a result, local Workforce Investment Boards, when developing and entering into MOUs with One-Stop partners pursuant to the requirements of WIA Section 121(c), should include attention to equal opportunity issues that may affect the One-Stop partners or the delivery system. Such issues include how discrimination complaints will be handled and how the cost of reasonable accommodations will be shared. For its part, CRC is in the process of developing MOUs with other Federal grantmaking agencies that provide financial assistance to programs and activities in the One-Stop delivery system, to ensure the consistent application of Federal civil rights law.

The Department is particularly interested in receiving comments regarding the effect of this part upon One-Stop partners.

Registrant: See the explanation of the term ''applicant'' in this section.

Sectarian activities: This term appears in Section 37.6(f), which implements Section 188(e) of WIA. With certain exceptions, that statutory section bars participants from being employed to carry out the construction, operation, or maintenance of any part of any facility that is or will be used for sectarian instruction or religious worship.

Service provider: Language has been inserted into this definition to clarify that the term encompasses any ''provider of aid, benefits, services, or training to'' any WIA Title I—financially assisted program or activity. The definition of the same term in 29 CFR 34.2 referred only to the ''operator'' of a JTPA-funded program or activity. This change is not a substantive change; it was made only to clarify the definition.

Additional language has been added to the definition to clarify that organizations that are selected and/or certified as eligible providers of training services under WIA are service providers under this Interim Final Rule, regardless of whether any participants actually select the organization to provide them with training.

Small recipient: This definition contains the same requirements as the definition in 29 CFR 34.2. The definition has been rewritten to explain that such a recipient both (a) serves a total of fewer than 15 beneficiaries during the entire grant year, and (b) employs fewer than 15 employees on any given day during the grant year. Again, this alteration is not intended as a substantive change; it was made only to clarify the definition.

State Programs: This definition adds language explaining that the term includes State Employment Service agencies, and/or State unemployment compensation agencies, that operate independently of a SESA. Again, this change has been included solely to clarify the definition.

Supportive services: This definition is taken directly from WIA Section 101(46).

Terminee: This definition has been rewritten to explain that the term refers to a participant whose participation in the program terminates, voluntarily or involuntarily, during the applicable program year. Again, this change has

been included solely to clarify the definition.

Undue hardship: As the definition itself notes, the meaning of this term differs, depending upon the context in which it is used. The first part of the definition explains the meaning of the term in the context of reasonable accommodation for individuals with disabilities. This part of the definition, like the definition of ''reasonable accommodation,'' is based on the definition of ''undue hardship'' contained in 29 CFR 1630.2, in the regulations implementing Title I of the Americans with Disabilities Act. As explained above in the discussion of the definition of ''reasonable accommodation,'' this Interim Final Rule requires recipients to provide reasonable accommodation to qualified individuals with disabilities with regard to aid, benefits, services, and training, as well as employment, except where such accommodation would cause undue hardship. *See* Section 37.7.

The second part of the definition explains the meaning of the term in the context of religious accommodations. This part of the definition is based on Supreme Court decisions, most notably the leading case of *Trans World Airlines, Inc.* v. *Hardison*, 432 U.S. 63, 81, 84 (1977).

WIA Title I—financially assisted program or activity: This definition contains the same elements as the definition of the term ''JTPA-funded program or activity'' in 29 CFR 34.2. The definition has been presented in outline form to improve its readability.

The remainder of the definitions in Section 37.4 are either unchanged from their counterparts in 29 CFR 34.2, or have been changed merely to refer to WIA rather than JTPA.

Section 37.5 What forms of discrimination are prohibited by this part?

This section is identical to 29 CFR 34.3, except that references to JTPA have been changed to refer to WIA.

Section 37.6 What specific discriminatory actions, based on prohibited grounds other than disability, are prohibited by this part?

This section contains the same requirements as 29 CFR 34.4. Differences between this regulation and the JTPA regulation are explained below.

Paragraph 37.6(a): This paragraph is identical to the first sentence of 29 CFR 34.4(a), except that references to JTPA have been changed to refer to WIA.

Paragraph 37.6(b): This introductory paragraph is identical to the second sentence of 29 CFR 34.4(a).

Paragraphs 37.6(b)(1)–(7): These paragraphs are identical to 29 CFR 34.4(a)(1)–(7), with the following exceptions:

(1) references to ''service, financial aid, or benefit'' have been changed to ''aid, benefits, services, or training,'' as explained in the discussion of the definition of the latter term in Section 37.4 above; and

(2) references to JTPA have been changed to refer to WIA.

Paragraph 37.6(b)(8): This paragraph is identical to 29 CFR 34.4(a)(10), except that a reference to WIA Title I has been inserted.

Paragraphs 37.6(c)(1)–(2): These paragraphs contain requirements similar to those in 29 CFR 34.4(a)(8) and (9). Paragraph 37.6(c)(1) signifies that a recipient must not provide significant assistance under any circumstances to any agency, organization, or person that discriminates on a prohibited ground. Similarly, Paragraph 37.6(c)(2) signifies that except where doing so would cause undue hardship, a recipient may not refuse to accommodate an individual's religious practices or beliefs, even if the refusal is not based on dislike of or disagreement with the individual's religion. Again, this alteration is not intended as a substantive change from the regulations implementing JTPA; the change was made only to clarify the intent of the regulations.

As in other paragraphs, references to JTPA have been changed to refer to WIA.

Paragraph 37.6(d): This paragraph contains the same requirements as 29 CFR 34.4(b). Consistent with plain-language guidelines, the paragraph has been organized slightly differently from the JTPA paragraph, and presented in outline form to improve its readability. Also, the word ''outreach'' has been added to the list of examples of the types of administrative determinations in which discrimination is prohibited. Because the list, both in the corresponding JTPA regulation and in this paragraph, is exemplary rather than restrictive, the addition of this word makes no substantive change in the paragraph.

For consistency with the language of Section 37.7, the reference to ''standards, procedures or criteria'' has been changed to ''standards, procedures, criteria, or administrative methods.'' See the discussion in this preamble about Paragraph 37.7(e). Similarly, the paragraph has been reworded to prohibit practices that defeat or substantially impair accomplishment of the objectives of ''the nondiscrimination and equal opportunity provisions of WIA and this part,'' as well as those of the program or activity in question.

As in other paragraphs, references to JTPA have been changed to refer to WIA.

Paragraph 37.6(e): This paragraph contains the same requirements as 29 CFR 34.4(c). Again, consistent with plain-language guidelines, the paragraph has been organized slightly differently from the JTPA paragraph, and presented in outline form to improve its readability. Also, references to JTPA have been changed to refer to WIA.

Paragraph 37.6(f): This paragraph prohibits participants in a WIA Title I—financially assisted program or activity from being employed or trained to construct, operate, or maintain any part of a facility that is or will be used primarily for sectarian instruction or religious worship. This paragraph is directly based on, and implements, Section 188(a)(3) of WIA.

Paragraph 37.6(g): This paragraph is identical to 29 CFR 34.4(d).

Section 37.7 What specific discriminatory actions based on disability are prohibited by this part?

This section contains the same requirements as 29 CFR 34.5, with additional material modeled on the regulations implementing Title II of the ADA. Differences between this section and the corresponding sections of the JTPA nondiscrimination regulations or ADA regulations are discussed below.

Paragraphs 37.7(a)(1)–(3): These paragraphs are identical to 29 CFR 34.5(a)(1)–(3), except that references to JTPA have been changed to refer to Title I of WIA.

Paragraph 37.7(a)(4): This paragraph is identical to 29 CFR 34.5(a)(4), with the following exceptions:

(1) The paragraph specifies that, except when necessary to accommodate a qualified individual with a disability, a recipient may not provide ''segregated'' aid, benefits, services, or training to individuals with disabilities. This addition is intended to clarify and emphasize that a recipient may provide special programs or activities designed for and limited to individuals with disabilities, but may not require that individuals with disabilities attend only such programs or activities. In other words, qualified individuals with disabilities must be offered the option of participating in the same programs or activities that are offered to non-disabled individuals. This change is not intended to provide a substantive change from the JTPA

nondiscrimination regulations. It was inserted only to clarify the intent of the regulations.

(2) The beginning of 29 CFR 34.5(a)(4) prohibits recipients from providing different or separate ''aid, benefits, or services'' to individuals with disabilities; the end of the same paragraph refers to ''aid, benefits, services or training.'' For consistency, the paragraph has been modified to refer to ''aid, benefits, services, or training'' in both places. Again, this change is not intended to provide a substantive change from the meaning of the regulations implementing JTPA.

Paragraphs 37.7(a)(5)–(6): These paragraphs are identical to 29 CFR 34.5(a)(6)–(7), except that references to JTPA have been changed to refer to Title I of WIA.

Paragraph 37.7(b): This paragraph tracks the language of 29 CFR 34.5(a)(5). Like Paragraph 37.6(c)(1), it has been placed in a separate paragraph to clarify that a recipient must not provide significant assistance to any agency, organization, or person that discriminates on the basis of disability, even if the recipient has no discriminatory motivation in providing the assistance.

Paragraphs 37.7(c)–(d): These paragraphs are identical to 29 CFR 34.5(b)–(c), except that references to JTPA have been changed to refer to Title I of WIA.

Paragraph (d) requires recipients to administer WIA Title I-financially assisted programs and activities in ''the most integrated setting appropriate to the needs of qualified individuals with disabilities.'' This language means that the recipient must provide programs or activities in a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible.

Paragraph 37.7(e): This paragraph contains the same requirements as 29 CFR 34.5(d). Differences between the paragraph and the corresponding paragraphs of the JTPA nondiscrimination regulations are explained below.

(1) Consistent with plain-language guidelines, the word ''utilize'' in Paragraph 34.5(d) has been replaced by ''use.''

(2) For consistency with the language of Section 37.6(d), the reference to ''criteria or administrative methods'' has been changed to ''standards, procedures, criteria, or administrative methods.'' See the discussion in this preamble about Paragraph 37.6(d).

(3) Paragraph 34.5(d)(1) prohibited the use of such methods that have ''the *effect* of'' discriminating against qualified individuals with disabilities. This wording has been changed to prohibit methods that have ''the *purpose or* effect of'' such discrimination. This addition was made for two reasons:

(a) because WIA Section 188 makes clear that *purposeful* discrimination against qualified individuals with disabilities is also prohibited; and

(b) to make the language of Paragraph 34.5(d)(1) consistent with the language of the remaining paragraphs in the section, which prohibit activities that have ''the purpose or effect of'' discrimination.

(3) References to JTPA have been changed to refer to Title I of WIA.

None of these changes is intended to alter the meaning of the paragraphs from the meaning of the corresponding paragraphs in the JTPA nondiscrimination regulations.

Paragraph 37.7(f): This paragraph contains the same requirements as 29 CFR 34.5(e). Consistent with plain-language guidelines, the paragraph has been organized slightly differently from the corresponding paragraph in the JTPA nondiscrimination regulations, and presented in outline form to improve its readability. Also, references to JTPA have been changed to refer to WIA.

Paragraphs 37.7(g)–(h): These paragraphs are based on 28 CFR 35.130(b)(5)–(6), from the regulations implementing Title II of the ADA. Differences between the paragraphs and the corresponding paragraphs of the ADA Title II regulations are explained below.

(1) Two changes have been made in order to tailor the regulations to the requirements of the WIA program:

(a) The reference in Paragraph 37.7(g) to ''procurement contractors'' has been changed to ''contractors'; and

(b) References to ''public entity'' have been changed to ''recipient'; and

(2) References to the ADA have been replaced by references to WIA.

These provisions have been modeled upon the ADA Title II regulations in order to ensure that requirements under Section 188 of WIA follow generally the requirements of ADA Title II. Many recipients of WIA Title I financial assistance are also subject to the requirements of Title II, which applies to public entities including State and local governments and their departments, agencies, and instrumentalities. *See* 42 U.S.C. 12131. Modeling the WIA regulations on the ADA Title II regulations ensures that these recipients are subject to similar obligations and responsibilities under both laws.

Paragraph 37.7(h), which discusses licensing and certification programs, gives CRC jurisdiction only over recipients of WIA Title I financial assistance. For example, a state electrician certification program run by a State agency that does not benefit from WIA Title I financial assistance would not be required to comply with this paragraph. Such an agency would, however, be required to comply with the similar requirements set forth in 28 CFR 35.130(b)(6), in the ADA Title II regulations.

Paragraphs 37.7(i)–(l): These paragraphs are based on 28 CFR 35.130(b)(8), (c), (f), and (g), from the regulations implementing Title II of the ADA. Differences between the paragraphs and the corresponding paragraphs of the ADA Title II regulations are explained below.

(1) References to ''public entity'' have been changed to ''recipient'; and

(2) References to ''service(s)'' have been changed to ''aid, benefits, services, or training.''

Both of these changes have been made in order to tailor the regulations to the requirements of the WIA program. Neither change is intended to alter the meaning of the paragraphs.

Paragraph 37.7(m): This paragraph is identical to 29 CFR 34.5(g), except that additional punctuation has been added to improve the material's clarity.

Paragraph 37.7(n): This paragraph contains the same requirements as 29 CFR 34.5(h). The paragraph has been presented in outline form to improve its readability.

Paragraph 37.7(o): This paragraph is based on 28 CFR 35.130(e), from the regulations implementing Title II of the ADA, except that references to the ADA have been replaced by references to WIA. This change is not intended to alter the meaning of the paragraph.

Section 37.8 What are a recipient's responsibilities regarding reasonable accommodation and reasonable modification for individuals with disabilities?

This section is based on 28 CFR 35.130(b)(7), which requires public entities to make ''reasonable modifications'' in ''policies, practices or procedures when the modifications are necessary to avoid discrimination on the basis of disability.'' To this requirement has been added the obligation that in providing aid, benefits, services, training, or employment, a recipient must make ''reasonable accommodation'' for qualified individuals with disabilities.

The two concepts are similar in that they both require a recipient to consult

with each individual with a disability who requests an accommodation(s) or modification(s); to make an individual determination about the alterations necessary in each case; and to take appropriate action based upon that determination. The concepts differ, however, in the standards used to determine ''reasonableness.'' An accommodation is ''reasonable'' unless providing the requested accommodation would cause the recipient undue hardship. A modification, by contrast, is ''reasonable'' unless making the modification would require a fundamental alteration in the nature of the service, program, or activity that the recipient is providing. See the definitions of ''fundamental alteration,'' ''reasonable accommodation,'' and ''undue hardship'' in Section 37.4.

The EEOC's Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act may help recipients and others understand these concepts, particularly as applied in the employment context. The Guidance is available from EEOC or through EEOC's web site at www.eeoc.gov.

The procedures, set forth in paragraphs 37.8(a)(1)–(2) and (b)(1)–(2), that a recipient must follow in determining whether a requested accommodation would cause undue hardship, or a requested modification would result in a fundamental alteration, are derived from the procedures set forth in 29 CFR 34.6(f)(1)–(3) for making similar determinations with regard to communications with individuals with disabilities. See the discussion in this preamble about Paragraphs 37.9(f)(1)–(3).

Section 37.9 What are a recipient's responsibilities to communicate with individuals with disabilities?

Generally, this section contains the same requirements as 29 CFR 34.6. Differences between the section and the corresponding section of the JTPA nondiscrimination regulations are described below.

Paragraph 37.9(a): This paragraph requires recipients to ensure that communication with certain groups of individuals with disabilities are as effective as communications with others. The paragraph is identical to Paragraph 34.6(a), except that the term ''registrants'' has been added to the list of such groups. The addition is necessary in order to tailor the regulations to the requirements of the WIA program. This change is not intended to alter the meaning of the paragraph.

Paragraph 37.9(b): Two words have been added to this paragraph in order to clarify its meaning. The first sentence of the paragraph requires a recipient to ''furnish appropriate auxiliary aids or services when necessary'' to give individuals with disabilities an equal opportunity to participate in the program or activity that receives Federal financial assistance. However, the second sentence of 29 CFR 34.6(b) referred only to a recipient's obligation to determine what auxiliary aids or services are ''necessary.'' In order to eliminate confusion, the phrase ''appropriate and'' has been added to the second sentence, so that it now refers to a recipient's obligation to determine what auxiliary aids or services are ''appropriate and necessary.''

Paragraph 37.9(c): The JTPA counterpart to this paragraph is 29 CFR 34.6(c). That paragraph was written in the passive voice. The paragraph has been shifted to the active voice, to clarify that the recipient has the responsibility of using telecommunications devices for individuals with hearing impairments, or other equally effective communications systems, in order to communicate by telephone with such individuals. Additionally, the acronym ''TTY,'' which is occasionally used as an alternative to the acronym ''TDD'' for such communications systems, has been added.

The phrase ''telephone relay services,'' which has been added as an example of an ''equally effective communications system,'' refers to services established under Title IV of the ADA to permit communications between individuals who communicate by TDD/TTY and individuals who communicate by the telephone alone. These relay services involve a relay operator using both a standard telephone and a TDD/TTY to type the voice messages to the TDD/TTY user and read the TDD/TTY messages to the standard telephone user. Where such relay services are available, a recipient may use these services to meet the requirements of this section. However, where the recipient has extensive telephone contact with the public, or where the provision of telephone services is a major function of the recipient, the recipient should use TDDs/TTYs to ensure more immediate access.

Paragraph 37.9(d): This paragraph is identical to 29 CFR 34.6(d), except that, consistent with plain language principles, the term ''shall'' has been replaced by ''must.''

Paragraphs 37.9(e)(1) and (2): These paragraph generally contain the same information as 29 CFR 34.6(e). The information has been presented in outline form to improve its readability. In addition, two sentences have been added to Paragraph 37.9(e)(1) to emphasize that ''signage'' is a term of art and to explain the standards that signage must meet under the regulations.

Paragraphs 37.9(f)(1)–(3): These paragraphs, which deal with circumstances in which a recipient believes that a particular action would result in a fundamental alteration to the nature of a service, program, or activity, contain the same requirements as 29 CFR 34.6(f)(1)–(3). Because the Interim Final Rule (unlike the JTPA nondiscrimination regulations) includes a definition of ''fundamental alteration'' that incorporates the concept of ''undue financial and administrative burdens,'' that phrase is now redundant, and has been omitted from the paragraphs. See the discussion in this preamble about the definition of ''fundamental alteration'' in Section 37.4. In addition, references to JTPA have been changed to refer to WIA. None of these changes is intended to alter the meaning of these paragraphs.

Section 37.10 To what extent are employment practices covered by this part?

This section contains information similar to that in 29 CFR 34.7(b)–(g). References to JTPA have been changed to refer to WIA. In addition, the reference to Equal Employment Opportunity Commission ''guidelines'' has been changed to ''guidance,'' and the material in 29 CFR 34.7(a), which defines the term ''employment practices,'' has been moved to the definition section (Section 37.4) in this Interim Final Rule. These changes are not intended to alter the meaning of the section.

Paragraph 37.10(a)(1) and (2): These paragraphs contain information similar to that in 29 CFR 34.7(b). Language has been added to this paragraph to clarify that the section applies to the employment practices of any program or activity that is part of the One-Stop delivery system and is operated by a One-Stop partner listed in Section 121(b) of WIA, to the extent that the program or activity is being conducted as part of the One-Stop delivery system. In addition, the information has been presented in outline form to improve its readability.

Paragraph 37.10(d): The corresponding paragraph in the JTPA nondiscrimination regulations, 29 CFR

34.7(e), stated that part 34 did not affect recipients' obligations to comply with the provisions of Subparts B and C and Appendix A of 29 CFR part 32. As noted in the discussion in this preamble about Paragraph 37.3(b), that paragraph has been amended to incorporate the cited provisions by reference. This paragraph has been amended accordingly.

Paragraph 37.10(f): This paragraph, which notes that recipients should be aware of their obligations to comply with the anti-discrimination provisions of the Immigration and Nationality Act, has been added at the request of the Department of Justice. See the discussion in this preamble about Paragraph 37.3(c)(9).

Section 37.11 To what extent are intimidation and retaliation prohibited by this part?

This section contains the same requirements as 29 CFR 34.8. Consistent with plain-language guidelines, the section has been organized slightly differently from the JTPA section, and presented in outline form to improve its readability. Also, references to JTPA have been changed to refer to WIA. None of these changes is intended to alter the meaning of the section.

Section 37.12 What Department of Labor office is responsible for administering this part?

This section contains the same requirements as 29 CFR 34.9(a). The section refers to the Civil Rights Center, or CRC, which was known as the Directorate of Civil Rights, or DCR, at the time the JTPA nondiscrimination regulations were promulgated. Also, references to JTPA in the previous section have been changed in this section, where appropriate, to refer to WIA. Neither of these changes is intended to alter the meaning of this section.

Some recipients have expressed confusion about which Department of Labor agency they should contact for answers to questions about the nondiscrimination and equal opportunity requirements of the JTPA and WIA programs. This confusion is understandable: the Department's Employment and Training Administration (ETA) is responsible for, and has expertise about, most aspects of the JTPA and WIA programs. As a result, recipient staff members are accustomed to approaching ETA personnel for answers to JTPA- and WIA-related questions. However, CRC, rather than ETA, is responsible for, and has expertise about, the particular aspects of the JTPA and WIA programs relating to nondiscrimination and equal opportunity. Recipients will therefore be able to receive more expeditious answers to questions about these aspects of the programs by contacting CRC directly.

Section 37.13 Who is responsible for providing interpretations of this part?

This section is identical to 29 CFR 34.9(b), except that the reference to JTPA has been changed to refer to WIA. This change is not intended to alter the meaning of this section. See the discussion of Section 37.12 above.

Section 37.14 Under what circumstances may the Secretary delegate responsibility under this part?

This section is identical to 29 CFR 34.12(a) and (b), with the following exceptions:

(1) The references to other regulatory sections within part 34 have been changed to reflect the numbering of this Interim Final Rule; and

(2) References to JTPA have been changed to refer to WIA.

Neither of these changes is intended to alter the meaning of this section.

Section 37.15 What are the Director's responsibilities to coordinate with other civil rights agencies?

This section generally contains the same requirements as 29 CFR 34.12(c). At the request of the Department of Justice, a reference to the anti-discrimination provision of the Immigration and Nationality Act has been added to the list of laws with regard to which the Director must coordinate with other Federal civil rights agencies. See the discussion in this preamble about Paragraph 37.3(c)(9).

In addition, consistent with plain-language guidelines, this section has been organized slightly differently from the JTPA section, and presented in outline form to improve its readability. Also, references to JTPA have been changed to refer to WIA. Neither of the latter changes is intended to alter the meaning of this section.

Section 37.16 What is this part's effect on a recipient's obligations under other laws, and what limitations apply?

Paragraphs (a) and (b) of this section are identical to the corresponding paragraphs in 29 CFR 34.11, except that references to JTPA have been changed to refer to WIA. This change is not intended to alter the meaning of the paragraphs.

Paragraph (a) of this section means that a recipient is not excused from complying with the nondiscrimination and equal opportunity provisions of WIA and this part, even if a State or local law requires the recipient to discriminate on a prohibited ground.

Similarly, paragraph (b) of this section means that no rule or regulation of a private organization, club, league, or association that requires a recipient to discriminate on a prohibited ground excuses a recipient from complying with the nondiscrimination and equal opportunity provisions of WIA and this part.

Paragraph (c) of this section contains the same requirements as 29 CFR 34.11(c). It has been rewritten to improve its clarity. The paragraph bars recipients, while recruiting, selecting, or placing individuals in programs or activities, from considering whether job opportunities in any particular occupation or profession will be open to qualified individuals with disabilities, or to persons of a certain race, color, religion, sex, national origin, age, political affiliation or belief, or citizenship. For example, a recipient operating a WIA Title I—financially assisted training program must not steer women away from training programs for construction work because the recipient believes that women will have difficulty finding jobs in construction. This paragraph does not change the recipient's general obligation under WIA to assure that training is focused on occupations that are in demand.

Subpart B—Recordkeeping and Other Affirmative Obligations of Recipients

The requirements in this subpart are generally similar to the requirements in Subpart B of part 34. Consistent with plain-language guidelines, some of the sections within the subpart have been rearranged in a more logical order, and lengthy sections have been divided into shorter sections treating narrower topics. These changes are not intended to alter the overall meaning of this subpart, or the meaning of any of its component sections.

Assurances

Section 37.20 What is a recipient's obligation to provide a written assurance?

This section contains the same requirements as 29 CFR 34.20(a) and (b). Differences between this section and the corresponding section of the JTPA nondiscrimination regulations are described below.

Paragraph 37.20(a)(1): In this paragraph, the introductory paragraph has been rewritten to eliminate redundancy, and the required assurance has been rewritten consistent with plain-language guidelines. These

changes are not intended to alter the meaning of the assurance or the paragraph.

The rewritten assurance states that the recipient must not discriminate on the basis of ''citizenship/status as a lawfully admitted immigrant authorized to work in the United States.'' This change has been made to convey more accurately the definition of ''discrimination on the ground of citizenship'' contained in Section 37.4.

Paragraphs 37.20(a)(2): These paragraphs are identical to 29 CFR 34.20(a)(2) and (b), with the following exceptions:

(1) The references to other regulatory sections within part 34 have been changed to reflect the numbering of this Interim Final Rule; and

(2) References to JTPA have been changed to refer to WIA.

Neither of these changes is intended to alter the meaning of these paragraphs.

Section 37.21 How long will the recipient's obligation under the assurance last, and how broad is the obligation?

This section contains the same general requirements as 29 CFR 34.20(c). References to JTPA have been changed to refer to Title I of WIA, and the material has been presented in outline form to improve its clarity. In addition, two new clauses have been added. The first clause extends the obligation for the period during which the property is used ''for another purpose involving the provision of * * * services or benefits'' that are similar to those provided under WIA Title I. This clause has been added for consistency with other Federal regulations involving Federally-assisted programs. *See, e.g.,* 28 CFR 42.105(a)(1) (implementing Title VI); 34 CFR 100.4(a)(1) (applying Title VI to programs assisted through the Department of Education).

The second new clause extends the obligation under the assurance to a transferee for the period until the transferee has compensated the Departmental grantmaking agency for the fair market value of the property transferred. This clause has been added in order to ensure that a transferee may not benefit from a transfer of property under the WIA Title I program without being subjected to the nondiscrimination and equal opportunity obligations of WIA and this part.

Section 37.22 How must covenants be used in connection with this part?

Generally, this section contains the same requirements as 29 CFR 34.20(d). References to JTPA have been changed to refer to Title I of WIA. In addition, paragraph (a) has been amended to require that the covenant must assure compliance with the nondiscrimination and equal opportunity provisions for the period described in Section 37.21. Additionally, the clause, described in the discussion of Section 37.21, that extends the obligation for the period during which the property is used ''for another purpose involving the provision of similar services or benefits'' has been added to this section as well. See the discussion of Section 37.21 above.

Equal Opportunity Officers

Section 37.23 Who must designate an Equal Opportunity Officer?

This section is based on the first sentence of 29 CFR 34.22(a). The section is not intended to alter the requirements of the corresponding JTPA regulation with regard to the entities that are required to designate Equal Opportunity Officers (''EO Officers'').

Section 37.24 Who is eligible to serve as an Equal Opportunity Officer?

The material in this section is new. It is intended to clarify and emphasize the significance and level of authority that recipients must give to the Equal Opportunity Officer position, and to the individual who holds that position. Much (though by no means all) of the responsibility for a recipient's nondiscrimination and equal opportunity program rests on the shoulders of the EO Officer. CRC's experience has demonstrated that in order for such programs to function fairly and effectively, the EO Officer must be a senior-level employee whose responsibilities in the position present no conflicts of interest with his or her other responsibilities. In addition, the recipient must establish clear lines of authority and accountability for the program, and must provide the EO Officer with appropriate levels of support. See the discussion of Sections 37.25 and 37.26 below.

As with part 34, this section does not require that recipients designate a separate or additional EO Officer to implement the nondiscrimination obligations imposed by WIA and this part. Nor is this section intended to require that the WIA EO Officer be employed in that position full-time. Recipients may still use their existing EO Officer and staff (assuming that the EO Officer meets the requirements of this section), or assign additional, non-WIA-related duties to a newly-appointed EO Officer, so long as the EO Officer is able to give top priority to, and to adequately accomplish all of, his/her responsibilities under the nondiscrimination and equal opportunity provisions of WIA and this part.

Section 37.25 What are the responsibilities of an Equal Opportunity Officer?

This section consolidates and clarifies the responsibilities that were conferred on EO Officers under 29 CFR part 34. The source of each proposed paragraph is set forth below.

The list of responsibilities provided in this section is not intended to be exclusive. The EO Officer must also perform any additional duties that may arise from his/her administration of the recipient's nondiscrimination and equal opportunity obligations under WIA and this part.

Paragraph 37.25(a): This paragraph, which requires the EO Officer to serve as the recipient's liaison with CRC, contains one of the recipients' responsibilities listed in 29 CFR 34.22(a). Other responsibilities listed in that paragraph of the JTPA nondiscrimination regulations are discussed in appropriate sections below.

This paragraph of the Interim Final Rule signifies that the EO Officer and his/her staff will serve as the point of contact for all recipient personnel who have questions about WIA's nondiscrimination and equal opportunity program. The EO Officer will have both expertise in the subject and an ongoing relationship with CRC staff. Because of that expertise, the EO Officer may be able to answer recipient staff members' questions based on his or her own knowledge of the program.

In addition, CRC has found this requirement to be a significant component of a program with clear lines of authority and accountability, as discussed in Section 37.24 above. Having a single point of contact, at both the recipient and departmental levels, helps to ensure a consistent interpretation and application of the requirements of the nondiscrimination and equal opportunity provisions of WIA and this part. See the discussion above about Section 37.12.

Paragraphs 37.25(b)–(c): These paragraphs require the EO Officer to monitor the activities of the recipient and its recipients to ensure that the recipients' nondiscrimination and equal opportunity obligations are not being violated, and to review their written policies to ensure that those policies are nondiscriminatory. CRC's experience has demonstrated that these two responsibilities are an integral part of the most effective equal opportunity programs of recipients under JTPA.

These paragraphs are not intended to impose additional responsibilities upon recipients or their EO Officers. The paragraphs are intended merely to clarify the responsibilities that were already imposed under the JTPA program, and to emphasize that the EO Officer should take a leadership role in the operation of the recipient's nondiscrimination and equal opportunity programs.

Paragraph 37.25(d): This paragraph, which requires the EO Officer to adopt, publish, and oversee the recipient's procedures for processing discrimination complaints, contains the same requirements as 29 CFR 34.42(b).

Paragraphs 37.25(e)-(g): These paragraphs contain the responsibilities of EO Officers that are listed in 29 CFR 34.22(a). Other responsibilities listed in that paragraph of the JTPA nondiscrimination regulations belong to recipients and are listed above, in Paragraph 37.25(a), or below, in Section 37.26.

Section 37.26 What are a recipient's obligations relating to the Equal Opportunity Officer?

This section consolidates and clarifies the obligations that were conferred on recipients under 29 CFR part 34 regarding their EO Officers. The source of each paragraph is set forth below.

Paragraph 37.26(a): This paragraph, which requires recipients to publicize the EO Officer's name and contact information, contains the same requirements, in a more detailed form, as the last sentence of 29 CFR 34.22(a).

Paragraph 37.26(b): This paragraph clarifies that where a recipient provides internal and external notice about its nondiscrimination and equal opportunity programs, it must also provide information about ways to contact its EO Officer. *See* 29 CFR 34.23(a) and (b), and the discussion of Sections 37.29 through 37.31, 37.34, and 37.36 below.

Paragraph 37.26(c): This paragraph is based on 29 CFR 34.22(b). It has been rewritten to emphasize that, as explained in the discussion of Section 37.24 above, the success of a recipient's nondiscrimination and equal opportunity program depends heavily upon the tangible and intangible support that the recipient provides to its EO Officer, and that the recipient's top management should provide a significant percentage of that support.

Paragraph 37.26(d): This paragraph requires a recipient to ensure that the EO Officer and his/her staff are afforded the opportunity to receive the training necessary and appropriate to maintain competency. This requirement is based on the language 29 CFR 34.22(a) which required the recipient to pay for any training that the Director required its EO Officer and staff to take. The requirement has been rewritten to emphasize that the recipient is responsible for ensuring that its EO Officer and staff maintain the level of knowledge, skills, and abilities necessary to carry out their responsibilities fully and effectively, and that the training needed to maintain this level of competency in a particular case, or for a particular recipient, may be more extensive than the training that the Director requires.

Section 37.27 What are the obligations of small recipients relating to Equal Opportunity Officers?

This section contains the same requirements as 29 CFR 34.22(c). Consistent with plain-language guidelines, the section has been slightly rewritten to improve its clarity. Also, the reference to other regulatory sections within part 34 has been changed to reflect the numbering of this Interim Final Rule. These changes are not intended to alter the meaning of this section.

Section 37.28 What are the obligations of service providers relating to Equal Opportunity Officers?

This section contains the same requirements as 29 CFR 34.22(d). As with Section 37.27, the section has been slightly rewritten, and the reference to another regulatory section within part 34 has been changed to reflect the numbering of this Interim Final Rule. Also, JTPA-related terminology (the references to SDA grant recipients and Substate grantees) has been replaced by WIA-related terminology (the reference to LWIA grant recipients). Again, these changes are not intended to alter the meaning of this section.

Notice and Communications

Section 37.29 What are a recipient's obligations to disseminate its equal opportunity policy?

This section contains the same requirements as 29 CFR 34.23(a)(1), with the addition of related material from 34.23(a)(7). Consistent with plain-language guidelines, the section has been organized slightly differently from 29 CFR 34.23(a)(1), and has been presented in outline form to improve its readability. Also, WIA-related terminology (the reference to ''registrants'') has been added where appropriate, and the reference to another regulatory section within part 34 has been changed to reflect the numbering of this Interim Final Rule. None of these changes is intended to alter the meaning of this section.

Section 37.30 What specific wording must the notice contain?

This section contains the same requirements as 29 CFR 34.23(a)(5). Both the introductory language and the notice have been rewritten consistent with plain-language guidelines. Also, references to JTPA have been replaced by references to WIA Title I, and the time frame within which a recipient must process a complaint has been extended to 90 days, consistent with the changes included in this Interim Final Rule. See the discussion of Section 37.76 in this preamble; see also the notice in Section 37.30 of the Interim Final Rule.

The rewritten notice states that the recipient must not discriminate on the basis of ''citizenship/status as a lawfully admitted immigrant authorized to work in the United States.'' This change has been made to convey more accurately the definition of ''discrimination on the ground of citizenship'' contained in Section 37.4.

The notice contains references to a document entitled a ''Notice of Final Action.'' As discussed in Section 37.76 of this preamble, the ''Notice of Final Action'' is merely a formal name for a document that a recipient was required under part 34 to issue when it finished processing a discrimination complaint. Therefore, the reference to a ''Notice of Final Action'' is not a substantive change to the notice required by this section.

Section 37.31 Where must the notice required by Sections 37.29 and 37.30 be published?

This section contains the same requirements as 29 CFR 34.23(a)(2) and (3). Consistent with plain-language guidelines, the section has been organized slightly differently from the JTPA nondiscrimination regulations, and has been presented in outline form to improve its readability. Also, the reference to another regulatory paragraph within part 34 has been changed to reflect the numbering of this Interim Final Rule. None of these changes is intended to alter the meaning of the section.

A reference to ''electronic communications'' has been added to Section 37.31(a)(2), to reflect the growth in computer technology, and the related expansion of electronic communications, that have taken place since the JTPA nondiscrimination regulations were promulgated in 1992.

Section 37.32 When must the notice required by Sections 37.29 and 37.30 be provided?

This section contains the same requirements as 29 CFR 34.23(a)(4). Consistent with plain-language guidelines, the section has been organized slightly differently from the JTPA nondiscrimination regulations. Also, the reference to another regulatory paragraph within part 34 has been changed to reflect the numbering of this Interim Final Rule. Neither of these changes is intended to alter the meaning of the paragraph.

Section 37.33 Who is responsible for meeting the notice requirement with respect to service providers?

This section contains the same requirements as 29 CFR 34.23(a)(6). JTPA-related terminology (the references to SDA grant recipients and Substate grantees) has been replaced by WIA-related terminology (the references to the LWIA grant recipient). Also, the reference to another regulatory paragraph within part 34 has been changed to reflect the numbering of this Interim Final Rule. Neither of these changes is intended to alter the meaning of the section.

Section 37.34 What type of notice must a recipient include in publications, broadcasts, and other communications?

This section contains the same requirements as 29 CFR 34.23(b). Differences between the section and the corresponding paragraph of the JTPA nondiscrimination regulations are described below.

Paragraph 37.34(a): Consistent with plain-language guidelines, this paragraph has been organized slightly differently from 29 CFR 34.23(b)(1), the corresponding paragraph in the JTPA nondiscrimination regulations. To reflect the growth in computer technology, and the related expansion of electronic communications, a reference to ''materials that are ordinarily distributed or communicated in written and/or oral form, electronically and/or on paper,'' has been added. Also, because materials that ''describe programs funded under [Title I of WIA] or the requirements for participation by recipients and participants'' are frequently distributed to staff and clients, as well as to the public, a reference to those two groups has been added. In addition, the acronym ''TTY,'' which, as previously noted, is occasionally used as an alternative to the acronym ''TDD,'' has been added. Finally, references to JTPA have been replaced by references to WIA Title I, and the reference to another regulatory paragraph within part 34 has been changed to reflect the numbering of this Interim Final Rule.

Paragraph 37.34(b): The reference to recipients ''required by law or regulation to'' publish or broadcast information in the news media has been deleted, in order to clarify that all recipients must include the required notice in written and electronic publications and broadcasts, regardless of whether those publications or broadcasts are required. Also, references to JTPA have been replaced by references to WIA Title I.

Paragraph 37.34(c): The language contained in 29 CFR 34.23(c) that prohibited a recipient from ''us[ing] or distribut[ing] a publication of the type described in paragraph (b) of this section'' has been replaced by language prohibiting a recipient from ''communicating any information.'' As with other changes described above, this change was made to reflect the growth of electronic communication. Recipients now may reach staff, clients, or the general public through e-mail and Internet Web sites, as well as through the traditional publications on paper that were contemplated by the JTPA nondiscrimination regulations.

Additionally, references to JTPA have been replaced by references to WIA Title I, and the reference to another regulatory paragraph within part 34 has been changed to reflect the numbering of this Interim Final Rule.

Section 37.35 What are a recipient's responsibilities to provide services and information in languages other than English?

The requirements in this section are authorized by the provision in Section 188 of WIA that bars recipients from discriminating on the basis of national origin. *Cf. Lau* v. *Nichols,* 414 U.S. 563 (1974) (school system required to provide English language instruction to students of Chinese ancestry who do not speak English under Section 601 of the Civil Rights Act of 1964, 42 U.S.C. 2000d, which bans discrimination based on national origin in programs or activities receiving Federal financial assistance).

Paragraph (a) of this section contains the same requirements as 29 CFR 34.23(c). Consistent with plain-language guidelines, this paragraph has been organized slightly differently from the corresponding paragraph in the JTPA nondiscrimination regulations, and has been presented in outline form to improve its readability. Also, references to JTPA have been replaced by references to WIA Title I, and the references to other regulatory paragraphs within part 34 have been changed to reflect the numbering of this Interim Final Rule.

Paragraph (b) has been added in order to clarify the responsibilities of recipients to provide services and information to individuals with limited English-speaking skills where the number or proportion of such persons in the community served by the recipient does not reach the levels described in paragraph (a). In such circumstances, a recipient should make reasonable efforts to meet the particularized needs of any such individuals who seek services or information from that recipient.

The differences between paragraphs (a) and (b) of this section may be explained as follows: Paragraph (a) requires a recipient to take certain actions before individuals with limited English skills seek assistance from the recipient. Under this paragraph, the recipient must assess the scope of its program or activity and the size and concentration of the population it serves, and establish and carry out a plan to provide services and information in the language (or languages) used by a significant number or proportion of members of that population. Depending upon the combination of these factors, that plan may include printing materials in the language used by the ''significant number or proportion of the population,'' hiring permanent staff members who are qualified interpreters in that language, or various other options.

Under paragraph (b), by contrast, a recipient is not required to take action in advance. However, when an individual with limited English skills—who does not speak a language spoken by a ''significant number or proportion of the population''—seeks services or information from the recipient, the recipient should then make reasonable efforts to meet the particularized needs of that individual. Such efforts may include, but are not limited to, locating and temporarily employing a qualified interpreter who can communicate in the appropriate language.

As technology advances, various options for complying with the requirements of this section, such as computerized and/or on-line translation services, are becoming increasingly available to recipients, and the cost of these options is decreasing.

Section 37.36 What responsibilities does a recipient have to communicate information during orientations?

This section contains the same requirements as 29 CFR 34.23(d).

Consistent with plain-language guidelines, the section has been organized slightly differently from the corresponding paragraph in the JTPA nondiscrimination regulations. Also, references to JTPA have been replaced by references to WIA Title I. In addition, because recipients may provide orientations for the general public as well as for their new participants and/or employees, a reference to the general public has been added.

Data and Information Collection and Maintenance

Section 37.37 What are a recipient's responsibilities to collect and maintain data and other information?

This section contains the same requirements as 29 CFR 34.24(a), (a)(1), and (a)(2), with additional, related material included from 29 CFR 34.24(a)(3)(iii), (a)(7), and (e). Differences between this section and the corresponding paragraphs of the JTPA nondiscrimination regulations are described below.

Paragraph 37.37(a): This paragraph is identical to 29 CFR 34.24(a), except that references to JTPA have been replaced by references to WIA. This change is not intended to alter the meaning of the paragraph.

Paragraph 37.37(b)(1): The first sentence of this paragraph contains the same requirements as 29 CFR 34.24(a)(1); references to JTPA have been replaced by references to WIA. The second sentence has been added to explain that the manner in which the records and data are kept must allow the Governor and CRC to monitor the recipient's compliance by conducting statistical and other quantifiable data analyses. This provision is not a new requirement; it merely clarifies and codifies CRC's current practices. *Compare* 29 CFR 34.24(a)(1).

Paragraph 37.37(b)(2): Generally, this paragraph contains the same requirements as 29 CFR 34.24(a)(2). Consistent with plain-language guidelines, the paragraph has been slightly rewritten to improve its clarity. Also, references to JTPA have been replaced by references to WIA, and WIA-related terminology (the references to ''registrants'' and to ''eligible applicants/registrants'') has been added where appropriate. None of these changes is intended to alter the meaning of the paragraph.

In addition, the last line of the paragraph has been amended to permit the data and information collected under paragraph (b) of this section to be used for such ''other use authorized by law.'' This change has been made to clarify that this Interim Final Rule does not prohibit recipients from cooperating with Federal, State, and local agencies that, for law enforcement purposes, seek access to the data and information collected.

