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Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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

WHO: The Office of the Federal Register.

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

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

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

WASHINGTON, DC

WHEN: January 30, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202-523-5240.

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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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 19

RIN 3150-AD06

Sequestration of Witnesses Interviewed Under Subpoena/ Exclusion of Attorneys

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission ("NRC") is amending its regulations to provide for the sequestration of witnesses compelled by subpoena to appear in connection with NRC investigations or inspections. These amendments also provide for the exclusion of counsel for a subpoenaed witness when that counsel represents multiple interests and there is a reasonable basis to believe that such representation will prejudice, impede, or impair the integrity of the inquiry. These amendments are designed to ensure the integrity of the investigative and inspection process. These amendments are also intended to serve as notice of the responsibilities of the NRC and the rights of individual witnesses, licensees and attorneys when exclusion authority is exercised.

EFFECTIVE DATE: February 5, 1990.

FOR FURTHER INFORMATION CONTACT: Carolyn F. Evans, Attorney, Office of the General Counsel, telephone (301) 492-1632, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

SUPPLEMENTARY INFORMATION:

I. Background

On November 14, 1988 (53 FR 45768), the Nuclear Regulatory Commission published in the **Federal Register** proposed amendments to its regulations found at 10 CFR part 19. The amendments provided for the sequestration of witnesses (and their counsel, if any) compelled to appear under subpoena before NRC representatives. The amendments also provided for the exclusion of counsel representing multiple interests (e.g., licensees and employees) whenever the NRC official conducting the inquiry had a reasonable basis to believe that counsel's representation of these interests would impair or impede the particular investigation or inspection. On January 6, 1989, the NRC published in the **Federal Register** a notice that extended the original 60-day comment period for an additional 30 days to February 9, 1989 (54 FR 427).

During the 90-day comment period, the Commission received 22 comments. Commenters included utilities, law firms representing utilities, the Nuclear Utility Management and Resources Council (NUMARC), the Nuclear Information and Resource Service and an individual. All comments are available for inspection and copying in the agency's Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

The Commission has considered all the comments and wishes to express its appreciation for the thoughtful views expressed. In response to the comments, the rule has been revised to clarify the meaning of the term "sequestration" and to identify more clearly the circumstances under which attorney exclusion authority is to be exercised. The rule also includes additional procedural safeguards to govern the exclusion process.

Before addressing the comments, a brief explanation of the scope of the rule is warranted. As specified in revised 10 CFR 19.2, the rule applies to all interviews under subpoena within the jurisdiction of the Nuclear Regulatory Commission other than those which focus on NRC employees or its contractors. The rule does not apply, however, to subpoenas issued pursuant to 10 CFR 2.720. Although in the discussion that follows we frequently use the terms "licensee" or "licensee's counsel," the discussion is equally applicable to "non-licensees" whose activities fall within the jurisdiction of the Commission. Similarly, while much of the discussion is focused on interviews conducted under subpoena by the NRC's Office of Investigations, the rule also applies to NRC inspections and investigations conducted under subpoena by other NRC officials.

The Commission will first address the remarks of some commenters regarding the necessity for the exclusion of counsel provisions of the rule. The Commission is extremely sensitive to the commenters' concerns and reservations in this regard, for we recognize that a decision to exclude an individual's chosen counsel is an extraordinary action. It is still the Commission's view, however, that a rule is needed. This is so for several reasons.

One means by which the Commission satisfies its statutory responsibility of ensuring the public health and safety is through investigation of unsafe practices and violations of the Atomic Energy Act and NRC regulations. NRC investigators must often interview licensees, their employees, and other individuals having possible knowledge of matters under investigation which are of regulatory interest to the NRC. When interviewing the employees of a licensee, investigating officials are especially sensitive to the need to provide these witnesses an atmosphere which encourages and promotes candor. This may be especially true during an investigation of a violation of the Commission's regulations involving the harassment or intimidation of employees for raising safety issues. The very identification and correction of unsafe practices or regulatory violations through an investigative or inspection process depends upon the willingness of individuals having possible knowledge of such practices or violations to speak openly to Commission officials.

In a limited number of cases, difficulties have arisen when licensee's counsel or counsel retained by the licensee has also represented witnesses who are employees of the licensee during interviews. This multiple representation appears to have inhibited the candor of these witnesses who, quite naturally, have been hesitant to divulge information against the interests of their employer in the presence of their employer's counsel or counsel retained by the employer. For example, recently during the course of conducting an investigation at an NRC-licensed facility, the investigator was approached by an individual who had been previously interviewed. This individual informed the investigator that during his interview he wanted to answer

questions in greater detail but felt uncomfortable about doing so with licensee's counsel present. The result of multiple representation in that case was that the free flow of possible safety-related information to the NRC was impeded and the overall effectiveness of an NRC investigation was reduced.

The problem raised by multiple representation is brought into sharp focus when counsel representing an employee states before an investigative interview of the employee that counsel intends to tell the licensee everything that is said during the interview, regardless of whether or not this may jeopardize the employee's interest. Contrary to the commenters' assertions regarding a lack of factual support for the rule, and as the Commission pointed out in its statement accompanying the proposed rule, there have been several instances where a licensee's counsel representing multiple interests has stated his or her intent to report information obtained from an employee to the licensee. Such situations, directly related to multiple representation, though limited in number, have the very real potential for frustrating the objectives of the Commission's fact-finding mission by chilling the candor of the employee witness who knows, or at least believes, that, in the final analysis, counsel's allegiance lies with the licensee, and that by providing information contrary to the interests of his or her employer, the employee stands to jeopardize his employment interest.

By setting forth guidance and procedures in this area, the Commission hopes to avoid the confusion which occurred in the absence of a rule when multiple representation issues were resolved on an ad hoc basis. This rule also serves to notify all affected persons and entities of Commission policy in this area and sets forth the procedural mechanisms available to licensees, witnesses and attorneys and the responsibilities of the NRC when exclusion authority is exercised. As we stated previously in the notice of proposed rulemaking, the Commission is not suggesting that the fact of multiple representation alone can form the basis for an exclusion decision. However, where the official conducting the inquiry concludes that an attorney's representation of both the licensee and its employees will impair the integrity of an NRC investigation or inspection, then exclusion may be warranted. The investigating official who, in the final rule, is still required to consult with the Office of the General Counsel before exercising exclusion authority is in the best position initially to assess when the presence of licensee counsel or counsel retained by the licensee (particularly counsel who expresses an intent to inform the licensee of what has been said during interviews) will impede or impair the particular investigation or inspection.

Some of the commenters contend that the Commission's concern with preventing an attorney from advising a licensee of what has been said during interviews of employees is misplaced as there is nothing wrong with an attorney doing this. While in a formal sense there may be nothing ethically wrong with counsel's disclosing to a licensee client what an employee client has said in an interview, provided both clients have been advised in advance of counsel's intent to disclose to the licensee everything the employee client says, the Commission has sound reason for concern about the potential effect of such attorney behavior on investigations. Moreover, protection and nondisclosure of investigative information are often necessary elements of an ongoing probe so that those under investigation and other prospective witnesses might not be warned of what has been asked and answered and so aided in thwarting the inquiry. When the integrity of an NRC investigation, inspection or other inquiry depends on the licensee not being apprised of information relating to the nature, scope or focus of the particular probe, counsel who advises the licensee of what was asked and answered during interviews of employee witnesses might impair or decrease the effectiveness of the particular investigation or inspection. These concerns are not theoretical. There have been several instances in which concerns about counsel's disclosures to employers have impeded investigations.