This section does not require recipients to obtain, or to maintain records regarding, the citizenship status of applicants or participants.

Paragraph 37.37(c): This paragraph contains the same general requirements as 29 CFR 34.24(a)(3)(iii). In response to questions that have arisen about whether recipients must provide the required log of complaints to CRC when requested to do so, the first sentence has been amended to clarify that recipients must ''submit [the log] to CRC upon request.'' Because 29 CFR 34.24(a)(4) already required that grant applicants and recipients provide, ''[a]t the discretion of the Director, . . . such information and data'' that the Director considered necessary to determine whether the entity was complying with the nondiscrimination and equal opportunity requirements, this addition was made solely to clarify the regulations. Also, the paragraph has been slightly rewritten to clarify that a complaint may be based upon more than one prohibited ground, that every prohibited ground upon which a particular complaint is based must be recorded in the log, and that information in the log that could lead to the identification of a particular individual as having filed a complaint must be kept confidential.

29 CFR 34.24(a)(3)(iii) contained two identical lists of prohibited grounds upon which complaints recorded in the required log might have been filed. For conciseness, the second list of prohibited grounds has been eliminated. Finally, references to JTPA have been replaced by references to WIA Title I. Neither of these two changes is intended to alter the meaning of the paragraph.

Section 37.37(d): This paragraph is identical to 29 CFR 34.24(e). The current guidelines may be found in 62 FR No. 210, Thursday, October 30, 1997, at 58782, 58790. They may also be found at 28 CFR 42.402(e). In following these guidelines, recipients should use the combined format for collection and reporting of data.

Section 37.37(e): This paragraph is identical to 29 CFR 34.24(a)(7), except that JTPA-related terminology (the reference to SDA grant recipients and Substate grantees) has been replaced by WIA-related terminology (the reference to the LWIA grant recipient). This change is not intended to alter the meaning of the paragraph.

Section 37.38 What information must grant applicants and recipients provide to CRC?

This section consolidates 29 CFR 34.24(a)(3)(i) and (ii), (a)(4), (a)(5), (a)(6), and (e). Requirements regarding information that grant applicants and recipients must provide to CRC have been grouped together. Differences, if any, between the section and the corresponding paragraphs of the JTPA nondiscrimination regulations are described below.

Paragraph 37.38(a): This paragraph contains the same general requirements as 29 CFR 34.24(a)(3)(i). References to JTPA in the paragraph have been replaced by references to WIA Title I. In addition, the language requiring grant applicants and recipients to promptly notify the Director ''of any administrative enforcement actions or lawsuits filed against it'' has been changed to require such notification ''when any'' such actions or lawsuits ''are filed.'' This change was made because of CRC's judgment that grant applicants and recipients needed guidance about the precise meaning of the requirement that the notification be made ''promptly.'' The new language emphasizes that the grant applicant or recipient must notify the Director at the time that enforcement actions or lawsuits are filed; it also makes the paragraph more readable.

Also, language that specifies the information that the notification must contain has been added to this paragraph. The added language is based upon part of 29 CFR 34.24(a)(3)(ii); the requirements are the same as those in Section 37.38(b)(2)(i)–(iii).

Paragraph 37.38(b): This paragraph requires grant applicants, as part of their applications for assistance, and recipients, as part of a compliance review or monitoring activity conducted by the Director, to provide the Director with information about any of the following occurrences from the two years before the application, compliance review, or monitoring activity:

(1) The names of any other Federal agencies that found the grant applicant or recipient to be in noncompliance with civil rights requirements; and

(2) Information about any administrative enforcement actions or lawsuits that:

(a) were filed during those two years; and

(b) alleged discrimination on any protected ground.

This paragraph contains the same requirements as 29 CFR 34.24(a)(3)(ii). Consistent with plain-language guidelines, this paragraph has been

organized slightly differently from the corresponding paragraph in the JTPA nondiscrimination regulations, and has been presented in outline form to improve its readability. Also, references to other regulatory sections within part 34 have been changed to reflect the numbering of this Interim Final Rule. None of these changes is intended to alter the meaning of the paragraph.

Paragraph 37.38(c): This paragraph is based upon 29 CFR 34.24(a)(4). It requires grant applicants and recipients to provide CRC with the data and information necessary to investigate complaints and conduct compliance reviews. References to JTPA have been replaced by references to WIA; and the phrase ''in a timely manner'' has been inserted. This phrase was added in order to emphasize the need for grant applicants and recipients to respond promptly to the Director's requests for information. Because the corresponding paragraph in part 34 already required grant applicants and recipients to provide information ''at the discretion of the Director,'' and the scope of Director's discretion includes the discretion to determine when information must be submitted, the latter change is intended merely to clarify the meaning of the paragraph.

The corresponding paragraph in the JTPA nondiscrimination regulations specified that the requirement applied to complaints and compliance reviews ''on grounds prohibited under the nondiscrimination and equal opportunity provisions of JTPA and this part, other than race/ethnicity, sex, age, and disability.'' Because 29 CFR 34.24(a)(2) and (3) already required grant applicants and recipients to record and submit the race/ethnicity, sex, age, and disability of certain categories of persons, the paragraph was written this way to emphasize that grant applicants and recipients were required to provide CRC with records and data about additional prohibited grounds. However, grant applicants and recipients found the paragraph confusing. The paragraph therefore has been rewritten to clarify that they may be requested to submit data and information necessary to investigate complaints and/or conduct compliance reviews on any ground prohibited by the nondiscrimination and equal opportunity provisions of WIA and this part.

Paragraph 37.38(d)–(e): These paragraphs require grant applicants and recipients to submit certain specified information at the discretion of the Director. These paragraphs are identical to 29 CFR 34.24(a)(5)–(6), with the following exceptions:

(1) References to JTPA have been replaced by references to WIA; and

(2) In each paragraph, the phrase ''in a timely manner'' has been inserted. This phrase was added in order to emphasize the need for grant applicants and recipients to respond promptly to the Director's requests for information. As with Paragraph 37.38(c), because each corresponding paragraph in part 34 already required grant applicants and recipients to provide information ''at the discretion of the Director,'' and the scope of Director's discretion includes the discretion to determine when information must be submitted, these changes clarify the meaning of these paragraphs.

Paragraph 37.38(f): This paragraph provides that where designation of persons by race or ethnicity is required, the guidelines of the Office of Management and Budget must be used. The paragraph is identical to 29 CFR 34.24(e), and appears in Section 37.37 as well. It was repeated in this section to clarify that its provisions apply to information provided to and collected by CRC, as well as to data and information collected by grant applicants and recipients. The current guidelines may be found in 62 FR. No. 210, Thursday, October 30, 1997, at 58782, 58790. They may also be found at 28 CFR 42.402(e). In following these guidelines, recipients should use the combined format for collection and reporting of data.

Because this paragraph was applicable to 29 CFR 34.24(a)(4)–(6), its inclusion in this section does not impose additional responsibilities upon grant applicants or recipients.

Section 37.39 How long must grant applicants and recipients maintain the records required under this part?

This section contains the same requirements as 29 CFR 34.24(c), ''Record retention requirements.'' Consistent with plain-language guidelines, this section has been organized slightly differently from the corresponding paragraph in the JTPA nondiscrimination regulations, and has been presented in outline form to improve its readability. This change is not intended to alter the meaning of the section.

Section 37.40 What access to sources of information must grant applicants and recipients provide the Director?

This section generally contains the same requirements as 29 CFR 34.24(b), ''Access to sources of information.'' References to JTPA have been replaced by references to WIA. In addition, the sentence ''Information obtained pursuant to the requirements of this part must be used only in connection with compliance and enforcement activities pertinent to the nondiscrimination and equal opportunity provisions of WIA and this part'' has been deleted from paragraph (b). As with the change discussed in Section 37.37(b)(2) earlier in this preamble, this change was made to clarify that this Interim Final Rule does not prohibit recipients from cooperating with Federal, State, and local agencies that, for law enforcement purposes, seek access to the data and information collected.

Paragraph (c) contains the same requirements as the last sentence of 29 CFR 34.24(b)(2). Consistent with plain-language guidelines, it has been rewritten to clarify those requirements.

Section 37.41 What responsibilities do grant applicants, recipients, and the Department have to maintain the confidentiality of the information collected?

This section is identical to 29 CFR 34.24(d), ''Confidentiality,'' with the following exceptions:

(a) language has been inserted to clarify that the identity of individuals who file discrimination complaints must be kept confidential; and

(b) the reference to 29 CFR 34.8 has been changed to reflect the numbering of this Interim Final Rule.

Neither of these changes is intended to alter the meaning of this section.

Section 37.42 What are a recipient's responsibilities under this part to provide universal access to WIA Title I-financially assisted programs and activities?

This section notifies recipients of their obligation to ensure universal access for all eligible populations to the aid, benefits, services, and/or training that the recipient offers under its WIA Title I—financially assisted programs and activities. Recipients should take specific actions to reach out to all eligible populations. The rule provides a nonexclusive list of possible actions, such as targeted advertising, notification of schools or community interest groups, and consultation with community service groups, that might be used to enhance community awareness of a recipient's programs and activities.

Subpart C—Governor's Responsibilities to Implement the Nondiscrimination and Equal Opportunity Requirements of WIA

The individual sections in this subpart are largely identical to their corresponding sections within the same

subpart in part 34. Consistent with plain-language guidelines, they have been rearranged in a more logical order, and one lengthy section has been divided into shorter sections treating narrower topics. These changes are not intended to alter the overall meaning of this subpart, or the meaning of any of its component sections.

Section 37.50 To whom does this subpart apply?

This section is identical to 29 CFR 34.30, ''Application,'' except that the references to sections in part 34 have been changed to reflect the numbering of this Interim Final Rule. This change is not intended to alter the meaning of this section.

Section 37.51 What are a Governor's oversight responsibilities?

This section contains the same requirements as 29 CFR 34.32(a). References to JTPA have been replaced by references to WIA Title I, and the references to sections in part 34 have been changed to reflect the numbering of this Interim Final Rule. Neither of these changes is intended to alter the meaning of this section. In addition, language has been added to clarify that the Governor must negotiate with a noncomplying recipient ''where appropriate.''

Section 37.52 To what extent may a Governor be liable for the actions of a recipient s/he has financially assisted under WIA Title I?

This section is identical to 29 CFR 34.32(b) and (c), with the following exceptions:

(1) References to JTPA have been replaced by references to WIA;

(2) The references to sections in part 34 have been changed to reflect the numbering of this Interim Final Rule; and

(3) To comply with the rules of grammar, the word ''which'' in paragraph (a)(2) has been changed to ''that.''

None of these changes is intended to alter the meaning of this section.

Section 37.53 What are a Governor's oversight responsibilities regarding recipients' recordkeeping?

This section is identical to 29 CFR 34.31, except that the references to sections in part 34 have been changed to reflect the numbering of this Interim Final Rule. These changes are not intended to alter the meaning of this section.

Section 37.54 What are a Governor's obligations to develop and maintain a Methods of Administration?

A ''Methods of Administration'' (MOA) is a document that describes the actions an individual State will take to ensure that its WIA Title I-financially assisted programs, activities, and recipients are complying, and will comply, with all requirements imposed by or under this part.

This section contains the same general requirements as 29 CFR 34.33(a)–(c). References to JTPA have been replaced by references to WIA, and the references to sections in part 34 have been changed to reflect the numbering of this Interim Final Rule. Also, the list of sections referred to in paragraph 37.54(c)(1) has been expanded to include a description of each section. In addition, consistent with plain-language guidelines, the information in Paragraphs 37.54(c)(1) and (c)(2)(vii) has been presented in outline form to improve its readability. None of these changes is intended to alter the meaning of these paragraphs.

The reasons for additional changes in the section are described below.

(1) 29 CFR 34.33(b)(2) required that the MOA be ''[u]pdated periodically as required by the Director.'' The parallel provision in Section 37.54, paragraph (b)(2), requires that the MOA be ''[r]eviewed and updated as required in Section 37.55.'' The reasons for this change are described below, in the discussion in this preamble about Section 37.55.

(2) Paragraph 37.54(c) has been reserved to give the Department the opportunity to later amend the regulation to insert a reference to guidance that the Director intends to issue regarding the requirements for MOAs.

(2) Paragraph (d)(2)(i) has been added to clarify that the MOA must include a system that will permit the Governor to carry out his/her responsibility of determining whether a grant applicant seeking WIA Title I financial assistance from the State, if funded, or a training provider, if selected and/or certified as eligible, is likely to comply with its nondiscrimination and equal opportunity obligations under WIA and this part. *See* Section 37.51.

(3) Paragraph (d)(2)(ii) and its subparagraphs are based on 29 CFR 34.33(c)(2)(i). Language has been added to clarify that the Governor must monitor the compliance of the State's recipients by conducting statistical and other quantifiable data analyses of each recipient's records and data, and to provide the minimum requirements for such monitoring reviews.

(4) Paragraphs (d)(2)(iii) and (d)(2)(iv) are based on 29 CFR 34.33(c)(2)(ii). They have been rewritten to reflect the requirements CRC actually imposes with regard to the types of documents listed in the two paragraphs.

(5) 29 CFR 34.33(c)(2)(iii) required the MOA to include procedures for ensuring that recipients ''provide accessibility to individuals with disabilities.'' The corresponding paragraph, paragraph (d)(2)(v), has been changed to clarify and emphasize that the MOA must include procedures for ensuring that recipients comply with *all* of the requirements of Section 504 and this part with regard to individuals with disabilities, not just those requirements regarding accessibility.

The Department is particularly interested in receiving comments regarding this section of the Interim Final Rule.

Section 37.55 When must the Governor carry out his or her obligations with regard to the Methods of Administration?

Paragraph (a) of this section is similar to 29 CFR 34.33(d), except that it requires the Governor to develop, implement, and submit its first WIA MOA within 180 days of either the date on which this Interim Final Rule is effective, or the date on which the Department gives final approval to the State's Five-Year Plan, whichever is later. If the MOA submitted by the State under JTPA satisfies the requirements listed in Section 37.54, the Governor is required only to submit any necessary updates and/or to certify that no changes are required, as described below.

The remainder of this section is intended to improve the MOA's usefulness as a method for both States and CRC to monitor the compliance of States and their recipients; to initially evaluate discrimination complaints filed against those States and recipients; and to reduce the burden on States and recipients by eliminating unnecessary complaint investigations and/or compliance reviews.

CRC regards the MOA as a baseline instrument for monitoring the compliance of States and their recipients. By reviewing a State's MOA, CRC is able to conduct an initial evaluation of the overall systems and procedures the State has put in place, without the necessity of an extensive compliance review. Similarly, if a complaint filed with CRC alleges that a State's or recipient's nondiscrimination and/or equal opportunity procedures are

unlawful or unfair, the Director may simply compare the complaint with the MOA, to establish whether the procedures described in the complaint are the same ones described in the document submitted by the Governor. If CRC has already reviewed those procedures and determined them to be adequate, the agency may avoid a burdensome and unnecessary complaint investigation.

In order for the MOA to provide an effective method of monitoring compliance, however, it is important that CRC have access to current information regarding a State's practices. The requirements in paragraphs (b) and (c) are intended to provide that current information.

Paragraph (b) requires the Governor to ''promptly update'' the MOA ''whenever necessary.'' This paragraph means that whenever, in the ordinary course of implementing the MOA, the Governor or the State decides that an amendment to the MOA is appropriate, the Governor must notify CRC of the amendment. The paragraph does not require the Governor or the State to provide CRC with an entirely new MOA under these circumstances. For example, if a State's MOA lists the members of a particular recipient's EO staff, the State is not required to redo its entire MOA when there is turnover on the staff. Rather, the Governor may notify CRC of the change simply by sending a letter listing the names of the departing and incoming staff members, and the contact information for the new staffers.

Paragraph (c) requires that every two years, the Governor must review the MOA and the way in which the State has implemented the document, and to make any necessary changes. As in paragraph (b), the Governor is required to notify CRC about those changes alone; he or she must submit an entirely new MOA to CRC only if he or she decides to replace the previous MOA completely. If, based on the review, he or she determines that no changes are necessary, he or she is required merely to certify to CRC in writing that the previous MOA remains in effect. If this certification is not required, then each time that the Director receives a complaint regarding a particular State, CRC will be forced to contact that State to ask whether its MOA has been changed. In CRC's view, such repeated inquiries would be more burdensome for States than requiring certification every two years.

The Department is particularly interested in receiving comments regarding this section of the Interim Final Rule.

Subpart D—Compliance Procedures

Generally, this subpart contains the same requirements as the corresponding subpart in part 34. The few circumstances in which substantive changes have been made are discussed in the descriptions below of individual sections.

Consistent with plain-language guidelines, the information in this subpart has been rearranged in a more logical order, and lengthy sections have been divided into shorter sections treating narrower topics. The subpart now begins with sections describing the Director's general authority, and continues with sections describing Compliance Reviews, Complaint Investigations, Determinations, and Breaches of Conciliation Agreements. The above changes are not intended to alter the overall meaning of this subpart, or the meaning of any of its component sections.

Section 37.60 How does the Director evaluate compliance with the nondiscrimination and equal opportunity provisions of WIA and this part?

In general, this section contains the same requirements as 29 CFR 34.40(a). Consistent with plain-language guidelines, the section has been slightly rewritten and reorganized. Also, references to JTPA have been replaced by references to WIA. Neither of these changes is intended to alter the meaning of this section.

The sentence in 29 CFR 34.40(a) that discusses techniques used in compliance reviews has been moved to Section 37.63, to clarify that in CRC's actual practice, the techniques discussed are used only in post-approval compliance reviews.

A sentence has been added to clarify that pre- or post-approval compliance reviews may focus on one or more specific programs or activities, or one or more issues within a program or activity. The Director has the discretion to determine the scope of a particular compliance review. This addition is intended only to provide notice to grant applicants and recipients that compliance reviews may be narrow as well as broad. It does not alter the Director's authority in any way, but is intended only to clarify the meaning of this section.

Because this section now serves as an introduction to Subpart D, a sentence has also been added that notes that the Director may also investigate and resolve discrimination complaints. Again, this sentence does not alter the Director's authority in any way, and is not intended to change the meaning of this section.

Section 37.61 Is there authority to issue subpoenas?

This section contains the same requirements as 29 CFR 34.43(g)(4). Consistent with plain-language guidelines, the section has been organized slightly differently from the corresponding paragraph in the JTPA nondiscrimination regulations, and presented in outline form to improve its readability. Also, references to JTPA have been replaced by references to WIA.

The section was moved to the beginning of this subpart in order to clarify that the authority to issue subpoenas extends to compliance reviews as well as complaint investigations. Again, this change does not alter the subpoena authority in any way, and is not intended to change the meaning of this section.

Compliance Reviews

Section 37.62 What are the authority and procedures for conducting pre-approval compliance reviews?

This section contains the same requirements as 29 CFR 34.40(b), ''Pre-approval reviews,'' with additional material from 29 CFR 34.47. Differences between this section and the corresponding paragraphs and section of the JTPA nondiscrimination regulations are described below.

Paragraph 37.62(a): This paragraph describes the circumstances under which, and the bases upon which, the Director may conduct a pre-approval compliance review. The paragraph is identical to 29 CFR 34.40(b)(1), with the following exceptions:

(1) References to JTPA have been replaced by references to WIA; and

(2) The references to sections in part 34 have been changed to reflect the numbering of this Interim Final Rule.

Neither of these changes is intended to alter the meaning of this paragraph.

Paragraph 37.62(b): This paragraph outlines the Director's responsibilities when s/he determines that a grant applicant might not comply with the nondiscrimination and equal opportunity provisions of WIA and this part. Generally, this paragraph contains the same requirements as 29 CFR 34.40(b)(2) and (4); it also incorporates material from 29 CFR 34.47, which requires the Director to notify the Assistant Attorney General, as well as the grantmaking agency, where a complaint investigation or compliance review results in a finding of noncompliance. The latter requirement

is also contained within the Department of Justice's Title VI coordination regulations at 28 CFR 42.407(d).

Consistent with plain-language guidelines, this paragraph has been organized slightly differently from the corresponding paragraphs in the JTPA nondiscrimination regulations, and has been presented in outline form to improve its readability. Because the JTPA nondiscrimination regulations listed these same responsibilities, their inclusion in this paragraph does not alter the Director's authority in any way, and is not intended to change the meaning of this paragraph.

In addition, references to JTPA have been replaced by references to WIA, and the references to sections in part 34 have been changed to reflect the numbering of this Interim Final Rule. Neither of these changes is intended to alter the meaning of this paragraph.

Paragraph 37.62(c): This paragraph describes the Department's responsibilities where a grant applicant agrees to take remedial or corrective actions in order to receive WIA Title I financial assistance. The paragraph is identical to 29 CFR 34.40(b)(3), with the following exceptions:

(1) References to JTPA have been replaced by references to WIA; and

(2) The references to sections in part 34 have been changed to reflect the numbering of this Interim Final Rule.

Neither of these changes is intended to alter the meaning of this paragraph.

Section 37.63 What are the authority and procedures for conducting post-approval compliance reviews?

Generally, this section contains the same requirements as 29 CFR 34.40(c), ''Post-approval reviews,'' with one paragraph from 34.40(a). Differences between this section and the corresponding paragraphs of the JTPA nondiscrimination regulations are described below.

Paragraph 37.63(a): This paragraph outlines the circumstances under which, and the bases upon which, the Director may conduct a post-approval compliance review. The paragraph contains the same requirements as 29 CFR 34.40(c)(1). Consistent with plain-language guidelines, the list of examples of possible bases for such reviews has been slightly rewritten to clarify the examples. In addition, references to JTPA have been replaced by references to WIA. These changes are not intended to alter the meaning of the paragraph.

Paragraph 37.63(b): This paragraph outlines the procedures for initiating a post-approval compliance review. The paragraph contains the same information as 29 CFR 34.40(c)(2), and it incorporates related material from 29 CFR 34.40(c)(4).

References to ''data'' that a recipient must submit before a post-approval compliance review have been changed to ''information, records, and/or data.'' Like other changes described earlier in this Preamble, this change was made to reflect the growth in computer technology, and the related expansion of electronic communications; the change was intended to incorporate a variety of terms that might be used to refer to material stored in written, electronic, or other forms. Again, this change does not impose any additional obligations upon recipients; it was made merely to clarify the paragraph.

In addition, the references to sections in part 34 have been changed to reflect the numbering of this Interim Final Rule. These changes are not intended to alter the meaning of the paragraph.

Paragraph 37.63(c): This paragraph contains material from 29 CFR 34.40(a) about techniques used in compliance reviews. As discussed in Section 37.60 of this preamble, the sentence was moved to this section to clarify that in CRC's actual practice, the techniques discussed are used only in post-approval compliance reviews. The reference to off-site analyses has been deleted because it refers to internal agency procedure that is more appropriately treated in internal agency guidelines.

Section 37.64 What procedures must the Director follow when CRC has completed a post-approval compliance review?

Generally, this section contains the same requirements as 29 CFR 34.40(c)(3). However, the requirement that the Director inform the recipient of the results of the review within 210 days of the issuance of the Notification Letter has been deleted. This change was made because CRC has decided to establish such internal agency time frames in internal agency guidelines issued by the Director, rather than through rulemaking.

In addition, consistent with plain-language guidelines, the section has been slightly rewritten to clarify it. Also, the references to sections in part 34 have been changed to reflect the numbering of this Interim Final Rule. These changes are not intended to alter the meaning of the paragraph.

Section 37.65 What is the Director's authority to monitor the activities of a Governor?

This section is identical to 29 CFR 34.34(a) and (b), with the following exceptions:

(1) References to JTPA have been replaced by references to WIA; and

(2) The references to sections in part 34 have been changed to reflect the numbering of this Interim Final Rule.

Neither of these changes is intended to alter the meaning of this section.

The corresponding paragraphs in the JTPA nondiscrimination regulations were located in Subpart C (''Governor's Responsibilities''). The section was moved to Subpart D and included with procedures about compliance reviews because it deals with the Director's authority to review documents prepared by and actions taken by a Governor under this part. This change was not intended to alter the meaning of the section.

Paragraph (c) of Section 34.34 provided that ''[t]he procedures contained in [S]ubpart D'' would apply to the Director's monitoring activities. Because the section has been moved to Subpart D, this paragraph has become redundant, and has been deleted.

Section 37.66 What happens if a recipient fails to submit requested data, records, and/or information, or fails to provide CRC with the required access?

This section contains the same general requirements as 29 CFR 34.41(a). The reference to the ''Directorate'' (the Directorate of Civil Rights, the previous title of the Civil Rights Center) has been updated to ''CRC.'' Also, to help readers find the section of the Interim Final Rule that requires a recipient to provide CRC with access to sources of information, a reference to that section has been added. Neither of these changes is intended to alter the meaning of this section.

In addition, language has been added that specifies that recipients must submit or provide CRC with access to data, records, and/or information ''in a timely manner.'' This addition was made to clarify that the Director may issue a Notice to Show Cause based upon a recipient's delay in supplying the records, data, information, and/or access sought by CRC.

Section 37.67 What information must a Notice to Show Cause contain?

This section is identical to 29 CFR 34.41(b), and includes the first sentence of 34.41(c). References to JTPA have been replaced by references to WIA. These changes are not intended to change the meaning of this section.

Section 37.68 How may a recipient show cause why enforcement proceedings should not be instituted?

This section is identical to the remainder of 29 CFR 34.41(c), with the following exceptions:

(1) The references to sections in part 34 have been changed to reflect the numbering of this Interim Final Rule; and

(2) References to the ''Directorate'' have been updated to ''CRC.''

Neither of these changes is intended to alter the meaning of this section.

Section 37.69 What happens if a recipient fails to show cause?

This section is identical to 29 CFR 34.41(d), except that the reference to a section in part 34 has been changed to reflect the numbering of this Interim Final Rule. This change is not intended to alter the meaning of this section.

Complaint Processing Procedures

Section 37.70 Who may file a complaint concerning discrimination connected with WIA Title I?

This section contains the same requirements as 29 CFR 34.43(a). Consistent with plain-language guidelines, the section has been slightly rewritten to improve its readability. This change is not intended to alter the meaning of this section.

Section 37.71 Where may a complaint be filed?

This section contains the same requirements as 29 CFR 34.43(b). Consistent with plain-language guidelines, the section has been slightly rewritten to improve its clarity. This change is not intended to alter the meaning of this section.

Section 37.72 When must a complaint be filed?

This section contains the same requirements as 29 CFR 34.43(c). Consistent with plain-language guidelines, the section has been slightly rewritten to improve its clarity. This change is not intended to alter the meaning of this section.

Section 37.73 What information must a complaint contain?

This section contains the same requirements as 29 CFR 34.43(d), except that, for the ease of the reader, the information in the second sentence of Section 34.43(d)(4)(iii) has been placed in the next section. Consistent with plain-language guidelines, the section has been slightly rewritten to improve its clarity. This change is not intended to alter the meaning of this section.

Section 37.74 Are there any forms that a complainant may use to file a complaint?

This section contains the same requirements as the second sentence of Section 34.43(d)(4)(iii). Consistent with plain-language guidelines, the section has been slightly rewritten to improve its clarity. In addition, for the convenience of the reader, the section now explains where complainants or their representatives may obtain the forms.

Section 37.75 Is there a right of representation in the complaint process?

This section contains the same requirements as 29 CFR 34.43(e). Consistent with plain-language guidelines, the section has been slightly rewritten to improve its clarity. This change is not intended to alter the meaning of this section.

Section 37.76 What are the required elements of a recipient's discrimination complaint processing procedures?

Much of this section is new. It includes most of the general information contained in 29 CFR 34.42(a), which requires a recipient to adopt and publish procedures for processing discrimination complaints, and 34.42(c), which requires the recipient to provide the complainant with written notice of the resolution of the complaint. (As discussed earlier in this preamble, the material in 29 CFR 34.42(b), which charges a recipient's Equal Opportunity Officer with the responsibility for adopting and publishing these procedures, has been moved to Section 37.25(d), ''What are the responsibilities of an Equal Opportunity Officer?'' In addition, the information in the third sentence of Section 34.42(a) has been moved to the next section.) However, this section includes the following changes.

(1) The period for recipients to process discrimination complaints has been extended, from 60 to 90 days. *See* Paragraphs 37.76(a) and 37.76(b)(5). This change has been made in response to concerns raised by recipients that 60 days was not enough time in which to give a complaint appropriate attention.

(2) A list of specific elements that must be included in each recipient's complaint processing procedures has been added. *See* Paragraphs 37.76(b) and (c). This change has been made because a number of recipients have requested more extensive guidance about the steps that must be taken in order to process a complaint fairly and effectively. As this section notes, the list is intended only as a baseline; recipients may include additional elements in their complaint processing procedures, as long as the procedures allow for resolution of the complaint within 90 days.

(3) The section requires recipients to adopt procedures for alternative dispute resolution (ADR). *See* Paragraph 37.76(c). This requirement was added in response to input from complainants and recipients who wanted a more flexible, less adversarial means of resolving discrimination complaints. (CRC itself is adopting procedures that will allow complainants and respondents to mediate complaints filed with the Director. See the discussion of Section 37.89, later in this preamble.) The section also includes procedures through which any party to an agreement reached under ADR may complain to the Director if the agreement is breached. *See* Paragraph 37.76(c)(2). CRC believes that complainants and recipients will be more willing to resolve complaints through ADR if the parties know that they have a means of enforcing the agreements reached through that procedure. However, in the event that the ADR process does not resolve a complaint, the section provides that a complainant may file a complaint with the Director within 30 days of the date on which the ADR process terminates. CRC is particularly interested in receiving comments about this new requirement.

(4) The section has given a formal name, ''Notice of Final Action,'' to the written notification that a recipient must give a complainant when the recipient has finished processing a complaint. Because 29 CFR 34.42(c) already required such a written notification, this change is not a substantive change in the section.

Section 37.77 Who is responsible for developing and publishing complaint processing procedures for service providers?

Generally, this section contains the same requirements as the third sentence of 29 CFR 34.42(a). Consistent with plain-language guidelines, the section has been slightly rewritten to improve its clarity. Also, JTPA-related terminology (the references to SDA grant recipients and Substate grantees) has been replaced by WIA-related terminology (the reference to the LWIA grant recipient). Neither of these changes is intended to alter the meaning of this section.

The final sentence has been added to the section to clarify that service providers are obliged to follow the

procedures adopted and published on their behalf.

Section 37.78 Does a recipient have any special obligations in cases in which the recipient determines that it has no jurisdiction over a complaint?

This section contains the same requirements as 29 CFR 34.43(f)(5). Consistent with plain-language guidelines, the section has been slightly rewritten and presented in outline form to improve its readability. Also, references to JTPA have been replaced by references to WIA. Neither of these changes is intended to alter the meaning of this section.

Section 37.79 If, before the 90-day period has expired, a recipient issues a Notice of Final Action with which the complainant is dissatisfied, how long does the complainant have to file a complaint with the Director?

This section contains the same general information as 29 CFR 34.43(f)(1). Consistent with plain-language guidelines, the section has been slightly rewritten to improve its clarity. Also, references to the 60-day period allowed for processing complaints under the JTPA nondiscrimination regulations have been replaced by references to the newly-extended 90-day period allowed under WIA, and the new term ''Notice of Final Action'' has been used to refer to the written notification that a recipient must provide a complainant when the recipient has completed its processing of a complaint.

Section 37.80 What happens if a recipient fails to issue a Notice of Final Action within 90 days of the date on which a complaint was filed?

This section contains the same general information as 29 CFR 34.43(f)(3). Consistent with plain-language guidelines, the section has been slightly rewritten to improve its clarity. Also, references to the 60-day period allowed for processing complaints under the JTPA nondiscrimination regulations have been replaced by references to the newly-extended 90-day period allowed under WIA, and the new term ''Notice of Final Action'' has been used to refer to the written notification that a recipient must provide a complainant when the recipient has completed its processing of a complaint.

This section deals only with a complainant's rights if a recipient fails to issue a Notice of Final Action within the required period. Recipients should be aware that in such circumstances, the Director has the right to take appropriate action against the recipient.

Section 37.81 Are there any circumstances under which the Director may extend the time limit for filing a complaint with him or her?

This section contains the same requirements as 29 CFR 34.43(f)(4). Consistent with plain-language guidelines, the section has been slightly rewritten and presented in outline form to improve its readability. Also, the reference to a section in part 34 has been changed to reflect the numbering of this Interim Final Rule, and a final sentence has been added to clarify and emphasize that the burden of showing good cause for extending the time limit rests with the complainant.

Section 37.82 Does the Director accept every complaint for resolution?

This section consolidates information contained in 29 CFR 34.43(g)(1), (g)(5), and (g)(6). Consistent with plain-language guidelines, the material has been slightly rewritten and presented in outline form to improve its readability. Also, the information in Paragraph 37.82(c), explaining that CRC need not investigate a complaint about a matter that it has already decided, has been added. A ''complaint about a matter that it has already decided'' is a complaint about the same set of facts that CRC has already considered and decided in a previous case. This addition does not change CRC's authority in any way; it is intended only to notify complainants and respondents about CRC's practices. None of these changes is intended to alter the meaning of this section.

Section 37.83 What happens if a complaint does not contain enough information?

Generally, this section contains the same requirements as 29 CFR 34.43(g)(3). Consistent with plain-language guidelines, the material has been slightly rewritten and presented in outline form to improve its readability. Also, the provision requiring that a complainant must submit the requested additional information within 15 days has been eliminated. This change has been made in order to provide the Director with the flexibility to require a longer or shorter response period, if appropriate in a particular case.

Section 37.84 What happens if CRC does not have jurisdiction over a complaint?

This section contains the same general information as 29 CFR 34.43(g)(5). Consistent with plain-language guidelines, the section has been slightly rewritten to improve its clarity. Also, the reference to the ''Directorate'' has been updated to ''CRC.'' Neither of these changes is intended to alter the meaning of this section.

Section 37.85 Are there any other circumstances in which the Director will send a complaint to another authority?

Generally, this section contains the same requirements as 29 CFR 34.43(g)(7) and (8), with additional material necessitated by the requirements of the WIA program. Differences between this section and the corresponding paragraphs of the JTPA nondiscrimination regulations are set forth below.

Paragraph 37.85(a): This paragraph generally contains the same requirements as 29 CFR 34.43(g)(7), except that the requirement that the Director advise the complainant and the respondent about the referral has been moved to paragraph (d). In addition, consistent with plain-language guidelines, the material has been slightly rewritten. Neither of these changes is intended to alter the meaning of this paragraph.

Paragraph 37.85(b): This paragraph generally contains the same requirements as 29 CFR 34.43(g)(8), except that the requirement that the Director advise the complainant and the respondent about the referral has been moved to paragraph (d). In addition, consistent with plain-language guidelines, the material has been slightly rewritten and presented in outline form to improve its readability. Also, the reference to JTPA has been replaced by a reference to WIA. None of these changes is intended to alter the meaning of this paragraph.

Paragraph 37.85(c): The material in this paragraph is new. Under the One-Stop system established by WIA, CRC may have dual jurisdiction, with Federal grantmaking agencies other than the Department of Labor, over complaints that allege discrimination by One-Stop partners financially assisted by those other grantmaking agencies. This paragraph sets forth the general procedures that will be used to determine whether CRC will retain such complaints for processing or refer them to the other grantmaking agencies for appropriate action in accordance with the Federal grantmaking agency's applicable regulations. CRC will enter into Memoranda of Understanding (MOUs) with the appropriate Federal grantmaking agencies to ensure that complaints will be referred in accordance with these guidelines. These MOUs, which will contain more specific

referral procedures, will be published in the **Federal Register**. In addition, the Department encourages local Workforce Investment Boards, in developing the MOUs required by Section 121(c) of WIA, to include in those MOUs provisions regarding the appropriate referral of any such complaints filed at the local level.

Paragraph 37.85(d): The material in this paragraph comes from both 29 CFR 34.43(g)(7) and (8), as noted above. It has been placed in a separate paragraph to improve the readability of this section.

Section 37.86 What must the Director do if he or she determines that a complaint will not be accepted?

Generally, this section contains the same requirements as 29 CFR 34.43(g)(6). Consistent with plain-language guidelines, the material has been slightly rewritten to improve its clarity. In addition, the wording referring to circumstances in which a complaint ''will not be investigated'' has been changed to ''will not be accepted.'' This change has been made to reflect the addition of the mediation option to CRC's complaint processing procedures: where a complainant and respondent agree to mediate the complaint, CRC will conduct an investigation only if the mediation fails, or if one of the parties breaches the agreement reached through the mediation. *See* Section 37.89.

Section 37.87 What must the Director do if he or she determines that a complaint will be accepted?

Generally, this section contains the same requirements as 29 CFR 34.43(g)(1)(i) and (ii). Consistent with plain-language guidelines, the material has been slightly rewritten to improve its clarity. In addition, the following changes have been made:

(1) The reference to the ''Directorate'' has been changed to the ''Director,'' because it is he or she who has the authority to determine whether a complaint will be accepted.

(2) The Director is now required to notify the grantmaking agency, as well as the complainant and the respondent, when a complaint is accepted. This requirement has been added because CRC's experience has shown that when grantmaking agencies are aware of discrimination complaints, those complaints are more likely to be resolved successfully, and recipients are more likely to comply with their obligations regarding nondiscrimination and equal opportunity.

(3) The Director is also required to provide notice about any issues over which he or she has not accepted jurisdiction, and the reasons why those issues have been rejected. This requirement has been added in order to provide complainants and respondents with reasonable notice of the Director's determinations about the entire complaint.

Section 37.88 Who may contact CRC for information about a complaint?

Generally, this section contains the same requirements as 29 CFR 34.43(g)(2). Consistent with plain-language guidelines, the material has been slightly rewritten to improve its clarity. Also, a second sentence has been added in order to clarify that the Director has the authority to determine what information about a complaint should be released.

Section 37.89 May the Director offer the parties to a complaint the option of mediation?

This section is new. Like the provisions allowing recipients to include provisions for ADR in their complaint processing procedures, this option was added in response to concerns of complainants and recipients who wanted a more flexible, less adversarial means of resolving discrimination complaints. CRC is particularly interested in receiving comments concerning this section.

Determinations

Section 37.90 If a complaint is investigated, what must the Director do when the investigation is completed?

This section contains information from 29 CFR 34.43(g)(9), (9)(i), and (9)(ii). Consistent with plain-language guidelines, the material has been rewritten and reorganized slightly, and presented in outline form to improve its readability. Also, the Director is now required to notify the grantmaking agency about his or her determination whether the respondent has violated the nondiscrimination and equal opportunity provisions. This requirement was added for the reasons listed in the discussion of Section 37.87.

Section 37.91 What notice must the Director issue if he or she finds reasonable cause to believe that a violation has taken place?

This section contains information from 29 CFR 34.43(g)(9)(i). Consistent with plain-language guidelines, the material has been rewritten and reorganized slightly to improve its clarity. Also, references to sections in part 34 have been changed to reflect the numbering of this Interim Final Rule. None of these changes is intended to alter the meaning of this section.

Section 37.92 What notice must the Director issue if he or she finds no reasonable cause to believe that a violation has taken place?

This section contains information from 29 CFR 34.43(g)(9)(ii). Consistent with plain-language guidelines, the material has been slightly rewritten to improve its clarity. These changes are not intended to alter the meaning of the section.

Section 37.93 What happens if the Director finds that a violation has taken place, and the recipient fails or refuses to take the corrective action listed in the Initial Determination?

This section contains information from 29 CFR 34.46(a)(1). Consistent with plain-language guidelines, the material has been slightly rewritten to improve its clarity. These changes are not intended to alter the meaning of the section.

Section 37.94 What corrective or remedial actions may be imposed where, after a compliance review or complaint investigation, the Director finds a violation of the nondiscrimination and equal opportunity provisions of WIA or this part?

This section contains the same requirements as 29 CFR 34.44. The material has been slightly rewritten to improve its clarity. Also, the references to other regulatory sections within part 34 have been changed to reflect the numbering of this Interim Final Rule, and references to JTPA have been changed to refer to WIA. None of these changes is intended to alter the meaning of the section.

Section 37.95 What procedures apply if the Director finds that a recipient has violated the nondiscrimination and equal opportunity provisions of WIA or this part?

This section contains the same requirements as 29 CFR 34.45 (a) and (b). Consistent with plain-language guidelines, the material has been rewritten and reorganized slightly to improve its clarity. Some of the material has been presented in outline form. Also, the references to other regulatory sections within part 34 have been changed to reflect the numbering of this Interim Final Rule, and references to JTPA have been changed to refer to WIA. None of these changes is intended to alter the meaning of the section.

The section makes reference to a written Conciliation Agreement. CRC, not the recipient or the Governor, prepares the initial draft of this

document. See also the discussion in this preamble about Section 37.97.

Section 37.96 What are the required elements of a written assurance?

This section contains the same requirements as 29 CFR 34.45(c)(1). Consistent with plain-language guidelines, the material has been slightly rewritten to improve its clarity. These changes are not intended to alter the meaning of the section.

Section 37.97 What are the required elements of a Conciliation Agreement?

Generally, this section contains the same requirements as 29 CFR 34.45(c)(2). Consistent with plain-language guidelines, the material has been slightly rewritten to improve its clarity. These changes are not intended to alter the meaning of the section.

As noted above in the discussion of Section 37.95, CRC, not the recipient or the Governor, prepares the initial draft of the Conciliation Agreement.

Section 37.98 When will the Director conclude that compliance cannot be secured by voluntary means?

This section contains the same requirements as 29 CFR 34.46(a). Consistent with plain-language guidelines, the material has been slightly rewritten to improve its clarity. Also, the references to other regulatory sections within part 34 have been changed to reflect the numbering of this Interim Final Rule. These changes are not intended to alter the meaning of the section.

Section 37.99 If the Director concludes that compliance cannot be secured by voluntary means, what actions must he or she take?

This section includes information from 29 CFR 34.46(b) (1), (2), and (3). The subparagraphs from Paragraph 34.46(b)(1) that describe the required elements of a Final Determination have been moved to the next section. Also, the material in this section has been slightly rewritten to improve its clarity. Neither of these changes is intended to alter the meaning of this section.

Section 37.100 What information must a Final Determination contain?

This section contains the same requirements as 29 CFR 34.46(a) and (b). Consistent with plain-language guidelines, the material has been rewritten and reorganized slightly to improve its clarity, and the references to other regulatory sections within part 34 have been changed to reflect the numbering of this Interim Final Rule. In addition, in Paragraph 37.100(f)(1), language has been added to clarify that the Department may withhold a grant applicant's or recipient's WIA Title I-funded Federal financial assistance in whole or in part. This change does not expand the Department's authority; it has been added solely to provide recipients with notice of the Department's actual practice.