A number of commenters contend there is already a statutory and regulatory scheme in place to protect against the concerns expressed by the Commission. These commenters cite the obstruction of justice statute, 18 U.S.C. 1505, section 210 of the Energy Reorganization Act, and 10 CFR 50.7 as providing sufficient safeguards against the concerns articulated in the rule. The Commission agrees that the statutory provisions cited by the commenters may well protect against some of the concerns that prompted this rule; however, these provisions are an inadequate means for accomplishing an expeditious administrative remediation of potential impairments to NRC investigations and inspections, a major goal of the rule.

In the past, there have been only a limited number of investigations in which the exclusion of a particular attorney representing multiple interests would have been warranted. This suggests, and indeed it is the Commission's intent, that exercise of exclusion authority will be confined to the most compelling cases.

A. General Comments—Sequestration

The majority of comments relate to the exclusion of counsel provisions of the rule. However, several commenters have raised concerns regarding the rule's sequestration provisions. The Commission's responses to these concerns are set forth below.

1. Sequestration Is Defined in an Anomalous Manner

Several commenters have indicated that the term "sequestration" is defined in an anomalous or confusing manner. These commenters, however, do not indicate in what respect they are confused. The term is intended to have its common meaning, which is the act of separating or isolating persons during the course of trial, but in this context, agency interviews. Some of the confusion may have arisen from the Commission's characterization of the act of prohibiting counsel from attending the interviews of individuals as a sequestration. The proper term for the act of removing counsel under the rule is actually "exclusion." The definitions have been revised in the final rule to clarify the meaning of terms.

2. Implementation of the Rule Will Violate Witnesses' First Amendment Rights

Several commenters have expressed concern that the provisions governing the sequestration of witnesses would also apparently bar discussions among witnesses in contravention of the First Amendment protections of freedom of speech and association. The Commission disagrees. The rule, which is reasonably related to the legitimate fact-finding function of the NRC, neither by its terms nor in its intended application, effects a prohibition on the communications or associational rights of witnesses either before or after an interview. The rule is designed to discourage fabrication, inaccuracy and collusion during the course of the investigative interview, and no more restricts an individual's First Amendment rights than does Federal Rule of Evidence 615, the provision upon which it is based.

B. General Comments—Exclusion of Counsel

1. Rule Unnecessarily Infringes upon a Witness' Right to Counsel of Choice

Virtually all of the commenters expressed concern that implementation of the proposed rule would deprive witnesses of the fundamental right to counsel of choice as guaranteed by section 6(a) of the Administrative Procedure Act (APA). 5 U.S.C. 555. In this context, one commenter contends that in view of what it perceives as the dual nature of NRC investigations, i.e., that they are conducted for civil and/or criminal purposes, the constitutional implications of depriving subpoenaed witnesses of the right to counsel should not be lightly disturbed. A significant number of commenters also asserted that the >>reasonable basis" standard for exclusion of counsel is contrary to established judicial precedent and the recommendations of an NRC advisory committee which explored the merits of adopting a sequestration rule at the NRC in 1983. See, Report of the Advisory Committee for Review of the Investigation Policy on Rights of Employees Under Investigation, September 13, 1983. This report is available for inspection and may be copied for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

At the outset, the Commission would like to make it clear that neither its Office of Investigations nor any other investigative or inspection office of the NRC has the authority to conduct criminal investigations. NRC investigations are conducted for civil purposes only. Whenever investigations officials uncover facts which suggest that a violation of criminal law has occurred, those facts are referred to the Department of Justice which conducts its own inquiry.

Next, this rule in no way deprives anyone of the right to counsel. Concededly, however, it can operate so as to burden a particular choice of counsel. The Commission recognizes that the right to select and be represented by an attorney of one's own choosing is not to be lightly disturbed. However, this right, unlike the right to counsel itself, "does not override the broader societal interests in the effective administration of justice *** or in the integrity of [the] legal system." In re Grand Jury Subpoena Served Upon Doe, 781 F.2d 238, 250-251 (2d Cir.), cert. denied sub nom. *Roe* v. *United States*, 475 U.S. 1108 (1986), *United States* v. *Reese*, 699 F.2d 803 (6th Cir. 1983). Thus, the right to a particular counsel may be circumscribed, not only in the context of criminal proceedings where it is most critical, see *Wheat* v. *United States* 486 U.S._____, 108 S. Ct. 1692, 100 L. Ed. 2d 140 (1988), but also in the context of administrative proceedings under the APA. See *SEC* v. *Csapo*, 533 F.2d 7 (D.C. Cir. 1976). As discussed below, the Commission, in its final rule, has sought to make it clear that exclusion authority is to be confined within permissible limits.

A number of commenters contend that exclusion of counsel under the "reasonable basis" standard proposed by the Commission would hardly be within permissible limits. According to these commenters, the "concrete evidence" standard articulated by the D.C. Circuit in Csapo represents the proper standard for disqualification of counsel.

To the best of our knowledge, since Csapo, neither the D.C. Circuit nor any other court has had the occasion to consider whether an administrative agency is still required to possess concrete evidence that an investigation will be impaired before an exclusion decision will be sustained. After carefully considering the matter, however, we have concluded that the nature of the investigation involved in Csapo is sufficiently different from the public health and safety-related investigations conducted by the NRC that the Csapo "concrete evidence" standard would be inappropriate for application to NRC investigations.

The Csapo decision involved an investigation by the Securities and Exchange Commission (SEC). The statutory responsibilities of the SEC and the NRC are sufficiently different to justify using a less exacting standard than the "concrete evidence" standard of Csapo. Impeding an SEC investigation, while serious, does not have substantial, immediate public health and safety implications. In contrast, undetected violations of Commission regulations or the Atomic Energy Act could have far reaching public health and safety implications. The NRC should not be required to wait until it has "concrete evidence" that an investigation has been impeded before taking those steps necessary to protect its investigatory process and correspondingly, the public health and safety. The importance of uncovering in an expeditious manner willful regulatory violations justifies use of a less stringent standard.

A related issue raised by a number of commenters is that the rule will deprive individuals of the effective assistance of counsel. They assert this is so because of a small nuclear bar and the fact that many lawyers are unfamiliar with the often technical issues involved in practice before the NRC. Sixth Amendment effective assistance of counsel requirements are not necessarily applicable to NRC investigatory interviews. For one, there is a substantial difference between the rights of an accused in a criminal proceeding and the rights of a witness in a civil (administrative) proceeding; secondly, the stringent standards of appointment and effective assistance of counsel mandated by the Sixth Amendment and Federal Rule of Criminal Procedure 44 do not apply to civil proceedings. In re Grand Jury Matter, 682 F.2d 61 (3d Cir. 1982); *Watson* v. *Moss*, 619 F.2d 775 (8th Cir. 1981); *United States* v. *Rogers*, 534 F.2d 1134 (5th Cir.), cert. denied 429 U.S. 940 (1976). We also believe the nuclear bar is large enough that alternative counsel with the necessary expertise will be available if the need should arise.

Almost half the commenters take issue with the one week time frame cited in the supplementary information to the proposed rule as an example of a reasonable period of time within which to retain new counsel when exclusion authority has been exercised. Specifically, they contend one week is an insufficient amount of time to secure appropriate alternate counsel, particularly in situations where a nuclear plant is remotely located and counsel experienced in NRC practice and Federal administrative law are scarce or unavailable.

Although the supplementary information cited one week as an example of a reasonable period of time, former § 19.18(c) of the proposed rule did not attempt to quantify a reasonable time frame. One week may constitute a reasonable period of time under some circumstances. What constitutes a reasonable period of time, however, must be determined on a case-by-case basis with the official taking into account the circumstances, including the apparent availability of experienced counsel for the particular witness, the complexity of the case and the need for counsel to familiarize himself or herself with the facts, and the Commission's need to conclude an investigation or inspection promptly in order to protect the public health and safety. The final rule retains the reasonable period of time standard which should be implemented on the basis of these kinds of considerations.

2. Rule Ignores Fact That Multiple Representation Issues Are Governed by Principles of Legal Ethics

Several other commenters contend the rule ignores the fact that the propriety of multiple representation is governed by basic principles of legal ethics, and that the Code of Professional Responsibility generally permits an attorney to represent multiple interests. Another commenter questions the Commission's authority to exclude counsel and states that the Commission has no business or particular expertise in determining for a witness whether a conflict-of-interest exists or wherein lies his or her best interest.

The Commission, in the supplementary information and text of the proposed rule, expressly recognized, as we do again here, that an attorney may ethically represent multiple clients provided he or she discloses any potential conflicts to the clients who then assent to the representation. We again emphasize that the rule does not provide that an attorney representing multiple interests will be excluded from the questioning of other witness clients on the basis of the multiple representation alone. To the contrary, the rule contemplates the exclusion of counsel only in the limited circumstances where counsel's representation of multiple interests poses a threat to the ability of the NRC to develop credible facts upon which to base its health and safety findings or where the Commission could reasonably expect to obtain necessary safety information only if counsel representing the witness did not also represent other interests. Such a threat might be posed where the investigation requires a degree of secrecy that cannot be maintained if the licensee and others are likely to be apprised of the specifics of the inspection or investigation, or where the nature of the investigation or inspection may require employees to divulge information against the interests of the employer, or where the witness, unbeknown to counsel or his employer, has expressed a desire for confidentiality. A decision to exclude certain counsel in these instances is not a matter of legal ethics, nor is exclusion under such a standard at odds with any provision of the Code of Professional Responsibility. Exclusion in these instances is not based on ethical considerations but on a legitimate need to maintain in confidence information gained in the course of an investigation. Indeed, ethical considerations are essentially immaterial to the decision to exclude. See Csapo, 533 F.2d at 11.

3. Procedures for Excluding Counsel Are Inadequate

Many of the law firm commenters have raised objections to the procedures for excluding counsel. Specifically, they contend that the procedures are inadequate and afford the interviewing official virtually unfettered discretion in the exclusion process. In this regard, they point out that the rule does not include any provision requiring the official to make factual findings prior to excluding counsel nor does it require the official to document the basis for exclusion, or to communicate the basis to the witness or counsel. One commenter has also expressed concern with the provision of the rule that allows an interviewing official to exclude counsel. According to this commenter, a court is the appropriate forum for resolution of conflict-of-interest issues. It suggests including a provision in the rule requiring the NRC to file a motion before a Federal judge requesting the disqualification of counsel. Another commenter points out that because the NRC's Office of Investigations (OI) is, in this commenter's opinion, an adversary of the licensee, the provision allowing an official of OI to make the exclusion decision alone is fundamentally misconceived.

The Commission agrees that additional guidelines and safeguards should be included to assist and guide agency officials in the exclusion process. Consequently, the rule now requires the interviewing official to advise a witness whose attorney has been excluded of the basis for the attorney's exclusion in every instance. The rule also requires that an excluded attorney be advised of the basis for his or her exclusion. In addition, the rule unequivocally provides that the witness and the excluded attorney be provided a written statement of those reasons. The rule retains the provision requiring the interviewing official to consult with the Office of the General Counsel prior to invoking the exclusion rule. This requirement is designed to ensure that exclusion authority is confined within lawful limits. We believe these provisions provide sufficient safeguards against arbitrary and capricious exclusion decisions. The Commission does not believe, however, that a provision requiring the institution of fact-finding proceedings in advance of excluding counsel would provide a higher level of protection than the above procedures. If, as many of the commenters assert, the bottom line is going to be judicial challenges to an exclusion decision, a petitioning party will have the written statement of reasons to challenge in court. We also do not agree with the suggestion that an agency cannot disqualify counsel but must file a motion with a district court. An administrative agency which has the general authority to prescribe its rules of procedure may set standards for determining who may practice before it. See *Koden* v. *Department of Justice*, 564 F.2d 228 (7th Cir. 1977); see also *Goldsmith* v. *United States Board of Tax Appeals*, 270 U.S. 117 (1926). In this regard, we note that the NRC has prescribed rules of practice for attorneys in the context of adjudicatory proceedings before the Commission or licensing boards. See, *e.g.*, 10 CFR 2.713. Moreover, the rule does not require agency officials to resolve conflict of interest issues. Rather, the rule affords the official conducting the particular inquiry a means for excluding counsel who represents multiple interests when there is a reasonable basis to believe that the investigation will be impaired by virtue of the multiple representation.

In order to remove the perception that investigations officials have unfettered discretion in the exclusion process, the rule has been revised to afford a witness whose attorney has been excluded the right to seek administrative review of the exclusion decision. Specifically, the provision affords the witness an opportunity to appeal the exclusion decision to the Commission. Under the rule, any witness aggrieved by an exclusion decision may challenge the exclusion by filing a motion with the Commission to quash the subpoena. To ensure that investigations are not unreasonably delayed, this motion must be filed within five days after the witness receives the written explanation for the exclusion from the interviewing official.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget approval number 3150-0046.

Regulatory Analysis

The APA affords individuals compelled to submit to agency inquiry under subpoena the right to be accompanied by counsel or, if the agency permits, other representative of choice. 5 U.S.C. 555(b). Although the right to counsel guarantee of section 555(b) is not to be lightly disturbed, it is not absolute and may be circumscribed when justice requires. Any restrictions on the right to counsel must, however, be within permissible limits.

Questions concerning the scope of the right to counsel have arisen in the context of NRC investigative interviews of licensee employees and the licensee's right to appoint in-house or retain outside counsel to represent them. Although there is nothing improper about this kind of arrangement on its face, it has been the Commission's experience that such multiple representation has the potential of undermining the investigative process by inhibiting the candor of these witnesses or by possibly precluding a witness' opportunity to request confidentiality. The rule, which delineates the rights of licensees, witnesses, and their attorneys and the NRC's responsibilities during the conduct of interviews, is intended to facilitate an expeditious and satisfactory resolution of NRC's inquiry into public health and safety matters. This final rule is also intended to avoid the confusion and delay that obtained through attempts to resolve multiple representation issues on an ad hoc basis.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The final rule, which simply sets forth the rights of licensee employees and other individuals who are compelled to appear before NRC representatives under subpoena, has no significant economic impact on a substantial number of small entities.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule. Therefore, a backfit analysis is not required because these amendments do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 19

Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Penalty, Radiation protection, Reporting and recordkeeping requirements, Sex discrimination.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 19.

1. The authority citation for part 19 continues to read as follows:

Authority: Secs. 53, 63, 81, 103, 104, 161, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 955 as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2073, 2093, 2111, 2133, 2134, 2201, 2236, 2282); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 95-601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 19.11(a), (c), (d), and (e) and 19.12 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and §§ 19.13 and 19.14(a) are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. The title of part 19 is revised to read as follows:

PART 19—NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS: INSPECTION AND INVESTIGATIONS

3. Section 19.1 is revised to read as follows:

§ 19.1 Purpose.

The regulations in this part establish requirements for notices, instructions, and reports by licensees to individuals participating in licensed activities and options available to these individuals in connection with Commission inspections of licensees to ascertain compliance with the provisions of the Atomic Energy Act of 1954, as amended, Title II of the Energy Reorganization Act of 1974, and regulations, orders, and licenses thereunder regarding radiological working conditions. The regulations in this part also establish the rights and responsibilities of the Commission and individuals during interviews compelled by subpoena as part of agency inspections or investigations pursuant to section 161c of the Atomic Energy Act of 1954, as amended, on any matter within the Commission's jurisdiction.

4. Section 19.2 is revised to read as follows:

§ 19.2 Scope.