Section 37.101 Whom must the Director notify of a finding of noncompliance?

Generally, this section contains the same requirements as 29 CFR 34.47. Consistent with plain-language guidelines, the material has been slightly rewritten to improve its clarity. In addition, language has been added to clarify that the Director will notify the grant applicant or recipient, as well as the grantmaking agency and the Assistant Attorney General. This change has been made to reflect the Director's actual practice and the requirements of the preceding sections.

Breaches of Conciliation Agreements

Section 37.102 What happens if a grant applicant or recipient breaches a Conciliation Agreement?

This section contains the same requirements as 29 CFR 34.48(b). The phrase ''through the Governor or by other means'' has been eliminated as redundant. This change is not intended to alter the meaning of this section.

Section 37.103 Whom must the Director notify about a breach of a Conciliation Agreement?

This section contains the same requirements as 29 CFR 34.48(c). Consistent with plain-language guidelines, the material has been slightly rewritten to improve its clarity. In addition, the Director is now required to notify the grantmaking agency, for the reasons listed in the discussion of Section 37.87.

Section 37.104 What information must a Notification of Breach of Conciliation Agreement contain?

This section contains the same requirements as 29 CFR 34.48(d). Consistent with plain-language guidelines, the material has been slightly rewritten to improve its clarity. In addition, the references to other regulatory sections within part 34 have been changed to reflect the numbering of this Interim Final Rule. None of these changes is intended to alter the meaning of the section.

Section 37.105 Whom must the Director notify if enforcement action under a Notification of Breach of Conciliation Agreement is commenced?

This section contains the same requirements as 29 CFR 34.48(e). Consistent with plain-language guidelines, the material has been slightly rewritten and presented in outline form to improve its readability. These changes are not intended to alter the meaning of the section.

Subpart E—Federal Procedures For Effecting Compliance

Section 37.110 What enforcement procedures does the Department follow to effect compliance with the nondiscrimination and equal opportunity provisions of WIA and this part?

This section contains the same requirements as 29 CFR 34.50. Consistent with plain-language guidelines, the material has been slightly rewritten to improve its clarity. Also, references to JTPA have been changed to refer to WIA, and references to other regulatory sections within part 34 have been changed to reflect the numbering of this Interim Final Rule. None of these changes is intended to alter the meaning of the section.

Section 37.111 What hearing procedures does the Department follow?

This section contains the same requirements as 29 CFR 34.51. Consistent with plain-language guidelines, the material has been slightly rewritten to improve its clarity. Also, references to another regulatory section within part 34 have been changed to reflect the numbering of this Interim Final Rule, and the current address of the Office of Administrative Law Judges has been provided for the convenience of the reader. None of these changes is intended to alter the meaning of the section.

Section 37.112 What procedures for initial and final decisions does the Department follow?

This section contains the same requirements as 29 CFR 34.52(a) and (b). Consistent with plain-language guidelines, the material has been slightly rewritten to improve its clarity. Also, references to JTPA have been changed to refer to WIA, and references to other regulatory sections within part 34 have been changed to reflect the numbering of this Interim Final Rule. None of these changes is intended to alter the meaning of the section.

Section 37.113 What procedure does the Department follow to suspend, terminate, withhold, deny or discontinue WIA Title I financial assistance?

Generally, this section contains the same requirements as 29 CFR 34.53(a). Consistent with plain-language guidelines, the material has been slightly re-punctuated to improve its clarity. Also, references to JTPA have been changed to refer to WIA, and references to other regulatory sections within part 34 have been changed to reflect the numbering of this Interim Final Rule. None of these changes is intended to alter the meaning of the section.

In addition, language has been added to the section to clarify that the Department may withhold a grant applicant's or recipient's WIA Title I financial assistance in whole or in part, as explained in the discussion of Section 37.100.

Section 37.114 What procedure does the Department follow to distribute WIA Title I financial assistance to an alternate recipient?

This section is identical to 29 CFR 34.53(b), except that the reference to JTPA has been changed to refer to WIA. This change is not intended to alter the meaning of the section.

Section 37.115 What procedures does the Department follow for post-termination proceedings?

This section contains the same general requirements as 29 CFR 34.52(c). Consistent with plain-language guidelines, the material has been slightly rewritten to improve its clarity. Also, references to JTPA have been changed to refer to WIA, and references to other regulatory sections within part 34 have been changed to reflect the numbering of this Interim Final Rule. None of these changes is intended to alter the meaning of the section.

In addition, the sentence providing that ''[r]estoration to eligibility may be conditioned upon the grant applicant or recipient entering into a consent decree'' has been deleted, in order to clarify that the grant applicant or recipient must actually bring itself into compliance with the nondiscrimination and equal opportunity provisions of Section 188 and this part before being restored to eligibility for WIA Title I financial assistance.

IV. Regulatory Procedures

Executive Order 12866

The Department of Labor has determined that this Interim Final Rule is not a ''significant regulatory action'' under Executive Order 12866 because this action will not: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency, or otherwise interfere, with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Therefore, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

This Interim Final Rule does not substantially change the existing obligation of recipients or entities operating Federally-assisted programs or activities to apply a policy of nondiscrimination and equal opportunity in employment or services. The Department of Labor certifies that the proposed rule will not have a significant economic impact on substantial number of small business entities. Therefore, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform

Executive Order 12875—This rule will not create an unfunded Federal Mandate upon any State, local, or tribal government.

Unfunded Mandate Reform Act of 1995—This rule will not include any Federal mandate that may result in increased expenditures by State, local and tribal governments in the aggregate of $100 million or more, or increased expenditures by the private sector of $100 million or more.

Paperwork Reduction Act

Certain sections of this Interim Final Rule, including §§ 37.8, 37.9, 37.20, 37.29, 37.30, 37.31, 37.34, 37.37, 37.38, 37.39, 37.54, 37.73, and 37.74, contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Labor has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review. Comments must be submitted by December 13, 1999 to: Desk Officer for the Department of Labor, Civil Rights Center, Office of Management and Budget, 725 17th Street, NW (Rm 10235), Washington, DC 20503. Affected parties do not have to comply with the information collection requirements in this document until DOL publishes in the **Federal Register** the control numbers assigned by OMB. Publication of the control numbers notifies the public that OMB has approved this information collection requirement under the Paperwork Reduction Act of 1995.

Request for Comments

This publication implements the nondiscrimination and equal opportunity provisions of Section 188 of WIA, and requests comments about this Interim Final Rule from State and local governments; public interest groups; current and potential grant applicants for and recipients of Federal financial assistance (particularly current and potential providers of training services); current and potential beneficiaries of such Federal financial assistance; other Federal agencies; and the public.

Clarity Of This Regulation

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. The Department invites comments on how to make this proposed rule easier to understand. For example:

—Have we organized the material to suit your needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that isn't clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

Absence of Notice of Proposed Rulemaking

After full and fair consideration over the months since passage of the Workforce Investment Act of 1998, the Department of Labor has determined that it is in the public interest not to publish a Notice of Proposed Rulemaking (NPRM) regarding implementation of Section 188 of the Act, but instead to publish this Interim Final Rule. This determination is based upon the schedule for implementation of WIA.

The WIA program is designed eventually to supersede its predecessor program, the Job Training Partnership Act (JTPA) program, which sunsets on

July 1, 2000. The regulations implementing JTPA therefore will remain in effect until that date. However, States have the option of implementing WIA Title I-financially assisted programs and activities as early as July 1, 1999; indeed, the Department is encouraging such early implementation.

CRC is issuing the regulations implementing WIA's nondiscrimination and equal opportunity provisions as an Interim Final Rule so that those regulations will be in place as soon as possible for early-implementation States and their recipients. Generally, the Rule tracks the nondiscrimination and equal opportunity regulations in place under JTPA; the Rule does, however, contain a number of new or revised provisions that will require these States and their recipients to take action before the date on which they implement WIA, or as soon after that date as possible.

For example, each application for financial assistance under either JTPA or WIA Title I must contain assurances regarding the grant applicant's compliance with various Federal laws and regulations concerning nondiscrimination and equal opportunity. For the WIA program, the required assurance has been rewritten in plain language. The new language appears in Section 37.20 of the Interim Final Rule. Publication of the regulations as an immediately-effective Interim Final Rule will eliminate any possible ambiguity regarding the language that grant applicants in early-implementation states must include in their applications for WIA Title I financial assistance.

Similarly, Section 37.76 of the Rule contains a list of elements that a recipient's discrimination complaint processing procedures must include. Although the JTPA nondiscrimination regulations contained a general requirement that recipients adopt and publish complaint processing procedures, the new list of requisite elements for those procedures is more detailed, and recipients in early-implementing states will need to know as soon as possible the actual requirements for those procedures in order to ensure that their complaint processing procedures comply with the requirements of the WIA program. Publishing an Interim Final Rule, rather than an NPRM, will assist States and recipients by providing a firm list of requirements that will be in place on or soon after the date of implementation, rather than a proposed list that might change before that date.

Furthermore, the Interim Final Rule sets a comment period to elicit any concerns raised by the rule. The comment period takes place before the final rule will be implemented, so that CRC may receive comments in time to consider them in preparing the final rule for publication.

For the above-listed reasons, the Department of Labor finds that publishing an NPRM, and providing a period for notice and comment, before implementing this Interim Final Rule would be contrary to the public interest, and therefore constitute good cause under 5 U.S.C. 553(b)(B) for publishing these regulations as an Interim Final Rule. Furthermore, the Department finds that the above-listed reasons also constitute good cause under 5 U.S.C. 553(d)(3) for waiving the customary requirement to delay the effective date of a regulation for 30 days following its publication. Therefore, this Interim Final Rule is effective immediately upon publication.

List of Subjects in 29 CFR Part 37

Administrative practice and procedure, Discrimination, Civil rights, Equal education opportunity, Equal employment opportunity, Grant programs—Labor, Individuals with disabilities, Investigations, Reporting and recordkeeping requirements.

Signed at Washington, D.C. this 22nd day of October 1999.

Alexis M. Herman,

Secretary of Labor.

Accordingly, title 29, subtitle A of the Code of Federal Regulations is amended by adding part 37 to read as follows:

PART 37—IMPLEMENTATION OF THE NONDISCRIMINATION AND EQUAL OPPORTUNITY PROVISIONS OF THE WORKFORCE INVESTMENT ACT OF 1998 (WIA)

Subpart A—General Provisions

Sec.
37.1 What is the purpose of this part?
37.2 To whom does this part apply, and what is the scope of this part?
37.3 How does this part affect a recipient's other obligations?
37.4 What definitions apply to this part?
37.5 What forms of discrimination are prohibited by this part?
37.6 What specific discriminatory actions, based on prohibited grounds other than disability, are prohibited by this part?
37.7 What specific discriminatory actions based on disability are prohibited by this part?
37.8 What are a recipient's responsibilities regarding reasonable accommodation and reasonable modification for individuals with disabilities?
37.9 What are a recipient's responsibilities to communicate with individuals with disabilities?
37.10 To what extent are a recipient's employment practices covered by this part?
37.11 To what extent are intimidation and retaliation prohibited by this part?
37.12 What Department of Labor office is responsible for administering this part?
37.13 Who is responsible for providing interpretations of this part?
37.14 Under what circumstances may the Secretary delegate the responsibilities of this part?
37.15 What are the Director's responsibilities to coordinate with other civil rights agencies?
37.16 What is this part's effect on a recipient's obligations under other laws, and what limitations apply?

Subpart B—Recordkeeping and Other Affirmative Obligations of Recipients

Assurances

37.20 What is a grant applicant's obligation to provide a written assurance?
37.21 How long will the recipient's obligation under the assurance last, and how broad is the obligation?
37.22 How must covenants be used in connection with this part?

Equal Opportunity Officers

37.23 Who must designate an Equal Opportunity Officer?
37.24 Who is eligible to serve as an Equal Opportunity Officer?
37.25 What are the responsibilities of an Equal Opportunity Officer?
37.26 What are a recipient's obligations relating to the Equal Opportunity Officer?
37.27 What are the obligations of small recipients regarding Equal Opportunity Officers?
37.28 What are the obligations of service providers regarding Equal Opportunity Officers?

Notice and Communication

37.29 What are a recipient's obligations to disseminate its equal opportunity policy?
37.30 What specific wording must the notice contain?
37.31 Where must the notice required by §§ 37.29 and 37.30 be published?
37.32 When must the notice be provided?
37.33 Who is responsible for meeting the notice requirement with respect to service providers?
37.34 What type of notice must a recipient include in publications, broadcasts, and other communications?
37.35 What are a recipient's responsibilities to provide services and information in languages other than English?
37.36 What responsibilities does a recipient have to communicate information during orientations?

Data and Information Collection and Maintenance

37.37 What are a recipient's responsibilities to collect and maintain data and other information?
37.38 What information must grant applicants and recipients provide to CRC?
37.39 How long must grant applicants and recipients maintain the records required under this part?
37.40 What access to sources of information must grant applicants and recipients provide the Director?
37.41 What responsibilities do grant applicants, recipients, and the Department have to maintain the confidentiality of the information collected?
37.42 What are a recipient's responsibilities under this part to provide universal access to WIA Title I-financially assisted programs and activities?

Subpart C—Governor's Responsibilities to Implement the Nondiscrimination and Equal Opportunity Requirements of WIA

37.50 To whom does this subpart apply?
37.51 What are a Governor's oversight responsibilities?
37.52 To what extent may a Governor be liable for the actions of a recipient he or she has financially assisted under WIA Title I?
37.53 What are a Governor's oversight responsibilities regarding recipients' recordkeeping?
37.54 That are a Governor's obligations to develop and maintain a Methods of Administration?
37.55 When must the Governor carry out his or her obligations with regard to the Methods of Administration?

Subpart D—Compliance Procedures

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Authority: Sections 134(b), 136(d)(2)(F), 136(e), 172(a), 183(c), 185(c)(2), 185(d)(1)(E), 186, 187 and 188 of the Workforce Investment Act of 1998, 29 U.S.C. 2801 et seq.; Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; the Age Discrimination Act of 1975, as amended, 42

U.S.C. 6101; and Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681.

Subpart A—General Provisions

§ 37.1 What is the purpose of this part?

The purpose of this part is to implement the nondiscrimination and equal opportunity provisions of the Workforce Investment Act of 1998 (WIA), which are contained in section 188 of WIA. Section 188 prohibits discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in a WIA Title I-financially assisted program or activity. This part clarifies the application of the nondiscrimination and equal opportunity provisions of WIA and provides uniform procedures for implementing them.

§ 37.2 To whom does this part apply, and what is the scope of this part?

(a) This part applies to:

(1) Any recipient, as defined in § 37.4;

(2) Programs and activities that are part of the One-Stop delivery system and that are operated by One-Stop partners listed in section 121(b) of WIA, to the extent that the programs and activities are being conducted as part of the One-Stop delivery system; and

(3) The employment practices of a recipient and/or One-Stop partner, as provided in § 37.10.

(b) *Limitation of Application.* This part does not apply to:

(1) Programs or activities that are financially assisted by the Department exclusively under laws other than Title I of WIA, and that are not part of the One-Stop delivery system (including programs or activities implemented under, authorized by, and/or financially assisted by the Department under, JTPA);

(2) Contracts of insurance or guaranty;

(3) The ultimate beneficiary to this program of Federal financial assistance;

(4) Federal procurement contracts, with the exception of contracts to operate or provide services to Job Corps Centers; and

(5) Federally-operated Job Corps Centers. The operating Department is responsible for enforcing the nondiscrimination and equal opportunity laws to which such Centers are subject.

§ 37.3 How does this part affect a recipient's other obligations?

(a) A recipient's compliance with this part will satisfy any obligation of the recipient to comply with 29 CFR part 31, the Department of Labor's regulations implementing Title VI of the Civil Rights Act of 1964, as amended (Title VI), and with Subparts A, D and E of 29 CFR part 32, the Department's regulations implementing Section 504 of the Rehabilitation Act of 1973, as amended (Section 504).

(b) 29 CFR part 32, Subparts B and C and Appendix A, the Department's regulations which implement the requirements of Section 504 pertaining to employment practices and employment-related training, program accessibility, and reasonable accommodation, are hereby incorporated into this part by reference. Therefore, recipients must comply with the requirements set forth in those regulatory sections as well as the requirements listed in this part.

(c) Recipients that are also public entities or public accommodations, as defined by Titles II and III of the Americans with Disabilities Act of 1990 (ADA), should be aware of obligations imposed by those titles.

(d) Similarly, recipients that are also employers, employment agencies, or other entities covered by Title I of the ADA should be aware of obligations imposed by that title.

(e) Compliance with this part does not affect, in any way, any additional obligation that a recipient may have to comply with the following laws and their implementing regulations:

(1) Executive Order 11246, as amended;

(2) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793 and 794);

(3) The affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212);

(4) The Equal Pay Act of 1963, as amended (29 U.S.C. 206d);

(5) Titles VI and VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d *et seq.* and 2000e *et seq.*);

(6) The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101);

(7) The Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 621);

(8) Title IX of the Education Amendments of 1972, as amended (Title IX) (20 U.S.C. 1681);

(9) The Americans with Disabilities Act of 1990, as amended (42 U.S.C. 12101 *et seq.*); and

(10) The anti-discrimination provision of the Immigration and Nationality Act, as amended (8 U.S.C. 1324b).

(f) This rule does not preempt consistent State and local requirements.

§ 37.4 What definitions apply to this part?

As used in this part, the term:

Administrative Law Judge means a person appointed as provided in 5 U.S.C. 3105 and 5 CFR 930.203, and qualified under 5 U.S.C. 557, to preside at hearings held under the nondiscrimination and equal opportunity provisions of WIA and this part.

Aid, benefits, services, or training means WIA Title I—financially assisted services, financial or other aid, or benefits provided by or through a recipient or its employees, or by others through contract or other arrangements with the recipient. ''Aid, benefits, services, or training'' includes, but is not limited to:

(1) Core and intensive services;

(2) Education or training;

(3) Health, welfare, housing, social service, rehabilitation, or other supportive services;

(4) Work opportunities; and

(5) Cash, loans, or other financial assistance to individuals.

As used in this part, the term includes any aid, benefits, services, or training provided in or through a facility that has been constructed, expanded, altered, leased, rented, or otherwise obtained, in whole or in part, with Federal financial assistance under Title I of WIA.

Applicant means an individual who is interested in being considered for WIA Title I—financially assisted aid, benefits, services, or training by a recipient, and who has signified that interest by submitting personal information in response to a request by the recipient. See also the definitions of ''application for benefits,'' ''eligible applicant/registrant,'' ''participant,'' ''participation,'' and ''recipient'' in this section.

Applicant for employment means a person or persons who make(s) application for employment with a recipient of Federal financial assistance under WIA Title I.

Application for assistance means the process by which required documentation is provided to the Governor, recipient, or Department before and as a condition of receiving WIA Title I financial assistance (including both new and continuing assistance).

Application for benefits means the process by which information, including but not limited to a completed application form, is provided by applicants or eligible applicants before and as a condition of receiving WIA Title I—financially assisted aid, benefits, services, or training from a recipient.

Assistant Attorney General means the Assistant Attorney General, Civil Rights

Division, United States Department of Justice.

Assistant Secretary means the Assistant Secretary for Administration and Management, United States Department of Labor.

Auxiliary aids or services includes—

(1) Qualified interpreters, notetakers, transcription services, written materials, telephone handset amplifiers, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices for deaf persons (TDDs/TTYs), videotext displays, or other effective means of making aurally delivered materials available to individuals with hearing impairments;

(2) Qualified readers, taped texts, audio recordings, brailled materials, large print materials, or other effective means of making visually delivered materials available to individuals with visual impairments;

(3) Acquisition or modification of equipment or devices; and

(4) Other similar services and actions.

Beneficiary means the individual or individuals intended by Congress to receive aid, benefits, services, or training from a recipient.

Citizenship See ''Discrimination on the ground of citizenship'' in this section.

CRC means the Civil Rights Center, Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor.

Department means the U.S. Department of Labor (DOL), including its agencies and organizational units.

Departmental grantmaking agency means a grantmaking agency within the U.S. Department of Labor.

Director means the Director, Civil Rights Center (CRC), Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor, or a designee authorized to act for the Director.

Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(1)(i) The phrase *physical or mental impairment* means—

(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine;

(B) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) The phrase *physical or mental impairment* includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism. The phrase ''physical or mental impairment'' does not include homosexuality or bisexuality.

(2) The phrase *major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) The phrase *has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) The phrase *is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by the recipient as being such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the recipient as having such an impairment.

Discrimination on the ground of citizenship means a denial of participation in programs or activities financially assisted in whole or in part under Title I of WIA to individuals on the basis of their status as citizens or nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees, and parolees, or other immigrants authorized by the Attorney General to work in the United States.

Eligible applicant/registrant means an individual who has been determined eligible to participate in one or more WIA Title I—financially assisted programs or activities.

Employment practices means a recipient's practices related to employment, including but not limited to:

(1) Recruitment or recruitment advertising;

(2) Selection, placement, layoff or termination of employees;

(3) Upgrading, promotion, demotion or transfer of employees;

(4) Training, including employment-related training;

(5) Participation in upward mobility programs;

(6) Deciding rates of pay or other forms of compensation;

(7) Use of facilities; or

(8) Deciding other terms, conditions, benefits and/or privileges of employment.

Employment-related training means training that allows or enables an individual to obtain employment.

Entity means any person, corporation, partnership, joint venture, sole proprietorship, unincorporated association, consortium, Indian tribe or tribal organization, Native Hawaiian organization, and/or entity authorized by State or local law; any State or local government; and/or any agency, instrumentality or subdivision of such a government.

Facility means all or any portion of buildings, structures, sites, complexes, equipment, roads, walks, passageways, parking lots, rolling stock or other conveyances, or other real or personal property or interest in such property, including the site where the building, property, structure, or equipment is located. The phrase ''real or personal property'' in the preceding sentence includes indoor constructs that may or may not be permanently attached to a building or structure. Such constructs include, but are not limited to, office cubicles, computer kiosks, and similar constructs.

Federal grantmaking agency means a Federal agency that provides financial assistance under any Federal statute.

Financial assistance means any of the following:

(1) Any grant, subgrant, loan, or advance of funds, including funds extended to any entity for payment to or on behalf of participants admitted to that entity for training, or extended directly to such participants for payment to that entity;

(2) Provision of the services of grantmaking agency personnel, or of other personnel at the grantmaking agency's expense;

(3) A grant or donation of real or personal property or any interest in or use of such property, including:

(a) Transfers or leases of property for less than fair market value or for reduced consideration;

(b) Proceeds from a subsequent sale, transfer, or lease of such property, if the grantmaking agency's share of the fair market value of the property is not returned to the grantmaking agency; and

(c) The sale, lease, or license of, and/or the permission to use (other than on a casual or transient basis), such property or any interest in such property, either:

(i) Without consideration,

(ii) At a nominal consideration, or

(iii) At a consideration that is reduced or waived either for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to or use by the recipient;

(4) Waiver of charges that would normally be made for the furnishing of services by the grantmaking agency; and

(5) Any other agreement, arrangement, contract or subcontract (other than a procurement contract or a contract of insurance or guaranty), or other instrument that has as one of its purposes the provision of assistance or benefits under the statute or policy that authorizes assistance by the grantmaking agency.

Financial assistance under Title I of WIA means any of the following, when authorized or extended under WIA Title I:

(1) Any grant, subgrant, loan, or advance of Federal funds, including funds extended to any entity for payment to or on behalf of participants admitted to that entity for training, or extended directly to such participants for payment to that entity;

(2) Provision of the services of Federal personnel, or of other personnel at Federal expense;

(3) A grant or donation of Federal real or personal property or any interest in or use of such property, including:

(a) Transfers or leases of property for less than fair market value or for reduced consideration;

(b) Proceeds from a subsequent sale, transfer, or lease of such property, if the Federal share of the fair market value of the property is not returned to the Federal Government; and

(c) The sale, lease, or license of, and/or the permission to use (other than on a casual or transient basis), such property or any interest in such property, either:

(i) Without consideration,

(ii) At a nominal consideration, or

(iii) At a consideration that is reduced or waived either for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to or use by the recipient;

(4) Waiver of charges that would normally be made for the furnishing of Government services; and

(5) Any other agreement, arrangement, contract or subcontract (other than a Federal procurement contract or a contract of insurance or guaranty), or other instrument that has as one of its purposes the provision of assistance or benefits under WIA Title I.

Fundamental alteration means:

(1) A change in the essential nature of a program or activity as defined in this part, including but not limited to an aid, service, benefit, or training; or

(2) A cost that a recipient can demonstrate would result in an undue burden. Factors to be considered in making the determination whether the cost of a modification would result in such a burden include:

(a) The nature and net cost of the modification needed, taking into consideration the availability of tax credits and deductions, and/or outside financial assistance, for the modification;

(b) The overall financial resources of the facility or facilities involved in the provision of the modification, including:

(i) The number of persons aided, benefited, served, or trained by, or employed at, the facility or facilities; and

(ii) The effect the modification would have on the expenses and resources of the facility or facilities;

(c) The overall financial resources of the recipient, including:

(i) The overall size of the recipient;

(ii) The number of persons aided, benefited, served, trained, or employed by the recipient; and

(iii) The number, type and location of the recipient's facilities;

(d) The type of operation or operations of the recipient, including:

(i) The geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the recipient; and

(ii) Where the modification sought is employment-related, the composition, structure and functions of the recipient's workforce; and

(e) The impact of the modification upon the operation of the facility or facilities, including:

(i) The impact on the ability of other participants to receive aid, benefits, services, or training, or of other employees to perform their duties; and

(ii) The impact on the facility's ability to carry out its mission.

Governor means the chief elected official of any State or his or her designee.

Grant applicant means an entity that submits the required documentation to the Governor, recipient, or Department, before and as a condition of receiving financial assistance under Title I of WIA.

Grantmaking agency means an entity that provides Federal financial assistance.

Guideline means written informational material supplementing an agency's regulations and provided to grant applicants and recipients to provide program-specific interpretations of their responsibilities under the regulations.

Illegal use of drugs means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act, as amended (21 U.S.C. 812). ''Illegal use of drugs'' does not include the use of a drug taken under supervision of a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

Individual with a disability means a person who has a disability, as defined in this section.

(1) The term ''individual with a disability'' does not include an individual on the basis of:

(i) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(ii) Compulsive gambling, kleptomania, or pyromania; or

(iii) Psychoactive substance use disorders resulting from current illegal use of drugs.

(2) The term ''individual with a disability'' also does not include an individual who is currently engaging in the illegal use of drugs, when a recipient acts on the basis of such use. This limitation does not exclude as an individual with a disability an individual who:

(i) Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(ii) Is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(iii) Is erroneously regarded as engaging in such use, but is not engaging in such use, except that it is not a violation of the nondiscrimination and equal opportunity provisions of WIA or this part for a recipient to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1)(i) or (1)(ii) of this definition is no longer engaging in the illegal use of drugs.

(2) With regard to employment, the term ''individual with a disability'' does not include any individual who:

(i) Is an alcoholic:

(A) Whose current use of alcohol prevents such individual from performing the duties of the job in question, or

(B) Whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others; or

(ii) Has a currently contagious disease or infection, if:

(A) That disease or infection prevents him or her from performing the duties of the job in question, or

(B) His or her employment, because of that disease or infection, would constitute a direct threat to the health and safety of others.

Labor market area means an economically integrated geographic area within which individuals can reside and find employment within a reasonable distance or can readily change employment without changing their place of residence. Such an area must be identified in accordance with either criteria used by the Bureau of Labor Statistics of the Department of Labor in defining such areas, or similar criteria established by a Governor.

LWIA (Local Workforce Investment Area) grant recipient means the entity that receives WIA Title I financial assistance for a Local Workforce Investment Area directly from the Governor and disburses those funds for workforce investment activities.

Methods of Administration means the written document and supporting documentation developed under § 37.54.

National Programs means:

(1) Job Corps; and

(2) Programs receiving Federal funds under Title I, Subtitle D of WIA directly from the Department. Such programs include, but are not limited to, the Migrant and Seasonal Workers Programs, Native American Programs, and Veterans' Workforce Investment programs.

Noncompliance means a failure of a grant applicant or recipient to comply with any of the applicable requirements of the nondiscrimination and equal opportunity provisions of WIA or this part.

On-the-Job Training (OJT) means training by an employer that is provided to a paid participant while the participant is engaged in productive work that:

(1) Provides knowledge or skills essential to the full and adequate performance of the job;

(2) Provides reimbursement to the employer of up to 50 percent of the wage rate of the participant, for the extraordinary costs of providing the training and additional supervision related to the training; and

(3) Is limited in duration as appropriate to the occupation for which the participant is being trained, taking into account the content of the training, the prior work experience of the participant, and the service strategy of the participant, as appropriate.

Participant means an individual who has been determined to be eligible to participate in, and who is receiving aid, benefits, services or training under, a program or activity funded in whole or in part under Title I of WIA. ''Participant'' includes, but is not limited to, applicants receiving any service(s) under state Employment Service programs, and claimants receiving any service(s) under state Unemployment Insurance programs.

Participation is considered to commence on the first day, following determination of eligibility, on which the participant began receiving subsidized aid, benefits, services, or training provided under Title I of WIA.

Parties to a hearing means the Department and the grant applicant(s), recipient(s), or Governor.

Population eligible to be served means the total population of adults and eligible youth who reside within the labor market area that is served by a particular recipient, and who are eligible to seek WIA Title I-financially assisted aid, benefits, services or training from that recipient. See the definition of ''labor market area'' in this section.

Program or activity: See ''WIA Title I-financially assisted program or activity'' in this section.

Prohibited ground means any basis upon which it is illegal to discriminate under the nondiscrimination and equal opportunity provisions of WIA or this part, *i.e.*, race, color, religion, sex, national origin, age, disability, political affiliation or belief, and, for beneficiaries only, citizenship or participation in a WIA Title I-financially assisted program or activity.

Public entity means:

(1) Any State or local government; and

(2) Any department, agency, special purpose district, workforce investment board, or other instrumentality of a State or States or local government.

Qualified individual with a disability means:

(1) With respect to employment, an individual with a disability who, with or without reasonable accommodation, is capable of performing the essential functions of the job in question;

(2) With respect to aid, benefits, services, or training, an individual with a disability who, with or without reasonable accommodation and/or reasonable modification, meets the essential eligibility requirements for the receipt of such aid, benefits, services, or training.

Qualified interpreter means an interpreter who is able to interpret effectively, accurately, and impartially, either for individuals with disabilities or for individuals with limited English skills. The interpreter must be able to interpret both receptively and expressively, using any necessary specialized vocabulary.

Reasonable accommodation. (1) The term ''reasonable accommodation'' means:

(i) Modifications or adjustments to an application/registration process that enables a qualified applicant/registrant with a disability to be considered for the aid, benefits, services, training, or employment that the qualified applicant/registrant desires; or

(ii) Modifications or adjustments that enable a qualified individual with a disability to perform the essential functions of a job, or to receive aid, benefits, services, or training equal to that provided to qualified individuals without disabilities. These modifications or adjustments may be made to:

(A) The environment where work is performed or aid, benefits, services, or training are given; or

(B) The customary manner in which, or circumstances under which, a job is performed or aid, benefits, services, or training are given; or

(iii) Modifications or adjustments that enable a qualified individual with a disability to enjoy the same benefits and privileges of the aid, benefits, services, training, or employment as are enjoyed by other similarly situated individuals without disabilities.

(2) Reasonable accommodation includes, but is not limited to:

(i) Making existing facilities used by applicants, registrants, eligible applicants/registrants, participants, applicants for employment, and employees readily accessible to and usable by individuals with disabilities; and

(ii) Restructuring of a job or a service, or of the way in which aid, benefits, or training is/are provided; part-time or modified work or training schedules; acquisition or modification of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of readers or interpreters; and other similar

accommodations for individuals with disabilities.

(3) To determine the appropriate reasonable accommodation, it may be necessary for the recipient to initiate an informal, interactive process with the qualified individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.

Recipient means any entity to which financial assistance under WIA Title I is extended, either directly from the Department or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient), but excluding the ultimate beneficiaries of the WIA Title I-funded program or activity. In instances in which a Governor operates a program or activity, either directly or through a State agency, using discretionary funds apportioned to him or her under WIA Title I (rather than disbursing the funds to another recipient), the Governor is also a recipient. ''Recipient'' includes, but is not limited to:

(1) State-level agencies that administer, or are financed in whole or in part with, WIA Title I funds;

(2) State Employment Security Agencies;

(3) State and local Workforce Investment Boards;

(4) LWIA grant recipients;

(5) One-Stop operators;

(6) Service providers, including eligible training providers;

(7) On-the-Job Training (OJT) employers;

(8) Job Corps contractors and center operators, excluding the operators of federally-operated Job Corps centers;

(9) Job Corps national training contractors;

(10) Outreach and admissions agencies, including Job Corps contractors that perform these functions;

(11) Placement agencies, including Job Corps contractors that perform these functions; and

(12) Other National Program recipients.

In addition, for purposes of this part, One-Stop partners, as defined in section 121(b) of WIA, are treated as ''recipients,'' and are subject to the nondiscrimination and equal opportunity requirements of this part, to the extent that they participate in the One-Stop delivery system.

Registrant means the same as ''applicant'' for purposes of this part. See also the definitions of ''application for benefits,'' ''eligible applicant/registrant,'' ''participant,'' ''participation,'' and ''recipient'' in this section.

Respondent means a grant applicant or recipient (including a Governor) against which a complaint has been filed under the nondiscrimination and equal opportunity provisions of WIA or this part.

Secretary means the Secretary of Labor, U.S. Department of Labor, or his or her designee.

Sectarian activities means religious worship or ceremony, or sectarian instruction.

Section 504 means Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, which forbids discrimination against qualified individuals with disabilities in federally-financed and conducted programs and activities.

Service provider means:

(1) Any operator of, or provider of aid, benefits, services, or training to:

(a) Any WIA Title I—funded program or activity that receives financial assistance from or through any State or LWIA grant recipient; or

(b) Any participant through that participant's Individual Training Account (ITA); or

(2) Any entity that is selected and/or certified as an eligible provider of training services to participants.

Small recipient means a recipient who:

(a) Serves a total of fewer than 15 beneficiaries during the entire grant year, and

(b) Employs fewer than 15 employees on any given day during the grant year.

Solicitor means the Solicitor of Labor, U.S. Department of Labor, or his or her designee.

State means the individual states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau.

State Employment Security Agency (SESA) means the State agency that, under the State Administrator, contains both State agencies with responsibility for administering programs authorized under the Wagner-Peyser Act, and unemployment insurance programs authorized under Title III of the Social Security Act.

State Programs means programs financially assisted in whole or in part under Title I of WIA in which either:

(1) The Governor and/or State receives and disburses the grant to or through LWIA grant recipients; or

(2) The Governor retains the grant funds and operates the programs, either directly or through a State agency.

''State programs'' also includes State Employment Security Agencies, State Employment Service agencies, and/or State unemployment compensation agencies.

Supportive services means services, such as transportation, child care, dependent care, housing, and needs-related payments, that are necessary to enable an individual to participate in WIA Title I-financially assisted programs and activities, as consistent with the provisions of WIA.

Terminee means a participant whose participation in the program terminates, voluntarily or involuntarily, during the applicable program year.

Title VI means Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.*, as amended, which forbids recipients of Federal financial assistance from discriminating on the basis of race, color, or national origin.

Transferee means a person or entity to whom real or personal property, or an interest in such property, is transferred.

Ultimate beneficiary See the definition of ''beneficiary'' in this section.

Undue hardship This term has different meanings, depending upon whether it is used with regard to reasonable accommodation of individuals with disabilities, or with regard to religious accommodation.

(1) *Reasonable accommodation of individuals with disabilities:* (i) In general, ''undue hardship'' means significant difficulty or expense incurred by a recipient, when considered in light of the factors set forth in paragraph (ii).

(ii) Factors to be considered in determining whether an accommodation would impose an undue hardship on a recipient include:

(A) The nature and net cost of the accommodation needed, taking into consideration the availability of tax credits and deductions, and/or outside funding, for the accommodation;

(B) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, including:

(*1*) The number of persons aided, benefited, served, or trained by, or employed at, the facility or facilities, and

(*2*) The effect the accommodation would have on the expenses and resources of the facility or facilities;

(C) The overall financial resources of the recipient, including:

(*1*) The overall size of the recipient,

(*2*) The number of persons aided, benefited, served, trained, or employed by the recipient, and

(*3*) The number, type and location of the recipient's facilities;

(D) The type of operation or operations of the recipient, including:

(*1*) The geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the recipient, and

(*2*) Where the individual is seeking an employment-related accommodation, the composition, structure and functions of the recipient's workforce; and

(E) The impact of the accommodation upon the operation of the facility or facilities, including:

(*1*) The impact on the ability of other participants to receive aid, benefits, services, or training, or of other employees to perform their duties, and

(*2*) The impact on the facility's ability to carry out its mission.

(2) *Religious accommodation* For purposes of religious accommodation only, ''undue hardship'' means any additional, unusual costs, other than *de minimis* costs, that a particular accommodation would impose upon a recipient. *See Trans World Airlines, Inc.* v. *Hardison*, 432 U.S. 63, 81, 84 (1977).

WIA means the Workforce Investment Act of 1998, Pub. L. 105–220.

WIA Title I financial assistance See the definition of ''Federal financial assistance under Title I of WIA'' in this section.

WIA Title I-funded program or activity means:

(1) A program or activity, operated by a recipient and funded, in whole or in part, under Title I of WIA, that provides either:

(i) Any aid, benefits, services, or training to individuals; or

(ii) Facilities for furnishing any aid, benefits, services, or training to individuals;

(2) Aid, benefits, services, or training provided in facilities that are being or were constructed with the aid of Federal financial assistance under WIA Title I; or

(3) Aid, benefits, services, or training provided with the aid of any non-WIA Title I funds, property, or other resources that are required to be expended or made available in order for the program to meet matching requirements or other conditions which must be met in order to receive the WIA Title I financial assistance.

See the definition of ''aid, benefits, services, or training'' in this section.

§ 37.5 What forms of discrimination are prohibited by this part?

No individual in the United States may, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in any WIA Title I—financially assisted program or activity, be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with any WIA Title I—funded program or activity.

§ 37.6 What specific discriminatory actions, based on prohibited grounds other than disability, are prohibited by this part?

(a) For the purposes of this section, ''prohibited ground'' means race, color, religion, sex, national origin, age, political affiliation or belief, and for beneficiaries only, citizenship or participation in any WIA Title I—financially assisted program or activity.

(b) A recipient must not, directly or through contractual, licensing, or other arrangements, on a prohibited ground:

(1) Deny an individual any aid, benefits, services, or training provided under a WIA Title I—funded program or activity;

(2) Provide to an individual any aid, benefits, services, or training that is different, or is provided in a different manner, from that provided to others under a WIA Title I—funded program or activity;

(3) Subject an individual to segregation or separate treatment in any matter related to his or her receipt of any aid, benefits, services, or training under a WIA Title I—funded program or activity;

(4) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any aid, benefits, services, or training under a WIA Title I—funded program or activity;

(5) Treat an individual differently from others in determining whether he or she satisfies any admission, enrollment, eligibility, membership, or other requirement or condition for any aid, benefits, services, or training provided under a WIA Title I—funded program or activity;

(6) Deny or limit an individual with respect to any opportunity to participate in a WIA Title I—funded program or activity, or afford him or her an opportunity to do so that is different from the opportunity afforded others under a WIA Title I—funded program or activity;

(7) Deny an individual the opportunity to participate as a member of a planning or advisory body that is an integral part of the WIA Title I—funded program or activity; or

(8) Otherwise limit on a prohibited ground an individual in enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any WIA Title I—financially assisted aid, benefits, services, or training.

(c) A recipient must not, directly or through contractual, licensing, or other arrangements:

(1) Aid or perpetuate discrimination by providing significant assistance to an agency, organization, or person that discriminates on a prohibited ground in providing any aid, benefits, services, or training to registrants, applicants or participants in a WIA Title I—funded program or activity; or

(2) Refuse to accommodate an individual's religious practices or beliefs, unless to do so would result in undue hardship, as defined in section 37.4.

(d) (1) In making any of the determinations listed in paragraph (d)(2) of this section, either directly or through contractual, licensing, or other arrangements, a recipient must not use standards, procedures, criteria, or administrative methods that have any of the following purposes or effects:

(i) Subjecting individuals to discrimination on a prohibited ground; or

(ii) Defeating or substantially impairing, on a prohibited ground, accomplishment of the objectives of either:

(A) The WIA Title I—funded program or activity; or

(B) the nondiscrimination and equal opportunity provisions of WIA or this part.

(2) The determinations to which this paragraph applies include, but are not limited to:

(i) The types of aid, benefits, services, training, or facilities that will be provided under any WIA Title I—funded program or activity;

(ii) The class of individuals to whom such aid, benefits, services, training, or facilities will be provided; or

(iii) The situations in which such aid, benefits, services, training, or facilities will be provided.

(3) Paragraph (d) of this section applies to the administration of WIA Title I—funded programs or activities providing aid, benefits, services, training, or facilities in any manner, including, but not limited to:

(i) Outreach and recruitment;

(ii) Registration;

(iii) Counseling and guidance;

(iv) Testing;

(v) Selection, placement, appointment, and referral;

(vi) Training; and

(vii) Promotion and retention.

(4) A recipient must not take any of the prohibited actions listed in paragraph (d) of this section either directly or through contractual, licensing, or other arrangements.

(e) In determining the site or location of facilities, a grant applicant or recipient must not make selections that have any of the following purposes or effects:

(1) On a prohibited ground:

(i) Excluding individuals from a WIA Title I—financially assisted program or activity;

(ii) Denying them the benefits of such a program or activity; or

(iii) Subjecting them to discrimination; or

(2) Defeating or substantially impairing the accomplishment of the objectives of either:

(i) The WIA Title I—financially assisted program or activity; or

(ii) The nondiscrimination and equal opportunity provisions of WIA or this part.

(f) (1) A recipient must not permit participants to be employed or trained in sectarian activities.

(2) This paragraph applies to any facility that is, or will be, primarily used or inherently devoted either:

(A) For sectarian instruction; or

(B) As a place of worship,

(ii) A recipient must not permit participants to be employed or trained in any way to:

(A) Construct any part of such a facility,

(B) Operate any part of such a facility, or

(C) Maintain any part of that facility.

(3) If a facility is not primarily or inherently devoted to sectarian instruction or religious worship, a recipient may permit the use of WIA Title I funds to employ participants to maintain the facility, if the organization that operates the facility is part of a program or activity that provides services to participants.