The regulations in this part apply to all persons who receive, possess, use, or transfer material licensed by the Nuclear Regulatory Commission pursuant to the regulations in parts 30 through 35, 39, 40, 60, 61, or part 72 of this chapter, including persons licensed to operate a production or utilization facility pursuant to part 50 of this chapter and persons licensed to possess power reactor spent fuel in an independent spent fuel storage installation (ISFSI) pursuant to part 72 of this chapter. The regulations regarding interviews of individuals under subpoena apply to all investigations and inspections within the jurisdiction of the Nuclear Regulatory Commission other than those involving NRC employees or NRC contractors. The regulations in this part do not apply to subpoenas issued pursuant to 10 CFR 2.720.

5. In § 19.3 remove the paragraph designations, rearrange definitions in alphabetical order, and add the definition for "exclusion" and the definition for "sequestration" in the appropriate alphabetical sequence to read as follows:

§ 19.3 Definitions.

* * * * *

"Exclusion" means the removal of counsel from interviews whenever the NRC official conducting the interview has a reasonable basis to believe that counsel's representation of multiple interests will obstruct, impede, or impair the particular investigation, inspection or inquiry.

* * * * *

"Sequestration" means the separation or isolation of witnesses and their attorneys from other witnesses and their attorneys during an interview conducted as part of an investigation, inspection, or other inquiry.

* * * * *

6. A new § 19.18 is added to read as follows:

§ 19.18 Sequestration of witnesses and exclusion of counsel in interviews conducted under subpoena.

(a) All witnesses compelled by subpoena to submit to agency interviews shall be sequestered unless the official conducting the interviews permits otherwise.

(b) Any witness compelled by subpoena to appear at an interview during an agency inquiry may be accompanied, represented, and advised by counsel of his or her choice; however, when the agency official conducting the inquiry determines, after consultation with the Office of the General Counsel, that a reasonable basis exists to believe that the investigation or inspection will be obstructed, impeded or impaired,

either directly or indirectly, by an attorney's representation of multiple interests, the agency official may prohibit that attorney from being present during the interview.

(c) The interviewing official is to provide a witness whose counsel has been excluded under paragraph (b) of this section and the witness's counsel a written statement of the reasons supporting the decision to exclude. This statement, which must be provided no later than five working days after the exclusion, must explain the basis for counsel's exclusion.

(d) Within five days after receipt of the written notification required in paragraph (c) of this section a witness whose counsel has been excluded may appeal the exclusion decision by filing a motion to quash the subpoena with the Commission. The filing of the motion to quash will stay the effectiveness of the subpoena pending the Commission's decision on the motion.

(e) Where a witness's counsel is excluded under paragraph (b) of this section, the interview may, at the witness's request, either proceed without counsel or be delayed for a reasonable period of time to permit the retention of new counsel. The interview may also be rescheduled to a subsequent date established by the NRC.

Dated at Rockville, Maryland this 28th day of December, 1989.

For the Nuclear Regulatory Commission.

John C. Hoyle

Secretary of the Commission.

[FR Doc. 90-141 Filed 1-3-90; 8:45 am]

BILLING CODE 7590-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-ASW-29; Amendment 39-6458]

Airworthiness Directives; Sikorsky Model S-61 Series Helicopter

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires a one-time inspection and measurement of each bifilar attachment bolt installation for clearance, and a one-time inspection for cracks around each bifilar attachment hole in the main rotor upper hub plate on the Sikorsky Model S-61 series helicopters. The AD is needed to detect a cracked main rotor upper hub plate which could result in the loss of the helicopter.

DATES: *Effective Date:* February 5, 1990.

Compliance: Within the next 150 hours' time in service, unless previously accomplished.

ADDRESSES: The applicable service bulletin may be obtained from Sikorsky Aircraft Division of United Technologies Corporation, Commercial Customer Service Department, 6800 Main Street, Stratford, CT 06601-1381, or may be examined in the Regional Rules Docket, Office of the Assistant Chief Counsel, Federal Aviation Administration, 4400 Blue Mound Road, room 158, Building 3B, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Donald F. Thompson, Airframe Branch, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7113.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (FAR) to include an AD requiring a one-time inspection and measurement of each bifilar attachment bolt installation for clearance, and a one-time inspection for cracks around each bifilar attachment hole in the main rotor upper hub plate on Sikorsky Model S-61 series helicopters was published in the **Federal Register** on August 14, 1989 (54 FR 33237).

The proposal was prompted by two reports of cracks occurring in Sikorsky S-61 main rotor upper hub plates starting from a bifilar attachment bolt hole. The cause of the cracking is attributed to improper clearance between the bifilar lug and main rotor hub.The improper clearance, which is beyond the recommended drawing clearance, allows the bifilar attachment bolt to preload the upper hub plate walls, thereby causing premature cracking in the hub attachment hole.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Two comments were received from a manufacturer. One comment pertains to clarification of the preamble of the NPRM. The preamble indicated that a one-time inspection for cracks starting from any of the five bifilar attachment bolt holes on Sikorsky Model S-61 series helicopters was required. In reality, as the commenter pointed out, there are 10 holes in the hub at the bifilar attachment, 2 on each of the 5 hub arms. The FAA agrees, and the preamble of this final rule AD has been revised to clarify it.

The second comment asked that the FAA mandate a repetitive, 15-hour inspection interval for cracks emanating from the bifilar holes in the upper hub plate, as stated in Sikorsky's Message CBT-P-88-033, dated April 18, 1988. The FAA disagrees with this comment because the primary cause of the plate cracking was a preloading of the hub arm due to improper clearance as a result of maintenance procedures or practices. Since the AD corrects the clearance or preload problem, a 15-hour repetitive inspection recommended by the commenter is unnecessary and beyond the scope of the NPRM. The hub upper plate bifilar attachment hole inspection is already included in the normal Model S-61 Equalized Inspection and Maintenance Program (SA4097-13) of the rotor head. That program is considered adequate.

Accordingly, the AD is adopted with a minor editorial change to the NOTE which identifies the revelant Sikorsky Alert Service Bulletin.

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 only involves 32 aircraft, and will cost approximately $300 per aircraft for a total cost of $9,600. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) 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.

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 39.13) as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Sikorsky Aircraft: Applies to Sikorsky Model S-61 series helicopters certificated in any category, equipped with part number (P/N) S6110-23300 main rotor head. (Docket 89-ASW-29)

Compliance is required within the next 150 hours' time in service after the effective date of this AD, unless already accomplished.

To prevent possible failure of the main rotor hub upper plate, which could result in the loss of the helicopter, accomplish the following:

(a) Conduct a one-time inspection of the main rotor head, P/N S6110-23300, installed with a bifilar assembly, P/N S6112-23039, as follows:

(1) Remove main rotor fairing to provide access to the upper hub arms.

(2) Loosen the bifilar attachment bolt (NAS630-84) and nut (EB108) a minimum of two turns, one bolt at a time.

(3) Using a 0.010-inch feeler gage or equivalent, insert tip of feeler gage between washer stackup and bifilar lug. Accomplish this check on both sides of lug.

(i) If tip of feeler gage does not contact shank of attachment bolt, washer stackup and lug clearance are acceptable. Torque attachment nut to 1,690 inch-pounds.

(ii) If tip of feeler gage contacts shank of attachment bolt, reshim bifilar support assembly to provide a 0.000 to 0.004 inch clearance. Torque attachment nut to 1,690 inch-pounds maximum.

Note: The Sikorsky Model S-61 Maintenance Manual contains shimming instructions.

(4) Repeat the requirements of paragraphs (a)(2) and (3) individually on the four remaining hub arms for each bifilar support assembly attachment hardware.

(5) Reinstall main rotor fairing.

(b) Conduct a one-time visual inspection for cracks in area of the 10 main rotor hub upper plate arm bifilar attachment bolt holes. Conduct a visual inspection for cracks on the outside surfaces of each of the 5 hub arms, adjacent to the 10 bifilar attachment holes. The rotor head does not require disassembly for these inspections.