(g) The exclusion of an individual from programs or activities limited by Federal statute or Executive Order to a certain class or classes of individuals of which the individual in question is not a member is not prohibited by this part.

§ 37.7 What specific discriminatory actions based on disability are prohibited by this part?

(a) In providing any aid, benefits, services, or training under a WIA Title I—financially assisted program or activity, a recipient must not, directly or through contractual, licensing, or other arrangements, on the ground of disability:

(1) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefits, services, or training;

(2) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefits, services, or training that is not equal to that afforded others;

(3) Provide a qualified individual with a disability with an aid, benefit, service or training that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(4) Provide different, segregated, or separate aid, benefits, services, or training to individuals with disabilities, or to any class of individuals with disabilities, unless such action is necessary to provide qualified individuals with disabilities with aid, benefits, services or training that are as effective as those provided to others;

(5) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; or

(6) Otherwise limit a qualified individual with a disability in enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, service or training.

(b) A recipient must not, directly or through contractual, licensing, or other arrangements, aid or perpetuate discrimination against qualified individuals with disabilities by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefits, services or training to registrants, applicants, or participants.

(c) A recipient must not deny a qualified individual with a disability the opportunity to participate in WIA Title I—financially assisted programs or activities despite the existence of permissibly separate or different programs or activities.

(d) A recipient must administer WIA Title I—financially assisted programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(e) A recipient must not, directly or through contractual, licensing, or other arrangements, use standards, procedures, criteria, or administrative methods:

(1) That have the purpose or effect of subjecting qualified individuals with disabilities to discrimination on the ground of disability;

(2) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the WIA Title I—financially assisted program or activity with respect to individuals with disabilities; or

(3) That perpetuate the discrimination of another entity if both entities are subject to common administrative control or are agencies of the same state.

(f) In determining the site or location of facilities, a grant applicant or recipient must not make selections that have any of the following purposes or effects:

(1) On the basis of disability:

(i) Excluding qualified individuals from a WIA Title I-financially assisted program or activity;

(ii) Denying them the benefits of such a program or activity; or

(iii) Subjecting them to discrimination; or

(2) Defeating or substantially impairing the accomplishment of the disability-related objectives of either:

(i) The WIA Title I-financially assisted program or activity; or

(ii) The nondiscrimination and equal opportunity provisions of WIA or this part.

(g) A recipient, in the selection of contractors, must not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(h) A recipient must not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may a recipient establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. The programs or activities of entities that are licensed or certified by a recipient are not, themselves, covered by this part.

(i) A recipient must not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any aid, benefit, service, training, program, or activity, unless such criteria can be shown to be necessary for the provision of the aid, benefit, service, training, program, or activity being offered.

(j) Nothing in this part prohibits a recipient from providing aid, benefits, services, training, or advantages to individuals with disabilities, or to a particular class of individuals with disabilities, beyond those required by this part.

(k) A recipient must not place a surcharge on a particular individual

with a disability, or any group of individuals with disabilities, to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by WIA Title I or this part.

(l) A recipient must not exclude, or otherwise deny equal aid, benefits, services, training, programs, or activities to, an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association.

(m) The exclusion of an individual without a disability from the benefits of a program limited by Federal statute or Executive Order to individuals with disabilities, or the exclusion of a specific class of individuals with disabilities from a program limited by Federal statute or Executive Order to a different class of individuals with disabilities, is not prohibited by this part.

(n) This part does not require a recipient to provide any of the following to individuals with disabilities:

(1) Personal devices, such as wheelchairs;

(2) Individually prescribed devices, such as prescription eyeglasses or hearing aids;

(3) Readers for personal use or study; or

(4) Services of a personal nature, including assistance in eating, toileting, or dressing.

(o)(1) Nothing in this part requires an individual with a disability to accept an accommodation, aid, benefit, service, training, or opportunity provided under WIA Title I or this part that such individual chooses not to accept.

(2) Nothing in this part authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.

§ 37.8 What are a recipient's responsibilities regarding reasonable accommodation and reasonable modification for individuals with disabilities?

(a) With regard to aid, benefits, services, training, and employment, a recipient must provide reasonable accommodation to qualified individuals with disabilities who are applicants, registrants, eligible applicants/registrants, participants, employees, or applicants for employment, unless providing the accommodation would cause undue hardship. See the definitions of ''reasonable accommodation'' and ''undue hardship'' in § 37.4 of this part.

(1) In those circumstances where a recipient believes that the proposed accommodation would cause undue hardship, the recipient has the burden of proving that the accommodation would result in such hardship.

(2) The recipient must make the decision that the accommodation would cause such hardship only after considering all factors listed in the definition of ''undue hardship'' in § 37.4. The decision must be accompanied by a written statement of the recipient's reasons for reaching that conclusion. The recipient must provide a copy of the statement of reasons to the individual or individuals who requested the accommodation.

(3) If a requested accommodation would result in undue hardship, the recipient must take any other action that would not result in such hardship, but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the aid, benefits, services, training, or employment provided by the recipient.

(b) A recipient must also make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless making the modifications would fundamentally alter the nature of the service, program, or activity. See the definition of ''fundamental alteration'' in § 37.4 of this part.

(1) In those circumstances where a recipient believes that the proposed modification would fundamentally alter the program, activity, or service, the recipient has the burden of proving that the modification would result in such an alteration.

(2) The recipient must make the decision that the modification would result in such an alteration only after considering all factors listed in the definition of ''fundamental alteration'' in § 37.4. The decision must be accompanied by a written statement of the recipient's reasons for reaching that conclusion. The recipient must provide a copy of the statement of reasons to the individual or individuals who requested the modification.

(3) If a modification would result in a fundamental alteration, the recipient must take any other action that would not result in such an alteration, but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the aid, benefits, services, training, or employment provided by the recipient.

§ 37.9 What are a recipient's responsibilities to communicate with individuals with disabilities?

(a) Recipients must take appropriate steps to ensure that communications with beneficiaries, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, employees, and members of the public who are individuals with disabilities, are as effective as communications with others.

(b) A recipient must furnish appropriate auxiliary aids or services where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the WIA Title I—financially assisted program or activity. In determining what type of auxiliary aid or service is appropriate and necessary, such recipient must give primary consideration to the requests of the individual with a disability.

(c) Where a recipient communicates by telephone with beneficiaries, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, and/or employees, the recipient must use telecommunications devices for individuals with hearing impairments (TDDs/TTYs), or equally effective communications systems, such as telephone relay services.

(d) A recipient must ensure that interested individuals, including individuals with visual or hearing impairments, can obtain information as to the existence and location of accessible services, activities, and facilities.

(e)(1) A recipient must provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The signage provided must meet the most current standards prescribed by the General Services Administration under the Architectural Barriers Act at 41 CFR 101–19.6. Alternative standards for the signage may be adopted when it is clearly evident that such alternative standards provide equivalent or greater access to the information.

(2) The international symbol for accessibility must be used at each primary entrance of an accessible facility.

(f) This section does not require a recipient to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity.

(1) In those circumstances where a recipient believes that the proposed action would fundamentally alter the WIA Title I—financially assisted

program, activity, or service, the recipient has the burden of proving that compliance with this section would result in such an alteration.

(2) The decision that compliance would result in such an alteration must be made by the recipient after considering all resources available for use in the funding and operation of the WIA Title I—financially assisted program, activity, or service, and must be accompanied by a written statement of the reasons for reaching that conclusion.

(3) If an action required to comply with this section would result in the fundamental alteration described in paragraph (f)(1) of this section, the recipient must take any other action that would not result in such an alteration, but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the recipient.

§ 37.10 To what extent are employment practices covered by this part?

(a) Discrimination on the ground of race, color, religion, sex, national origin, age, disability, or political affiliation or belief is prohibited in employment practices in the administration of, or in connection with:

(1) Any WIA Title I-financially assisted program or activity; and

(2) Any program or activity that is part of the One-Stop delivery system and is operated by a One-Stop partner listed in Section 121(b) of WIA, to the extent that the program or activity is being conducted as part of the One-Stop delivery system.

(b) *Employee selection procedures.* In implementing this section, a recipient must comply with the Uniform Guidelines on Employee Selection Procedures, 41 CFR part 60–3.

(c) *Standards for employment-related investigations and reviews.* In any investigation or compliance review, the Director must consider Equal Employment Opportunity Commission (EEOC) regulations, guidance and appropriate case law in determining whether a recipient has engaged in an unlawful employment practice.

(d) As provided in § 37.3(b) of this part, 29 CFR part 32, subparts B and C and Appendix A, which implement the requirements of Section 504 pertaining to employment practices and employment-related training, program accessibility, and reasonable accommodation, have been incorporated into this part by reference. Therefore, recipients must comply with the requirements set forth in those regulatory sections as well as the requirements listed in this part.

(e) Recipients that are also employers, employment agencies, or other entities covered by Titles I and II of the ADA should be aware of obligations imposed by those titles. *See* 29 CFR part 1630 and 28 CFR part 35.

(f) Similarly, recipients that are also employers covered by the anti-discrimination provision of the Immigration and Nationality Act should be aware of the obligations imposed by that provision. *See* 8 U.S.C. 1324b, as amended.

(g) This rule does not preempt consistent State and local requirements.

§ 37.11 To what extent are intimidation and retaliation prohibited by this part?

(a) A recipient must not discharge, intimidate, retaliate, threaten, coerce or discriminate against any individual because the individual has:

(1) Filed a complaint alleging a violation of Section 188 of WIA or this part;

(2) Opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of WIA or this part;

(3) Furnished information to, or assisted or participated in any manner in, an investigation, review, hearing, or any other activity related to any of the following:

(i) Administration of the nondiscrimination and equal opportunity provisions of WIA or this part;

(ii) Exercise of authority under those provisions; or

(iii) Exercise of privilege secured by those provisions; or

(4) Otherwise exercised any rights and privileges under the nondiscrimination and equal opportunity provisions of WIA or this part.

(b) The sanctions and penalties contained in Section 188(b) of WIA or this part may be imposed against any recipient that engages in any such retaliation or intimidation, or fails to take appropriate steps to prevent such activity.

§ 37.12 What Department of Labor office is responsible for administering this part?

The Civil Rights Center (CRC), in the Office of the Assistant Secretary for Administration and Management, is responsible for administering and enforcing the nondiscrimination and equal opportunity provisions of WIA and this part, and for developing and issuing policies, standards, guidance, and procedures for effecting compliance.

§ 37.13 Who is responsible for providing interpretations of this part?

The Director will make any rulings under, or interpretations of, the nondiscrimination and equal opportunity provisions of WIA or this part.

§ 37.14 Under what circumstances may the Secretary delegate the responsibilities of this part?

(a) The Secretary may from time to time assign to officials of other departments or agencies of the Government (with the consent of such department or agency) responsibilities in connection with the effectuation of the nondiscrimination and equal opportunity provisions of WIA and this part (other than responsibility for final decisions under § 37.112), including the achievement of effective coordination and maximum uniformity within the Department and within the executive branch of the Government in the application of the nondiscrimination and equal opportunity provisions of WIA or this part to similar programs and similar situations.

(b) Any action taken, determination made, or requirement imposed by an official of another department or agency acting under an assignment of responsibility under this section has the same effect as if the action had been taken by the Director.

§ 37.15 What are the Director's responsibilities to coordinate with other civil rights agencies?

(a) Whenever a compliance review or complaint investigation under this part reveals possible violation of one or more of the laws listed in paragraph (b) of this section, or of any other Federal civil rights law, that is not also a violation of the nondiscrimination and equal opportunity provisions of WIA or this part, the Director must attempt to notify the appropriate agency and provide it with all relevant documents and information.

(b) This section applies to the following:

(1) Executive Order 11246, as amended;

(2) Section 503 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793);

(3) The affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212);

(4) The Equal Pay Act of 1963, as amended (29 U.S.C. 206d);

(5) Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e *et seq.*);

(6) The Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 621);

(7) The Americans with Disabilities Act of 1990, as amended (42 U.S.C. 12101 *et seq.*);

(8) The anti-discrimination provision of the Immigration and Nationality Act, as amended (8 U.S.C. 1324b); and

(9) Any other Federal civil rights law.

§ 37.16 What is this part's effect on a recipient's obligations under other laws, and what limitations apply?

(a) *Effect of State or local law or other requirements.* The obligation to comply with the nondiscrimination and equal opportunity provisions of WIA or this part are not excused or reduced by any State or local law or other requirement that, on a prohibited ground, prohibits or limits an individual's eligibility to receive aid, benefits, services, or training; to participate in any WIA Title I—financially assisted program or activity; to be employed by any recipient; or to practice any occupation or profession.

(b) *Effect of private organization rules.* The obligation to comply with the nondiscrimination and equal opportunity provisions of WIA and this part is not excused or reduced by any rule or regulation of any private organization, club, league or association that, on a prohibited ground, prohibits or limits an individual's eligibility to participate in any WIA Title I—financially assisted program or activity to which this part applies.

(c) *Effect of possible future exclusion from employment opportunities.* A recipient must not exclude any individual from, or restrict any individual's participation in, any program or activity based on the recipient's belief or concern that the individual will encounter limited future employment opportunities because of his or her race, color, religion, sex, national origin, age, disability, political affiliation or belief, or citizenship.

Subpart B—Recordkeeping and Other Affirmative Obligations of Recipients

Assurances

§ 37.20 What is a grant applicant's obligation to provide a written assurance?

(a) (1) Each application for financial assistance under Title I of WIA, as defined in § 37.4, must include the following assurance:

As a condition to the award of financial assistance from the Department of Labor under Title I of WIA, the grant applicant assures that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

Section 188 of the Workforce Investment Act of 1998 (WIA), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and against beneficiaries on the basis of either citizenship/status as a lawfully admitted immigrant authorized to work in the United States or participation in any WIA Title I—financially assisted program or activity;

Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the bases of race, color and national origin;

Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;

The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and

Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs.

The grant applicant also assures that it will comply with 29 CFR part 37 and all other regulations implementing the laws listed above. This assurance applies to the grant applicant's operation of the WIA Title I-financially assisted program or activity, and to all agreements the grant applicant makes to carry out the WIA Title I-financially assisted program or activity. The grant applicant understands that the United States has the right to seek judicial enforcement of this assurance.

(2) The assurance is considered incorporated by operation of law in the grant, cooperative agreement, contract or other arrangement whereby Federal financial assistance under Title I of the WIA is made available, whether or not it is physically incorporated in such document and whether or not there is a written agreement between the Department and the recipient, between the Department and the Governor, between the Governor and the recipient, or between recipients. The assurance also may be incorporated by reference in such grants, cooperative agreements, contracts, or other arrangements.

(b) *Continuing State programs.* Each Strategic Five-Year State Plan submitted by a State to carry out a continuing WIA Title I-financially assisted program or activity must provide a statement that the WIA Title I-financially assisted program or activity is (or, in the case of a new WIA Title I-financially assisted program or activity, will be) conducted in compliance with the nondiscrimination and equal opportunity provisions of WIA and this part, as a condition to the approval of the Five-Year Plan and the extension of any WIA Title I financial assistance under the Plan. The State also must certify that it has developed and maintains a Methods of Administration under § 37.54.

§ 37.21 How long will the recipient's obligation under the assurance last, and how broad is the obligation?

(a) Where the WIA Title I financial assistance is intended to provide, or is in the form of, either personal property, real property, structures on real property, or interest in any such property or structures, the assurance will obligate the recipient, or (in the case of a subsequent transfer) the transferee, for the longer of:

(1) The period during which the property is used either:

(i) For a purpose for which WIA Title I financial assistance is extended; or

(ii) For another purpose involving the provision of similar services or benefits; or

(2) The period during which either:

(i) The recipient retains ownership or possession of the property; or

(ii) The transferee retains ownership or possession of the property without compensating the Departmental grantmaking agency for the fair market value of that ownership or possession.

(b) In all other cases, the assurance will obligate the recipient for the period during which WIA Title I financial assistance is extended.

§ 37.22 How must covenants be used in connection with this part?

(a) Where WIA Title I financial assistance is provided in the form of a transfer of real property, structures, or improvements on real property or structures, or interests in real property or structures, the instrument effecting or recording the transfer must contain a covenant assuring nondiscrimination and equal opportunity for the period described in § 37.21.

(b) Where no Federal transfer of real property or interest therein from the Federal Government is involved, but real property or an interest therein is acquired or improved under a program of WIA Title I financial assistance, the recipient must include the covenant described in paragraph (a) of this section in the instrument effecting or recording any subsequent transfer of such property.

(c) When the property is obtained from the Federal Government, the covenant described in paragraph (a) of this section also may include a condition coupled with a right of reverter to the Department in the event of a breach of the covenant.

Equal Opportunity Officers

§ 37.23 Who must designate an Equal Opportunity Officer?

Every recipient must designate an Equal Opportunity Officer (''EO Officer''), except small recipients and

service providers, as defined in § 37.4. The responsibilities of small recipients and service providers are described in §§ 37.27 and 37.28.

§ 37.24 Who is eligible to serve as an Equal Opportunity Officer?

A senior-level employee of the recipient should be appointed as the recipient's Equal Opportunity Officer. Depending upon the size of the recipient, the size of the recipient's WIA Title I-financially assisted programs or activities, and the number of applicants, registrants, and participants served by the recipient, the EO Officer may, or may not, be assigned other duties. However, he or she must not have other responsibilities or activities that create a conflict, or the appearance of a conflict, with the responsibilities of an EO Officer.

§ 37.25 What are the responsibilities of an Equal Opportunity Officer?

An Equal Opportunity Officer is responsible for coordinating a recipient's obligations under this part. Those responsibilities include, but are not limited to:

(a) Serving as the recipient's liaison with CRC;

(b) Monitoring and investigating the recipient's activities, and the activities of the entities that receive WIA Title I funds from the recipient, to make sure that the recipient and its subrecipients are not violating their nondiscrimination and equal opportunity obligations under WIA Title I and this part;

(c) Reviewing the recipient's written policies to make sure that those policies are nondiscriminatory;

(d) Developing and publishing the recipient's procedures for processing discrimination complaints under §§ 37.76 through 37.79, and making sure that those procedures are followed;

(e) Reporting directly to the appropriate official (including, but not limited to, the State WIA Director, Governor's WIA Liaison, Job Corps Center Director, SESA Administrator, or LWIA grant recipient) about equal opportunity matters;

(f) Undergoing training (at the recipient's expense) to maintain competency, if the Director requires him or her, and/or his or her staff, to do so; and

(g) If applicable, overseeing the development and implementation of the recipient's Methods of Administration under § 37.54.

§ 37.26 What are a recipient's obligations relating to the Equal Opportunity Officer?

A recipient has the following obligations:

(a) Making the Equal Opportunity Officer's name, and his or her position title, address, and telephone number (voice and TDD/TTY) public;

(b) Ensuring that the EO Officer's identity and contact information appears on all internal and external communications about the recipient's nondiscrimination and equal opportunity programs;

(c) Assigning sufficient staff and resources to the Equal Opportunity Officer, and providing him or her with the necessary support of top management, to ensure compliance with the nondiscrimination and equal opportunity provisions of WIA and this part; and

(d) Ensuring that the EO Officer and his/her staff are afforded the opportunity to receive the training necessary and appropriate to maintain competency.

§ 37.27 What are the obligations of small recipients regarding Equal Opportunity Officers?

Although small recipients do not need to designate Equal Opportunity Officers who have the full range of responsibilities listed above, they must designate an individual who will be responsible for developing and publishing of complaint procedures, and the processing of complaints, as explained in §§ 37.76 through 37.79.

§ 37.28 What are the obligations of service providers regarding Equal Opportunity Officers?

Service providers, as defined in § 37.4, are not required to designate an Equal Opportunity Officer. The obligation for ensuring service provider compliance with the nondiscrimination and equal opportunity provisions of WIA and this part rests with the Governor or LWIA grant recipient, as specified in the State's Methods of Administration.

Notice and Communication

§ 37.29 What are a recipient's obligations to disseminate its equal opportunity policy?

(a) A recipient must provide initial and continuing notice that it does not discriminate on any prohibited ground. This notice must be provided to:

(1) Registrants, applicants, and eligible applicants/registrants;

(2) Participants;

(3) Applicants for employment and employees;

(4) Unions or professional organizations that hold collective bargaining or professional agreements with the recipient;

(5) Subrecipients that receive WIA Title I funds from the recipient; and

(6) Members of the public, including those with impaired vision or hearing.

(b) As provided in § 37.9, the recipient must take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others.

§ 37.30 What specific wording must the notice contain?

The notice must contain the following specific wording:

Equal Opportunity Is the Law

It is against the law for this recipient of Federal financial assistance to discriminate on the following bases:

Against any individual in the United States, on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief; and

Against any beneficiary of programs financially assisted under Title I of the Workforce Investment Act of 1998 (WIA), on the basis of the beneficiary's citizenship/status as a lawfully admitted immigrant authorized to work in the United States, or his or her participation in any WIA Title I-financially assisted program or activity.

The recipient must not discriminate in any of the following areas:

Deciding who will be admitted, or have access, to any WIA Title I-financially assisted program or activity;

Providing opportunities in, or treating any person with regard to, such a program or activity; or

Making employment decisions in the administration of, or in connection with, such a program or activity.

What to Do If You Believe You Have Experienced Discrimination

If you think that you have been subjected to discrimination under a WIA Title I-financially assisted program or

Activity, you may file a complaint within 180 days from the date of the alleged violation with either:

The recipient's Equal Opportunity Officer (or the person whom the recipient has designated for this purpose); or

The Director, Civil Rights Center (CRC), U.S. Department of Labor, 200 Constitution Avenue NW, Room N–4123, Washington, DC 20210.

If you file your complaint with the recipient, you must wait either until the recipient issues a written Notice of Final Action, or until 90 days have passed (whichever is sooner), before filing with the Civil Rights Center (see address above).

If the recipient does not give you a written Notice of Final Action within 90 days of the day on which you filed your complaint, you do not have to wait for the recipient to issue that Notice before filing a complaint with CRC. However, you must file your CRC complaint within 30 days of the 90-day deadline (in other words, within 120 days after the day on which you filed your complaint with the recipient).

If the recipient does give you a written Notice of Final Action on your complaint,

but you are dissatisfied with the decision or resolution, you may file a complaint with CRC. You must file your CRC complaint within 30 days of the date on which you received the Notice of Final Action.

§ 37.31 Where must the notice required by §§ 37.29 and 37.30 be published?

(a) At a minimum, the notice required by §§ 37.29 and 37.30 must be:

(1) Posted prominently, in reasonable numbers and places;

(2) Disseminated in internal memoranda and other written or electronic communications;

(3) Included in handbooks or manuals; and

(4) Made available to each participant, and made part of each participant's file.

(b) The notice must be provided in appropriate formats to individuals with visual impairments. Where notice has been given in an alternate format to a participant with a visual impairment, a record that such notice has been given must be made a part of the participant's file.

§ 37.32 When must the notice required by §§ 37.29 and 37.30 be provided?

The notice required by §§ 37.29 and 37.30 must be initially provided within 90 days of the effective date of this part, or of the date this part first applies to the recipient, whichever comes later.

§ 37.33 Who is responsible for meeting the notice requirement with respect to service providers?

The Governor or the LWIA grant recipient, as determined by the Governor and as provided in that State's Methods of Administration, will be responsible for meeting the notice requirement provided in Sections 37.29 and 37.30 with respect to a State's service providers.

§ 37.34 What type of notice must a recipient include in publications, broadcasts, and other communications?

(a) Recipients must indicate that the WIA Title I-financially assisted program or activity in question is an ''equal opportunity employer/program,'' and that ''auxiliary aids and services are available upon request to individuals with disabilities,'' in recruitment brochures and other materials that are ordinarily distributed or communicated in written and/or oral form, electronically and/or on paper, to staff, clients, or the public at large, to describe programs financially assisted under Title I of WIA or the requirements for participation by recipients and participants. Where such materials indicate that the recipient may be reached by telephone, the materials must state the telephone number of the TDD/TTY or relay service used by the recipient, as required by § 37.9(c).

(b) Recipients that publish or broadcast program information in the news media must ensure that such publications and broadcasts state that the WIA Title I-financially assisted program or activity in question is an equal opportunity employer/program (or otherwise indicate that discrimination in the WIA Title I-financially assisted program or activity is prohibited by Federal law), and indicate that auxiliary aids and services are available upon request to individuals with disabilities.

(c) A recipient must not communicate any information that suggests, by text or illustration, that the recipient treats beneficiaries, registrants, applicants, participants, employees or applicants for employment differently on any prohibited ground specified in § 37.5, except as such treatment is otherwise permitted under Federal law or this part.

§ 37.35 What are a recipient's responsibilities to provide services and information in languages other than English?

(a) A significant number or proportion of the population eligible to be served, or likely to be directly affected, by a WIA Title I-financially assisted program or activity may need services or information in a language other than English in order to be effectively informed about, or able to participate in, the program or activity. Where such a significant number or proportion exists, a recipient must take the following actions:

(1) Consider:

(i) The scope of the program or activity, and

(ii) The size and concentration of the population that needs services or information in a language other than English; and

(2) Based on those considerations, take reasonable steps to provide services and information in appropriate languages. This information must include the initial and continuing notice required under §§ 37.29 and 37.30, and all information that is communicated under § 37.34.

(b) In circumstances other than those described in paragraph (a) of this section, a recipient should nonetheless make reasonable efforts to meet the particularized language needs of limited-English-speaking individuals who seek services or information from the recipient.

§ 37.36 What responsibilities does a recipient have to communicate information during orientations?

During each presentation to orient new participants, new employees, and/or the general public to its WIA Title I-financially assisted program or activity, a recipient must include a discussion of rights under the nondiscrimination and equal opportunity provisions of WIA and this part, including the right to file a complaint of discrimination with the recipient or the Director.

Data and Information Collection and Maintenance

§ 37.37 What are a recipient's responsibilities to collect and maintain data and other information?

(a) The Director will not require submission of data that can be obtained from existing reporting requirements or sources, including those of other agencies, if the source is known and available to the Director.

(b)(1) Each recipient must collect such data and maintain such records, in accordance with procedures prescribed by the Director, as the Director finds necessary to determine whether the recipient has complied or is complying with the nondiscrimination and equal opportunity provisions of WIA or this part. The system and format in which the records and data are kept must be designed to allow the Governor and CRC to conduct statistical or other quantifiable data analyses to verify the recipient's compliance with section 188 of WIA and this part.

(2) Such records must include, but are not limited to, records on applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment. Each recipient must record the race/ethnicity, sex, age, and where known, disability status, of every applicant, registrant, eligible applicant/registrant, participant, terminee, applicant for employment, and employee. Such information must be stored in a manner that ensures confidentiality, and must be used only for the purposes of recordkeeping and reporting; determining eligibility, where appropriate, for WIA Title I-financially assisted programs or activities; determining the extent to which the recipient is operating its WIA Title I-financially assisted program or activity in a nondiscriminatory manner; or other use authorized by law.

(c) Each recipient must maintain, and submit to CRC upon request, a log of complaints filed with it that allege discrimination on the ground(s) of race, color, religion, sex, national origin, age, disability, political affiliation or belief,

citizenship, and/or participation in a WIA Title I-financially assisted program or activity. The log must include: the name and address of the complainant; the ground of the complaint; a description of the complaint; the date the complaint was filed; the disposition and date of disposition of the complaint; and other pertinent information. Information that could lead to identification of a particular individual as having filed a complaint must be kept confidential.

(d) Where designation of individuals by race or ethnicity is required, the guidelines of the Office of Management and Budget must be used.

(e) A service provider's responsibility for collecting and maintaining the information required under this section may be assumed by the Governor or LWIA grant recipient, as provided in the State's Methods of Administration.

§ 37.38 What information must grant applicants and recipients provide to CRC?

In addition to the information which must be collected, maintained, and, upon request, submitted to CRC under § 37.37:

(a) Each grant applicant and recipient must promptly notify the Director when any administrative enforcement actions or lawsuits are filed against it alleging discrimination on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in a WIA Title I-financially assisted program or activity. This notification must include:

(1) The names of the parties to the action or lawsuit;

(2) The forum in which each case was filed; and

(3) The relevant case numbers.

(b) Each grant applicant (as part of its application) and recipient (as part of a compliance review conducted under Section 37.63, or monitoring activity carried out under § 37.65) must provide the following information:

(1) The name of any other Federal agency that conducted a civil rights compliance review or complaint investigation, and that found the grant applicant or recipient to be in noncompliance, during the two years before the grant application was filed or CRC began its examination; and

(2) Information about any administrative enforcement actions or lawsuits that alleged discrimination on any protected basis, and that were filed against the grant applicant or recipient during the two years before the application or renewal application, compliance review, or monitoring activity. This information must include:

(i) The names of the parties;

(ii) The forum in which each case was filed; and

(iii) The relevant case numbers.

(c) At the discretion of the Director, grant applicants and recipients may be required to provide, in a timely manner, any information and data necessary to investigate complaints and conduct compliance reviews on grounds prohibited under the nondiscrimination and equal opportunity provisions of WIA and this part.

(d) At the discretion of the Director, recipients may be required to provide, in a timely manner, the particularized information and/or to submit the periodic reports that the Director considers necessary to determine compliance with the nondiscrimination and equal opportunity provisions of WIA or this part.

(e) At the discretion of the Director, grant applicants may be required to submit, in a timely manner, the particularized information necessary to determine whether or not the grant applicant, if financially assisted, would be able to comply with the nondiscrimination and equal opportunity provisions of WIA or this part.

(f) Where designation of individuals by race or ethnicity is required, the guidelines of the Office of Management and Budget must be used.

§ 37.39 How long must grant applicants and recipients maintain the records required under this part?

(a) Each recipient must maintain the following records for a period of not less than three years from the close of the applicable program year:

(1) The records of applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment; and

(2) Such other records as are required under this part or by the Director.

(b) Records regarding complaints and actions taken on the complaints must be maintained for a period of not less than three years from the date of resolution of the complaint.

§ 37.40 What access to sources of information must grant applicants and recipients provide the Director?

(a) Each grant applicant and recipient must permit access by the Director during normal business hours to its premises and to its employees and participants, to the extent that such individuals are on the premises during the course of the investigation, for the purpose of conducting complaint investigations, compliance reviews, monitoring activities associated with a State's development and implementation of a Methods of Administration, and inspecting and copying such books, records, accounts and other materials as may be pertinent to ascertain compliance with and ensure enforcement of the nondiscrimination and equal opportunity provisions of WIA or this part.

(b) Asserted considerations of privacy or confidentiality are not a basis for withholding information from CRC and will not bar CRC from evaluating or seeking to enforce compliance with the nondiscrimination and equal opportunity provisions of WIA and this part.

(c) Whenever any information that the Director asks a grant applicant or recipient to provide is in the exclusive possession of another agency, institution, or person, and that agency, institution, or person fails or refuses to furnish the information upon request, the grant applicant or recipient must certify to CRC that it has made efforts to obtain the information and that the agency, institution, or person has failed or refused to provide it. This certification must list the name and address of the agency, institution, or person that has possession of the information and the specific efforts the grant applicant or recipient made to obtain it.

§ 37.41 What responsibilities do grant applicants, recipients, and the Department have to maintain the confidentiality of the information collected?

The identity of any individual who furnishes information relating to, or assisting in, an investigation or a compliance review, including the identity of any individual who files a complaint, must be kept confidential to the extent possible, consistent with a fair determination of the issues. An individual whose identity it is necessary to disclose must be protected from retaliation (see § 37.11).

§ 37.42 What are a recipient's responsibilities under this part to provide universal access to WIA Title I-financially assisted programs and activities?

Recipients must take appropriate steps to ensure that they are providing universal access to their WIA Title I-financially assisted programs and activities. These steps should involve reasonable efforts to include members of both sexes, various racial and ethnic groups, individuals with disabilities, and individuals in differing age groups. Such efforts may include, but are not limited to:

(a) Advertising the recipient's programs and/or activities in media,

such as newspapers or radio programs, that specifically target various populations;

(b) Sending notices about openings in the recipient's programs and/or activities to schools or community service groups that serve various populations; and

(c) Consulting with appropriate community service groups about ways in which the recipient may improve its outreach and service to various populations.

Subpart C—Governor's Responsibilities to Implement the Nondiscrimination and Equal Opportunity Requirements of WIA

§ 37.50 To whom does this subpart apply?

This subpart applies to State Programs as defined in § 37.4. However, the provisions of § 37.52(b) do not apply to State Employment Security Agencies (SESAs), because the Governor's liability for any noncompliance on the part of a SESA cannot be waived.

§ 37.51 What are a Governor's oversight responsibilities?

The Governor is responsible for oversight of all WIA Title I-financially assisted State programs. This responsibility includes ensuring compliance with the nondiscrimination and equal opportunity provisions of WIA and this part, and negotiating, where appropriate, with a recipient to secure voluntary compliance when noncompliance is found under § 37.95(b).

§ 37.52 To what extent may a Governor be liable for the actions of a recipient he or she has financially assisted under WIA Title I?

(a) The Governor and the recipient are jointly and severally liable for all violations of the nondiscrimination and equal opportunity provisions of WIA and this part by the recipient, unless the Governor has:

(1) Established and adhered to a Methods of Administration, under Section 37.54, designed to give reasonable guarantee of the recipient's compliance with such provisions;

(2) Entered into a written contract with the recipient that clearly establishes the recipient's obligations regarding nondiscrimination and equal opportunity;

(3) Acted with due diligence to monitor the recipient's compliance with these provisions; and

(4) Taken prompt and appropriate corrective action to effect compliance.

(b) If the Director determines that the Governor has demonstrated substantial compliance with the requirements of paragraph (a) of this section, he or she may recommend to the Secretary that the imposition of sanctions against the Governor be waived and that sanctions be imposed only against the noncomplying recipient.

§ 37.53 What are a Governor's oversight responsibilities regarding recipients' recordkeeping?

The Governor must ensure that recipients collect and maintain records in a manner consistent with the provisions of § 37.37 and any procedures prescribed by the Director under § 37.37(b). The Governor must further ensure that recipients are able to provide data and reports in the manner prescribed by the Director.

§ 37.54 What are a Governor's obligations to develop and maintain a Methods of Administration?

(a) (1) Each Governor must establish and adhere to a Methods of Administration for State programs as defined in § 37.4. In those States in which one agency contains both SESA or unemployment insurance and WIA Title I-financially assisted programs, the Governor should develop a combined Methods of Administration.

(2) Each Methods of Administration must be designed to give a reasonable guarantee that all recipients will comply, and are complying, with the nondiscrimination and equal opportunity provisions of WIA and this part.

(b) The Methods of Administration must be:

(1) In writing, addressing each requirement of § 37.54(d) with narrative and documentation;

(2) Reviewed and updated as required in § 37.55; and

(3) Signed by the Governor.

(c) [Reserved]

(d) At a minimum, each Methods of Administration must:

(1) Describe how the State programs and recipients have satisfied the requirements of the following regulations:

(i) Sections 37.20 through 37.22 (assurances);

(ii) Sections 37.23 through 37.28 (Equal Opportunity Officers);

(iii) Sections 37.29 through 37.36 (Notice and Communication);

(iv) Sections 37.37 through 37.41 (Data and Information Collection and Maintenance);

(v) Section 37.42 (Universal Access);

(vi) Section 37.53 (Governor's Oversight Responsibilities Regarding Recipients' Recordkeeping); and

(vii) Sections 37.76 through 37.79 (Complaint Processing Procedures); and

(2) Include the following additional elements:

(i) A system for determining whether a grant applicant, if financially assisted, and/or a training provider, if selected as eligible under section 122 of the Act, is likely to conduct its WIA Title I—financially assisted programs or activities in a nondiscriminatory way, and to comply with the regulations in this part;

(ii) A system for periodically monitoring the compliance of recipients with WIA section 188 and this part, including a determination as to whether each recipient is conducting its WIA Title I—financially assisted program or activity in a nondiscriminatory way. At a minimum, each periodic monitoring review required by this paragraph must include:

(A) A statistical or other quantifiable analysis of records and data kept by the recipient under § 37.37, including analyses by race/ethnicity, sex, age, and disability status;

(B) An investigation of any significant differences identified in paragraph (A) of this section in participation in the programs, activities, or employment provided by the recipient, to determine whether these differences appear to be caused by discrimination. This investigation must be conducted through review of the recipient's records and any other appropriate means; and

(C) An assessment to determine whether the recipient has fulfilled its administrative obligations under section 188 or this part (for example, recordkeeping, notice and communication) and any duties assigned to it under the MOA;

(iii) A review of recipient policy issuances to ensure they are nondiscriminatory;

(iv) A system for reviewing recipients' job training plans, contracts, assurances, and other similar agreements to ensure that they are both nondiscriminatory and contain the required language regarding nondiscrimination and equal opportunity;

(v) Procedures for ensuring that recipients comply with the requirements of Section 504 and this part with regard to individuals with disabilities;

(vi) A system of policy communication and training to ensure that EO Officers and members of the recipients' staffs who have been assigned responsibilities under the nondiscrimination and equal opportunity provisions of WIA or this part are aware of and can effectively carry out these responsibilities;

(vii) Procedures for obtaining prompt corrective action or, as necessary, applying sanctions when noncompliance is found; and

(viii) Supporting documentation to show that the commitments made in the Methods of Administration have been and/or are being carried out. This supporting documentation includes, but is not limited to:

(A) policy and procedural issuances concerning required elements of the Methods of Administration;

(B) copies of monitoring instruments and instructions;

(C) evidence of the extent to which nondiscrimination and equal opportunity policies have been developed and communicated as required by this part;

(D) information reflecting the extent to which Equal Opportunity training, including training called for by §§ 37.25(f) and 37.26(c), is planned and/or has been carried out;

(E) reports of monitoring reviews and reports of follow-up actions taken under those reviews where violations have been found, including, where appropriate, sanctions; and

(F) copies of any notices made under §§ 37.29 through 37.36.

§ 37.55 When must the Governor carry out his or her obligations with regard to the Methods of Administration?

(a) Within 180 days of either the date on which this interim final rule is effective, or the date on which the Department gives final approval to a State's Five-Year Plan, whichever is later, a Governor must:

(1) Develop and implement a Methods of Administration consistent with the requirements of this part, and

(2) Submit a copy of the Methods of Administration to the Director.

(b) The Governor must promptly update the Methods of Administration whenever necessary, and must notify the Director in writing at the time that any such updates are made.

(c) Every two years from the date on which the initial MOA is submitted to the Director under § 37.55(a)(2), the Governor must review the Methods of Administration and the manner in which it has been implemented, and determine whether any changes are necessary in order for the State to comply fully and effectively with the nondiscrimination and equal opportunity provisions of WIA and this part.

(1) If any such changes are necessary, the Governor must make the appropriate changes and submit them, in writing, to the Director.

(2) If the Governor determines that no such changes are necessary, s/he must certify, in writing, to the Director that the Methods of Administration previously submitted continues in effect.

Subpart D—Compliance Procedures

§ 37.60 How does the Director evaluate compliance with the nondiscrimination and equal opportunity provisions of WIA and this part?

From time to time, the Director may conduct pre-approval compliance reviews of grant applicants for, and post-approval compliance reviews of recipients of, WIA Title I financial assistance, to determine compliance with the nondiscrimination and equal opportunity provisions of WIA and this part. Reviews may focus on one or more specific programs or activities, or one or more issues within a program or activity. The Director may also investigate and resolve complaints alleging violations of the nondiscrimination and equal opportunity provisions of WIA and this part.

§ 37.61 Is there authority to issue subpoenas?

Yes, section 183(c) of WIA authorizes the issuance of subpoenas. A subpoena may direct the individual named on the subpoena to take the following actions:

(a) To appear:

(1) Before a designated CRC representative,

(2) At a designated time and place;

(b) To give testimony; and/or

(c) To produce documentary evidence.

The subpoena may require the appearance of witnesses, and the production of documents, from any place in the United States, at any designated time and place.

Compliance Reviews

§ 37.62 What are the authority and procedures for conducting pre-approval compliance reviews?

(a) As appropriate and necessary to ensure compliance with the nondiscrimination and equal opportunity provisions of WIA or this part, the Director may review any application, or class of applications, for Federal financial assistance under Title I of WIA, before and as a condition of their approval. The basis for such review may be the assurance specified in § 37.20, information and reports submitted by the grant applicant under this part or guidance published by the Director, and any relevant records on file with the Department.

(b) Where the Director determines that the grant applicant for Federal financial assistance under WIA Title I, if financially assisted, might not comply with the nondiscrimination and equal opportunity requirements of WIA or this part, the Director must:

(1) Notify, in a timely manner, the Departmental grantmaking agency and the Assistant Attorney General of the findings of the pre-approval compliance review; and

(2) Issue a Letter of Findings. The Letter of Findings must advise the grant applicant, in writing, of:

(i) The preliminary findings of the review;

(ii) The proposed remedial or corrective action under Section 37.94 and the time within which the remedial or corrective action should be completed;

(iii) Whether it will be necessary for the grant applicant to enter into a written Conciliation Agreement as described in §§ 37.95 and 37.97; and

(iv) The opportunity to engage in voluntary compliance negotiations.

(c) If a grant applicant has agreed to certain remedial or corrective actions in order to receive WIA Title I-funded Federal financial assistance, the Department must ensure that the remedial or corrective actions have been taken, or that a Conciliation Agreement has been entered into, before approving the award of further assistance under WIA Title I. If a grant applicant refuses or fails to take remedial or corrective actions or to enter into a Conciliation Agreement, as applicable, the Director must follow the procedures outlined in §§ 37.98 through 37.100.

§ 37.63 What are the authority and procedures for conducting post-approval compliance reviews?

(a) The Director may initiate a post-approval compliance review of any recipient to determine compliance with the nondiscrimination and equal opportunity provisions of WIA and this part. The initiation of a post-approval review may be based on, but need not be limited to, the results of routine program monitoring by other Departmental or Federal agencies, or the nature or frequency of complaints.

(b) A post-approval review must be initiated by a Notification Letter, advising the recipient of:

(1) The practices to be reviewed;

(2) The programs to be reviewed;

(3) The information, records, and/or data to be submitted by the recipient within 30 days of the receipt of the Notification Letter, unless this time frame is modified by the Director; and

(4) The opportunity, at any time before receipt of the Final Determination described in §§ 37.99 and 37.100, to make a documentary or other submission that explains, validates or otherwise addresses the practices under review.

(c) The Director may conduct post-approval reviews using such techniques as desk audits and on-site reviews.

§ 37.64 What procedures must the Director follow when CRC has completed a post-approval compliance review?