(1) If a crack indication is found by the visual inspection, clean immediate area and reinspect using a dye penetrant or equivalent inspection method.

(2) If a crack is verified, remove main rotor hub assembly prior to further flight, and replace with an airworthy component.

(c) Upon request, an alternate means of compliance which provides an equivalent level of safety to the requirements of this AD may be used when approved by the Manager, Boston Aircraft Certification Office, Engine, and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7118.

(d) Upon submission of substantiating data by an owner or operator through an FAA Aviation Safety Inspector, the Manager of the Boston Aircraft Certification Office may adjust the compliance time specified in this AD.

Note: Sikorsky Aircraft Co. Alert Service Bulletin No. 61B10-46, dated February 7, 1989, pertains to this subject.

This amendment becomes effective February 5, 1990.

Issued in Fort Worth, Texas, on December 22, 1989.

John J. Shapley,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 90-126 Filed 1-3-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-ASW-50; Amdt. 39-6450]

Airworthiness Directives; Bell Helicopter Textron, Inc. (BHTI), Model 204B Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires the removal and replacement of certain tail rotor gearbox duplex bearing sets used on Bell Model 204B helicopters. The AD is needed to prevent failure of the duplex bearing which could result in loss of tail rotor control.

EFFECTIVE DATE: February 1, 1990.

COMPLIANCE: As indicated in the body of the AD.

ADDRESSES: The applicable alert service bulletin may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, Attention: Customer Support, or may be examined at the Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, room 158, Building 3B, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Tyrone D. Millard, FAA, Rotorcraft Certification Office, ASW-170, Fort Worth, Texas 76193-0170, telephone (817) 624-5177.

SUPPLEMENTARY INFORMATION: The FAA has determined that insufficient heat treatment during the manufacturing of certain tail rotor gearbox duplex bearing sets, part number (P/N) 204-040-424-001, could result in premature wear and subsequent failure of the duplex bearing. Failure of the duplex bearing could result in loss of tail rotor control and subsequent loss of the helicopter. Since this condition is likely to exist or develop on other helicopters of the same type design, an AD is being issued which requires the removal and replacement of these tail rotor gearbox duplex bearing sets on Bell Model 204B helicopters.

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

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 and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined 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 regulatory docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Regional Rules Docket.

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 39.13) as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Bell Helicopter Textron, Inc.: Applies to Bell Helicopter Textron, Inc., Model 204B helicopters, certificated in any category, with tail rotor gearbox duplex bearing sets, P/N 204-040-424-001, with serial numbers (S/N's) 1 thru 182, MB183 thru MB382, MB442, MB486, MB513, MB518, MB519, MB524, MB530, MB531, MB544, MB545, MB548, MB549, MB551, MB553, MB554, MB561, MB659, MB743, MB744, MB760 thru MB769 and MB927 thru MB936, installed in tail rotor gearbox output quill, P/N 204-040-012-009. (Docket No. 89-ASW-50)

Compliance is required as indicated, unless already accomplished.

To prevent failure of the tail rotor duplex bearing which could result in loss of tail rotor control and subsequent loss of the helicopter, accomplish the following:

(a) Within the next 100 hours' time in service after the effective date of this AD, remove the tail rotor gearbox duplex bearing set, P/N 204-040-424-001, from service and replace with a serviceable part before further flight.

(b) In accordance with FAR §§ 21.197 and 21.199, the helicopter may be flown to a base where the requirements of this AD may be accomplished.

(c) An alternate method of compliance or adjustment of the compliance time which provides an equivalent level of safety may be used when approved by the Manager, Rotorcraft Certification Office, ASW-170, Rotorcraft Directorate, FAA, Southwest Region, Fort Worth, Texas.

This amendment becomes effective February 1, 1990.

Issued in Fort Worth, Texas, on December 21, 1989.

John J. Shapley,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 90-113 Filed 1-3-90; 8:45 am]

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14 CFR Part 39

[Docket No. 89-NM-76-AD; Amdt. 39-6463]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 airplanes, which requires inspection of certain 8th stage bleed pneumatic system check valves, and repair or replacement of these valves, as necessary. This amendment is prompted by reports of premature wear and/or failure of these check valves when used on the Boeing Model 767 series airplanes. This condition, if not corrected, could result in engine shutdown, engine damage, and/or damage to the pneumatic system.

DATE: Effective February 12, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mahinder K. Wahi, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1575. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 767 airplanes, which requires initial and repetitive inspections of certain 8th stage bleed pneumatic system check valves, and repair or replacement of those valves, as necessary, was published in the **Federal Register** on June 21, 1989 (54 FR 26052).

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

Two commenters noted that two foundries (Garrett Foundry and Miller Foundry) produced the castings for the Allied Signal check valve poppets. All 18 check valves removed from the Model 767 fleet to date, due to a fractured poppet, have been identified as having a Garrett logo on the poppet. All 18 valves were manufactured prior to the October 1987 delivery date of the first Miller Foundry poppets delivered to Allied Signal. None of the Miller Foundry-supplied valve poppets have failed in service. The commenters therefore contend that all check valves should be initially inspected; however, purging the Garrett Foundry check valves from the fleet during the initial inspection as instructed by Boeing Service Bulletin 767-36A0030, dated April 27, 1989, should be terminating action for the AD and no follow-on inspections should be required. The commenters stated that requiring continued reinspection even after purging of the Garrett Foundry valves is an unnecessary imposition on the airlines. The FAA concurs, based on new information received since issuance of the NPRM which identified the source of the problem poppets (Garrett Foundry). The final rule has been revised accordingly.

One commenter also requested that the incorporation of a newly developed and completely redesigned check valve P/N 320544-1, available in November 1989, be considered an alternate terminating action. The FAA concurs and the final rule has been revised accordingly.

The Air Transport Association (ATA) of America, commenting on behalf of its members, stated no objection to adoption of the proposed rule.

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

There are approximately 245 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 106 airplanes of U.S. registry will be affected by this AD. It is estimated that 49 Allied Signal 8th stage bleed pneumatic system check valves of the affected part number are in service. It is estimated that it will take approximately 7 manhours to perform the required inspection. The average labor cost is estimated to be $40 per manhour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $13,720.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (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 prepared for the

action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

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 as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Boeing: Applies to all Model 767 series airplanes, certificated in any category, equipped with Allied Signal 8th stage bleed system check valve, part number 3202164-2 or -4. Compliance is required as indicated, unless previously accomplished.

To prevent engine shutdown or damage, and/or pneumatic system damage, accomplish the following:

A. Within the next 250 hours time-in-service after the effective date of this AD, or prior to accumulating 600 hours total time-in-service on the valve, whichever occurs later, perform the inspections of the check valve in accordance with Boeing Alert Service Bulletin 767-36A0030, dated April 27, 1989. Prior to further flight, repair or replace check valves which do not pass all required inspections.

B. Used check valves must be inspected and repaired, if necessary, in accordance with Boeing Alert Service Bulletin 767-36A0030 dated April 27, 1989, prior to installation in any Model 767 series airplane.

C. Installation of a P/N 320544-1 valve in lieu of a P/N 3202164-2 or -4 valve constitutes terminating action for the inspection required by this AD.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may by used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the inspections required by this AD.

All persons affected by this directive who have not already received copies of the service bulletins cited herein may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 12, 1990.