(a) Where, as the result of a post-approval review, the Director has made a finding of noncompliance, he or she must issue a Letter of Findings. This Letter must advise the recipient, in writing, of:

(1) The preliminary findings of the review;

(2) Where appropriate, the proposed remedial or corrective action to be taken, and the time by which such action should be completed, as provided in § 37.94;

(3) Whether it will be necessary for the recipient to enter into a written assurance and/or Conciliation Agreement, as provided in §§ 37.96 and 37.97; and

(4) The opportunity to engage in voluntary compliance negotiations.

(b) Where no violation is found, the recipient must be so informed in writing.

§ 37.65 What is the Director's authority to monitor the activities of a Governor?

(a) The Director may periodically review the adequacy of the Methods of Administration established by a Governor, as well as the adequacy of the Governor's performance under the Methods of Administration, to determine compliance with the requirements of §§ 37.50 through 37.55. The Director may review the Methods of Administration during a compliance review under §§ 37.62 and 37.63, or at another time.

(b) Nothing in this subpart limits or precludes the Director from monitoring directly any WIA Title I recipient or from investigating any matter necessary to determine a recipient's compliance with the nondiscrimination and equal opportunity provisions of WIA or this part.

§ 37.66 What happens if a recipient fails to submit requested data, records, and/or information, or fails to provide CRC with the required access?

The Director may issue a Notice to Show Cause to a recipient failing to comply with the requirements of this part, where such failure results in the inability of the Director to make a finding. Such a failure includes, but is not limited to, the recipient's failure or refusal to:

(a) Submit requested information, records, and/or data within 30 days of receiving a Notification Letter;

(b) Submit, in a timely manner, information, records, and/or data requested during a compliance review, complaint investigation, or other action to determine a recipient's compliance with the nondiscrimination and equal opportunity provisions of WIA or this part; or

(c) Provide CRC access in a timely manner to a recipient's premises, records, or employees during a compliance review, as required in § 37.40.

§ 37.67 What information must a Notice to Show Cause contain?

(a) A Notice to Show Cause must contain:

(1) A description of the violation and a citation to the pertinent nondiscrimination or equal opportunity provision(s) of WIA and this part;

(2) The corrective action necessary to achieve compliance or, as may be appropriate, the concepts and principles of acceptable corrective or remedial action and the results anticipated; and

(3) A request for a written response to the findings, including commitments to corrective action or the presentation of opposing facts and evidence.

(b) A Notice to Show Cause must give the recipient 30 days to show cause why enforcement proceedings under the nondiscrimination and equal opportunity provisions of WIA or this part should not be instituted.

§ 37.68 How may a recipient show cause why enforcement proceedings should not be instituted?

A recipient may show cause why enforcement proceedings should not be instituted by, among other means:

(a) Correcting the violation(s) that brought about the Notice to Show Cause and entering into a written assurance and/or entering into a Conciliation Agreement, as appropriate, under §§ 37.95 through 37.97;

(b) Demonstrating that CRC does not have jurisdiction; or

(c) Demonstrating that the violation alleged by CRC did not occur.

§ 37.69 What happens if a recipient fails to show cause?

If the recipient fails to show cause why enforcement proceedings should not be initiated, the Director must follow the enforcement procedures outlined in §§ 37.99 and 37.100.

Complaint Processing Procedures

§ 37.70 Who may file a complaint concerning discrimination connected with WIA Title I?

Any person who believes that either he or she, or any specific class of individuals, has been or is being subjected to discrimination prohibited by WIA or this part, may file a written complaint, either by him/herself or through a representative.

§ 37.71 Where may a complaint be filed?

A complainant may file a complaint with either the recipient or the Director. Complaints filed with the Director should be sent to the address listed in the notice in § 37.30.

§ 37.72 When must a complaint be filed?

Generally, a complaint must be filed within 180 days of the alleged discrimination. However, for good cause shown, the Director may extend the filing time. The time period for filing is for the administrative convenience of CRC, and does not create a defense for the respondent.

§ 37.73 What information must a complaint contain?

Each complaint must be filed in writing, and must contain the following information:

(a) The complainant's name and address (or another means of contacting the complainant);

(b) The identity of the respondent (the individual or entity that the complainant alleges is responsible for the discrimination);

(c) A description of the complainant's allegations. This description must include enough detail to allow the Director or the recipient, as applicable, to decide whether:

(i) CRC or the recipient, as applicable, has jurisdiction over the complaint;

(ii) The complaint was filed in time; and

(iii) The complaint has apparent merit; in other words, whether the complainant's allegations, if true, would violate any of the nondiscrimination and equal opportunity provisions of WIA or this part; and

(d) The complainant's signature or the signature of the complainant's authorized representative.

§ 37.74 Are there any forms that a complainant may use to file a complaint?

Yes. A complainant may file a complaint by completing and submitting CRC's Complaint Information and Privacy Act Consent Forms, which may be obtained either from the recipient's EO Officer, or from CRC at the address listed in the notice contained in § 37.30.

§ 37.75 Is there a right of representation in the complaint process?

Yes. Both the complainant and the respondent have the right to be represented by an attorney or other individual of their choice.

§ 37.76 What are the required elements of a recipient's discrimination complaint processing procedures?

(a) The procedures that a recipient adopts and publishes must provide that the recipient will issue a written Notice of Final Action on discrimination complaints within 90 days of the date on which the complaint is filed.

(b) At a minimum, the procedures must include the following elements:

(1) Initial, written notice to the complainant that contains the following information:

(i) An acknowledgment that the recipient has received the complaint, and

(ii) Notice that the complainant has the right to be represented in the complaint process;

(2) A written statement of the issue(s), provided to the complainant, that includes the following information:

(i) A list of the issues raised in the complaint, and

(ii) For each such issue, a statement whether the recipient will accept the issue for investigation or reject the issue, and the reasons for each rejection;

(3) A period for fact-finding or investigation of the circumstances underlying the complaint;

(4) A period during which the recipient attempts to resolve the complaint. The methods available to resolve the complaint must include alternative dispute resolution (ADR), as described in paragraph (c) of this section

(5) A written Notice of Final Action, provided to the complainant within 90 days of the date on which the complaint was filed, that contains the following information:

(i) For each issue raised in the complaint, a statement of either:

(A) The recipient's decision on the issue and an explanation of the reasons underlying the decision, or

(B) A description of the way the parties resolved the issue; and

(ii) Notice that the complainant has a right to file a complaint with CRC within 30 days of the date on which the Notice of Final Action is issued if he or she is dissatisfied with the recipient's final action on the complaint.

(c) The procedures the recipient adopts must provide for alternative dispute resolution (ADR). The recipient's ADR procedures must provide that:

(1) The choice whether to use ADR or the customary process rests with the complainant;

(2) A party to any agreement reached under ADR may file a complaint with the Director in the event the agreement is breached. In such circumstances, the following rules will apply:

(i) The non-breaching party may file a complaint with the Director within 30 days of the date on which the non-breaching party learns of the alleged breach;

(ii) The Director must evaluate the circumstances to determine whether the agreement has been breached. If he or she determines that the agreement has been breached, the complainant may file a complaint with CRC based upon his/her original allegation(s), and the Director will waive the time deadline for filing such a complaint.

(3) If the parties do not reach an agreement under ADR, the complainant may file a complaint with the Director as described in §§ 37.71 through 37.74.

§ 37.77 Who is responsible for developing and publishing complaint processing procedures for service providers?

The Governor or the LWIA grant recipient, as provided in the State's Methods of Administration, must develop and publish, on behalf of its service providers, the complaint processing procedures required in § 37.76. The service providers must then follow those procedures.

§ 37.78 Does a recipient have any special obligations in cases in which the recipient determines that it has no jurisdiction over a complaint?

Yes. If a recipient determines that it does not have jurisdiction over a complaint, it must notify the complainant, in writing, immediately. This Notice of Lack of Jurisdiction must include:

(a) A statement of the reasons for that determination, and

(b) Notice that the complainant has a right to file a complaint with CRC within 30 days of the date on which the complainant receives the Notice.

§ 37.79 If, before the 90-day period has expired, a recipient issues a Notice of Final Action with which the complainant is dissatisfied, how long does the complainant have to file a complaint with the Director?

If, during the 90-day period, the recipient issues its Notice of Final Action, but the complainant is dissatisfied with the recipient's decision on the complaint, the complainant or his/her representative may file a complaint with the Director within 30 days after the date on which the complainant receives the Notice.

§ 37.80 What happens if a recipient fails to issue a Notice of Final Action within 90 days of the date on which a complaint was filed?

If, by the end of 90 days from the date on which the complainant filed the complaint, the recipient has failed to issue a Notice of Final Action, the complainant or his/her representative may file a complaint with the Director within 30 days of the expiration of the 90-day period. In other words, the complaint must be filed with the Director within 120 days of the date on which the complaint was filed with the recipient.

§ 37.81 Are there any circumstances under which the Director may extend the time limit for filing a complaint with him or her?

Yes. The Director may extend the 30-day time limit:

(a) If the recipient does not include in its Notice of Final Action the required notice about the complainant's right to file with the Director, as described in § 37.76(b)(5)(ii); or

(b) For other good cause shown.

The complainant has the burden of proving to the Director that the time limit should be extended.

§ 37.82 Does the Director accept every complaint for resolution?

No. The Director must determine whether CRC will accept a particular complaint for resolution. For example, a complaint need not be accepted if:

(a) It has not been timely filed;

(b) CRC has no jurisdiction over the complaint; or

(c) CRC has previously decided the matter.

§ 37.83 What happens if a complaint does not contain enough information?

(a) If a complaint does not contain enough information, the Director must try to get the needed information from the complainant.

(b) The Director may close the complainant's file, without prejudice, if:

(1) The Director makes reasonable efforts to try to find the complainant, but is unable to reach him or her; or

(2) The complainant does not provide the needed information to CRC within the time specified in the request for more information.

(c) If the Director closes the complainant's file, he or she must send written notice to the complainant's last known address.

§ 37.84 What happens if CRC does not have jurisdiction over a complaint?

If CRC does not have jurisdiction over a complaint, the Director must:

(a) Notify the complainant and explain why the complaint falls outside the coverage of the nondiscrimination and equal opportunity provisions of WIA or this part; and

(b) Where possible, transfer the complaint to an appropriate Federal, State or local authority.

§ 37.85 Are there any other circumstances in which the Director will send a complaint to another authority?

Yes. The Director refers complaints to other agencies in the following circumstances:

(a) Where the complaint alleges discrimination based on age, and the complaint falls within the jurisdiction of the Age Discrimination Act of 1975, as amended, then the Director must refer the complaint, in accordance with the provisions of 45 CFR 90.43(c)(3).

(b) Where the only allegation in the complaint is a charge of individual employment discrimination that is covered both by WIA or this part and by one or more of the laws listed below, then the complaint is a ''joint complaint,'' and the Director may refer it to the EEOC for investigation and conciliation under the procedures described in 29 CFR part 1640 or 1691, as appropriate. The relevant laws are:

(1) Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e to 2000e–17);

(2) The Equal Pay Act of 1963, as amended (29 U.S.C. 206(d));

(3) The Age Discrimination in Employment Act of 1976, as amended (29 U.S.C. 621, *et seq.*); and

(4) Title I of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. 12101 *et seq.*).

(c) Where the complaint alleges discrimination by an entity that operates a program or activity financially assisted by a Federal grantmaking agency other than the Department, but that participates as a partner in a One-Stop delivery system, the following procedures apply:

(1) Where the complaint alleges discrimination on a basis that is prohibited both by Section 188 of WIA and by a civil rights law enforced by the Federal grantmaking agency, then CRC and the grantmaking agency have dual jurisdiction over the complaint, and the Director will refer the complaint to the grantmaking agency for processing. In such circumstances, the grantmaking agency's regulations will govern the processing of the complaint.

(2) Where the complaint alleges discrimination on a basis that is prohibited by Section 188 of WIA, but not by any civil rights laws enforced by the Federal grantmaking agency, then CRC has sole jurisdiction over the complaint, and will retain the complaint and process it pursuant to this part. Such bases generally include religion, political affiliation or belief, citizenship, and/or participation in a WIA Title I-financially assisted program or activity.

(d) Where the Director makes a referral under this section, he or she must notify the complainant and the respondent about the referral.

§ 37.86 What must the Director do if he or she determines that a complaint will not be accepted?

If a complaint will not be accepted, the Director must notify the complainant, in writing, about that fact, and provide the complainant his/her reasons for making that determination.

§ 37.87 What must the Director do if he or she determines that a complaint will be accepted?

If the Director accepts the complaint for resolution, he or she must notify the complainant, the respondent, and the grantmaking agency. The notice must:

(a) State that the complaint will be accepted,

(b) Identify the issues over which CRC has accepted jurisdiction; and

(c) Explain the reasons why any issues were rejected.

§ 37.88 Who may contact CRC about a complaint?

Both the complainant and the respondent, or their authorized representatives, may contact CRC for information about the complaint. The Director will determine what information, if any, about the complaint will be released.

§ 37.89 May the Director offer the parties to a complaint the option of mediation?

Yes. The Director may offer the parties to a complaint the option of mediating the complaint. In such circumstances, the following rules apply:

(a) Mediation is voluntary; the parties must consent before the mediation process will proceed.

(b) The mediation will be conducted under guidance issued by the Director.

(c) If the parties are unable to reach resolution of the complaint through mediation, CRC will investigate and process the complaint under §§ 37.82 through 37.88 of this part.

Determinations

§ 37.90 If a complaint is investigated, what must the Director do when the investigation is completed?

At the conclusion of the investigation of the complaint, the Director must take the following actions:

(a) Determine whether there is reasonable cause to believe that the respondent has violated the nondiscrimination and equal opportunity provisions of WIA or this part; and

(b) Notify the complainant, the respondent, and the grantmaking agency, in writing, of that determination.

§ 37.91 What notice must the Director issue if he or she finds reasonable cause to believe that a violation has taken place?

If the Director finds reasonable cause to believe that the respondent has violated the nondiscrimination and equal opportunity provisions of WIA or this part, he or she must issue an Initial Determination. The Initial Determination must include:

(a) The specific findings of the investigation;

(b) The corrective or remedial action that the Department proposes to the respondent, under § 37.94;

(c) The time by which the respondent must complete the corrective or remedial action;

(d) Whether it will be necessary for the respondent to enter into a written agreement under § 37.95 and 37.96; and

(e) The opportunity to engage in voluntary compliance negotiations.

§ 37.92 What notice must the Director issue if he or she finds no reasonable cause to believe that a violation has taken place?

If the Director determines that there is no reasonable cause to believe that a violation has taken place, he or she must issue a Final Determination under § 37.100. The Final Determination represents the Department's final agency action on the complaint.

§ 37.93 What happens if the Director finds that a violation has taken place, and the recipient fails or refuses to take the corrective action listed in the Initial Determination?

Under such circumstances, the Department must take the actions described in § 37.99 of this part.

§ 37.94 What corrective or remedial actions may be imposed where, after a compliance review or complaint investigation, the Director finds a violation of the nondiscrimination and equal opportunity provisions of WIA or this part?

(a) A Letter of Findings, Notice to Show Cause, or Initial Determination, issued under §§ 37.62 or 37.63, 37.66 and 37.67, or 37.91 respectively, must include the specific steps the grant applicant or recipient, as applicable, must take within a stated period of time in order to achieve voluntary compliance.

(b) Such steps must include:

(1) Actions to end and/or redress the violation of the nondiscrimination and equal opportunity provisions of WIA or this part;

(2) Make whole relief where discrimination has been identified, including, as appropriate, back pay (which must not accrue from a date more than 2 years before the filing of the complaint or the initiation of a

compliance review) or other monetary relief; hire or reinstatement; retroactive seniority; promotion; benefits or other services discriminatorily denied; and

(3) Such other remedial or affirmative relief as the Director deems necessary, including but not limited to outreach, recruitment and training designed to ensure equal opportunity.

(c) Monetary relief may not be paid from Federal funds.

§ 37.95 What procedures apply if the Director finds that a recipient has violated the nondiscrimination and equal opportunity provisions of WIA or this part?

(a) *Violations at State level.* Where the Director has determined that a violation of the nondiscrimination and equal opportunity provisions of WIA or this part has occurred at the State level, he or she must notify the Governor through the issuance of a Letter of Findings, Notice to Show Cause or Initial Determination, as appropriate, under § 37.62 or 37.63, 37.66 and 37.67, or 37.91, respectively. The Director may secure compliance with the nondiscrimination and equal opportunity provisions of WIA and this part through, among other means, the execution of a written assurance and/or Conciliation Agreement, under paragraph (d) of this section.

(b) *Violations below State level.* Where the Director has determined that a violation of the nondiscrimination and equal opportunity provisions of WIA or this part has occurred below the State level, the Director must so notify the Governor and the violating recipient(s) through the issuance of a Letter of Findings, Notice to Show Cause or Initial Determination, as appropriate, under §§ 37.62 or 37.63, 37.66 and 37.67, or 37.91, respectively.

(1) Such issuance must:

(i) Direct the Governor to initiate negotiations immediately with the violating recipient(s) to secure compliance by voluntary means;

(ii) Direct the Governor to complete such negotiations within 30 days of the Governor's receipt of the Notice to Show Cause or within 45 days of the Governor's receipt of the Letter of Findings or Initial Determination, as applicable. The Director reserves the right to enter into negotiations with the recipient at any time during the period. For good cause shown, the Director may approve an extension of time to secure voluntary compliance. The total time allotted to secure voluntary compliance must not exceed 60 days.

(iii) Include a determination as to whether compliance must be achieved by:

(A) Immediate correction of the violation(s) and written assurance that such violations have been corrected, under § 37.96;

(B) Entering into a written Conciliation Agreement under § 37.97; or

(C) Both.

(2) If the Governor determines, at any time during the period described in paragraph (b)(1)(ii) of this section, that a recipient's compliance cannot be achieved by voluntary means, the Governor must so notify the Director.

(3) If the Governor is able to secure voluntary compliance under paragraph (b)(1) of this section, he or she must submit to the Director for approval, as applicable:

(i) Written assurance that the required action has been taken, as described in § 37.96;

(ii) A copy of the Conciliation Agreement, as described in § 37.97; or

(iii) Both.

(4) The Director may disapprove any written assurance or Conciliation Agreement submitted for approval under paragraph (b)(3) of this section that fails to satisfy each of the applicable requirements provided in §§ 37.96 or 37.97.

(c) *Violations in National Programs.* Where the Director has determined that a violation of the nondiscrimination and equal opportunity provisions of WIA or this part has occurred in a National Program, he or she must notify the Federal grantmaking agency and the recipient by issuing a Letter of Findings, Notice to Show Cause, or Initial Determination, as appropriate, under §§ 37.62 or 37.63, 37.66 and 37.67, or 37.91, respectively. The Director may secure compliance with the nondiscrimination and equal opportunity provisions of WIA and this part through, among other means, the execution of a written assurance and/or Conciliation Agreement under §§ 37.96 or 37.97, as applicable.

§ 37.96 What are the required elements of a written assurance?

A written assurance must provide documentation that the violations listed in the Letter of Findings, Notice to Show Cause or Initial Determination, as applicable, have been corrected.

§ 37.97 What are the required elements of a Conciliation Agreement?

A Conciliation Agreement must:

(a) Be in writing;

(b) Address each cited violation;

(c) Specify the corrective or remedial action to be taken within a stated period of time to come into compliance;

(d) Provide for periodic reporting on the status of the corrective and remedial action;

(e) Provide that the violation(s) will not recur; and

(f) Provide for enforcement for a breach of the agreement.

§ 37.98 When will the Director conclude that compliance cannot be secured by voluntary means?

The Director will conclude that compliance cannot be secured by voluntary means under the following circumstances:

(a) The grant applicant or recipient fails or refuses to correct the violation(s) within the time period established by the Letter of Findings, Notice to Show Cause or Initial Determination; or

(b) The Director has not approved an extension of time for agreement on voluntary compliance, under § 37.95(b)(1)(ii), and he or she either:

(1) Has not been notified, under § 37.95(b)(3), that the grant applicant or recipient has agreed to voluntary compliance;

(2) Has disapproved a written assurance or Conciliation Agreement, under § 37.95(b)(4); or

(3) Has received notice from the Governor, under § 37.95(b)(2), that the grant applicant or recipient will not comply voluntarily.

§ 37.99 If the Director concludes that compliance cannot be secured by voluntary means, what actions must he or she take?

If the Director concludes that compliance cannot be secured by voluntary means, he or she must either:

(a) Issue a Final Determination;

(b) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; or

(c) Take such other action as may be provided by law.

§ 37.100 What information must a Final Determination contain?

A Final Determination must contain the following information:

(a) A statement of the efforts made to achieve voluntary compliance, and a statement that those efforts have been unsuccessful;

(b) A statement of those matters upon which the grant applicant or recipient and CRC continue to disagree;

(c) A list of any modifications to the findings of fact or conclusions that were set forth in the Initial Determination, Notice to Show Cause or Letter of Findings;

(d) A statement of the grant applicant's or recipient's liability, and, if appropriate, the extent of that liability;

(e) A description of the corrective or remedial actions that the grant applicant or recipient must take to come into compliance;

(f) A notice that if the grant applicant or recipient fails to come into compliance within 10 days of the date on which it receives the Final Determination, one or more of the following consequences may result:

(1) After the grant applicant or recipient is given the opportunity for a hearing, its WIA Title I funds may be terminated, discontinued, or withheld in whole or in part, or its application for such funds may be denied, as appropriate;

(2) The Secretary of Labor may refer the case to the Department of Justice with a request to file suit against the grant applicant or recipient; or

(3) the Secretary may take any other action against the grant applicant or recipient that is provided by law;

(g) A notice of the grant applicant's or recipient's right to request a hearing under the procedures described in §§ 37.112 through 37.115; and

(h) A determination of the Governor's liability, if any, under § 37.52.

§ 37.101 Whom must the Director notify of a finding of noncompliance?

Where a compliance review or complaint investigation results in a finding of noncompliance, the Director must notify:

(a) The grant applicant or recipient;

(b) The grantmaking agency; and

(c) Tthe Assistant Attorney General.

Breaches of Conciliation Agreements

§ 37.102 What happens if a grant applicant or recipient breaches a Conciliation Agreement?

When it becomes known to the Director that a Conciliation Agreement has been breached, the Director may issue a Notification of Breach of Conciliation Agreement.

§ 37.103 Whom must the Director notify about a breach of a Conciliation Agreement?

The Director must send a Notification of Breach of Conciliation Agreement to the Governor, the grantmaking agency, and/or other party(ies) to the Conciliation Agreement, as applicable.

§ 37.104 What information must a Notification of Breach of Conciliation Agreement contain?

A Notification of Breach of Conciliation Agreement must:

(a) Specify any efforts made to achieve voluntary compliance, and indicate that those efforts have been unsuccessful;

(b) Identify the specific provisions of the Conciliation Agreement violated;

(c) Determine liability for the violation and the extent of the liability;

(d) Indicate that failure of the violating party to come into compliance within 10 days of the receipt of the Notification of Breach of Conciliation Agreement may result, after opportunity for a hearing, in the termination or denial of the grant, or discontinuation of assistance, as appropriate, or in referral to the Department of Justice with a request from the Department to file suit;

(e) Advise the violating party of the right to request a hearing, and reference the applicable procedures in Section 37.111; and

(f) Include a determination as to the Governor's liability, if any, in accordance with the provisions of § 37.52.

§ 37.105 Whom must the Director notify if enforcement action under a Notification of Breach of Conciliation Agreement is commenced?

In such circumstances, the Director must notify:

(a) The grantmaking agency; and

(b) The Governor, recipient or grant applicant, as applicable.

Subpart E—Federal Procedures For Effecting Compliance

§ 37.110 What enforcement procedures does the Department follow to effect compliance with the nondiscrimination and equal opportunity provisions of WIA and this part?

(a) *Sanctions; judicial enforcement.* If compliance has not been achieved after issuance of a Final Determination under §§ 37.99 and 37.100, or a Notification of Breach of Conciliation Agreement under §§ 37.102 through 37.105, the Secretary may:

(1) After opportunity for a hearing, suspend, terminate, deny or discontinue the WIA Title I financial assistance, in whole or in part;

(2) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted; or

(3) Take such action as may be provided by law.

(b) *Deferral of new grants.* When proceedings under § 37.111 have been initiated against a particular recipient, the Department may defer action on that recipient's applications for new WIA Title I financial assistance until a Final Decision under § 37.112 has been rendered. Deferral is not appropriate when WIA Title I financial assistance is due and payable under a previously approved application.

(1) New WIA Title I financial assistance includes all assistance for which an application or approval, including renewal or continuation of existing activities, or authorization of new activities, is required during the deferral period.

(2) New WIA Title I financial assistance does not include assistance approved before the beginning of proceedings under § 37.111, or increases in funding as a result of changed computations of formula awards.

§ 37.111 What hearing procedures does the Department follow?

(a) *Notice of opportunity for hearing.* As part of a Final Determination, or a Notification of Breach of a Conciliation Agreement, the Director must include, and serve on the grant applicant or recipient (by certified mail, return receipt requested), a notice of opportunity for hearing.

(b) *Complaint; request for hearing; answer.* (1) In the case of noncompliance that cannot be voluntarily resolved, the Final Determination or Notification of Breach of Conciliation Agreement is considered the Department's formal complaint.

(2) To request a hearing, the grant applicant or recipient must file a written answer to the Final Determination or Notification of Breach of Conciliation Agreement, and a copy of the Final Determination or Notification of Breach of Conciliation Agreement, with the Office of the Administrative Law Judges, 800 K Street N.W., Suite 400, Washington, DC 20001.

(i) The answer must be filed within 30 days of the date of receipt of the Final Determination or Notification of Breach of Conciliation Agreement.

(ii) A request for hearing must be set forth in a separate paragraph of the answer.

(iii) The answer must specifically admit or deny each finding of fact in the Final Determination or Notification of Breach of Conciliation Agreement. Where the grant applicant or recipient does not have knowledge or information sufficient to form a belief, the answer may so state and the statement will have the effect of a denial. Findings of fact not denied are considered admitted. The answer must separately state and identify matters alleged as affirmative defenses, and must also set forth the matters of fact and law relied on by the grant applicant or recipient.

(3) The grant applicant or recipient must simultaneously serve a copy of its filing on the Office of the Solicitor, Civil Rights Division, Room N–2464, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington DC 20210.

(4) (i) The failure of a grant applicant or recipient to request a hearing under this paragraph, or to appear at a hearing for which a date has been set, waives the right to a hearing; and

(ii) Whenever a hearing is waived, all allegations of fact contained in the Final Determination or Notification of Breach of Conciliation Agreement are

considered admitted, and the Final Determination or Notification of Breach of Conciliation Agreement becomes the Final Decision of the Secretary as of the day following the last date by which the grant applicant or recipient was required to request a hearing or was to appear at a hearing. *See* § 37.112(b)(3).

(c) *Time and place of hearing.* Hearings will be held at a time and place ordered by the Administrative Law Judge upon reasonable notice to all parties and, as appropriate, the complainant. In selecting a place for the hearing, due regard must be given to the convenience of the parties, their counsel, and witnesses, if any.

(d) *Judicial process; evidence.* (1) The Administrative Law Judge may use judicial process to secure the attendance of witnesses and the production of documents authorized by Section 9 of the Federal Trade Commission Act (15 U.S.C. 49).

(2) *Evidence.* In any hearing or administrative review conducted under this part, evidentiary matters will be governed by the standards and principles set forth in the Uniform Rules of Evidence issued by the Department of Labor's Office of Administrative Law Judges, 29 CFR part 18.

§ 37.112 What procedures for initial and final decisions does the Department follow?

(a) *Initial Decision.* After the hearing, the Administrative Law Judge must issue an initial decision and order, containing findings of fact and conclusions of law. The initial decision and order must be served on all parties by certified mail, return receipt requested.

(b) *Exceptions; Final Decision.* (1) Final decision after a hearing. The initial decision and order becomes the Final Decision and Order of the Secretary unless exceptions are filed by a party or, in the absence of exceptions, the Secretary serves notice that he or she will review the decision.

(i) A party dissatisfied with the initial decision and order may, within 45 days of receipt, file with the Secretary and serve on the other parties to the proceedings and on the Administrative Law Judge, exceptions to the initial decision and order or any part thereof.

(ii) Upon receipt of exceptions, the Administrative Law Judge must index and forward the record and the initial decision and order to the Secretary within three days of such receipt.

(iii) A party filing exceptions must specifically identify the finding or conclusion to which exception is taken. Any exception not specifically urged is waived.

(iv) Within 45 days of the date of filing such exceptions, a reply, which must be limited to the scope of the exceptions, may be filed and served by any other party to the proceeding.

(v) Requests for extensions for the filing of exceptions or replies must be received by the Secretary no later than 3 days before the exceptions or replies are due.

(vi) If no exceptions are filed, the Secretary may, within 30 days of the expiration of the time for filing exceptions, on his or her own motion serve notice on the parties that the Secretary will review the decision.

(vii) Final Decision and Order.

(A) Where exceptions have been filed, the initial decision and order of the Administrative Law Judge becomes the Final Decision and Order of the Secretary unless the Secretary, within 30 days of the expiration of the time for filing exceptions and replies, has notified the parties that the case is accepted for review.

(B) Where exceptions have not been filed, the initial decision and order of the Administrative Law Judge becomes the Final Decision and Order of the Secretary unless the Secretary has served notice on the parties that he or she will review the decision, as provided in paragraph (b)(1)(vi) of this section.

(viii) Any case reviewed by the Secretary under this paragraph must be decided within 180 days of the notification of such review. If the Secretary fails to issue a Final Decision and Order within the 180-day period, the initial decision and order of the Administrative Law Judge becomes the Final Decision and Order of the Secretary.

(2) Final Decision where a hearing is waived.

(i) If, after issuance of a Final Determination under § 37.100 or Notification of Breach of Conciliation Agreement under § 37.104, voluntary compliance has not been achieved within the time set by this part and the opportunity for a hearing has been waived as provided for in § 37.111(b)(4), the Final Determination or Notification of Breach of Conciliation Agreement becomes the Final Decision of the Secretary.

(ii) When a Final Determination or Notification of Breach of Conciliation Agreement becomes the Final Decision of the Secretary, the Secretary may, within 45 days, issue an order terminating or denying the grant or continuation of assistance or imposing other appropriate sanctions for the grant applicant or recipient's failure to comply with the required corrective and/or remedial actions, or referring the matter to the Attorney General for further enforcement action.

(3) Final agency action. A Final Decision and Order issued under § 37.112(b) constitutes final agency action.

§ 37.113 What procedure does the Department follow to suspend, terminate, withhold, deny or discontinue WIA Title I financial assistance?

Any action to suspend, terminate, deny or discontinue WIA Title I financial assistance must be limited to the particular political entity, or part thereof, or other recipient (or grant applicant) as to which the finding has been made, and must be limited in its effect to the particular program, or part thereof, in which the noncompliance has been found. No order suspending, terminating, denying or discontinuing WIA Title I financial assistance will become effective until:

(a) The Director has issued a Final Determination under § 37.100 or Notification of Breach of Conciliation Agreement under § 37.104;

(b) There has been an express finding on the record, after opportunity for a hearing, of failure by the grant applicant or recipient to comply with a requirement imposed by or under the nondiscrimination and equal opportunity provisions of WIA or this part;

(c) A Final Decision has been issued by the Secretary, the Administrative Law Judge's decision and order has become the Final Decision of the Secretary, or the Final Determination or Notification of Conciliation Agreement has been deemed the Final Decision of the Secretary, under § 37.112(b); and

(d) The expiration of 30 days after the Secretary has filed, with the committees of Congress having legislative jurisdiction over the program involved, a full written report of the circumstances and grounds for such action.

§ 37.114 What procedure does the Department follow to distribute WIA Title I financial assistance to an alternate recipient?

When the Department withholds funds from a recipient or grant applicant under these regulations, the Secretary may disburse the withheld funds directly to an alternate recipient. In such case, the Secretary will require any alternate recipient to demonstrate:

(a) The ability to comply with these regulations; and

(b) The ability to achieve the goals of the nondiscrimination and equal opportunity provisions of WIA.

§ 37.115 What procedures does the Department follow for post-termination proceedings?

(a) A grant applicant or recipient adversely affected by a Final Decision and Order issued under § 37.112(b) will be restored, where appropriate, to full eligibility to receive WIA Title I financial assistance if the grant applicant or recipient satisfies the terms and conditions of the Final Decision and Order and brings itself into compliance with the nondiscrimination and equal opportunity provisions of WIA and this part.

(b) A grant applicant or recipient adversely affected by a Final Decision and Order issued under § 37.112(b) may at any time petition the Director to restore its eligibility to receive WIA Title I financial assistance. A copy of the petition must be served on the parties to the original proceeding that led to the Final Decision and Order. The petition must be supported by information showing the actions taken by the grant applicant or recipient to bring itself into compliance. The grant applicant or recipient has the burden of demonstrating that it has satisfied the requirements of paragraph (a) of this section. While proceedings under this section are pending, sanctions imposed by the Final Decision and Order under § 37.112(b) (1) and (2) must remain in effect.

(c) The Director must issue a written decision on the petition for restoration.

(1) If the Director determines that the grant applicant or recipient has not brought itself into compliance, he or she must issue a decision denying the petition.

(2) Within 30 days of its receipt of the Director's decision, the recipient or grant applicant may file a petition for review of the decision by the Secretary, setting forth the grounds for its objection to the Director's decision.

(3) The petition must be served on the Director and on the Office of the Solicitor, Civil Rights Division.

(4) The Director may file a response to the petition within 14 days.

(5) The Secretary must issue the final agency decision denying or granting the recipient's or grant applicant's request for restoration to eligibility.

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federal register

Friday
November 12, 1999

Part III

Farm Credit Administration

12 CFR Part 650

Federal Agricultural Mortgage Corporation; Risk-Based Capital Requirements; Proposed Rule

FARM CREDIT ADMINISTRATION

12 CFR Part 650

RIN 3052–AB56

Federal Agricultural Mortgage Corporation; Risk-Based Capital Requirements

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends Farm Credit Administration (FCA) regulations, through the Office of Secondary Market Oversight (OSMO), by establishing risk-based capital requirements for the Federal Agricultural Mortgage Corporation (Corporation or Farmer Mac). The proposed regulations: Set forth the risk-based capital rules for Farmer Mac, including definitions, methods, parameters and guidelines for developing and implementing the risk-based capital stress test; specify capital calculation, reporting, and compliance requirements; delineate our monitoring, examination, supervisory, and enforcement activities; and, prescribe certain policy requirements for business and capital planning.

DATES: Please send your comments to us by March 13, 2000.

ADDRESSES: You may mail or deliver written comments to Carl A. Clinefelter, Director, Office of Secondary Market Oversight, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, or send them by facsimile transmission to (703) 734–5784. You may also send comments via electronic mail to ''reg-com@fca.gov'' or through the Pending Regulations section of our website at ''www.fca.gov.'' You may review copies of all comments we receive in the Office of Policy and Analysis, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Carl A. Clinefelter, Director, Office of Secondary Market Oversight, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4280, TDD (703) 883–4444, or Dennis K. Carpenter, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Joy Strickland, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Objective

The purpose of this proposed regulation is to establish a risk-based capital stress test for the Corporation as required by section 8.32 of the Farm Credit Act of 1971, as amended (Pub. L. 92–181)(Act). Section 8.32 of the Act requires us to establish a risk-based capital stress test that will determine the level of regulatory capital [1] necessary for the Corporation to maintain positive capital during a 10-year period where stressful credit and interest rate conditions occur. The proposed rule contains specific information on the structure of the risk-based capital stress test, including guidelines for its implementation, monitoring, reporting and examination. The rule also includes requirements for business and capital planning. The guidelines and procedures for implementation of the stress test are available to the public through the proposed regulation, technical appendix to part 650, subpart B, and an electronic version of the risk-based capital stress test (spreadsheet-based) that is available on our website ''www.fca.gov'' or on written request. The technical appendix contains details on how to construct the risk-based capital stress test, including basic assumptions used in the test.

II. Farmer Mac Organization

Farmer Mac is a federally chartered instrumentality of the United States (U.S.) established on January 6, 1988 by the Agricultural Credit Act of 1987 (Pub. L. 100–233)(1987 Act), which amended the Act. The Corporation's status as a Government-sponsored enterprise (GSE) requires it to fulfill the public policy mission of providing a secondary market for agricultural real estate loans. The Corporation is charged with increasing liquidity to rural lenders, increasing available long-term credit to farmers and ranchers at stable interest rates, and enhancing the ability of individuals in rural communities to get financing for moderately priced homes. Congress established the Corporation as part of its efforts to resolve the agricultural crisis of the 1980s. Congress believed that a secondary market for agricultural mortgages would increase available mortgage credit to America's farmers, ranchers and rural homeowners. Farmer Mac serves this role mainly by buying and securitizing ''qualified loans'' [2] from lenders, thereby restoring the lenders' availability of funds to make new loans. Although created by Congress, Farmer Mac is privately owned with its common stock publicly traded on the New York Stock Exchange.

III. Corporation Authorities and Statutory Requirements for Risk-Based Capital

Farmer Mac's statutory authority, which was established under title VIII of the Act, has been substantively amended three times since its origination in 1988 (i.e., 1990, 1991, and 1996). The 1990 amendments authorized the Farmer Mac II program at the request of the United States Department of Agriculture (USDA). The 1991 amendments authorized the Farmer Mac linked portfolio program.[3] The 1991 amendments created OSMO and established the FCA, acting through OSMO, as the regulator of Farmer Mac. The 1991 amendments also set forth definitions for core capital [4] and regulatory capital. The 1991 amendments also established minimum

[1] ''Regulatory capital'' is defined in section 8.31(5) of the Act as core capital plus an allowance for losses and guarantee claims (in accordance with generally accepted accounting principles (GAAP)). For the purposes of this definition, regulatory capital includes any allowance or reserve accounts that Farmer Mac maintains for losses on loans that are held in portfolio and for losses on securities it has guaranteed, particularly, reserves required by section 8.10 of the Act.

[2] A qualified loan is a loan secured by a first lien, fee simple mortgage or a long-term leasehold mortgage on agricultural real estate or rural housing that is located in the U.S. Agricultural real estate is defined by Farmer Mac as a parcel or parcels of land, which may be improved by buildings or other structures permanently affixed to the parcel or parcels, that (1) Are used for the production of one or more agricultural commodities, and (2) consist of a minimum of five acres or are used in the production of agricultural receipts of at least $5,000. In accordance with the Act, the maximum principal amount of a qualified loan secured by agricultural real estate is indexed to inflation and currently is $3.49 million, unless the loan is secured by 1,000 acres or less, in which case the maximum loan size is set by Farmer Mac at $6.0 million.

[3] The linked portfolio authority allows Farmer Mac to purchase guaranteed securities that have been issued by Farmer Mac or another authorized issuer and hold the securities indefinitely in its portfolio.

[4] ''Core Capital'' is defined in section 8.31(2) of the Act as the sum (as determined in accordance with GAAP) of: (1) The par value of outstanding common stock; (2) the par value of outstanding preferred stock; (3) paid-in capital; and (4) retained earnings.

capital[5] and critical capital[6] levels and required us to establish risk-based capital requirements for Farmer Mac.

The 1996 amendments served to streamline Farmer Mac's operating structure to be more competitive. Specifically, and most importantly, Farmer Mac was allowed to buy loans directly from lenders and issue guaranteed securities representing 100 percent of the principal of the purchased loans. This amendment removed the previous requirement for poolers to hold at least a 10-percent subordinated interest against loan losses on pools of loans securitized by Farmer Mac.

The Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (Pub. L. 102–237)(1991 Act) required us to develop and issue a risk-based capital stress test for the Corporation. The Farm Credit System Reform Act of 1996 (Pub. L. 104–105)(1996 Act) further amended the Act by prohibiting us from establishing a risk-based capital stress test prior to February 10, 1999, 3 years following the effective date of the 1996 Act. The risk-based capital stress test required by the 1991 Act determines the amount of capital necessary for the Corporation to preserve positive capital while undergoing stressful credit and interest rate risk conditions during a 10-year period. The 1991 Act also required an added amount of capital to cover management and operational risk.

Section 8.32 of the Act requires that the risk-based capital stress test subject the Corporation to credit losses on agricultural mortgages it owns or guarantees. The frequency of loan default and severity of losses must be reasonably related to a ''benchmark'' with the highest rate of default and severity of agricultural mortgage losses experienced during a historical period of at least 2 consecutive years. The credit losses also must be related to those experienced in contiguous areas of the U.S. containing at least 5 percent of the total U.S. population. The establishment of the benchmark loss experience is more fully discussed later in this preamble.

The 1991 Act also required us to incorporate in the risk-based capital stress test an interest rate risk stress scenario based on rising and falling interest rates on Treasury obligations of various terms. Under the interest rate stress scenario, current rates on Treasury obligations are instantaneously shocked up and down. For the first 12 months of the 10-year stress period, rates either increase or decrease by: (1) 50 percent of the average rates on various Treasury obligations during the 12-month period preceding the stress period, or (2) 600 basis point (bp), whichever is less. The rates must remain at the increased or decreased level for the remainder of the 10-year stress period.

In addition to the risk-based capital level required as a result of the credit loss and interest rate change components of the risk-based capital stress test, Farmer Mac is required to maintain additional capital to protect against management and operational risk. This additional capital level is specified in the Act to be 30 percent of the capital level required for the sum of the credit loss and interest rate change components of the risk-based capital stress test.

In developing the risk-based capital stress test, the Act permits us to take into account appropriate distinctions relative to various types of agricultural mortgage products, varying terms of Treasury obligations, and any other factors considered appropriate. We may also consider credit loss protection provided by retained subordinated participation interests, which were required for guaranteed securities under section 8.6(b)(2) of the Act prior to the enactment of the 1996 Act.[7] The 1991 Act does not require a specific adjustment for any of these factors, but allows us to determine how best to account for them. Unlike the risk-based capital stress tests applicable to other GSEs, the 1991 Act does not contain specific requirements for addressing new business and other corporate activities during the stress period, including growth, product types, and pricing.[8]

Our risk-based capital regulations must contain specific information on the requirements, definitions, methods and parameters used in implementing the risk-based capital stress test in order to enable others to apply the test in a similar manner. Finally, we must ultimately make available to the public any statistical model used to implement the risk-based capital stress test.

IV. Philosophy and Development of the Risk-Based Capital Stress Test

The principal objective of the risk-based capital standard is to ensure that Farmer Mac has sufficient capital to remain solvent in the face of extreme economic conditions. We believe that effective capital standards should also permit Farmer Mac to fulfill its public policy mission while pursuing prudent business practices and strategies.