Issued in Seattle, Washington, on December 26, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-114 Filed 1-3-90; 8:45 am]

BILLING CODE 4510-13-M

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14 CFR Part 39

[Docket No. 89-CE-28-AD; Amdt. 39-6446]

Airworthiness Directives; Bellanca Models 14-19-3, 14-19-3A, 17-30, 17-31, 17-31TC, 17-30A, 17-31A and 17-31ATC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain Bellanca 14 and 17 series airplanes, which requires repetitive inspections and, if necessary, replacement of the drag strut landing gear assembly fitting. The FAA has received reports that these fitting assemblies are cracking and deforming. The actions adopted herein will preclude collapse of the landing gear.

EFFECTIVE DATE: February 5, 1990.

COMPLIANCE: As prescribed in the body of the AD.

ADDRESSES: Bellanca Service Letter B-106, dated September 26, 1989, applicable to this AD may be obtained from Bellanca Inc., P.O. Box 964, Alexandria, Minnesota 56308; telephone (612) 762-1501, or may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Steven J. Rosenfeld, Chicago Aircraft Certification Office, FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone (312) 694-7030.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD requiring repetitive inspection and replacement of the drag strut landing gear fitting assemblies which have cracked, are deformed, or have failed on certain Bellanca Models 14-19-3, 14-19-3A, 17-30, 17-31; 17-31TC, 17-30A, 17-31A, and 17-31ATC airplanes was published in the **Federal Register** on October 20, 1989 (54 FR 43075). The proposal was prompted by reports that the two drag strut landing gear fitting assemblies, Part Number (P/N) 194153-10, on Bellanca Models 14-19-3, 14-19-3A, 17-30, 17-31, 17-31TC, 17-30A, 17-31A, and 17-31ATC airplanes, are cracking on the face near the landing gear strut attachment weld. The FAA has determined that these cracks can be initiated by hard landings at high speeds, heavy braking, or improper tightening of the fitting-to-spar attach bolts. These conditions cause local deformations of the fitting assembly around the weld, causing cracks to occur. These cracks grow with normal usage and this condition reduces the main landing gear down lock overcenter. Eventually, the main landing gear can collapse because the overcenter down lock is lost, or the fitting assembly itself fails.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objections were received on the proposal or the FAA determination of the related cost. Accordingly, the proposal is adopted without change.

The FAA has determined that this regulation involves approximately 1200 airplanes at an approximate one-time inspection and replacement cost of $230 for each airplane, or a total one-time fleet cost of $276,000. The cost of compliance with this proposed AD is so small that the expense of compliance will not have a significant financial impact on any small entities operating these airplanes.

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. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact,

positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

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 as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Bellanca, Incorporated: Applies to Models 14–19–3, 14–19–3A, 17–30, 17–31 and 17–31TC (all serial numbers (S/N)), 17–30A (S/N 30263 through 89–301007), 17–31A (S/N 32–15 through 78–32–172), and 17–31ATG (S/N 31004 through 79–31155) airplanes certificated in any category.

Compliance: Required as indicated in the body of the AD, unless already accomplished.

To prevent the collapse of the main landing gear which could result in substantial airframe damage, accomplish the following:

(a) Upon the accumulation of 500 hours total time-in-service (TIS), or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, and each 100 hours TIS thereafter, inspect the left and right drag strut landing gear fitting assemblies, Part Number (P/N) 194153–10, for cracks, deformations, or failures as follows:

Note 1: This information is also contained in Bellanca Service Letter B–106, dated September 26, 1989. Penetrant inspection techniques are described in FAA Advisory Circular (AC) 43–3, "Nondestructive Testing in Aircraft." These inspections can be conducted with the fitting assemblies installed on the airplane. Do not apply loads to the landing gear components, particularly the drag strut, as it is possible to move the drag strut to overcenter and cause the landing gear to collapse.

(1) Place jacks or other workstands under the airplane at locations specified in the Bellanca Service Manual to prevent accidental landing gear collapse during this inspection.

(2) Figure 1 to this AD describes the 194153–10 fitting assembly. Clean the aft face of the –1 fitting with Stoddart solvent and a brush.

(3) Inspect for cracks adjacent to the welds which join the -1 fitting to the -2 fitting and -3 brace near the lower aft attachment bolt holes using liquid penetrant inspection techniques and a magnifying glass. If any crack is found, prior to further flight replace the assembly with a new fitting assembly, P/N 194153–30 or P/N 194153–40, as applicable.

(4) Lay a straight-edge along side the lower aft attachment bolts, in accordance with Figure 2 and, using a feeler gage or wire gage of .030 inch thickness, look for any evidence of local deformation (dimpling) in the -1 fitting. If any deformation greater than .030 inches is found, prior to further flight replace the assembly with a new fitting assembly, P/N 194153–30 or P/N 194153–40, as applicable.

Note 2: The -30, -40 assemblies can be distinguished from a -10 assembly by measuring the -1, -2, fitting and -3 brace part thickness: -10 part thickness is 0.062 inches, -30, -40 parts thickness is 0.100 inches. A 0.040 Shim (P/N 194167–2 Shim Spar Bracket) is available to provide proper fit between the 194153 fitting assembly and the forward spar.

(5) Check and adjust, as required, the drag strut for correct overcenter using the appropriate procedures in the Bellanca Service Manual.

(6) If the inspections specified above do not indicate any evidence of cracks or local deformation in the -1 fitting, apply zinc chromate or Epibond primer, as necessary, to protect the part and repeat these inspections as specified above.

(7) The repetitive inspections specified above are not required on the P/N 194153–30 or P/N 194153–40 assemblies.

(b) Airplanes with cracked or deformed fittings may be flown with a special flight permit in accordance with FAR 21.197 to a location where this AD may be accomplished providing that no crack is found during the inspection of paragraph (a)(3) that exceeds ⅜ in. length, or no deformation is found during the inspection of paragraph (a)(4) that is great enough to cause the overcenter of the drag strut to be out of tolerance. In these cases, no special flight permit is allowed.

(c) An alternate method of compliance or adjustment of the initial and repetitive compliance times, which provides an equivalent level of safety, may be approved by the Manager, Chicago Aircraft Certification Office, 2300 E. Devon Avenue, Des Plaines, Illinois 60018.

Note 3: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and send it to the Manager, Chicago Aircraft Certification Office.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Bellanca, Inc.; P.O. Box 964, Alexandria, Minnesota 56308; telephone (612) 762–1501; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on December 19, 1989.