Although the risk-based capital stress test can produce a single capital requirement, it effectively creates marginal capital requirements, that is, incremental requirements based on the riskiness of each additional dollar of business for every type of product that Farmer Mac guarantees or holds in its portfolio. Marginal capital requirements for mortgages held in portfolio will vary depending on the interest rate and credit risk associated with the mortgages as well as the Farmer Mac's funding strategy. These marginal capital requirements may have significant bearing on how Farmer Mac implements its business strategies.

We developed the risk-based capital stress test to closely reflect the risks inherent in Farmer Mac's various business activities. We incorporated, to the extent permitted by the Act, consistent relationships between the economic environment of the stress period and Farmer Mac's business activities. This required modeling Farmer Mac's assets, liabilities, and off-balance sheet positions at a sufficient level of detail to capture their various risk characteristics.

Our philosophy guiding the development of the risk-based capital stress test was that it should:

- Be consistent with the requirements of the statute, i.e., it should reflect worst-case credit conditions and interest rate movements, as defined in the Act;
- Reflect Farmer Mac's regulatory capital needs for credit and interest rate risks measured under stressful conditions;
- Be internally consistent;

[5] The Corporation's ''minimum capital'' requirements are described under section 8.33 of the Act. The minimum capital level for the Corporation is an amount of core capital equal to the sum of: (1) 2.75 percent of the aggregate on-balance sheet assets of the Corporation, as determined in accordance with GAAP; and (2) 0.75 percent of the aggregate off-balance sheet obligations of the Corporation which include: (a) The unpaid principal balance of outstanding securities that are guaranteed by the Corporation and backed by pools of qualified loans; (b) instruments that are issued or guaranteed by the Corporation and are substantially equivalent to (a); and (c) other off-balance sheet obligations. These minimum statutory capital standards will continue in effect after the risk-based capital rule becomes effective.

[6] The Corporation's ''critical capital level'' is described in section 8.34 of the Act. The critical capital level for the Corporation is an amount of core capital equal to 50 percent of the total minimum capital amount determined under section 8.33 of the Act.

[7] Section 8.32 of the Act states that we must also conform loan loss data to the geographic and commodity diversification standards that the Corporation loan pools had to meet based on provisions of the 1991 Act. Because the geographic and commodity diversification requirement was eliminated in the 1996 Act, this consideration is no longer applicable.

[8] *See* 12 U.S.C. 4611(a)(3).

- Not create inappropriate economic incentives;
- Aim for simplicity; and
- Reflect, to the extent practical and meaningful, Farmer Mac's current operating policies and practices.

In developing the risk-based capital regulations, we also compared our statutory requirements with the Basle Accord risk-based capital framework. Although the current Basle Accord and our risk-based capital framework significantly differ, both strive to equate risk with an appropriate capital requirement. We note that the proposed direction of the Basle Committee suggests an increasing reliance and acceptance of econometric and statistical models for measuring credit and market risk and allocating capital.[9] Additionally, we both advocate that proactive regulatory measures, such as our risk-based capital stress test, should be complemented by effective monitoring, supervision, and examination. For these reasons, we believe our risk-based capital framework is consistent with the current opinions of the Basle Committee.

In developing the risk-based capital stress test, we engaged in three distinct activities that vary in complexity and time horizons:

- Identification of the benchmark loss experience;
- Construction of the risk-based capital stress test; and
- Examination and oversight.

A. Identification of the Benchmark Loss Experience

Our first initiative was to identify the worst-case historical loss experience as required by the Act. We published our results for comment in the **Federal Register** on July 28, 1998 (63 FR 40282). This study entitled, ''Risk-based Capital Regulations for Farmer Mac: Loan Loss Estimation Procedures,'' is available through our website at (www.fca.gov/pubs/farmmac). The study was prepared by Barry & Associates,[10] consultants who also assisted us in all facets of development of the risk-based capital stress test. The following is a brief summary of our efforts to locate agricultural mortgage loan data and identify the worst-case loss rates to serve as a benchmark for the loss rates used in the risk-based capital stress test.

1. Available Loan Data

We were unable to use Farmer Mac loan data for establishing the benchmark loss experience because Farmer Mac is a relatively new enterprise and did not have historical data. Therefore, we searched for other possible data sources, including the Economic Research Service (ERS) of the USDA, commercial banks, life insurance companies, and System banks. After an exhaustive search, we identified the Farm Credit Bank of Texas (FCBT) and the former Farm Credit Bank of St. Paul (FCBSP) as the only data sources with available historic loan-level performance data on Farmer Mac-eligible loans that satisfied the statutory provisions.

After an extensive evaluation of the available data, we concluded that the FCBT had the most relevant data available for developing a benchmark loss experience for use in a risk-based capital stress test. Data from the FCBT is the most useful available for determining benchmark losses because losses were taken expeditiously as charge-offs and are thus clearly measurable. In contrast, although the FCBSP experienced substantial financial distress during the 1980s, charge-off rates were relatively low due to the FCBSP's strategy of forbearance and restructuring of problem loans. Thus, the FCBSP experienced most of its financial stress through reduced earnings on loans and increased servicing costs. This stress is more difficult to measure in the form of loan default rates and severity of defaults, which the statute requires us to measure. Also, we proposed to use only the FCBT loans that would have met the Farmer Mac underwriting standards that were in place at loan origination because non-conforming loans could present significantly different credit, market, and institutional risks.

2. Identification of Worst-Case Losses

According to the USDA, Texas ranked fourth among the 50 states in terms of farm financial stress in the 1980s. In addition, our experience with the System banks indicates that the FCBT did not experience the worst historical losses on agricultural real estate mortgages. Therefore, the only usable loan data we were able to identify, the FCBT data, did not represent the worst-case agricultural mortgage loss experience. We, thus, found it necessary to consider how Texas loss rates related to other states and regions for determining worst-case loss experience.

We employed a statistical procedure to expand the loan loss rates for the FCBT to estimate loss rates for other states and regions of the U.S. This procedure is explained in detail in the study published for public comment. Briefly, the preferred regression equation identified by Barry & Associates was based on the relationship between FCBT loss rates and the annual percentage change in Texas farmland values over the next 2 years. This regression equation was used to estimate historical loss rates for every state from 1976 to 1993. Then a ranking was compiled of 2-year loss rates for contiguous regions representing at least 5 percent of the 1990 U.S. population. Our study concluded that the worst-case region was found to contain Minnesota, Iowa and Illinois during the 1983–1984 time period with a 2-year loan loss rate of 4.18 percent. This region represents 7.5 percent of the U.S. population. Our experience in overseeing FCS institutions with severe credit problems and high default rates during this period also points to the upper mid-west as the focal point of agricultural stress.

3. Use of the Benchmark Losses

Following our identification of the worst-case benchmark loss rate, we began our development of the risk-based capital stress test. The Act requires that the risk-based capital stress test use losses that occur throughout the U.S. The identified losses are to be at a rate of default and severity ''reasonably related'' to the rate and severity that occurred for at least 2 years in contiguous areas of the U.S. containing not less than 5 percent of the U.S. population.

The published study used loss rates extrapolated from the FCBT data to identify the worst-case region. The primary variable used in the extrapolation was the change in farmland values. However, we are not proposing to use the benchmark loss rate in the risk-based capital stress test. The extrapolation method used in the study was an appropriate method for estimating aggregate loss rates on agricultural mortgages. The method proposed here allows us to incorporate the current risk characteristics of Farmer Mac's portfolio, including loan-level data, in addition to the farmland value changes for the worst-stress time period. These loan-level risk characteristics include loan size, loan-to-value ratio (LTV), debt service coverage ratio

[9] A New Capital Adequacy Framework is a consultative paper issued by the Basle Committee on Banking Supervision. A copy of this paper can be found at *www.bis.org.*

[10] Barry & Associates is a consulting group that conducts research and education projects in agricultural finance on behalf of industry, policy, and non-profit organizations. Projects have included analyses of capital regulations for financial institutions, insurance modeling, risk pricing of loans, community banks' access to agency market funds, and Farm Bill changes. Principal members of Barry & Associates are Peter Barry (Managing Partner), Bruce Sherrick, Paul Ellinger, and Del Banner. Each of these members is affiliated with the Center for Farm and Rural Business Finance at the University of Illinois, Urbana-Champaign.

(DSCR), and debt-to-asset (D/A) ratio. The statistical method proposed makes it easier for Farmer Mac to implement and for us to examine the results.

Although we are not using the benchmark loss rate identified in the published study, we use the percentage changes in farmland values from the published study as a primary variable in estimating the loss rates used in the stress test. Using the farmland value changes from the published benchmark worst-case region of Minnesota, Iowa, and Illinois as input in the credit risk portion of the risk-based capital stress test is a direct linkage to the benchmark loss rate. The loss rates used in the risk-based capital stress test are closely related to the benchmark loss rate, because both are limited to changes in farmland values. The changes in farmland values identified in the published benchmark loss rate study are primary variables in the default equation used in the risk-based capital stress test. Changes in farmland values, as used in the risk-based capital stress test and the benchmark loss rate study, represent the combined effects of the level and growth rates of farm income, interest rates, and inflationary expectations. More detailed information on the procedure for calculating loss rates in the risk-based capital stress test is presented later in this supplementary information and in the technical appendix.

4. Comments on the Benchmark Loss Report

As noted earlier, in July 1998 we published a ''Notice of availability of study and request for comment'' on the loan loss study completed by Barry & Associates. (See 63 FR 40282, July 28, 1998.) Through the Notice, we made the results of the study available for public comment in expectation that it would lead to improved input for the credit risk component of the risk-based capital stress test. Due to the complexity of the study and the importance of the benchmark loss experience in the risk-based capital stress test, several parties requested that we extend the comment period on the Notice from September 15, 1998, to January 4, 1999, which we did.

We received five letters on the study from a variety of interested parties. The commenters were Farmer Mac (2 letters), AgFirst Farm Credit Bank, the American Bankers Association, and the Independent Bankers Association of America (now the Independent Community Bankers of America). We have considered these comments in the development of this proposed risk-based capital regulation. Many of the comments were related to the benchmark loss rates that were identified rather than the loan loss data we used as the starting point or the land value changes we identified. Because we are not using the benchmark loss rates as the loss rates in the risk-based capital stress test, we do not believe that a detailed response to each comment is relevant in this supplementary information. Thus, we are providing a summary of, and our response to, the primary comments relevant to this proposed rule.

First, the commenters stated that the statute does not permit extrapolation procedures in identifying the worst-case loss data. The commenters asserted that the statute required us to use as benchmark losses, the worst-case data that are available to us, *i.e.*, the losses from the FCBT portfolio. We disagree with this interpretation of the statute. The statute directs us to use the worst-case data, not the worst-case data ''that are available.'' Congress directed us to use loan loss rates in the risk-based capital stress test that are reasonably related to the area of the U.S. that experienced the ''highest rates of default and severity.'' Therefore, our first step was to determine the benchmark worst-case losses pursuant to this requirement.

Second, the commenters stated that the study failed to account for appropriate credit risk distinctions between the historical FCBT data and Farmer Mac's current portfolio. We believe it was appropriate to use only those agricultural mortgages that would have been Farmer Mac-eligible loans at the time the study was conducted so that the benchmark losses would reflect losses on relevant loans. We reviewed the process for selecting the screening criteria used in the study and found it to be appropriate given the underwriting data of Farmer Mac's portfolio, the statutory criteria for loan eligibility, and the limitations of the FCBT data set. We also reviewed the eligible loan set obtained from the FCBT data and determined that all variables were within the values found in Farmer Mac's current portfolio. Thus, we believe the data used for the benchmark study are appropriate. We also consider it appropriate to account for Farmer Mac's current portfolio risk factors in applying the loss rates in the risk-based capital stress test. Thus, we consider the current make-up of Farmer Mac's portfolio when we apply the loan loss default equation to determine the loss rates used in the risk-based capital stress test. Later discussions in this supplementary information and the technical appendix further explain how the risk characteristics of Farmer Mac's portfolio are incorporated in determining the loss rates used in the risk-based capital stress test.

B. Construction of the Statutory Stress Test

Our second major undertaking was to develop a financial model to represent Farmer Mac's assets, liabilities and off-balance sheet positions at a sufficient level of detail to capture important risk characteristics and project Farmer Mac's financial performance over a hypothetical period of stress lasting 10 years. The focus of our efforts was to determine the appropriate parameters and economic relationships necessary for the risk-based capital stress test to fulfill the statutory requirements. To accomplish this task, we worked in consultation with Barry & Associates. Additionally, Farmer Mac and PriceWaterhouseCoopers provided information relative to loan data, Farmer Mac's operations, and economic relationships and statistical methodologies for use in measuring various types and levels of risk.

A summary of the major components of the risk-based capital stress test is provided in a subsequent section of this preamble and the regulation. A more thorough discussion of all the technical aspects of the risk-based capital stress test can be found in the technical appendix to the proposed regulation. Due to the nature and complexity of the risk-based capital stress test, we are also making an electronic version of the risk-based capital stress test available to the public through our website at www.fca.gov.

The proposed rule specifies the basic structure and parameters of the risk-based capital stress test and allows Farmer Mac to implement the stress test internally using a model built according to our specifications to determine its risk-based capital level. During the 1-year period following adoption of the final risk-based capital regulation and on an ongoing basis thereafter, we will examine and verify Farmer Mac's implementation of the risk-based capital stress test to ensure compliance with the regulation, including the specifications identified in the technical appendix to the regulation. Furthermore, we are proposing that Farmer Mac have its implementation of the risk-based capital stress test verified and audited once every 3 years by an external independent party. The audit should ensure that the financial data used in the stress test are accurate and that stress test is implemented in accordance with our regulations and procedures. We note that because of the proprietary nature of specific, transaction level loan and financial data used in the risk-based

capital stress test, it is unlikely that results of the test will be fully reproducible by parties other than Farmer Mac and us. Other parties will, however, be able to approximate the test results on an aggregate basis using publicly available information.

C. Examination and Oversight

From a regulatory perspective, the ongoing nature of the risk-based capital stress test facilitates our understanding of how changes in Farmer Mac's business activities will affect its risk profile and resulting capital requirements. A risk-based capital stress test, because it is based on statistical relationships, is limited in a number of important ways that must be understood before it can be used as an effective regulatory tool. Foremost, the risk-based capital stress test uses econometric relationships based on historical data to estimate potential loss rates. Past historical data, even though required by the statute, may not be the best basis for projecting the performance of new agricultural mortgages originated using a different set of underwriting criteria and subject to a different set of economic conditions. As a result, we may need a significant period of time to collect and analyze new data to appropriately update the risk-based capital stress test procedures. Furthermore, the effectiveness of the risk-based capital stress test may be influenced by changes in Farmer Mac's operations, underwriting standards or products and services offered. Lastly, the risk-based capital stress test best measures identifiable and quantifiable risks.

Therefore, our ongoing monitoring and on-site examination will be integral in assessing Farmer Mac's capital adequacy. Our monitoring and examination program will help ensure that Farmer Mac appropriately implements the risk-based capital stress test and aid in identifying non-quantifiable risks that the risk-based capital stress test cannot measure. Together, the ongoing monitoring and examination by OSMO will enable us to provide effective regulatory oversight and ensure the adequacy of regulatory capital standard set by the risk-based capital stress test.

V. Risk-Based Capital Stress Test

The risk-based capital stress test is intended to be forward-looking and sensitive to fluctuations in the economy, as well as to changes in Farmer Mac's asset composition, funding strategies, and on- and off-balance sheet exposures. The risk-based capital level, unlike simple leverage ratios, is tailored to specific risks in Farmer Mac's book of business. In designing the risk-based capital stress test, we sought to identify and incorporate all significant credit and interest rate risks to which Farmer Mac is exposed.

Given the risk-based capital stress test's sensitivity to changing risk conditions, the risk-based capital requirement bears no direct relationship to the statutory minimum capital requirements. Based on a Farmer Mac condition of relatively low risk exposure, the risk-based capital stress test could produce a risk-based capital requirement below that of the statutory minimum standard. When this occurs, Farmer Mac must continue to meet its statutory minimum capital level.

Econometric models are used to project the effects of stressed conditions on Farmer Mac's assets, liabilities and off-balance sheet activities. The risk-based capital stress test will project credit losses from defaults on agricultural mortgages and loss severities comparable to the worst historical agricultural mortgage default loss experience in any region of the country.

The risk-based capital stress test is designed to capture Farmer Mac's specific exposure to credit and interest rate risks under stressed conditions. Economic conditions of the stress scenario affect Farmer Mac's agricultural mortgage performance, earnings and market values, and ultimately required capital. For example, movement in farmland values, which reflect changes in farm income and interest rates, influence mortgage credit loss rates, which in turn affect Farmer Mac's cashflows and capital accretion or depletion. By requiring the risk-based capital stress test to be conducted on a quarterly basis, we will strive to identify changes in capital needs before such economic events as declining farmland values can impact Farmer Mac's balance sheet to any significant degree. Thus, the risk-based capital stress test is more dynamic than simple leverage ratios because the entire business profile of Farmer Mac from assets and liabilities to off-balance sheet obligations is modeled.

The goal of the risk-based capital stress test is to align capital requirements with risk and avoid creating incentives for the Corporation to engage in inappropriately risky activities. The stress test approach also provides greater flexibility to meet regulatory requirements than is available in traditional capital requirements. For instance, the stress test approach recognizes risk-mitigating activities. As an example, Farmer Mac may meet its risk-based capital needs by reducing risk and/or increasing capital.

Proposed § 650.24 describes the main components of the risk-based capital stress test that Farmer Mac must apply to its current operations. The technical appendix to the regulation provides details on the specification and estimation of the statistical (econometric) model used to project Farmer Mac performance over the 10-year stress period. Additionally, the technical appendix discusses how the statistical model is applied in the proposed risk-based capital stress test. The key stress test components, include data requirements, specifications of credit risk, interest rate movements, the cashflow generator, and the capital calculation.

The following discussions provide a general overview of the risk-based capital stress test components and explanation of the concepts underlying the stress test.

A. Data Requirements

Historical loan data from the FCBT are used to determine appropriate relationships among mortgage-risk factors, rates of loan default and loss occurrence. Data on Farmer Mac's current book of business are used to establish Farmer Mac's initial balance sheet structure, financial position and risk profile for the start of the risk-based capital stress test. Current interest rate information as described in the technical appendix is needed for the interest rate component of the risk-based capital stress test.

Farmer Mac will be required to provide additional information in its quarterly financial reports to us. Specific details regarding the new requirements will be provided through modifications to our Call Report instructions. Although we are allowing Farmer Mac the flexibility to determine its risk-based capital level and report its results to us, we believe it is essential for FCA to retain the capability to also determine Farmer Mac's risk-based capital level. Therefore, we intend to modify the current Call Report instructions to accommodate our data and information needs.

B. Farmer Mac Programs and Risk Characteristics

Farmer Mac operates a variety of secondary market programs with varying amounts of risk to fulfill its mission. A brief description of these programs follows.

1. Farmer Mac I—Direct Loan Purchases

Farmer Mac purchases from approved lenders[11] qualified loans secured by a first mortgage on agricultural real estate, including part-time farms that meet specified credit standards. Farmer Mac provides liquidity to the agricultural mortgage market by: (1) Purchasing newly originated qualified loans directly from lenders on a continuing basis through its ''cash window''; (2) exchanging qualified loans for securities issued and guaranteed by Farmer Mac (Farmer Mac Guaranteed Securities) through ''swap'' transactions; and (3) purchasing portfolios of existing loans on a negotiated basis.[12] Qualified loans purchased by Farmer Mac are aggregated into pools that back Farmer Mac Guaranteed Securities, which are periodically issued and sold to investors in the capital markets. Farmer Mac also has the authority to purchase these securities and hold them in its portfolio. Farmer Mac receives income from guarantee fees on securities it guarantees. Farmer Mac also receives interest income on securities it holds.

2. Farmer Mac I—Long-term Standby Purchase Commitment

Under a standby purchase commitment agreement with the lender, Farmer Mac receives an annual fee in return for its commitment to purchase certain loans in the future. The lender services the loans and retains them on its books in a segregated pool. This program allows approved lenders to reduce credit risk and free capital to make additional loans.

3. Farmer Mac I—AgVantage Bond Sales

AgVantage bonds are highly collateralized corporate debt issued by approved lenders to Farmer Mac, which in turn guarantees the bonds. The approved lenders pledge qualified loans and other securities (Treasury securities) as collateral, which are retained by the lenders. This program provides approved lenders with another means to fund qualified loans and generates revenue for Farmer Mac. Farmer Mac receives revenue in the form of interest income on AgVantage bonds.

4. Farmer Mac II

Under Farmer Mac II, the Corporation purchases the portions of loans guaranteed by the USDA. The Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624) (1990 Act) gives Farmer Mac the authority to operate a secondary market for certain USDA-guaranteed loans. The guaranteed portions of loans are pooled and securitized by Farmer Mac or other certified facilities. Farmer Mac then guarantees the repayment of the securities. Farmer Mac receives income from guarantee fees on securities it guarantees. Farmer Mac also receives interest income on securities it holds.

5. Farmer Mac—Rural Housing

Home mortgages from lenders in rural areas and small communities are eligible for sale to Farmer Mac for pooling and securitization. Rural housing is defined by Farmer Mac as a one-to-four family, owner-occupied principal residence that is a moderately priced dwelling located in a community having a population of 2,500 or fewer inhabitants; the dwelling (excluding the land to which it is affixed) cannot have a purchase price or current appraised value of more than $100,000 (adjusted annually for inflation). This figure is currently $133,000. In addition to the dwelling, a rural housing loan can be secured by land associated with the dwelling having an appraised value of no more than 50 percent of the total appraised value of the combined property. As of August 31, 1999, Farmer Mac had not issued any securities backed by rural home mortgages.

6. Risk Characteristics

Farmer Mac's primary exposure to credit risk is the risk of loss resulting from the inability of borrowers to repay their mortgages. Farmer Mac is exposed to credit risk on the loans it holds or guarantees against default, as well as securities it guarantees. Farmer Mac guarantees the timely payment of principal, including any balloon payments, and interest on securities. Loans held or guaranteed by Farmer Mac can be divided into three groups: (1) Pre-1996 Act Farmer Mac I loans; (2) post-1996 Act Farmer Mac I loans; and (3) Farmer Mac II loans. Within these general groupings, Farmer Mac, as previously discussed, operates other programs. Each of these programs carries different amounts of credit risk that must be appropriately reflected in the credit risk component of the risk-based capital stress test.

For pre-1996 Act loans, subordinated interests mitigate Farmer Mac's credit risk exposure. Before Farmer Mac incurs a credit loss, recourse must be taken against the subordinated interest. At December 31, 1998, the subordinated interest of each outstanding security on pre-1996 Act Farmer Mac I loans was equal to or greater than 10 percent. The 1996 Act eliminated the subordinated interest requirement. As a result, Farmer Mac assumes 100 percent of the credit risk exposure on the post-1996 Act Farmer Mac I loans. Farmer Mac mitigates the credit risk related to these loans through the application of its underwriting standards and by requiring collateral in the form of real estate. Farmer Mac's credit exposure on Farmer Mac II loans is covered by the ''full faith and credit'' of the U.S. Government by virtue of the USDA guarantee of the principal and interest on all guaranteed portions.

There is very limited, if any, credit risk exposure on the pre-1996 Act loans due to the subordinated interest, or on the Farmer Mac II loans because of the USDA guarantee. For this reason, we are not requiring Farmer Mac to project any credit losses on these programs during the stress period of the test. Farmer Mac's credit risk exposure on post-1996 Act Farmer Mac I loans is fully reflected in the risk-based capital stress test. Farmer Mac I rural home loans are subject to the same loss rates as agricultural mortgages. Rural home loan loss rates are not computed independently given the lack of data and the fact that there is no outstanding loan volume held on the balance sheet or guaranteed.

Farmer Mac is also exposed to institutional credit risk relating to: (1) Issuers of AgVantage bonds and other investments held by Farmer Mac; (2) sellers and servicers; and (3) interest-rate contract counterparties. We decided not to model these sources of institutional credit risk for several reasons. AgVantage bonds are general obligations of the AgVantage bond issuers and secured by collateral in an amount ranging from 120 percent to 150 percent of the bond amount. In addition to requiring collateral, Farmer Mac mitigates credit risk related to AgVantage bonds by evaluating and monitoring the financial condition of the AgVantage issuers. Farmer Mac manages institutional credit risk related to sellers and servicers by requiring such institutions to meet certain standards and by monitoring their financial condition and servicing performance. The credit risk inherent in the investment portfolio is mitigated by Farmer Mac's policy of investing in highly rated institutions and by establishing concentration limits, which reduce exposure to any one counterparty. Furthermore, the short-term nature of Farmer Mac's investment portfolio limits credit risk. Farmer Mac mitigates credit risk arising from interest-rate swaps by dealing only with counterparties with high credit ratings,

[11] Approved lenders are financial institutions that have met Farmer Mac's technical, financial and stock ownership requirements.

[12] See Farmer Mac's 1998 Annual Report.

establishing and maintaining collateral requirements, and entering into netting agreements.

We are proposing to capture Farmer Mac's institutional credit risk exposure through the 30-percent management and operations risk add-on required by the statute. At this time, we believe modeling institutional credit risk presents many challenges that would unnecessarily complicate the risk-based capital stress test. However, if Farmer Mac significantly increases its credit risk exposure in these areas through modifications to its current operating policies, we will reconsider how to best reflect institutional credit risk exposure in the risk-based capital stress test.

Farmer Mac is also exposed to credit risk concentration in the mortgages it holds and guarantees. Farmer Mac's current policy is to limit its credit exposure in a particular geographic region or commodity to a percentage of total principal amount of all loans outstanding. Additionally, Farmer Mac employs more stringent underwriting criteria in regions with higher loan volume concentrations. Such underwriting criteria consider the credit quality of the loans in a particular geographic region or commodity based on the borrower's LTV, DSCR, equity-to-asset and working capital-to-current asset ratios. The effectiveness of Farmer Mac's underwriting standards is specifically measured in the risk-based capital stress test through our model of loan losses as described more thoroughly in the next section as well as in the technical appendix.

C. Credit Risk

A statistical methodology is used to model the stress conditions described in the statute. Econometric models are used to estimate the probability of mortgage defaults and the severity of loss under stressed conditions. Detailed instructions for measuring credit risk are provided in the technical appendix.

1. Estimation of Default.

A logistic model is used to estimate the frequency of defaults from historical FCBT loan data. Logistic models are widely accepted as an appropriate methodology for modeling loan-level mortgage defaults. There are several well-known predictors of mortgage default, including loan age, payment burden, LTV, and interest rates. Additionally, there are other variables that are specific to farm mortgages, such as farmland prices, net farm income, commodity prices and the D/A ratio. These variables, in addition to a host of others, were considered in the process of modeling defaults of FCBT loans. After extensive statistical analyses, the final equation for estimating the frequency of default includes the following variables:

- Maximum decline in farmland values
- LTV ratio
- DSCR
- Original loan balance in 1997 dollars
- D/A ratio

These variables have logical relationships to the incidence of loan default and loss.

a. *Farmland values.* Changes in farmland prices are an important factor in the model because they directly affect the likelihood of mortgage defaults and the magnitude of potential losses. In estimating the default frequency equation, the largest annual percentage decline in farmland values resulted in the strongest relationship between an economic variable and default frequency. For stress test purposes, we used the largest decline in farmland values from the benchmark loss experience as an input variable.

Because the lives of loans are unknown at origination and differ among loan observations, annual economic variables or annual changes throughout the life of the loan cannot be consistently applied across all loans. Economic variables need to be expressed in a form that can be applied to loans regardless of the life of the loan. For example, geometric average lifetime changes, minimum changes, or maximum changes could be considered. The maximum percentage decline in annual Texas farmland values resulted in the strongest relationship among economic variables considered in the estimated equation for default frequency.

b. *Loan-to-value Ratio.* Another important variable known to drive defaults is the LTV ratio. LTV is equal to the loan amount divided by the appraised value of the underlying property. This variable is one of the primary underwriting ratios that Farmer Mac uses in its loan purchasing decisions. LTV indicates the relative safety of collateralized debt. Large equity investments represent a substantial incentive for a borrower to continue making mortgage payments to safeguard their equity position in their property. Furthermore, if an income problem does arise, lower LTVs provide a significant cushion for the borrower to sell the underlying asset at a price that is sufficient to cover accrued interest and the remaining outstanding principal. Conversely, high LTV loans are more likely to default.

Ideally, an updated LTV could be calculated each year, which would take into account amortization and changes in property value. While we cannot obtain updates in the market value of the underlying collateral, the USDA Texas farmland value series could serve as a proxy for helping to update the denominator of the LTV. Since the amortization schedule of the FCBT data was not available, however, updating the numerator would require making payment assumptions as well. Rather than making additional assumptions, we opted to use LTV at origination.

c. *Debt Service Coverage Ratio.* A key factor in our assessment of potential frequency of default is the DSCR of a loan at origination. The numerator in the DSCR is net income plus depreciation, interest on capital debt, capital lease payments, and net off-farm income less living expenses and income taxes. The denominator is the sum of the total annual debt service requirements. Loans with low DSCRs have a higher expected frequency of default because borrowers cannot be expected to fund losses indefinitely. Conversely, loans with high DSCRs have a lower likelihood of default because they have an excess cashflow buffer, which would have to erode before the borrower would experience losses and consider defaulting. This variable would ideally be updated over the term of the loan. However, because of data limitations and the cyclical nature of agricultural receipts, DSCR at origination is used as the variable.

d. *Origination Loan Balance.* The beginning loan balance also proved to be a significant factor of default. We adjusted the origination loan balance for current constant dollars when we estimated the default equation and applied it to Farmer Mac's data. The base year we selected is 1997 and we adjusted the current dollars based on the consumer price index. It has been observed in the agricultural mortgage market that larger loans tend to have higher default rates. Liquidity constraints are the likely cause of this phenomenon. For a borrower who is experiencing financial difficulty, one of the alternatives is to sell the property and prepay the loan. Considering that there is relatively less demand for large farm properties, the owners of these properties may have difficulty in selling their properties in such an illiquid market. This inability to sell and then prepay eventually limits the farmers' alternatives to default.

e. *Debt-to-asset ratio.* The D/A ratio at origination is the last explanatory variable used in the default frequency estimation model. The D/A ratio

indicates the borrower's total amount of financial leverage. This is an important factor in agricultural lending because agricultural producers typically have significant amounts of debt from operations in addition to farm real estate debt. Borrowers with high D/A ratios experience higher default rates because they have limited capacity to withstand adverse conditions.

2. Loss Severity

Loss severity is a key element in the estimation of loan losses. Loss severity is defined as the total dollar amount of losses on a defaulted loan expressed as a percentage of origination loan balance. The loss severity rate is estimated with the same FCBT data employed in the estimation of defaults. To estimate loss severity, we searched for a significant statistical relationship between loss rate and various independent indicators in the FCBT loan-level data. We concluded, after extensive analysis, that the data set was insufficient to estimate an acceptable loss severity rate. As a result, the loss severity rate is calculated by taking the weighted average loss of defaulted loans. The resulting loss severity rate is 20.9 percent. When a more extensive data set becomes available, loss severity can be re-estimated.

3. Age Adjustment

Mortgage seasoning (aging) is widely accepted as an important determinant in default frequency. The probability of default is low in the early life of a loan and increases as the loan ages until it peaks in years 6 to 8. After this peak period, the borrower has developed greater equity in the property and the likelihood of default tapers off. Therefore, we adjust loan-level loss to reflect the differences in loss occurrence attributed to loan seasoning. We used FCBT data to estimate the distribution function for loan seasoning assuming that the loans have a 14-year average life.

4. Time Pattern of Loss Occurrence

The age-adjusted losses are then distributed through time on a deterministic path that is representative of a stressful scenario. The loss rates estimated in the credit risk component of the risk-based capital stress test are based on an origination year concept. Under this approach, all losses arising from loans originated in a particular year are expressed as a percent of that year's originated loan volume irrespective of when the losses actually occur. The stress test must adjust the origination loss rates to an exposure year concept, in which losses occurring in any 1 year are related to the total outstanding loan volume in that year. Because all loans held at any time are not all originated in that year (or, conversely, loan principal balances are reflected on more than 1 year's balance sheet), the origination year loss rates must be adjusted to exposure year rates. To adjust from origination to exposure year losses, we apply a deterministic time path for loss occurrence during the 10-year stress period. The deterministic time path for converting from origination year to exposure year was determined by calculating exposure year losses in the FCBT data and expressing such losses as proportions of total losses for each origination year. The maximum 1-, 2-, 3-, and 4-year commutative proportions of total origination loss observed in the FCBT data are used in the first four periods of the stress test. The remaining losses are equally allocated to years 5 through 10 of the stress test.

D. Interest Rate Risk

The statute requires the risk-based capital stress test to incorporate an interest rate risk component. Interest rate risk is the risk that interest rate changes could materially affect Farmer Mac's market value of equity and future earnings. Farmer Mac may be exposed to interest rate risk through any product or activity that is sensitive to changes in interest rates. Farmer Mac is exposed to three primary sources of interest rate risk: (1) Farmer Mac I and Farmer II securities; (2) other assets held for investment; and (3) loans held for securitization.

Farmer Mac's primary strategy to manage interest rate risk related to Farmer Mac I and II securities and other assets held for investment is to fund them with liabilities that have similar durations or average cashflow patterns over time.[13] To achieve the desired liability duration, Farmer Mac uses a mix of short-term discount notes and callable and non-callable medium term notes. By using a mix of liabilities that includes callable debt, the duration of the liabilities will tend to increase or decrease as interest rates change in a manner similar to the changes in the duration of assets. Farmer Mac also uses a variety of off-balance sheet derivative financial instruments to manage its interest rate risk exposure.

The Treasury yield curve represents the market's view of risk-free borrowing over a range of maturities. As such, it serves as a foundation for all other market rates. In the context of the risk-based capital stress test, the general level of interest rates will directly affect major components of Farmer Mac's business, including borrowing costs and earnings on mortgages and investments.

The statute specifically describes how Treasury rates must vary during the 10-year risk-based capital stress test period. While the Act provides a fairly specific description of how rates change in the stress scenario, it is silent on how we are to measure the financial effect of those rate changes. Accordingly, we are proposing the following procedures for implementing the statutory stress test and measuring Farmer Mac's exposure to interest rate risk.

Measurement of Farmer Mac's interest rate risk exposure requires the ability to estimate the sensitivity of the Corporation's assets and liabilities to interest rate risk. Vulnerability to interest rate risk is expressed through the degree of match between an institution's rate sensitive assets and liabilities, or between the durations of its assets and liabilities. More closely matched positions reduce the vulnerability to interest rate risk. By determining its duration gap, as measured by the difference between the duration of assets and liabilities under various parallel and instantaneous shifts in the yield curve, Farmer Mac can assess the potential effects of mismatches between the durations of its assets and liabilities. Farmer Mac derives its interest rate sensitivity measures using a commercially developed model, current market information, and other proprietary information.

We are proposing to use Farmer Mac's duration measures as inputs into the stress test to capture the cumulative effects of the Corporation's interest rate risk exposure under the interest rate shock scenarios required by the Act. We have two reasons for using this approach. One, we routinely assess Farmer Mac's interest rate risk measurement and management through our examination process. During this process, we closely evaluate the assumptions and inputs used in Farmer Mac's interest rate risk sensitivity measures. Therefore, we can validate the process and obtain the necessary confidence in the accuracy and integrity of the results to permit us to use them as inputs into the stress test. Our second reason for using Farmer Mac's internal duration measures is that it reduces the complexity of the stress test, thereby increasing the efficiency in implementing the model.

To estimate the effects of the interest rate shocks (up and down scenarios) on Farmer Mac's equity position, we compute effective duration over each

[13] See Farmer Mac's 1998 Annual Report.

interest rate shock scenario using information supplied by Farmer Mac. The duration measure is then used as a proxy for market value effects under each interest rate scenario. We consider Farmer Mac's assets and liabilities to be available for sale under GAAP. Thus, Farmer Mac must record changes in market values as increases or decreases to equity on its balance sheet. Finally, Farmer Mac must determine its risk-based capital level based on the rate movement (increase or decrease) that results in the highest level of required capital.

As noted, Farmer Mac is subject to interest rate risk on all assets held for investment because of the timing differences in the cashflows of the assets and related liabilities. This risk is primarily related to Farmer Mac I and II securities because of the ability of borrowers to repay their mortgages. Mortgage prepayments can cause fluctuations in the value of Farmer Mac securities to the extent they change cashflows of Farmer Mac's on- and off-balance sheet assets. Yield maintenance provisions associated with many of the loans underlying Farmer Mac securities significantly reduce, but do not eliminate, this risk.[14]

Although the effects of increasing and decreasing prepayments are captured in Farmer Mac's market value results, we are also proposing to use prepayment rates as input variables for generating balance sheet cashflows. We provide Farmer Mac the option to use their actual prepayment experience or assumed prepayment rates estimated from other data sources for the reasons explained below.

Prepayment rates often are estimated statistically by measuring relationships between prepayment and a set of independent variables that have been found to influence the prepayment rate. For several reasons, however, statistical relationships were not feasible to estimate in this case. During the historic time period in which the FCBT data were compiled, the FCBT priced its farm real estate loans with floating interest rates that adjusted annually in response to changes in the FCBT's average cost of funds. The resulting loan rates followed changes in market rates but with slower and lower rates of change. Because Farmer Mac does not engage in average cost pricing, estimating a prepayment function from the FCBT data would bear little, if any, relationship to prepayment rates experienced by Farmer Mac in the future. Moreover, an explicit or implicit prepayment measure was not available or obtainable from the FCBT data.[15]

Implementation of the interest rate shock requires several steps. The statutory interest rate shock is applied to the initial interest rate level, which is the preceding 3-month average of the 10-year Constant Maturity Treasury (CMT) rate. The 10-year CMT is frequently used for financial modeling of GSEs [16] since it is viewed as a good index for the cost of funds. Previous studies by Barry & Associates found the 10-year CMT to be a reliable index for System funding costs, and the 10-year CMT did not suffer random or unexplainable variations observed at shorter-term points on the yield curve. Thus, using a 3-month average avoids the possibility of unusual and extreme short-term movements in interest rates unduly influencing the results of the test and Farmer Mac's risk-based capital requirement. The interest rates resulting after the rate shock serve as the index needed to simulate mortgage and investment performance over the stress period and to calculate the risk-based capital level. Because many different interest rates affect Farmer Mac's business performance, we allow the use of other non-Treasury yield curves to simulate the financial effects of the interest rate shock on Farmer Mac's cashflows, income statement, and balance sheet.

Subject to our concurrence, Farmer Mac may use additional indexes, such as the London Interbank Offer Rates (LIBOR), in the risk-based capital test as long as the relationships between those indexes and the 10-year CMT are based on standard, widely used term structure modeling relationships. Farmer Mac may use these relationships to compute the cost of new debt, yields on investments, and coupon rates on mortgages purchased or guaranteed by Farmer Mac. The interest rate index and rate shock procedures described in the technical appendix are minimum guidelines, and although Farmer Mac can use additional indexes, the resulting risk-based capital level cannot be lower than it would be if only the 10-year CMT were used.

E. Cashflows

Our spreadsheet based model projects cashflows from all of Farmer Mac's assets, liabilities and off-balance sheet activities. Farmer Mac may use its own internal cashflow generator system and programming for this aspect of the risk-based capital stress test. However, Farmer Mac must first obtain our concurrence for any internal cashflow generator system and follow the procedures described in the technical appendix to this regulation.

There are numerous modeling constructs and assumptions used in the proposed cashflow component of the stress test. For the test, investments are aggregated into the following categories: (i) Cash and money market securities; (ii) commercial paper; (iii) certificates of deposit; (iv) Agency mortgage-backed securities and collateralized mortgage obligations; (v) and other investments. With our concurrence, Farmer Mac is permitted to more finely disaggregate these categories. Any new category deemed material to its operation in the future will also be required to be added as a separate account. The level of aggregation must appropriately reflect the contributions of revenues and expenses of major program activities. For each asset class, we must be able to discern the earnings rate and funding cost. Loan items requiring separate accounts include: (i) Farmer Mac I program assets, post-1996 Act; (ii) Farmer Mac I post-1996 Act swap balances; (iii) Farmer Mac I pre-1996 Act loans; (iv) Farmer Mac I AgVantage securities; (v) loans held for securitization; and (vi) Farmer Mac II loans.

During the stress test, the balance sheet remains a constant size over the 10-year period. This reflects a steady state scenario, meaning that when on-balance sheet assets and liabilities and off-balance sheet obligations amortize or pay-down, they are replaced with similar assets, liabilities, and obligations. However, as discontinued loan programs (*e.g.*, pre-1996 Act Farmer Mac I program) amortize, they are assumed to be replaced by current loan programs to more appropriately reflect Farmer Mac's current operations.

We use effective years to maturity to simulate the amortization of financial instruments, such as loans and other investments. A constant prepayment rate (CPR) is used for all assets that have embedded prepayment options. Together, the effective years to maturity and the CPR are used to establish a roll-off rate and generate cashflows reflecting a steady state over the stress

[14] Yield maintenance provisions require borrowers to make an additional payment to Farmer Mac when they repay their loans.

[15] The FCBT data set has a ''status'' variable that indicates whether the loan was active, foreclosed, re-amortized, paid in full or merged with a new loan.

[16] The Office of Federal Housing Enterprise Oversight also used the 10-year CMT as a component of their previously published proposed risk-based capital rule. (*See* 64 FR 18083, April 13, 1999.)

period. All cashflows and losses are computed on an annual basis.

To construct pro forma income statements for each period of the stress test, it is necessary to establish rules and relationships for deriving future income and expense items. Information from the first period balance sheet is used in conjunction with the earnings and cost-spread relationships from Farmer Mac supplied data to generate the first period's income statement. In our spreadsheet model, each investment account, loan item, and liability account can be specified as either: (i) A fixed rate investment; or (ii) an instrument with a fixed spread to Treasury with initial rates determined by actual data. The specific spreads (weighted average yield less initial 10-year CMT) by category are calculated directly in the stress test from the weighted average yield data supplied by Farmer Mac in accordance with the data requirements described in the technical appendix.

For non-interest income items, we follow certain decision rules for generating earnings over time. For example, gains on agricultural mortgage-backed security (AMBS) sales are a function of the amount of new AMBS being issued. We based the relationship on historical financial information. Expense items, such as fixed cost and variable cost, are measured using a regression equation where operating expenses is the dependent variable and the sum of investments and Farmer Mac program assets held on-balance sheet is the independent variable. We use the historical relationship of reserves to loan assets (that are subject to reserves, post-1996 Act Farmer Mac I loan items, on- and off-balance sheet) to simulate the loan reserves over time. The corporate tax rate is estimated from actual Farmer Mac financial data. Guarantee fee rates are obtained from actual guarantee fees charged by Farmer Mac on its loan programs.