J. Robert Ball,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

BILLING CODE 4910–13–M

FIGURE 1

FRONT SPAR DRAG STRUT FITTING ASSEMBLY
BELLANCA P/N 194153-10

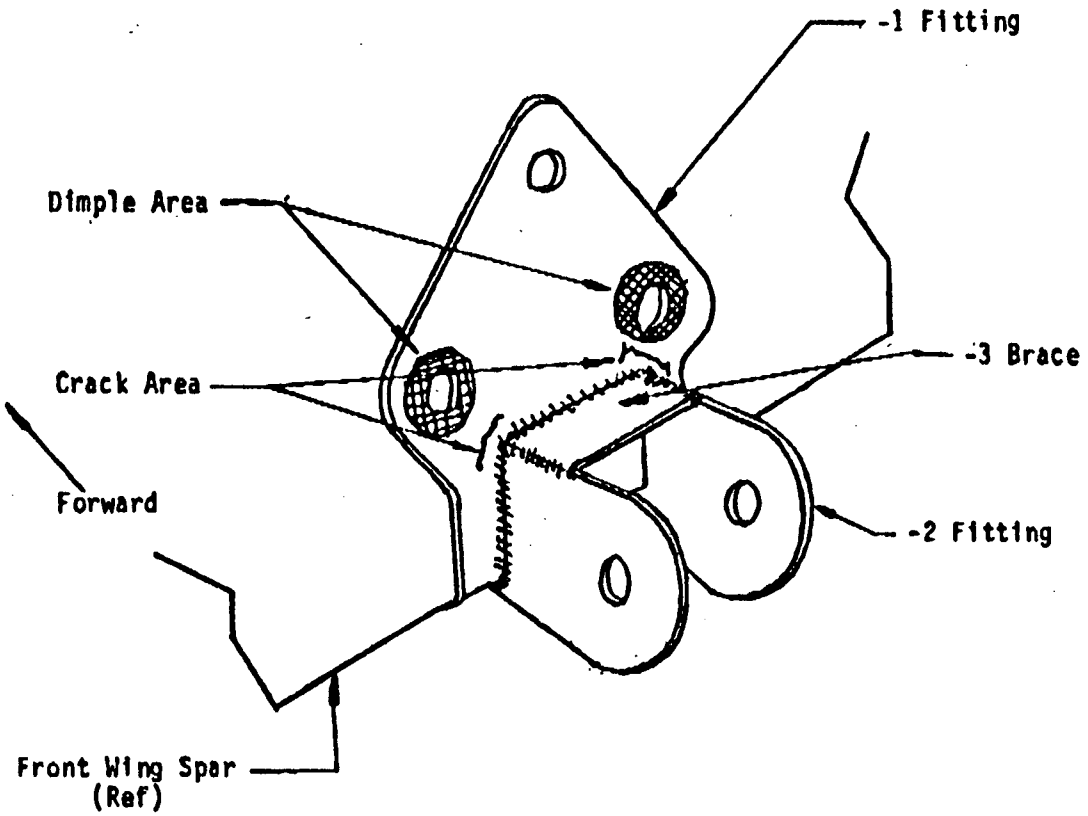
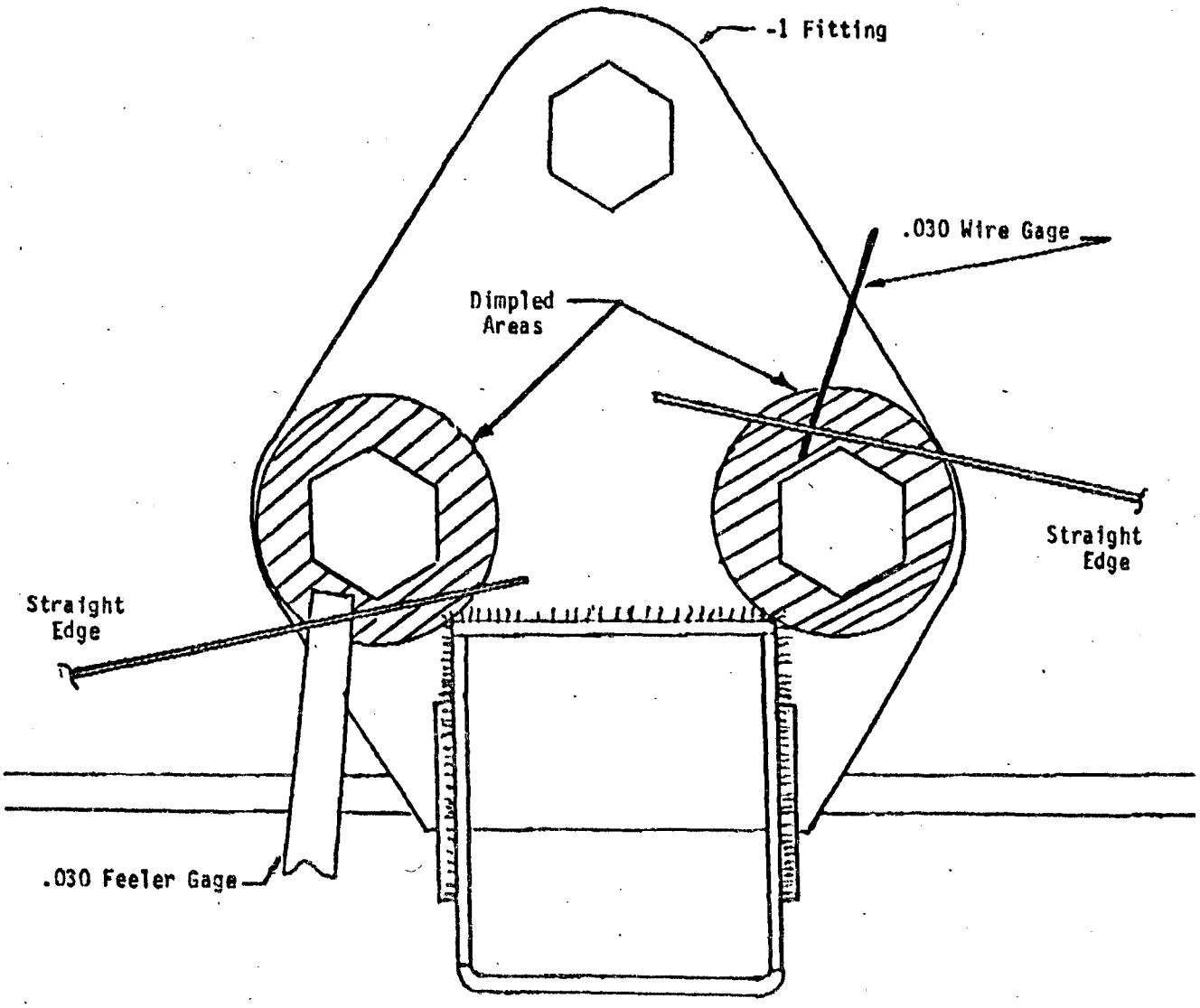


FIGURE 2

EXAMPLES OF MEASURING DEPTH OF DIMPLED AREAS



[FR Doc. 90-117 Filed 1-3-90; 8:45 am]
BILLING CODE 4910-13-C

14 CFR Part 39

[Docket No. 89-NM-147-AD; Amdt. 39-6440]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which requires inspection, repair as necessary, and modification of certain fuselage skin lap joints in the fuselage lower lobe. This amendment is prompted by reports of cracking detected in the stringer 34 lap joint near the interface with the wing-to-body fairing. This condition, if not corrected, could result in an in-flight depressurization of the airplane.

DATE: Effective February 5, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Richard Yarges, Airframe Branch, ANM-120S; telephone (206) 431-1925. Mailing address: FAA Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing 747 series airplanes, which requires inspection, repair as necessary, and modification of certain fuselage lap joints in the fuselage lower lobe, was published in the **Federal Register** on August 22, 1989 (89 FR 34781).

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

Several commenters requested an extension to the compliance time of 11,000 landings for the modification of newer airplanes. In lieu of modification, the commenters suggested that repetitive inspections of the area could be accomplished, as described in Boeing Service Bulletin 747-53A2312. The commenter pointed out that the cracking, which the NPRM addresses, was detected on an airplane having 20,000 equivalent pressurization cycles, the lengths of the cracks detected were 0.30 inches or less, the crack growth was slow, and cracking was occurring in a localized area of the fuselage. This would indicate that cracking which may occur can be kept within safe limits by repeated inspections. The FAA concurs in part with the commenters. The FAA established the compliance time for modification based on the estimated earliest practical time for accomplishment to eliminate the need for special mandatory repetitive inspections. After further consideration, the FAA agrees that, as an interim measure, safety can be assured by repeated inspections in this case. Therefore, the final rule has been revised to extend the compliance time for the modification to 20,000 landings and to require repetitive inspections until the modification is accomplished.

One commenter stated that the service bulletin necessary to accomplish the requirements of the AD does not yet exist. The FAA does not concur. The service bulletin reflected in the AD was issued by the manufacturer on June 12, 1989, and the FAA is satisfied it contains sufficient information to accomplish the inspections and modifications required by the AD. Therefore, no change has been made to the proposed rule as a result of this comment.