F. Financial Reports

Pro forma financial statements showing the resulting capital levels for each period of the stress test are developed. Annual pro forma balance sheets and income statements are generated for the stress period using Farmer Mac's starting position, the stress conditions, resulting cashflow outputs, and current operating strategies and policies, as well as other assumptions. The proposed regulation provides Farmer Mac with the option to use its own financial software to produce the projected financial statements using the risk-based capital stress test specifications and parameters described in the technical appendix to this regulation. Projected financial statements must comply, to the extent practical, with GAAP.

G. Capital Calculation

The risk-based capital stress test determines the amount of starting capital Farmer Mac must hold to maintain a positive amount of capital throughout the stress period using an iterative methodology. Also, Farmer Mac must add on an additional 30 percent to this amount to account for management and operational risk. Section 8.31(5) of the Act defines regulatory capital as core capital (the par value of outstanding common and preferred stock, paid-in capital, and retained earnings), plus the allowance for losses and guarantee claims, as determined in accordance with GAAP.

More specifically, to calculate the risk-based capital, our model includes a section to solve for the minimum initial capital amount that results in at least zero capital at the end of each period of the 10-year stress test. In solving for initial capital, it is assumed that reductions or additions to the initial capital accounts are made in the retained earnings accounts and are balanced in the debt accounts at levels proportionate to initial balances (same relative proportion of long- and short-term debt as existing initial proportions). Because the initial capital position affects the earnings, and hence capital positions and appropriate discount rates through time, the initial and future capital are simultaneously determined and must be solved using an iterative process.

H. Future Changes to the Stress Test

Farmer Mac's performance over the stress period reflects its current operating policies and other assumptions about its operations to make the model functional. Due to significant data limitations relating to a variety of issues, we were required to make a number of simplifying assumptions. We recognize this may require us to revisit a number of issues, particularly as more data become available from Farmer Mac's own operations. Therefore, we will continually monitor the risk-based capital stress test results and consider whether modifications to the risk-based capital stress test are warranted. In particular, we anticipate that as more data from agricultural mortgage losses, especially those loans currently securitized by the Corporation become available, changes may be required in the risk-based capital stress test through amendment of this subpart.

Through our ongoing evaluations of the risk-based capital stress test, we also may find it necessary to make technical modifications to the risk-based capital stress test procedures. If we modify the procedures for implementing the risk-based capital stress test, we will notify Farmer Mac and provide them with written instructions to implement the changes. We will make these modifications available to the public on a quarterly basis on our web site.

VI. Statistical Properties of the Default Equation

This section provides further details about the credit risk component, including the underlying theory, analytical methods, data, model specifications, econometric estimation results, and conformance with the worst-case conditions specified in the statute. This section is intended for readers who desire further information on the measurement of credit risk and the statistical properties of the default estimation equation.

A. Estimation Methods

Historic time series on the frequency and severity of losses on farm mortgage loans are compiled from available loan-level data.[17] The measures of frequency and severity are related to selected loan-level characteristics and macroeconomic conditions through appropriately specified regression equations in order to account explicitly for the collective effects of these characteristics on frequency and severity of loss. The resulting regression equations are applied to estimate Farmer Mac's future credit risk position by substituting the respective values of their loan level characteristics and macroeconomic (farmland value changes) measures into the estimated regression equations, calculating the results, and determining the performance implications.

Several estimation approaches are possible, although the ultimate choice depends on the degree of conformance between the characteristics of the data and the properties of the respective regression methods. In the case of frequency of default and loan loss occurrence, the loan outcome is a qualitative, binary variable—default and loss either occur or do not occur. Therefore, the appropriate regression procedure must also accommodate qualitative characteristics (e.g., loan default and loss is coded with a value of 1, while successful loan performance is coded with a value of 0).

[17] As previously discussed, the historic loan data was obtained from FCBT.

Regression approaches with qualitative dependent variables include the linear probability model, logit, and probit. The linear probability model has a number of shortcomings and is rarely used. Under the linear probability model, estimates can occur outside the 0–1 interval resulting in nonsense probabilities and negative variances. Logit and probit are the most commonly used approaches. The primary difference between the two approaches is the assumed underlying probability distribution. The probit model assumes a normal distribution while the logit model uses the logistic distribution. Logit is used more frequently in modeling loan defaults, and is utilized in the credit risk component of the stress test.

In the case of severity of loss, the resulting magnitude of loan loss does not have a qualitative characteristic. Rather, magnitude of loss occurs in a continuous form, bounded at zero, thus requiring a different modeling approach.

The two equations for frequency and severity could be estimated independently. If they are estimated independently, but are in fact related, inconsistent estimates result. A method to accommodate possible dependence is to use a Heckman two-step approach that first assesses the probability of default then subsequently estimates the level of loss based on similar or different covariates. Accordingly, Heckman's two-step or ''Heckit'' estimation method was also explored. The Heckman two-step approach is estimated using method of moments techniques that results in consistent estimates.[18] Basically, it is a discrete model estimated on the basis of sample selection criteria. Then, a linear regression is performed in the second step. Examples of the two-step estimation procedure include Miller, Barry, Ellinger, and Lajili and Nakosteen and Zimmer.[19] The method utilizes an asymptotic covariance for the two-step estimation and results in a consistent estimator for variance (Σe^2). The system specification is appropriate in this case because of the relationship between the two equations. That is, severity of loss only occurs on defaulted loans. Default is required in order for loss to occur. While we explored this approach, the two-step procedure did not yield significant results for estimating a loss severity equation. Severity was not found to vary systematically and considered constant across the tested loan characteristics and lending conditions. Therefore, the simple weighted average by loss volume of 20.9 percent is used in the stress test.

Due to Farmer Mac's relatively short history, its own loan-level data are insufficiently developed for use in estimating default frequency and loss severity equations. In the future, however, expansions in both the scope and historic length of Farmer Mac's lending operations likely will warrant use of its data in estimating the regression equations.

B. Model Specifications

Agricultural credit and residential mortgage literature suggest several independent financial variables to consider in modeling loan default. These include the D/A ratio, LTV ratio, DSCR, age of the loan, payment burden, interest rate changes, land price changes, net farm income and changes in commodity prices. These variables were each considered in modeling the default experiences of FCBT loans. Standard goodness-of-fit measures and the credibility of outcomes were used to select the final equation used to estimate the loss probabilities.

The FCBT farm real estate loans were included in the estimating data if they satisfied at least three of four underwriting standards currently utilized by Farmer Mac. The four standards specify that: (1) The D/A ratio must be less than or equal to 0.50, (2) the LTV ratio must be less than or equal to 0.70,(3) the DSCR must exceed 1.25, (4) and the current ratio must exceed 1.0. Farmer Mac may waive complete compliance with these standards if a loan is judged to have appropriate offsetting strengths. Accordingly, the approach employed in the 1998 study requires that loans satisfy at least three of the four specified standards.

Furthermore, the D/A and LTV ratios were restricted to be less than or equal to 0.85. It is unlikely that Farmer Mac would waive these standards if the ratios exceeded these values. Inspection of a portion of Farmer Mac's loan portfolio indicated several instances where the D/A and LTV ratios exceed .50 and .70, respectively, with values of both ratios rarely exceeding 0.85. In the Farmer Mac data, 3.3 percent of the loans and 3.1 percent of the current outstanding loan balances have LTV ratios exceeding 0.70. The use of the maximum values for LTV and D/A and the three-out-of-four standards requirement for passing standards is intended to emulate Farmer Mac's underwriting standards, and includes the practice of waiving selected standards.

Several limitations in the FCBT loan-level data affect construction of the default function. The data contained loans that were originated between 1979 and 1992, but there were virtually no losses during the early parts of the sample period. As a result, losses attributable to specific loans are only available from 1986 through 1992. In addition, no prepayment information was available in the data.

The data set used for estimation also includes loans that were re-amortized, paid in full, or merged with a new loan as performing loans. Including these loans may lead to an underestimation of defaults, if some of the re-amortized, paid, or merged loans default and incur losses. In contrast, when the loans that are re-amortized, paid in full or merged are excluded from the analysis, the default rates are overestimated if a higher proportion of loans that are re-amortized, paid in full, or combined (merged) into a new loan are non-default loans compared to live loans. Excluding loans with defaults, 11,527 loans were active and 7,515 loans were paid in full, re-amortized or merged as of 1992. Application of a t-test[20] for differences in the means for these two groups indicated that active loans had significantly higher D/A and LTV ratios, and lower current ratios than other loans. These results indicate that, on average, active loans have potentially higher risk than loans that were re-amortized, paid in full, or merged.

C. Estimation Results

From a statistical perspective, models utilizing information based on origination information and subsequent economic information were consistently more reliable than models using loans that are transformed into multiple observations.

The structure of the historical FCBT data supports estimation of defaults based on origination information and economic conditions. Under an origination year approach each observation is used only once in estimating loan default. The underwriting variables at origination and economic factors that occur over the life of the loan are used to estimate loan default.

The final estimated equation for loss frequency is:

[18] Greene, W. A. *Economic Analysis*, 3rd ed., Prentice Hall, 1997.

[19] Miller, L.P.N. Ellinger, P.J. Barry, and K. Lajili. ''Price and Non-Price Management of Agricultural Credit Risk,'' *Agricultural Finance Review*, 53 (1993): 28–41. Nakosteen, R. and M. Zimmer. ''Migration and Income: The Question of Self-Selection,'' *Southern Economic Journal*, 7 (1980): 840–851.

[20] The t-test used evaluates the hypothesis that the means from the two loan groups are statistically different. The t-test uses a statistic derived from the student distribution.

$$\log\left(\frac{p}{1-p}\right) = \beta_0 + \beta_1 X_1 + \beta_2 X_2 + \beta_3 X_3 + \beta_4 X_4 + \beta_5 X_5 + \varepsilon$$

where p is the probability that a loan defaults and has positive losses (Pr(Y=1|x)); B_0 to B_5 are the estimated coefficients for the intercept and variables X_1 to X_5; X_1 is the LTV ratio at loan origination raised to the power 5.38027;[21] X_2 is the largest annual percentage decline in FCBT farmland values during the life of the loan discounted by 4.8 percent per year;[22] X_3 is the DSCR at loan origination; X_4 is the original loan balance in 1997 dollars; and X_5 is the D/A ratio at loan origination. It is commonly accepted that farmland values at any point in time reflect the discounted present value of expected returns to the land.[23] Thus, changes in land values, as expressed in the default equation, represent the combined effects of the level and growth rates of farm income, interest rates, and inflationary expectations—each of which is accounted for in the discounted, present value process.

These variables have logical relationships to the incidence of loan default and loss, as evidenced by the findings of numerous credit scoring studies in agricultural finance.[24] Each of these anticipated directions of relationship signifies greater risk for the borrower, and thus greater credit risk and incidence of loan loss for the lender. The frequency of loan default was found to differ significantly across all of the loan characteristics and lending conditions, as indicated by the results of the logit equation. The estimated logit coefficients and p-values are:

	Coefficients	p-value
Intercept	−9.7267	0.0001
X_1: LTV	2.7337	0.0001
X_2: Max farmland value decline	−0.3138	0.0001
X_3: DSCR	−0.1822	0.0003
X_4: Loan size ..	8.222E–7	0.0001
X_5: D/A ratio	2.3229	0.0001

The low p-values on each coefficient indicate a highly significant relationship between loan default and the respective independent variables. Other goodness-of-fit indicators are:

Hosmer and Lemeshow goodness-of-fit p-value—0.2232
Max-rescaled R^2—0.1204
Concordant—79.4%
Disconcordant—16.5%
Tied—4.1%

Explanations of these indicators follow:

1. *Hosmer and Lemeshow Goodness-of-Fit Test* divides subjects into deciles based on predicted probabilities, then computes a chi-square test statistic from observed and expected frequencies. A probability (p) value is computed from the chi-square distribution with 8 degrees of freedom to test the fit of the logistic model. If the Hosmer and Lemeshow goodness-of-fit test statistic is .05 or less, the null hypothesis that there is no difference between the observed and predicted values of the dependent is rejected. If it is greater, the null hypothesis of no difference is not rejected, implying that the model's estimates fit that data at an acceptable level. This result does not, however, indicate that the model necessarily explains much of the variance in the dependent variable. Because the p-value of 0.22 is greater than 0.05, the null hypothesis of no difference between the observed and predicted values cannot be rejected. No other information about the default equation's goodness-of-fit is provided by this statistic.

2. *Max-rescaled R-squared.* Several measures often are used to develop R-squared measures with logistic regression. The logistic measures do not specifically measure the degree of variation explained by the model. However, the measures often are scaled from 0 to 1.0 to provide a relative index of degree of fit. The one reported here is a modification of the Cox and Snell coefficient that compares the likelihood function with the intercept only with the likelihood function with all the variables. Nagelkerke proposed normalizing the value between 0 and 1 by dividing by the likelihood function with intercepts only. The specific formula is:

$$R^2 = 1 - \left(\frac{L(0)}{L(\beta)}\right)^{\frac{n}{2}}$$

where L(0) is the likelihood of the intercept-only model, L((β) is the likelihood of the specified model and n is the sample size. The quantity R^2 achieves a maximum of less than 1 for discrete models, where the maximum is given by:

$$R^2_{max} = 1 - (L(0))^{\frac{2}{n}}$$

The Nagelkerke adjustment to normalize the value between 0 and 1 is:

$$R^2_{max\ rescaled} = \frac{R^2}{R^2_{max}}$$

While the default equation has strong statistical significance, the Max-rescaled R-squared value of 0.1204 indicates that other variables and factors not included in the default equation may also influence default rates. Limitations on availability and quality of data, however, restrict the access to, and use of, other variables.

Other statistical measures that are indicative of a model's performance for correctly estimating the probability of loan default, include concordant, disconcordant, and ties. Generally, model performance is superior when the concordant measure is high and the other two measures are low. Each measure is discussed below.

3. *Concordant.* The predicted values for each possible pair of non-defaulted and defaulted loans are compared. The number of possible pairs is equal to the number of non-default loans times the number of defaulted loans. The percent of pairs that have defaulted loans with higher predicted default rates than predicted default rates for non-defaulted loans are included in the concordant category. Given all possible non-default/default pairwise combinations, the concordant percentage is the proportion that has defaulted loans with a higher predicted percentage than non-default loans. The concordant value for the default equation of 79.4 percent

[21] Loss probability is likely to be more sensitive to changes in LTV at higher values of LTV. To test and implement this non-linearity, the model was first estimated with 8 dummy variables at LTV intervals of 0 to 0.399, 0.400 to 0.499, 0.500 to 0.599, 0.650 to 0.699, 0.700 to 0.749, 0.750 to 0.799 and 0.800 to 0.850. A power functional form for the LTV variable was fit to replace the individual dummy variables. The result using generalized least squares (GLS) was $LTV^{5.38027}$. The default equation is re-estimated with the power function. The power function increases the degrees of freedom for the model and provides a continuous relationship between LTV and defaults.

[22] Discounting reflects the declining effect that the maximum land value decline has on the probability of default when it occurs later in a loan's life. The value of 4.8 percent was determined by iteratively solving the default equation with the default equation dummy variable ranging from 0 percent to 10 percent. The 4.8 percent rate yielded the highest goodness-of-fit values.

[23] Barry, P. J., P. N. Ellinger, J. A. Hopkin, and C. B. Baker. *Financial Management in Agriculture*, 5th ed., Interstate Publishers, 1995.

[24] Splett, N.S., P. J. Barry, B. Dixon, and P. Ellinger. ''A Joint Experience and Statistical Approach to Credit Scoring,'' *Agricultural Finance Review*, 54 (1994):39–54.

indicates a relatively high incidence of correct rankings for the possible pairs of defaulted and non-defaulted loans, when the estimated coefficients of the default equation are used to estimate default rates.

4. *Disconcordant.* The disconcordant value is the proportion of pairwise estimates that have higher predicted default rates for non-default loans than defaulted loans. The discordant value of 16.5 percent indicates a relatively low incidence of incorrect rankings of default and non-default loans.

5. *Ties.* The proportion of pairwise estimated probabilities that are equal between non-default and default is 4.1 percent, which is relatively low.

D. Comparison of Actual to Predicted Losses

We compared the actual and predicted loss rates based on origination date and the 20.9 percent severity rate applied to all FCBT loans for the years 1979 to 1992. The largest discrepancies between the series occur on loans originated in 1984 and 1987. A problem associated with errors on specific loans is the application of an average severity value. Using an average severity rate underestimates losses on specific loans that have actual severity rates exceeding 20.9 percent. Using the average severity rate restricts the maximum estimated loss on any loan in the portfolio to 20.9 percent of the origination loan balance.

Application of the estimated loss equations to the FCBT data results in total estimated loss over the entire sample period equal to $9,417,704. Actual losses incurred total $9,805,472. The average of the predicted loss rates is 0.48 percent while the average of the actual default rates during 1979–92 is 0.50 percent. The maximum 1- and 2-year loss rates are 1.54 percent and 2.17 percent in 1985 and 1984–85, respectively. The maximum 1- and 2-year loss rates estimated by the model are 1.20 percent in 1984 and 1.85 percent in 1984–85.

VII. Sensitivity of Risk-Based Capital Requirement

The stress test is responsive to changes in the risk profile inherent in Farmer Mac's financial positions. The stress test requires higher levels of risk-based capital when Farmer Mac's risk levels increase and a lower requirement when risk levels decrease. Risk increases or decreases when Farmer Mac modifies its loan underwriting standards and/or interest rate risk exposure through various funding and hedging strategies. In addition, the mix and volume of assets and liabilities, both on- and off-balance sheet, affect risk levels as does the initial market interest rate used in the stress test. Some assets such as high quality investments, Farmer Mac II program mortgages, AgVantage, and Farmer Mac I pre-1996 Act mortgages present little or no loss exposure (lower credit risk exposure assets), while other assets such as Farmer Mac I post-1996 Act mortgages present greater levels of credit risk (higher credit risk exposure assets).

We evaluated the sensitivity of the stress test using two different initial financial positions. Financial position one is consistent with Farmer Mac's current business activities and risk profile. Financial position two is a hypothetical portrayal of Farmer Mac as a more mature business. For this scenario, we increased Farmer Mac's size, business activities, and risk profile. We specifically designed financial position two to evaluate the sensitivity of the stress test assuming additional growth in Farmer Mac program I assets. The characteristics of financial position one and two are as follows.

TABLE 1. Financial Positions Used in Performing the Sensitivity Analysis

Financial Component (in millions)	Financial Position 1	Financial Position 2
Assets	$2,566	$3,206
Liabilities	2,481	3,095
Capital	84	111
Off-Balance Sheet Assets.		
Overall Portfolio Characteristics	828	3,187
Lower Credit Risk Exposure Assets	1,931	2,133

TABLE 1. Financial Positions Used in Performing the Sensitivity Analysis—Continued

Financial Component (in millions)	Financial Position 1	Financial Position 2
Higher Credit Risk Exposure Assets	1,459	4,260

We used these two hypothetical financial positions as our initial starting positions. For each initial position, we calculated a ''base'' case risk-based capital requirement. We then increased or decreased Farmer Mac's risk levels by varying:

- Mortgage factors that influence loss performance (D/A ratio, LTV ratio, DSCR, loan size, and loan age);
- Interest rate risk exposure as measured by Farmer Mac in a market value framework;
- The initial interest rate environment;
- Spread relationships of interest earning assets to interest rate index used in the stress test; and
- Guarantee fee charged by Farmer Mac.

We then recalculated the risk-based capital requirement for each varied condition and compared the results to the ''base'' case. The results of this analysis follow.

A. Sensitivity to Changes in Mortgage Risk Factors

The stress test calculates increases in the risk-based capital requirement when the risk increases in Farmer Mac's mortgage portfolio of held and guaranteed loans. We found that, if Farmer Mac increases risk by loosening origination loan underwriting standards, the stress test calculates a higher capital requirement. Conversely, if Farmer Mac tightens its underwriting standards, the stress test calculates a lower capital level. As shown in the following table, the stress test consistently produces these results when mortgage characteristics are changed individually or on a combined basis.

TABLE 2.—CHANGES IN RISK-BASED CAPITAL REQUIREMENTS FOR CHANGES IN MORTGAGE CHARACTERISTICS

Sensitivity Cases (in millions)	Risk-Based Capital Requirement	
	Financial Position 1	Financial Position 2
1. Base Case	$29.5	$43.2
2. Origination D/A Ratios Increase	38.3	65.8
3. Origination LTV Ratios Increase	37.2	63.1
4. Origination DSCR Decrease	30.3	45.3
5. Origination Loan Size Increases	65.2	141.6

TABLE 2.—CHANGES IN RISK-BASED CAPITAL REQUIREMENTS FOR CHANGES IN MORTGAGE CHARACTERISTICS—Continued

Sensitivity Cases (in millions)	Risk-Based Capital Requirement	
	Financial Position 1	Financial Position 2
6. Increases Stated 2 to 5 Above Occur Simultaneously	109.5	266.9

The mortgage factors were increased from the base case on a loan-by-loan basis to increase risk levels in Farmer Mac's current portfolio. In each case, the increase in a mortgage factor was limited to the maximum permitted under Farmer Mac's underwriting standards or the unadjusted existing loan origination value, whichever was greater. We used the existing origination values in Farmer Mac's current portfolio as our starting point and then increased and decreased individual loan underwriting ratios to perform our sensitivity testing. The sensitivity tests are:

1. Base case;

2. D/A ratio for individual loans was increased 50 percent resulting in an increase in the portfolio-weighted average ratio to 56 percent from 37 percent;

3. LTV ratio for individual loans was increased 25 percent resulting in an increase in the portfolio-weighted average ratio to 70 percent from 56 percent with the maximum individual loan increase capped at 85 percent;

4. DSCR for individual loans was decreased 25 percent resulting in a decrease in the portfolio-weighted average ratio to 1.26 from 1.71;

5. Origination size for each loan in Farmer Mac's current portfolio was doubled resulting in an increase in the portfolio average to $956 thousand from $478 thousand with the maximum individual increase capped at $3.49 million; and

6. All increases stated in tests 2 to 5 occurring simultaneously.

Loan age affects the level of risk-based capital required by the stress test. Older loans represent lower credit risk and, therefore, reduce the risk-based capital requirement while the opposite is true for new loans. We evaluated how the capital requirement changes for an increase in loan age of 1 year. The results show a reduced risk-based capital requirement from the base case as follows:

TABLE 3.—CHANGES IN RISK-BASED CAPITAL REQUIREMENTS FOR CHANGES IN LOAN AGE

Sensitivity Cases (in millions)	Risk-Based Capital Requirement	
	Financial Position 1	Financial Position 2
1. Base Case	$29.5	$43.2
2. Loan Age Increases by 1 year	26.9	35.8

B. Sensitivity to Changes in Interest Rate Risk Exposure and the Initial Rate Environment

The stress test requires Farmer Mac to hold more capital as it increases its interest rate risk exposure and less capital as it decreases exposure. The stress test uses Farmer Mac's market value measurement of interest rate risk to quantify the effects that changes in interest rates have on risk-based capital. Farmer Mac can change its market value exposure by varying its funding, asset holdings, and hedging strategies. We evaluated the effect on the risk-based capital requirement if Farmer Mac pursues strategies that either increase or decrease its interest risk exposure as measured by the market value methodology. For the increase in interest rate risk scenario, we assume Farmer Mac doubles its interest rate risk exposure. In this scenario, a 277 bp movement in interest rates caused the loss to capital to increase by $25.1 million compared to the base case. We also evaluated the situation where Farmer Mac's interest rate risk exposure declines 50 percent from the base case. The results of our sensitivity tests are summarized below.

TABLE 4.—CHANGES IN RISK-BASED CAPITAL REQUIREMENTS FOR CHANGES IN INTEREST RATE RISK EXPOSURE

Sensitivity Cases (in millions)	Risk-Based Capital Requirement	
	Financial Position 1	Financial Position 2
1. Base Case	$29.5	$43.2
2. IRR Exposure Increases	54.7	74.9
3. IRR Exposure Decreases	16.9	27.3

The interest rate environment affects stress test results. When interest rates are low, the rate change used in the stress test is relatively small compared to when interest rates are high. Clearly, interest rates can change by a greater degree when they are high compared to when they are low. In addition, the large changes in interest rates expose Farmer Mac to greater risk. The stress test, therefore, requires higher risk-based capital in rate environments where interest rates are high relative to low rate environments as indicated in the following table:

Table 5.—CHANGES IN RISK-BASED CAPITAL REQUIREMENTS FOR DIFFERENT INITIAL RATES

Sensitivity Cases (in millions)	Initial Rate (percent)	Risk-Based Capital Requirement	
		Financial Position 1	Financial Position 2
1. Base Case	5.54	$29.5	$43.2
2. Higher Initial Rate	11.08	62.6	75.8

C. Sensitivity to Changes in Spread Relationships and Guarantee Fees

The stress test requires higher risk-based capital when earnings are under pressure from a tightening in spreads on interest earning assets or a reduction in guarantee fees charged by Farmer Mac. On the other hand, the risk-based capital requirement would be lower when yield spreads widen or Farmer Mac increases its guarantee fees. The stress test incorporates earnings when calculating risk-based capital. We evaluated the sensitivity of the stress test for decreases in spreads on interest earning assets of 5 bp and 10 bp. The stress test uses current spreads (i.e., the difference in current yields and the interest rate index used in the model) to determine asset yields when interest rates are changed. Therefore, a tightening in spreads will reduce asset yields used to generate earnings. We also evaluated stress test results assuming Farmer Mac reduced guarantee fees currently charged by half. The stress test calculated a higher risk-based capital requirement under diminished earnings capacity as follows:

TABLE 6.—CHANGES IN RISK-BASED CAPITAL REQUIREMENTS FOR CHANGES IN EARNING SPREADS AND GUARANTEE FEES

Sensitivity Cases (in millions)	Risk-Based Capital Requirement	
	Financial Position 1	Financial Position 2
1. Base Case	$29.5	$43.2
2. Spread Tighten by 5 bp	31.0	44.2
3. Spread Tighten by 10 bp	33.8	45.2
4. Guarantee Fee Decrease	38.4	59.6

VIII. Impact of the Risk-Based Capital Stress Test on Farmer Mac

The impact of the stress test depends on Farmer Mac's risk profile and starting capital position. High-risk assets and unhedged interest rate risk will result in larger risk-based capital requirements. Conversely, if Farmer Mac maintains a low risk profile, the stress test will produce a low capital requirement. Given Farmer Mac's current financial position and risk profile, the proposed stress test would not require Farmer Mac to increase its capital. The risk-based capital requirement for Farmer Mac produced by the proposed stress test is below the statutory minimum and critical capital standards. Furthermore, Farmer Mac's current capital level exceeds both the statutory minimum and critical capital standards. We emphasize that this result is only based on Farmer Mac's current financial position and risk profile. If Farmer Mac accepts more risk as it grows into a mature business, the risk-based capital requirement could exceed the statutory minimum and critical capital standards as well as current capital level. In such a situation there are several options available to Farmer Mac, including:

- Issue additional stock,
- Increase guarantee fees to build earnings and capital,
- Reduce credit risk through modifications to loan underwriting standards or obtain credit enhancements,
- Mitigate interest rate risk through funding and hedging strategies.

IX. Reporting Requirements

Proposed §§ 650.25 and 650.26 outline Farmer Mac's basic responsibilities for determining its risk-based capital level and reporting the results to us. Farmer Mac must determine its risk-based capital level in accordance with the procedures in § 650.24 and the technical appendix of the subpart. Farmer Mac must at all times maintain compliance with the risk-based capital levels established by the risk-based capital stress test and must be able to determine its risk-based capital level at any time. If, at any time, the risk-based capital level computed using the risk-based capital stress test procedures is less than the minimum capital requirements set forth in section 8.33 of the Act, Farmer Mac must maintain the statutory minimum capital level.

Proposed § 650.26 requires Farmer Mac to determine its risk-based capital level at least quarterly. However, changing circumstances that may have a significant effect on capital may necessitate that Farmer Mac determine its risk-based capital level more frequently than quarterly. For example, we may require the Corporation to determine its risk-based capital level and report the results to us more frequently than quarterly if:

1. The Corporation is receiving special supervisory attention;
2. The Corporation has, or is expected to have, losses resulting in capital depletion;
3. The Corporation has significant exposure due to operational risk, the risks from concentrations of credit, certain risks arising from other products, services, or related activities, or management's overall inability to monitor and control financial risks;
4. The Corporation is exposed to a high volume of, or particularly severe, problem loans;
5. The Corporation is growing rapidly;
6. The Corporation may be adversely affected by the activities or the condition of other institutions with which it has significant business relationships or in which it has significant investments; or
7. The Corporation has significant exposure to declines in net income or in the market value of its capital due to a change in interest rates and/or the exercise of embedded or explicit options.

In addition, if Farmer Mac anticipates entering into any new business activity that could have a significant effect on capital, it must determine a pro forma risk-based capital level that includes the new business activity. Farmer Mac must provide the pro forma determination to us 10 days prior to implementation of the new business program. Proposed §§ 650.27 and 650.28 provide further instructions on how and when to report the risk-based capital level.

X. Business and Capital Plans

Well-conceived strategic and operational business and capital plans promote safety and soundness and are essential ingredients in meeting institutional objectives. The process of identifying, measuring and controlling

an institution's risks and the resulting capital requirements starts with the development of the institution's goals and objectives. Such goals and objectives should identify the direction in which an institution wants to proceed, its stated mission, business structure, and how it intends to achieve its stated goals.

We expect that any strategic and operational business and capital plans will address the long-term purpose and mission of the business. In addition, we believe that such plans should include quantifiable goals and objectives, and recognize and discuss internal and external factors that are likely to influence the future operations of the business. We also expect that the strategic planning process will include an appropriate capital adequacy plan.

Proposed § 650.22 sets forth the responsibilities of the Corporation's board to ensure that the Corporation maintains its capital at a level that is sufficient to sustain continued financial viability and provide for growth. The Board must take appropriate measures so that the Corporation's capital is not only adequate to meet formal regulatory standards, but is also sufficient to support the Corporation's business objectives and strategies. This requires the Board to set explicit goals for capitalization with respect to risk and return objectives. The capital adequacy target levels should be part of the Corporation's internal process for evaluating capital adequacy. The Board should annually review and approve the Corporation's capital adequacy target and composition of capital.

Proposed § 650.22(b) requires the Board to adopt a 3-year strategic and operational business plan. The plan must contain the elements of both a basic strategic and operational business plan as well as a capital adequacy plan. Among other items listed in proposed § 650.22(b), the capital adequacy plan must include any projected dividends, equity retirements, or other action that may decrease the Corporation's capital. The Board should also consider other relevant factors that may affect Farmer Mac's capital adequacy, such as the capability of management to measure, manage, and control risk, the development of new lines of business or Farmer Mac's continued ability to access the market at favorable rates.

XI. Supervision and Notification

Section 8.35(a) of the Act describes the various levels (I–IV) of enforcement under which the Corporation will be classified by the OSMO Director. Proposed § 650.29 establishes the regulatory procedure for the OSMO Director to notify Farmer Mac of a determination that it is not meeting the risk-based capital level calculated by the Corporation as required by § 650.23 or the minimum or critical capital requirements specified by sections 8.33 and 8.34 of the Act. Proposed § 650.29 provides for the submission of a capital restoration plan, as appropriate, when it has been determined that the Corporation is not meeting the required capital levels.

List of Subjects in 12 CFR Part 650

Agriculture, Banks, banking, Conflicts of interest, Rural areas.

For the reasons stated in the preamble, part 650 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 650—FEDERAL AGRICULTURAL MORTGAGE CORPORATION

1. The authority citation for part 650 is revised to read as follows:

Authority: Secs. 4.12, 5.9, 5.17, 8.11, 8.31, 8.32, 8.33, 8.34, 8.35, 8.36, 8.37, 8.41 of the Farm Credit Act (12 U.S.C. 2183, 2243, 2252, 2279aa–11, 2279bb, 2279bb–1, 2279bb–2, 2279bb–3, 2279bb–4, 2279bb–5, 2279bb–6, 2279cc); sec. 514 of Pub. L. 102–552, 106 Stat. 4102; sec. 118 of Pub. L. 104–105, 110 Stat. 168.

2. Subpart B is added to read as follows:

Subpart B—Risk-Based Capital Requirements

Sec.

650.20 Definitions.
650.21 General.
650.22 Corporation board of directors guidelines.
650.23 Risk-based capital stress test.
650.24 Risk-based capital level.
650.25 Your responsibility for determining the risk-based capital level.
650.26 When you must determine the risk-based capital level.
650.27 When to report the risk-based capital level.
650.28 How to report your risk-based capital determination.
650.29 Failure to meet capital requirements.
650.30 Effective date for compliance with regulation.
650.31 Audit of the risk-based capital stress test.
Appendix A to Subpart B. of Part 650—Risk-Based Capital Stress Tests.

§ 650.20 Definitions.

For purposes of this subpart, the following definitions will apply:

(a) *Farmer Mac, Corporation, you, and your* means the Federal Agricultural Mortgage Corporation and its affiliates as defined in subpart A of this part.

(b) *Our, us or we* means the Farm Credit Administration.

(c) *Regulatory capital* means the sum of the following as determined in accordance with generally accepted accounting principles:

(1) The par value of outstanding common stock;

(2) The par value of outstanding preferred stock;

(3) Paid-in capital, which is the amount of owner investment in the Corporation in excess of the par value of stock;

(4) Retained earnings; and

(5) Any allowances for losses on loans and guaranteed securities.

(d) *Risk-based capital* means the amount of regulatory capital sufficient for the Corporation to maintain positive capital during a 10-year period of stressful conditions as determined by the risk-based capital stress test described in § 650.23.

§ 650.21 General.

You must hold risk-based capital in an amount determined in accordance with this subpart.

§ 650.22 Corporation board of directors guidelines.

(a) Your board of directors is responsible for ensuring that you maintain total capital at a level that is sufficient to ensure continued financial viability and provide for growth. In addition, your capital must be sufficient to meet statutory and regulatory requirements.

(b) No later than 30 days after the beginning of each calendar year, your board of directors must adopt an operational and strategic business plan for at least the next 3 years. The plan must include:

(1) A mission statement;

(2) A review of the internal and external factors that are likely to affect you during the planning period;

(3) Measurable goals and objectives;

(4) Pro forma financial statements for each year of the plan;

(5) A detailed operating budget for the first year of the plan; and,

(6) A capital adequacy plan.

(c) The capital adequacy plan must include capital targets necessary to achieve the minimum, critical and risk-based capital standards specified by the Act and this subpart as well as your capital adequacy goals. The plan must address any projected dividends, equity retirements, or other action that may decrease your capital or its components for which minimum amounts are required by this subpart. You must specify in your plan the circumstances in which stock or equities may be retired. In addition to factors that must be considered in meeting the statutory

and regulatory capital standards, your board of directors must also consider at least the following factors in developing the capital adequacy plan:

(1) Capability of management;

(2) Strategies and objectives in your business plan;

(3) Quality of operating policies, procedures, and internal controls;

(4) Quality and quantity of earnings;

(5) Asset quality and the adequacy of the allowance for losses to absorb potential losses in your retained mortgage portfolio, securities guaranteed as to principal and interest, commitments to purchase mortgages or securities, and other program assets or obligations;

(6) Sufficiency of liquidity and the quality of investments; and

(7) Any other risk-oriented activities, such as funding and interest rate risks, contingent and off-balance sheet liabilities, or other conditions warranting additional capital.

§ 650.23 Risk-based capital stress test.

You will perform the risk-based capital stress test as described in summary form below and as described in detail in appendix A to this subpart. The risk-based capital stress test spreadsheet is also available electronically at www.fca.gov. The risk-based capital stress test has five components:

(a) *Data requirements.* You will use the following data to implement the risk-based capital stress test.

(1) You will use Corporation loan-level data to estimate the credit risk component of the risk-based capital stress test.

(2) You will use Call Report data as the basis for Corporation data over the 10-year stress period supplemented with your interest rate risk measurements and tax data.

(3) You will use other data, including the 10-year Constant Maturity Treasury (CMT) and the applicable Internal Revenue Service corporate income tax schedule, as further described in the technical appendix.

(b) *Credit risk.* The credit risk part estimates loan losses during a period of sustained economic stress.

(1) For each loan in the Farmer Mac I portfolio, you will determine a default probability by using the logit functions specified in appendix A to this subpart with each of the following variables:

(i) Borrower's debt-to-asset ratio at loan origination;

(ii) Loan-to-value ratio at origination, which is the loan amount divided by the value of the property;

(iii) Debt-service-coverage ratio at origination, which is the borrower's net income (on- and off-farm) plus depreciation, capital lease payments, and interest, less living expenses and income taxes, divided by the total term debt payments;

(iv) The origination loan balance stated in 1997 dollars based on the consumer price index; and

(v) The worst-case percentage change in farmland values (23.52 percent).

(2) You will then calculate the loss rate by multiplying the default probability for each loan by the estimated loss severity rate, which is the average loss of the defaulted loans in the data set (20.9 percent).

(3) You will calculate losses by multiplying the loss rate by the origination loan balances stated in 1997 dollars.

(4) You will adjust the losses for loan seasoning, based on the number of years since loan origination, according to the functions in appendix A to this subpart.

(5) The losses must be applied in the risk-based capital stress test as specified in appendix A to this subpart.

(c) *Interest rate risk.* (1) During the first year of the stress period, you will adjust interest rates for two scenarios, an increase in rates and a decrease in rates. You must determine your risk-based capital level based on whichever scenario would require more capital.

(2) You will calculate the interest rate stress based on changes to the quarterly average of the 10-year CMT. The starting rate is the 3-month average of the most recent CMT monthly rate series. To calculate the change in the starting rate, determine the average yield of the preceding 12 monthly 10-year CMT rates. Then increase and decrease the starting rate by:

(i) 50 percent of the 12-month average if the average rate is less than 12 percent; or

(ii) 600 bp if the 12-month average rate is equal to or higher than 12 percent.

(3) Following the first year of the stress period, interest rates remain at the new level for the remainder of the stress period.

(4) You will apply the interest rate changes scenario as indicated in appendix A to this subpart.

(5) You may use other interest rate indices in addition to the 10-year CMT subject to our concurrence, but in no event can your risk-based capital level be less than that determined by using only the 10-year CMT.

(d) *Cashflow generator.* (1) You must adjust your financial statements based on the credit risk inputs and interest rate risk inputs described above to generate pro forma financial statements for each year of the 10-year stress test. The cashflow generator produces these financial statements. You may use the cashflow generator spreadsheet that is described in the technical appendix to this subpart and available electronically at www.fca.gov. You may also use any reliable program that can develop or produce *pro forma* financial statements using generally accepted accounting principles and widely recognized financial modeling methods, subject to our concurrence. You may disaggregate financial data to any greater degree than that specified in appendix A to this subpart, subject to our concurrence.

(2) You must use model assumptions to generate financial statements over the 10-year stress period. The major assumption is that cashflows generated by the risk-based capital stress test are based on a steady state scenario. To implement a steady state scenario, when on- and off-balance sheet assets and liabilities amortize or are paid down, you must replace them with similar assets and liabilities. Replace amortized assets from discontinued loan programs with current loan programs. In general, keep assets with small balances in constant proportions to key program assets.

(3) You must simulate annual pro forma balance sheets and income statements in the risk-based capital stress test using the Corporation's starting position, the credit risk and interest rate risk components, resulting cashflow outputs, current operating strategies and policies, and other inputs as shown in appendix A to this subpart and the electronic spreadsheet available at www.fca.gov.

(e) *Calculation of capital requirement.* The calculations that you must use to solve for the starting regulatory capital amount are shown in appendix A to this subpart and in the electronic spreadsheet available at www.fca.gov.

§ 650.24 Risk-based capital level.

The risk-based capital level is the sum of the following amounts:

(a) *Credit and interest rate risk.* The amount of risk-based capital determined by the risk-based capital test under § 650.23.

(b) *Management and operations risk.* Thirty (30) percent of the amount of risk-based capital determined by the risk-based capital test in § 650.23.

§ 650.25 Your responsibility for determining the risk-based capital level.

(a) You must determine your risk-based capital level using the procedures in this subpart, appendix A to this subpart, and any other supplemental instructions provided by us. You will report your determination to us as

prescribed in § 650.28. At any time, however, we may determine your risk-based capital level using the procedures in § 650.23 and appendix A to this subpart, and you must hold risk-based capital in the amount we determine is appropriate.

(b) You must at all times comply with the risk-based capital levels established by the risk-based capital stress test and must be able to determine your risk-based capital level at any time.

(c) If at any time, the risk-based capital level you determine is less than the minimum capital requirements set forth in section 8.33 of the Act, you must maintain the statutory minimum capital level.

§ 650.26 When you must determine the risk-based capital level.

(a) You must determine your risk-based capital level at least quarterly or whenever changing circumstances occur that have a significant effect on capital, such as exposure to a high volume of or particularly severe, problem loans or a period of rapid growth.

(b) In addition to the requirements of paragraph (a) of this section, we may require you to determine your risk-based capital level at any time.

(c) If you anticipate entering into any new business activity that could have a significant effect on capital, you must determine a pro forma risk-based capital level, which must include the new business activity, and report this pro forma determination to the Director, Office of Secondary Market Oversight, at least 10 business days prior to implementation of the new business program.

§ 650.27 When to report the risk-based capital level.

(a) You must file a risk-based capital report with us each time you determine your risk-based capital level as required by § 650.26.

(b) You must also report to us at once if you identify in the interim between quarterly or more frequent reports to us that you are not in compliance with the risk-based capital level required by § 650.24.

(c) If you make any changes to the data used to calculate your risk-based capital requirement that causes a material adjustment to the risk-based capital level you reported to us, you must file an amended risk-based capital report with us within 5 business days after the date of such changes;

(d) You must submit your quarterly risk-based capital report for the last day of the preceding quarter not later than the last business day of April, July, October, and January of each year.

§ 650.28 How to report your risk-based capital determination.

(a) Your risk-based capital report must contain at least the following information:

(1) All data integral for determining the risk-based capital level, including any business policy decisions or other assumptions made in implementing the risk-based capital test;

(2) Other information necessary to determine compliance with the procedures for determining risk-based capital as specified in appendix A to this subpart; and,

(3) Any other information we may require in written instructions to you.

(b) You must submit each risk-based capital report in such format or media as we require.

§ 650.29 Failure to meet capital requirements.

(a) *Determination and notice.* At any time, we may determine that you are not meeting your risk-based capital level calculated according to § 650.23, your minimum capital requirements specified in section 8.33 of the Act or your critical capital requirements specified in section 8.34 of the Act. We will notify you in writing of this fact and the date by which you should be in compliance (if applicable).

(b) *Submission of capital restoration plan.* Our determination that you are not meeting your required capital levels may require you to develop and submit to us, within a specified time period, an acceptable plan to reach the appropriate capital level(s) by the date required.

§ 650.30 Effective date for compliance with regulation.

For the 12-month period beginning on the effective date of this regulation, you must determine a risk-based capital level by implementing the risk-based capital stress test as described in § 650.23 and appendix A to this subpart, and must report the results to us as described in § 650.28. During this 12-month period, you will not be required to maintain capital at the risk-based capital level, but you must maintain your minimum capital level as prescribed in section 8.33 of the Act. Beginning on the day following the 12-month period, you must comply with all provisions of this subpart.

§ 650.31 Audit of the risk-based capital stress test.

You must have a qualified, independent external auditor review your implementation of the risk-based capital stress test every 3 years and submit a copy of the auditor's opinion to us.

Appendix A to Subpart B of Part 650—Risk-Based Capital Stress Tests

1.0 Introduction.
2.0 Credit Risk.
2.1 Loss Frequency and Severity Models.
2.2 Loan Seasoning Adjustment.
2.3 Example Calculation of Dollar Loss on One Loan.
2.4 Treatment of Long-term Standby Purchase Commitments.
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3.0 Interest Rate Risk.
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4.0 Elements Used in Generating Cashflows.
4.1 Data Inputs.
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4.3 Risk Measures.
4.4 Loan and Cashflow Accounts.
4.5 Income Statements.
4.6 Balance Sheets.
4.7 Capital.
5.0 Capital Calculations.
5.1 Method of Calculation.

1.0 Introduction

a. This technical appendix provides details about the risk-based capital stress test (stress test) for Farmer Mac. The stress test is a deterministic portrayal of Farmer Mac's annual capital needs for 10 years. The stress test calculates the risk-based capital level required by statute under stipulated conditions of credit risk and interest rate risk. The stress test uses loan-level data from Farmer Mac's agricultural mortgage portfolio, as well as quarterly Call Report and related information to generate pro forma financial statements and calculate a risk-based capital requirement. The stress test also uses historic agricultural real estate mortgage performance data, relevant economic variables, and other inputs in its calculations.

b. The key components of the stress test include the specifications of credit risk, interest rate risk, the cashflow generator, and the capital calculation. Linkages among the components ensure that the measures of credit and interest rate risk pass into the cashflow generator. The linkages also transfer cashflows through the financial statements to represent values of assets, liabilities, and equity capital. We designed the 10-year projection to reflect a steady state in the scope and composition of Farmer Mac's assets. This technical appendix provides details about the credit risk, interest rate risk, cashflow generator, and capital components of the stress test.

2.0 Credit Risk

Computing credit risk requires loan loss rates. We determined loan loss rates by applying loss frequency and severity equations to Farmer Mac loan-level data. From these equations, we calculated loan losses under stressful economic conditions and loss rates assuming Farmer Mac's portfolio remains at a ''steady state.'' Steady state assumes the underlying characteristics and, therefore, risks of Farmer Mac's

portfolio remain constant over the 10 years of the stress test. From estimated dollar losses, we computed loss rates for use in the stress test. The loan volume subject to loss throughout the stress test is then multiplied by the loss rate. Lastly, the stress test allocates losses to each of the 10 years assuming a time pattern for loss occurrence as discussed in section 4.3 of this appendix entitled *Risk Measures.*

2.1 Loss Frequency and Severity Models

a. We modeled credit risk using historical time series loan-level data to measure the frequency and severity of losses on agricultural mortgage loans. The model relates frequency and severity to loan-level characteristics and economic conditions through appropriately specified regression equations in order to account explicitly for the collective effects of these characteristics on loan losses. We can then estimate loan losses for Farmer Mac with the resulting regression equations by substituting the respective values of Farmer Mac's loan-level data and using a stressful economic input.

b. The loss frequency and severity equations were estimated from historical agricultural real estate mortgage loan data from the Farm Credit Bank of Texas (FCBT). To estimate the equations, the data used included FCBT loans if they satisfied at least three of four underwriting standards Farmer Mac currently uses (estimation data). The final estimated equation for loss frequency is:

$$\log\left(\frac{p}{1-p}\right) = -9.7267 + 2.7337\ X_1 - 0.3138\ X_2 - 0.1822\ X_3 + 0.0000008222\ X_4 + 2.3229\ X_5$$

Where:

- p is the probability that a loan defaults and has positive losses (Pr (Y=1|x)),
- X_1 is the loan-to-value ratio (LTV) at loan origination raised to the power 5.38027,[1]
- X_2 is the annual percentage decline in farmland values during the life of the loan discounted by 4.8 percent per year,[2]
- X_3 is the DSCR at loan origination,
- X_4 is the origination loan balance stated in 1997 dollars based on the consumer price index, and
- X_5 is the debt-to-asset ratio (D/A) at loan origination.

c. When applying the equation to Farmer Mac's portfolio, you must get the input values for X_1, X_3, X_4, and X_5 for each loan on the stress test run date. For the variable X_2, the stressful input value from the benchmark loss experience is −23.52 percent. You must apply this input to all Farmer Mac loans subject to loss to calculate loss frequency under stressful economic conditions.[3] The maximum land value decline stressed input from the benchmark loss experience is the simple average of annual land value changes for Iowa, Illinois, and Minnesota for the years 1984 and 1985.

d. The loss frequency (default) equation is non-linear and, therefore, using inputs outside the estimation data requires special treatment to implement the non-linear nature of the equation. While the estimation data embody Farmer Mac values for various loan characteristics, the maximum farmland price decline experienced in Texas was 16.69 percent, far below the benchmark experience of 23.52 percent. Applying the more severe benchmark loss experience to the increasing non-linear loss frequency equation could result in unreasonably large loss rates. The rates could get too large if the actual relationship between loss rates and land value declines is lower than calculated from the estimation data. To account for this effect you must apply a procedure that restricts the slope of all the independent variables to that observed at the maximum land value decline observed in the estimation data. Essentially, you must approximate the slope of each variable and use the measurement to adjust the probability of loan default and loss occurrence to reflect the more severe benchmark land value change. The adjustment procedure is shown in step 4 of section 2.3 of this appendix entitled *Example Calculation of Dollar Loss on One Loan.*

e. Loss severity is a weighted average rate of 20.9 percent where the weight is loss volume.[4] You must multiply loss severity with the probability estimate computed from the loss frequency equation to determine the origination loss rate for a loan.

f. Using origination data results in estimated probabilities of loss frequency over the life of a loan. To account for loan seasoning, you must apply the loan seasoning distribution and subtract the cumulative distribution of loss exposure already experienced by each loan as discussed in section 2.3 of this appendix entitled *Loan Seasoning Adjustment.* This subtraction is based on loan age and reduces the loss estimated by the loss frequency and severity equations. The result is an age-adjusted dollar loss that can be used in subsequent calculations of loss rates as discussed in section 2.5 of this appendix entitled *Calculation of Loss Rates for Use in the Stress Test.*

2.2 Loan Seasoning Adjustment

a. You must use the seasoning distribution to adjust each Farmer Mac loan for the cumulative loss exposure already experienced based on age. The estimated seasoning distribution for a 14-year average loan life and estimated values of p = 5.0875 and q = 13.6376 is:[5]

Year	Proportion of loss (percent)
1	0.58
2	8.30
3	21.98
4	27.56
5	21.99
6	12.45
7	5.18
8	1.57
9	0.33
10	0.05
11	0.00
12	0.00
13	0.00
14	0.00

b. How you must use the loan seasoning distribution is shown in step 7 of section 2.3 of this appendix entitled *Example Calculation of Dollar Loss on One Loan.*

2.3 Example Calculation of Dollar Loss on One Loan

Following is an example of how to calculate the loss for an individual loan that has the following independent characteristics and input values:[6]

Loan Origination Year	1996
Loan Origination Balance	$1,250,000
LTV at Origination	0.5
D/A at Origination	0.5
DSCR at Origination	1.3984
Maximum Percentage Land Price Decline (MAX	−23.52

Step 1: Convert 1996 Origination Value to 1997 dollar value (LOAN) based on the consumer price index as follows: $1,278,750 = $1,250,000 • 1.023

[1] To test and implement the non-linear relationship between loss probability and LTV, the model was first estimated with 8 dummy variables at LTV intervals of 0 to 0.399, 0.400 to 0.499, 0.500 to 0.599, 0.650 to 0.699, 0.700 to 0.749, 0.750 to 0.799 and 0.800 to 0.850. Using generalized least squares, a power function of LTV 5.38027 was fit to replace the individual dummy variables, and the equation was re-estimated. The power function increases the degrees of freedom for the model and provides a continuous relationship between LTV and defaults.

[2] We determined the 4.8 percent by iteratively solving the default equation using dummy variables ranging from 0 percent to 10 percent. The 4.8-percent rate yielded the highest goodness-of-fit values.

[3] On- and off-balance sheet Farmer Mac I agricultural mortgage program assets booked after the 1996 amendments are subject to the loss calculation.

[4] We calculated the weighted average severity from the estimation data.

[5] We estimated the loan seasoning distribution from portfolio aggregate charge-off rates from the estimation data. To do so, we arrayed all defaulting loans where loss occurred according to the time from origination to default. Then, a beta distribution, β(p, q), was fit to the estimation data scaled to the maximum time a loan survived (14 years).

[6] In the example calculations, we rounded numbers. However, the stress test does not use rounded numbers.

Step 2: Calculate the default probabilities using −16.69 percent and −16.79 percent land value declines as follows:[7]

Where,

$$Z_1 = -9.7267 + 2.7337 \cdot LTV^{5.38027} - 0.3138 \cdot -16.69 - 0.1822 \cdot DSCR + 8.222e-7 \cdot LOAN + 2.3229 \cdot DA = -2.466$$

$$\text{Default probability @–16.69\%} = \frac{1}{1+\exp^{-(-2.466)}} = 0.078276$$

And

$$Z_2 = -9.7267 + 2.7337 \cdot LTV^{5.38027} - 0.3138 \cdot -16.79 - \text{Default probability @–16.79\%} = \frac{1}{1+\exp^{-(-2.434)}} = 0.080616$$

$$0.1822 \cdot DSCR + 8.222e-7 \cdot LOAN + 2.3229 \cdot DA = -2.434$$

Step 3: Calculate the slope adjustment. You must calculate slope by subtracting the difference between ''Default Probability @ −16.69 percent'' and ''Default Probability @ −16.79 percent'' and dividing by −0.1 (the difference between −16.69 percent and −16.79 percent) as follows:

$$0.02340 = \frac{0.078276 - 0.080616}{-0.1}$$

Step 4: Make the linear adjustment. You make the adjustment by increasing the ''default probability @ −16.69 percent'' computed in Step 2 to reflect the stressed farmland value input, appropriately discounted. As discussed previously, the stressed land value input is discounted to reflect the declining effect that the maximum land value decline has on the probability of default when it occurs later in a loan's life.[8] The linear adjustment is the difference between the −16.69 percent land value decline and the adjusted stressed maximum land value decline input of −23.52 multiplied by the slope estimated in Step 3 as follows:

Discounted Maximum Land Price Decline = −19.50 = (−23.52)(1.048)−[4]

Slope Adjustment = 0.06575 = 0.02340 ÷(−16.69—−19.50)

Loan Default Probability = 0.144026 = 0.078276 + 0.06575

Step 5: Multiply loan default probability times the average severity of 0.209 as follows:

0.03010 = 0.144026 ÷ 0.209

Step 6: Multiply the loss rate times the origination loan balance as follows:

$37,625=$1,250,000×0.03010

Step 7: Adjust the dollar losses for 4 years of loan seasoning as follows:

$15,644=$37,625−($37,625×0.584215)

b. The loan seasoning adjustment factor is obtained from the beta distribution, previously discussed, for the age of the loan, where age is determined from loan origination to the run date of the test.

2.4 Treatment of Long-term Standby Purchase Commitments.

a. The default equation cannot directly compute the loss exposure on loans covered by a long-term standby purchase commitment (standbys) because complete origination underwriting standards for these loans are unavailable. Instead, the loss rate applied to each standby loan is the respective state-level loss rate unadjusted for loan seasoning. You must calculate state-level loss rates from non-standby loans as total dollar loan losses before the loan seasoning adjustment divided by total origination loan balances. Then you must multiply the origination loan balance of each standby loan by the appropriate loss rate to calculate estimated dollar losses. You must now adjust the resulting standby loan-level dollar losses adjusted for loan seasoning as was done for non-standby loans. For example, consider a $1,000,000 standby loan originated in Idaho in 1990. And, suppose the unadjusted loss rate for Idaho is 3 percent. The loss for this loan is:

($1,000,000 × 0.03) = $30,000.

The loan is 7 years old, thus the estimated age-adjusted loss rate is:

Estimated standby loan loss=$30,000*(0.02)=$600. As previously noted, the loan seasoning adjustment factor is obtained from the beta distribution for the age of the loan, where age is determined from loan origination to the run date of the test.

c. This treatment may not be used for loans that exhibit risk characteristics that, at the time Farmer Mac makes the commitment, disqualify the loan from being placed in the lowest risk category of the internal credit classification systems of both guarantor and guarantee. In the credit component of the stress test, such loans must be treated in the same manner as a new loan in any standard Farmer Mac I program. Thus, the risk characteristics of the loan at the time Farmer Mac enters into the standby commitment are treated as loan origination characteristics for calculating credit losses.

2.5 Calculation of Loss Rates for Use in the Stress Test.

a. You must compute loss rates by state (based on Farmer Mac's loan portfolio distribution) after you calculate dollar loan losses for each loan subject to loss in Farmer Mac's portfolio. The estimated origination year lifetime losses adjusted for loan seasoning for non-standby loans are computed as total dollar loan losses divided by total origination loan balances for each state. Similarly, you must calculate the estimated origination year lifetime losses adjusted for loan seasoning for standby loans. This calculation is total dollar loan losses divided by total scheduled current loan balances for each state. You must then blend the resulting state-level loss rates for non-standby and standby loans by calculating the weighted average loss rate for each state. For instance, the state-level loss rates you would calculate on Farmer Mac's current loan portfolio are:

[7] This process facilitates the approximation of slope needed to adjust the loss probabilities for land value declines greater than observed in the estimation data.

[8] The discount period is the number of years from the beginning of the origination year to the current year (*i.e.*, January 1, 1996 to January 1, 2000, is 4 years).

	Non-standby loans (percent)	Standby loans (percent)	Blended rate for stress test use (percent)
All States	3.24	0.14	2.42
Alaska	3.24	0.00	0.00
Alabama	4.58	0.14	4.58
Arkansas	1.97	0.14	1.97
Arizona	2.32	0.14	1.68
California	3.89	0.33	3.83
Colorado	2.78	0.14	2.78
Connecticut	3.24	0.14	2.42
Delaware	1.90	0.14	1.90
Florida	1.46	0.00	1.42
Georgia	3.78	0.14	3.78
Hawaii	3.24	0.44	0.44
Iowa	3.81	0.14	3.81
Idaho	2.88	0.12	1.57
Illinois	3.95	0.31	3.86
Indiana	3.31	0.14	3.31
Kansas	1.92	0.00	1.92
Kentucky	1.46	0.14	1.46
Louisiana	2.06	0.14	2.06
Massachusetts	3.24	0.14	2.42
Maryland	1.40	0.14	1.40
Maine	3.24	0.00	0.00
Michigan	2.42	0.00	2.41
Minnesota	2.46	0.00	2.46
Missouri	2.96	0.14	2.96
Mississippi	3.62	0.14	3.62
Montana	2.09	0.10	0.82
North Carolina	2.31	0.00	2.12
North Dakota	2.04	0.14	2.04
Nebraska	1.89	0.14	1.89
New Hampshire	3.24	0.14	2.42
New Jersey	3.24	0.81	0.81
New Mexico	3.79	0.00	3.73
Nevada	4.74	0.00	4.62
New York	1.17	0.33	1.06
Ohio	2.05	0.14	2.05
Oklahoma	2.13	0.14	2.13
Oregon	2.84	0.15	1.13
Pennsylvania	3.24	0.14	2.42
Rhode Island	3.24	0.14	2.42
South Carolina	3.24	0.14	2.42
South Dakota	1.49	0.14	1.49
Tennessee	1.25	0.14	1.25
Texas	4.53	0.71	4.51
Utah	2.39	0.39	2.29
Virginia	3.55	0.29	2.40
Vermont	3.24	0.14	2.42
Washington	2.93	0.13	1.65
Wisconsin	6.72	0.14	6.72
West Virginia	3.24	0.14	2.42
Wyoming	2.61	0.00	2.48

b. How the stress test uses the blended loss rates is discussed in section 4.3 of this appendix entitled *Risk Measures.*

3.0 Interest Rate Risk.

The stress test explicitly accounts for Farmer Mac's vulnerability to interest rate risk from the movement in interest rates specified in the statute. The stress test considers Farmer Mac's interest rate risk position through the current structure of its balance sheet, reported interest rate risk shock-test results,[9] and other financial activities. The stress test calculates the effect of interest rate risk exposure through market value changes of interest-bearing assets and liabilities, and thus equity capital. The stress test also captures this exposure through the cashflows on rate-sensitive assets and liabilities. We discuss how to calculate the dollar impact of interest rate risk in section 4.0 of this appendix entitled *Elements Used in Generating Cashflows.*

3.1 Process for Calculating the Interest Rate Movement.

a. The stress test uses the 10-year Constant Maturity Treasury (10-year CMT) released by the Federal Reserve in their publication HR. 15 *Selected Interest Rates,* which is available on their website at www.frb.gov. The stress test uses the 10-year CMT to generate earnings yields on assets, expense rates on liabilities, and changes in the market value of assets and liabilities. For stress test purposes, the starting rate for the 10-year CMT is the 3-month average of the most recent monthly rate series published by the Federal Reserve and available through their website. The 3-month average is calculated by summing the monthly series of the 10-year CMT and dividing by 3. For instance, you would calculate the initial rate on June 30, 1999, as:

Month end	10-year CMT monthly series
04/1999	5.18

[9] See paragraph c of section 4.1 of this appendix entitled *Data Inputs* for a description of the IRR shock-reporting requirement.

Month end	10-year CMT monthly series
05/1999	5.54
06/1999	5.90
Average	5.54

b. The amount by which the stress test shocks the initial rate up and down is determined by calculating the 12-month average of the 10-year CMT monthly series. If the resulting average is less than 12 percent, the stress test shocks the initial rate by an amount determined by multiplying the 12-month average rate by 50 percent. However, if the average is greater than or equal to 12 percent, the stress test shocks the initial rate by 600 bp. For example, you would determine the amount by which to increase and decrease the initial rate for June 30, 1999 as:

Month End	10-year CMT Monthly Series
07/1998	5.46
08/1998	5.34
09/1998	4.81
10/1998	4.53
11/1998	4.83
12/1998	4.65
01/1999	4.72
02/1999	5.00
03/1999	5.23
04/1999	5.18
05/1999	5.54
06/1999	5.90
12-Month Average	5.10

Calculation of Shock Amount:

12-month Average Less than 12%: Yes
12-month Average: 5.10
Multiply the 12-month Average by: 50%
Shock in bp Equals 255

c. You must run the stress test for two separate changes in interest rates, an immediate increase in the initial rate by the shock amount and an immediate decrease in the initial rate by the shock amount. The stress test holds the changed interest rate constant for the entire 10-year stress period. For example, at June 30, 1999, you would run the stress test for an immediate and sustained (for 10 years) upward movement in interest rates to 8.09 percent (5.54 percent plus 255 bp). You would also run the stress test for an immediate and sustained (for 10 years) downward movement in interest rates to 2.99 percent (5.54 percent minus 255 bp). The movement in interest rates that results in the greatest need for capital is used to determine Farmer Mac's risk-based capital requirement.

4.0 Elements Used in Generating Cashflows.

a. This section describes the elements that are required for implementation of the stress test and assessment of Farmer Mac capital performance through time. An Excel spreadsheet named FAMC RBCST, available at www.fca.gov contains the stress test, including the cashflow generator. The spreadsheet contains the following seven worksheets:

(1) Data Input;
(2) Assumptions and Relationships;
(3) Risk Measures (credit risk and interest rate risk);
(4) Loan and Cashflow Accounts;
(5) Income Statements;
(6) Balance Sheets; and
(7) Capital.

b. Each of the components is described in further detail below with references where appropriate to the specific worksheets within the Excel spreadsheet. The stress test may be generally described as a set of linked financial statements that evolve over a period of 10 years using generally accepted accounting conventions and specified sets of stressed inputs. The stress test uses the initial financial condition of Farmer Mac, including earnings and funding relationships, and the credit and interest rate stress inputs to calculate Farmer Mac capital performance through time. The stress test then subjects these to the first period set of stresses, generates cashflows by asset and liability category, performs necessary accounting postings into relevant accounts, and then generates an income statement associated with the first interval of time. The stress test then uses the income statement to update the balance sheet for the end of period 1 (beginning of period 2). All necessary capital calculations for that point in time are then performed.

c. The beginning of the period 2 balance sheet then serves as the departure point for the second income cycle. The second period's cashflows and resulting income statement are generated in similar fashion as the first period's except all inputs (i.e., the periodic loan losses, portfolio balance by category, and liability balances) are updated appropriately to reflect conditions at that point in time. The process evolves forward for a period of 10 years with each pair of balance sheets linked by an intervening set of cashflow and income statements. In this and the following sections, additional details are provided about the specification of the income-generating model to be used by Farmer Mac in calculating the risk-based capital requirement.

4.1 Data Inputs.

The stress test requires the initial financial statement conditions and income-generating relationships for Farmer Mac. The worksheet named ''Data Inputs'' contains the complete data inputs and the sample data form used in the stress test. The stress test uses these data and various assumptions to calculate pro forma financial statements. For stress test purposes, Farmer Mac is required to supply:

a. *Call Report Schedules RC: Balance Sheet and RI: Income Statement.* These schedules form the starting financial position for the stress test. In addition, the stress test calculates basic financial relationships and assumptions used in generating pro forma annual financial statements over the 10-year stress period. Financial relationships and assumptions are in section 4.2 of this appendix entitled Assumptions and Relationships.

b. *Cashflow data for asset and liability account categories.* The necessary cashflow data for the spreadsheet-based stress test are book value, weighted average yield, weighted average maturity, conditional prepayment rate, weighted average amortization, and weighted average guarantee fees. The spreadsheet uses this cashflow information to generate starting and ending account balances, interest earnings, guarantee fees, and interest expense. Each asset and liability account category identified in this data requirement is discussed in section 4.2 of this appendix entitled *Assumptions and Relationships.*

c. *Interest rate risk measurement results.* The stress test uses the results from Farmer Mac's interest rate risk model to represent changes in the market value of assets, liabilities, and equity for upward and downward instantaneous movement in interest rates of 300, 250, 200, 150, and 100, bp. The stress test uses the estimated effective duration to calculate the market value effects from a change in interest rates. The stress test uses the duration information to construct a linear interpolated schedule relating a change in interest rates to a change in the market value of assets and liabilities. This calculation is described in section 4.4 of this appendix entitled Loan and Cashflow Accounts.

d. *Loan-level data for all Farmer Mac I program assets.* (1) The stress test requires loan-level data for all Farmer Mac I program assets to determine age-adjusted origination year loss rates. The specific loan data fields required for running the credit risk component are:

All other Farmer Mac I program loans	Long-term standby commitments
Loan Number	Loan Number.
Ending Scheduled Balance	Current Month Actual Balance.
Group	Group.
Pre/Post Act	Pre/Post Act.
Property State	Property State.
Product Type	Product Type.
Origination Date	Note Date.
Origination Loan Balance	Origination Loan Balance.
Origination Scheduled P&I	Cutoff Scheduled P&I.

All other Farmer Mac I program loans	Long-term standby commitments
Origination Appraised Value	Most Recent Appraised Value.
Loan-to-Value Ratio	Loan-To-Value Ratio.
Current Assets	Current Assets.
Current Liabilities	Current Liabilities.
Total Assets	Total Assets.
Total Liabilities	Total Liabilities.
Gross Farm Revenue	Gross Farm Revenue.
Net Farm Income	Net Farm Income.
Depreciation	Depreciation.
Interest on Capital Debt	Interest On Capital Debt.
Capital Lease Payments	Capital Lease Payments.
Living Expenses	Living Expenses.
Income & FICA Taxes	Income & FICA Taxes.
Net Off-Farm Income	Net Off-Farm Income.
Total Debt Service	Total Debt Service.
Guarantee Fee	Commitment Fee Rate.
Seasoned Loan	Seasoned Loan.

(2) From the loan-level data, you must identify the geographic distribution by state of Farmer Mac's loan portfolio and enter the current loan balance for each state in the ''Data Inputs'' worksheet. We discussed previously how to calculate age-adjusted origination year loss rates in section 2.0 of this appendix entitled *Credit Risk.* The age-adjusted origination year loss rates, blended across standby and non-standby program assets are entered in the ''Risk Measures'' worksheet of the stress test. In addition, we discuss how the stress test applies loss rates in section 4.3 of this appendix entitled *Risk Measures.*

e. *Other data requirements.* Other data elements are taxes paid over the previous 2 years, the corporate tax schedule, and 10-year CMT information as discussed in section 3.1 of this appendix entitled *Process for Calculating the Interest Rate Movement.* The stress test uses the corporate tax schedule and previous taxes paid to determine the appropriate amount of taxes, including loss carry-backs and loss carry-forwards.

4.2 Assumptions and Relationships.

a. The stress test assumptions are summarized on the worksheet called ''Assumptions and Relationships.'' Some of the entries on this page are direct user entries. Other entries are relationships generated from data supplied by Farmer Mac or other sources as discussed in section 4.1 of this appendix entitled Data Inputs. After current financial data are entered, the user selects the date for running the stress test. This action causes the stress test to identify and select the appropriate data from the ''Data Input'' worksheet. The next section highlights the degree of disaggregation needed to maintain reasonably representative characterizations of Farmer Mac in the stress test. Several specific assumptions are established about the future relationships of account balances, how they evolve, and at what magnitude.

b. From the data and assumptions, the stress test computes pro forma financial statements for 10 years. The stress test will be run as a ''steady state'' with regard to program balances, and where possible, will use information gleaned from recent financial statement and other data supplied by Farmer Mac to establish earnings and cost relationships on major program assets that are applied forward in time. As documented in the stress test, entries of ''1'' imply no growth and/or no change in account balances or proportions relative to initial conditions. The interest rate risk and credit loss components are applied to the stress test through time. The individual sections of that worksheet are:

(1) *Elements related to cashflows, earnings rates, and disposition of discontinued program assets.* (A) The stress test accounts for earnings rates by asset class and cost rates on funding. The level of detail is such that it should be easy to understand the contributions of costs and revenues by the major program activities of Farmer Mac. The stress test aggregates investments into the categories of: Cash and money market securities; commercial paper; certificates of deposit; agency mortgage-backed securities and collateralized mortgage obligations; and other investments. With our concurrence, Farmer Mac is permitted to further disaggregate these categories. Similarly, we may require new categories for future activities. Loan items requiring separate accounts include the following:

(i) Farmer Mac I program assets post-1996 Act;

(ii) Farmer Mac I program assets post-1996 Act Swap balances;

(iii) Farmer Mac I program assets pre-1996 Act;

(iv) Farmer Mac I AgVantage securities;

(v) Loans held for securitization; and

(vi) Farmer Mac II program assets.

(B) The stress test also uses data elements related to amortization and prepayment experience to calculate and process the implied rates at which asset and liability balances terminate or ''roll off'' through time. Further, for each category, the stress test has the capacity to track account balances that are expected to change through time for each of the above categories. For purposes of the stress test, all assets are assumed to maintain a ''steady state'' with the implication that any principal balances retired or prepaid are replaced with new balances. The exceptions are that expiring pre-1996 Act program assets are replaced with post-1996 Act assets.

(2) *Elements related to other balance sheet assumptions through time.* As well as interest earning assets, the other categories of the balance sheet that are modeled through time include interest receivable, guarantee fees receivable, prepaid expenses, accrued interest payable, accounts payable, accrued expenses, reserves for losses (loans held and guaranteed securities), and other off-balance sheet obligations. The stress test is consistent with Farmer Mac's existing reporting categories and practices. If reporting practices change substantially, the above list would be adjusted accordingly. The stress test has the capacity to have the balances in each of these accounts determined based on existing relationships to other earning accounts, to keep their balances either in constant proportions of loan or security accounts, or to evolve according to a user-selected rule. For purposes of the stress test, these accounts are to remain constant relative to the proportions of their associated balance sheet accounts that generated the accrued balances.

(3) *Elements related to income and expense assumptions.* Several other parameters that are required to generate pro forma financial statements may not be easily captured from historic data or may have characteristics that suggest that they be individually supplied. These parameters are the gain on agricultural mortgage-backed securities (AMBS) sales, miscellaneous income, operating expenses, reserve requirement, and guarantee fees. The stress test assumes a 75 bp gain rate on sale of AMBS securities, recognizing that this parameter, while reasonably related to recent performance, may change with changes in market conditions. Miscellaneous income as a percentage of total assets contributes 2 bp to income. Fixed costs and variable costs are determined from historical financial data by running a linear regression (ordinary least squares) of operating expenses, excluding provision expense and taxes, to on-balance sheet investments and Farmer Mac program assets. The regression equation is:

$$Y = \alpha + \beta X$$

(A) Where Y is annualized operating expenses excluding provision and tax expenses, and X is investments and Farmer Mac program assets held on-balance sheet.

(B) The regression provides estimates of fixed costs (α) and a variable cost rate

coefficient (β). To run the stress test, the operating expense regression equation must be re-estimated by using data from Farmer Mac inception to the most recent quarterly financial information. For example, at June 30, 1999, fixed costs were estimated at $2,092 thousand per year and variable costs at 0.004330 of investments and Farmer Mac program assets held on-balance sheet.

(C) The reserve requirement as a fraction of loan assets is also specified, currently at 45 bp, and the corporate income tax is supplied as an input. However, the stress test is run with the reserve requirement set to zero. Setting the parameter to zero causes the stress test to calculate a risk-based capital level that is comparable to regulatory capital, which includes reserves. Thus, the risk-based capital requirement contains the regulatory capital required, including reserves. The amount of total capital that is allocated to the reserve account is determined by GAAP. The guarantee rates applied in the stress test are: Post-1996 Act Farmer Mac I assets (50 bp); pre-1996 Act Farmer Mac I assets (25 bp); and Farmer Mac II assets (25 bp).

(4) *Elements related to earnings rates and funding costs.* (A) The stress test can accommodate numerous specifications of earnings and funding costs. In general, both relationships are tied to the 10-year CMT interest rate. Specifically, each investment account, each loan item, and each liability account can be specified as fixed rate, or fixed spread to the 10-year CMT with initial rates determined by actual data. The stress test calculates specific spreads (weighted average yield less initial 10-year CMT) by category from the weighted average yield data supplied by Farmer Mac as described earlier. For example, the fixed spread for Farmer Mac I program post-1996 Act mortgages is calculated as follows:

Fixed Spread = Weighted Average Yield less 10-year CMT
0.014 = 0.0694—0.0554

(B) The resulting fixed spread of 1.40 percent is then added to the 10-year CMT when it is shocked to determine the new yield. For instance, if the 10-year CMT is shocked upward by 300 bp, the yield on Farmer Mac I Program post-1996 Act loans would change as follows:

Yield=Fixed Spread+10-year CMT
.0994=.014+.0854

(C) The adjusted yield is then used for income calculations when generating pro forma financial statements. All fixed spread asset and liability classes are computed in an identical manner using starting yields provided as data input from Farmer Mac. The fixed yield option holds the starting yield data constant for the entire 10-year stress test period. You must run the stress test using the fixed spread option for all accounts except for discontinued program activities, such as Farmer Mac I Program loans made before the 1996 Act. For discontinued loans, the fixed rate specification must be used if the loans are primarily fixed rate mortgages.

(5) *Elements related to interest rate shock test.* As described earlier, the interest rate shock test is implemented as a single set of forward interest rates. The stress test applies the up-rate scenario and down-rate scenario separately. The stress test also uses the results of Farmer Mac's shock test, as described in paragraph (3) of section 4.1 of this appendix entitled *Data Inputs,* to calculate the estimated effective duration of assets and liabilities at a given interest rate change. The stress test uses estimated effective duration information to construct a linearly interpolated schedule that relates a change in interest rates to a change in the market value of assets and liabilities. For instance, if interest rates are shocked upward by 262 bp, the linearly interpolated effective estimated duration is −1.389 years given Farmer Mac's interest rate measurement results at 250 and 300 bp of −1.395 and −1.373 years, respectively. The stress test uses the linearly interpolated estimated effective duration for assets to calculate the market value change by multiplying duration with the total value of on-balance sheet assets and with the change in interest rates. An identical procedure must be followed for computing the market value change in liabilities for a change in interest rates.

4.3 Risk Measures.

a. This section describes the elements of the stress test in the worksheet named ''Risk Measures'' that reflect the interest rate shock and credit loss requirements of the stress test.

b. As described in section 3.1 of this appendix, the stress test applies the statutory interest rate shock to the initial 10-year CMT rate. It then generates a series of fixed annual interest rates for the 10-year stress period that serve as an index for earnings yields and cost of funds rates used in the stress test. See the ''Risk Measures'' worksheet for the resulting interest rate series used in the stress test.

c. The blended loss rates by state, as described in section 2.5 of this appendix entitled *Calculation of Loss Rates for Use in the Stress Test,* are entered into the ''Risk Measures'' worksheet and applied to the loan balances that exist in each state as reported in the initial loan portfolio of Farmer Mac. The initial distribution of loan balances by state is used to allocate new loans that replace loan products that roll off the balance sheet through time. The loss rates are applied both to the initial volume and to new loan volume that replaces expiring loans. The total life of loan losses that are expected at origination are then allocated through time based on a set of user entries describing the time-path of losses.

d. The loss rates estimated in the credit risk component of the stress test are based on an origination year concept, adjusted for loan seasoning. All losses arising from loans originated in a particular year are expressed as a percent of that year's originated loan volume irrespective of when the losses actually occur. The allocations of the origination year loss rates that must be used are 43 percent to year 1, 17 percent to year 2, 16 percent to year 3, and 3.4 percent for the remaining years. The total allocated losses in any year are expressed as a percent of loan volume in that year to reflect the conversion to exposure year.

4.4 Loan and Cashflow Accounts.

The worksheet called ''Loan and Cashflow Data'' contains the categorized loan data and cashflow accounting that is used in the stress test in generating the projections of Farmer Mac's performance and condition. As can be seen in the worksheet, the steady-state formulation results in account balances that remain constant except for the effects of discontinued programs. For assets with maturity under 1 year, the results are reported for convenience as though they matured only one time per year with the additional convention that the earnings/cost rates are annualized. For the pre-1996 Act assets, maturing balances are added back to post-1996 Act account balances. The liability accounts are used to satisfy the accounting identity. In addition to the replacement of maturities under a steady-state, liabilities are increased to reflect net losses or decreased to reflect resulting net gains. Adjustments must be made to the long-and short-term debt accounts to maintain the same relative proportions as existed at the beginning period from which the stress test is run. The primary receivable and payable accounts are also maintained on this worksheet, as is a summary balance of the volume of loans subject to credit losses.

4.5 Income Statements.

a. Information related to income performance through time is contained in the worksheet called ''Income Statements.'' Information from the first period balance sheets is used in conjunction with the earnings and cost-spread relationships from Farmer Mac supplied data to generate the first period's income statement. The same set of accounts is maintained in this worksheet as ''Loan and Cashflow Accounts'' for consistency in reporting each annual period of the 10-year stress period of the test. The income from each interest-bearing account is calculated, as are costs of interest-bearing liabilities. In each case, these entries are the associated interest rate for that period multiplied by the account balances.

b. The credit losses described in section 2.0 of this appendix, entitled *Credit Risk,* are transmitted through the provision account as is any change needed to re-establish the target reserve balance. For determining risk-based capital, the reserve target is set to zero as described in section 4.2 of this appendix entitled *Assumptions and Relationships.* Under the income tax section, you must first determine whether it is appropriate to carry forward tax losses or recapture tax credits. The tax section then establishes the appropriate income tax liability that permits the calculation of final net income (loss) which is credited (debited) to the retained earnings and the paid-in capital account.

4.6 Balance Sheets.

a. The worksheet named ''Balance Sheets'' is used to construct pro forma balance sheets from which the capital calculations can be performed. As can be seen in the Excel spreadsheet, the worksheet is organized to correspond to Farmer Mac's normal reporting practices. Asset accounts are built from the initial financial statement conditions, and loan and cashflow accounts. Liability accounts including the reserve account are likewise built from the previous period's results to balance the asset and equity

positions. The equity section uses initial conditions and standard accounts to monitor equity through time. The equity section maintains separate categories for increments to paid-in-capital and retained earnings and for mark-to-market effects of changes in account values. The process described below in the ''Capital'' worksheet uses the initial retained earnings and paid-in-capital account to test for the change in initial capital that permits conformance to the statutory requirements. Therefore, these accounts must be maintained separately for test solution purposes.

b. The market valuation changes due to interest rate movements must be computed utilizing the linearly interpolated schedule of estimated effective duration information contained in the ''Assumptions and Relationships'' worksheet. The stress test calculates the change in the market value of assets by multiplying total assets, the linearly interpolated estimated effective duration assets, and the change in interest rate. The changes in the market values of liabilities are calculated in a similar manner using total liabilities, the effective estimated duration of liabilities, and the change in interest rate. The changes in market value of assets and liabilities are then netted to Farmer Mac's capital position. This approach ensures that the value of capital reflects the economic loss or gain in value of Farmer Mac's capital position from a change in interest rates.

c. The stress test considers Farmer Mac's balance sheet as consisting primarily of available-for-sale assets. Therefore, Farmer Mac's capital position should reflect mark-to-market changes in the value of assets and liabilities. This approach ensures that the stress test captures interest rate risk in a meaningful way by addressing explicitly the loss or gain in value resulting from the change in interest rates required by the statute.

d. After one cycle of income has been calculated, the balance sheet as of the end of the income period is then generated. The ''Balance Sheet'' worksheet shows the periodic pro forma balance sheets in a format convenient to track capital shifts through time.

4.7 Capital.

The ''Capital'' worksheet contains the results of the required capital calculations as described below, and provides a method to calculate the level of initial capital that would permit Farmer Mac to maintain positive capital throughout the 10-year stress test period.

5.0 Capital Calculations.

a. The stress test computes regulatory capital as the sum of the following:

(1) The par value of outstanding common stock;

(2) The par value of outstanding preferred stock;

(3) Paid-in capital;

(4) Retained earnings; and

(5) Reserve for loan and guarantee losses.

b. Inclusion of the reserve account in regulatory capital is an important difference compared to minimum capital as defined by the statute. Therefore, the calculation of reserves in the stress test is also important because reserves are reduced by loan and guarantee losses. The reserve account is linked to the income statement through the provision for loan loss expense (provision). Provision expense reflects the amount of current income necessary to rebuild the reserve account to acceptable levels after loan losses reduce the account or as a result of increases in the level of risky mortgage positions, both off-and on-balance sheet. Provision reversals represent reductions in the reserve levels due to reduced risk of loan losses or loan volume of risky mortgage positions. When calculating the stress test, the reserve is maintained at zero to result in a risk-based capital requirement that includes reserves, thereby making the requirement comparable to the statutory definition of regulatory capital. By setting the reserve requirement to zero, the capital position includes all financial resources Farmer Mac has at its disposal to withstand risk.

5.1 Method of Calculation.

a. Risk-based capital is calculated in the stress test as the minimum initial capital that would permit Farmer Mac to remain solvent for the following 10 years. To this amount, an additional 30 percent is added to account for managerial and operational risks not reflected in the specific components of the stress test.

b. The relationship between the solvency constraint (i.e., future capital position not less than zero) and risk-based capital requirement reflects the appropriate earnings and funding cost rates that may vary through time based on initial conditions. Therefore, the minimum capital at a future point in time cannot be directly used to determine the risk-based capital requirement. To calculate the risk-based capital requirement, the stress test includes a section to solve for the minimum initial capital value that results in a minimum capital level over the 10 years of zero at the point in time that it would actually occur. In solving for initial capital, you must assume that reductions or additions to the initial capital accounts are made in the retained earnings accounts, and are balanced in the debt accounts at terms proportionate to initial balances (same relative proportion of long- and short-term debt at existing initial rates). Because the initial capital position affects the earnings, and hence capital positions and appropriate discount rates through time, the initial and future capital are simultaneously determined and must be solved iteratively. To implement this calculation, you can either find the reduction/increase in initial capital needed that results in a zero excess minimum capital balance or utilize the ''solver'' utility of Excel to more efficiently locate the solution. The resulting minimum initial capital from the stress test is then reported on the ''Capital'' worksheet of the stress test. The ''Capital'' worksheet includes an element that uses Excel's ''solver'' capability to calculate the minimum initial capital that, when added (subtracted) from initial capital and replaced with debt results in a minimum capital balance over the following 10 years of zero.

Dated: November 3, 1999.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

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federal register

Friday
November 12, 1999

Part IV

The President

Notice of November 10, 1999—Continuation of Emergency Regarding Weapons of Mass Destruction

Federal Register
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Presidential Documents

Title 3—

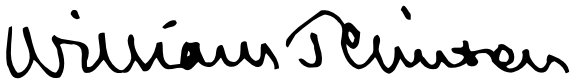
The President

Notice of November 10, 1999

Continuation of Emergency Regarding Weapons of Mass Destruction

On November 14, 1994, by Executive Order 12938, I declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States posed by the proliferation of nuclear, biological, and chemical weapons (''weapons of mass destruction'') and the means of delivering such weapons. Because the proliferation of weapons of mass destruction and the means of delivering them continues to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, the national emergency first declared on November 14, 1994, and extended on November 14, 1995, November 12, 1996, November 13, 1997, and November 12, 1998, must continue in effect beyond November 14, 1999. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency declared in Executive Order 12938.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
November 10, 1999.

[FR Doc. 99–29849
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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

S. 437/P.L. 106–91

To designate the United States courthouse under construction at 333 Las Vegas Boulevard South in Las Vegas, Nevada, as the ''Lloyd D. George United States Courthouse.'' (Nov. 9, 1999; 113 Stat. 1308)

S. 1652/P.L. 106–92

To designate the Old Executive Office Building located at 17th Street and

Pennsylvania Avenue, NW, in Washington, District of Columbia, as the ''Dwight D. Eisenhower Executive Office Building.'' (Nov. 9, 1999; 113 Stat. 1309)

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