One commenter stated that the proposed 50 landings compliance time for the initial inspection of high cycle airplanes is too short. The FAA does not concur. Some airplanes having over 18,000 landings are likely to have experienced some detectable cracking and these need to be inspected within a short time period. At the time the manufacturer's service bulletin was released in June 1989, 250 landings was judged to be the necessary compliance time for initial inspection. The time of the initial inspection specified in the airworthiness directive is in concert with the time that the manufacturer specified in the service bulletin, considering that a typical Model 747 will have accumulated about 200 landings between issuance date of the service bulletin and the effective date of this AD. The FAA elected to publish the rule for public comment before issuing it, rather than issue it concurrently with the release of the manufacturer's service bulletin, without the benefit of public comment. This necessitated the shorter compliance time for the initial inspection.

One commenter stated that the proposed 800 landings compliance time for the initial inspection of airplanes having accumulated between 11,000 and 15,000 landings is not justified, considering that the airplane which experienced the cracking in service had only short cracks (0.05 to 0.30 inches) at 24,000 landings. This commenter requested that the threshold for inspection be extended from 800 landings to 1,000 or 1,500 landings. The FAA concurs in part with this commenter. The FAA notes that although cracking was experienced at 24,000 cycles, the airplane on which it was detected was a Model 747SR, which operates at reduced differential cabin pressure. The 24,000 cycles for a Model 747SR is equivalent to 20,000 typical Model 747 pressure cycles. The FAA concurs that a small adjustment to the time for the initial inspection for airplanes in the 11,000 to 15,000 cycle age range would not adversely affect safety. Therefore, the final rule has been revised to extend the compliance time for the initial inspection to within 1,000 landings after the effective date for airplanes having accumulated between 11,200 and 15,200 landings.

One commenter implied that the proposed rule is not necessary, since the inspection requirements of previously issued AD 86-09-07-RI already cover this area on this commenter's airplanes. The FAA does not concur. Airworthiness Directive 86-09-07-RI, Amendment 39-5580, affects a completely different group of airplanes which have a different fastener configuration.

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

There are approximately 550 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 63 airplanes of U.S. registry will be affected by this AD, that it will take approximately 220 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The cost for parts necessary to modify the airplane is negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $554,400.

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 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

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 "major rule" under Executive Order 12291; (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 is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

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 as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.15 [Amended]

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

Boeing: Applies to Model 747 series airplanes, line numbers 201 through 765, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent rapid in-flight depressurization of the airplane cabin, accomplish the following:

A. Conduct a high frequency eddy current (HFEC) inspection of the lower lobe lap joints in the vicinity of the wing to body fairing to detect cracks, in accordance with Boeing Alert Service Bulletin 747-53A2312 dated June 12, 1989, at the following threshold, as applicable:

1. For airplanes that have accumulated less than 11,200 landings as of the effective date of this AD, prior to the accumulation of 11,000 landings or within the next 1,000 landings after the effective date of this AD, whichever occurs later.

2. For airplanes which have accumulated between 11,200 and 15,200 landings as of the effective date of this AD, within the next 1,000 landings after the effective date of this AD, or prior to the accumulation of 15,500 landings, which ever occurs first.

3. For airplanes which have accumulated between 15,201 and 18,200 landings as of the effective date of the AD, within the next 300 landings after the effective date of this AD, or prior to the accumulation of 18,250 landings, whichever occurs first.

4. For airplanes which have accumulated more than 18,200 landings as of the effective date of this AD, within the next 50 landings after the effective date of this AD. Repeat this inspection at intervals not to exceed 4,000 landings until the airplane is modified as described in paragraph D., below.

B. Repair any cracks detected, prior to further flight, in accordance with Boeing Alert Service Bulletin 747-53A2312, dated June 12, 1989.

C. Within 10 days, after the completion of the initial inspection required by paragraph A., above, submit a written report of the location and quantity of all affected countersunk fasteners found, along with aircraft line number and the number of flight cycles, to the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Prior to the accumulation of 20,000 landings or within the next 3,000 landings after the effective date of the AD, whichever occurs later, modify the airplane by replacing countersunk fasteners in the upper row of the lower lobe lap joints in the vicinity of the wing-to-body fairing with protruding head fasteners, in accordance with the procedure described in Boeing Alert Service Bulletin 747-53A2312, dated June 12, 1989. This modification constitutes terminating action for the inspections required by paragraph A., above.

E. Verification that an affected airplane does not have countersunk fasteners in the upper row of the lower lobe lap joints in the vicinity of the wing to body fairing as described in Boeing Alert Service Bulletin 747-53A2312, dated June 12, 1989, constitutes terminating action from the requirements of this AD.

F. For the purpose of complying with the AD, the number of landings may be determined to equal the number of pressurization cycles where the cabin pressure differential was greater than 2.0 psi.

G. For Model 747SR airplanes only, based on continued mixed operation of lower cabin differentials, the inspection and modification compliance times specified in this AD may be multiplied by a 1.2 adjustment factor.

H. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

I. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 5, 1990.

Issued in Seattle, Washington, on December 19, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-115 Filed 1-3-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-167-AD; Amdt. 39-6443]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which requires rework, or inspection and rework, of the acoustical seal for entry/service doors to ensure proper arming of the emergency evacuation slide. This amendment is prompted by a report of a door frame acoustical seal which had migrated downward and interfered with the girt bar carrier rotation, which resulted in incomplete arming of the slide mechanism. This condition, if not corrected, could result in an unarmed emergency evacuation slide, which must be armed for slide deployment during an emergency evacuation.

DATE: Effective February 5, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft

Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Pliny Brestel, Airframe Branch, ANM-120S; telephone (206) 431-1931. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 767 series airplanes, which requires rework, or inspection and rework, of the acoustical seal for entry/service doors to ensure proper arming of the emergency evacuation slide, was published in the **Federal Register** on September 26, 1989 (54 FR 39402).

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

The Air Transport Association (ATA) of America commented that its affected members expressed no objection to the proposed rule.

Since issuance of the Notice, the FAA has reviewed and approved Boeing Service Bulletin 767-25-0123, Revision 1, dated September 14, 1989, and has determined that compliance may also be made in accordance with this revision. The final rule has been changed to include this later revision as an optional service information source.

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, with the change previously noted. The FAA has determined that this change will neither increase the economic burden on any operator, nor increase the scope of the rule.

There are approximately 261 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 111 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,880.

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 "major rule" under Executive Order 12291; (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 is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

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 as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Boeing: Applies to Model 767 series airplanes, as listed in Boeing Service Bulletin 767-25-0123, dated May 25, 1989, certificated in any category. Compliance is required within the next 90 days after the effective date of this AD, unless previously accomplished.

To ensure proper arming of the emergency evacuation slide mechanism for entry/service doors and to prevent a false armed indication, accomplish the following:

A. For Group 1 airplanes, perform the inspection and rework of the acoustical seal for entry/service doors in accordance with paragraph III., Part B., of Boeing Service Bulletin 767-25-0123, dated May 25, 1989, or Revision 1, dated September 14, 1989.

B. For Group 2 airplanes, rework the acoustical seal for entry/service doors in accordance with paragraph III., Part C., of Boeing Service Bulletin 767-25-0123, dated May 25, 1989, or Revision 1, dated September 14, 1989.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This Amendment becomes effective February 5, 1990.

Issued in Seattle, Washington, on December 19, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-116 Filed 1-3-90; 8:45am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-CE-19-AD; Amdt. 39-6434]

Airworthiness Directives; British Aerospace (BAe) PLC, Jetstream Models HP 137 Mk 1, 200, 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain British Aerospace (BAe) PLC, Jetstream Models HP 137 Mk 1, 200, 3101 and 3201 airplanes, which modifies the flap and landing gear emergency selector valve by replacing the nylon detent ball with a stainless steel ball. During a production test flight, a nylon detent ball valve would not operate satisfactorily which caused a failure of the emergency hydraulic system. The modification specified in this AD will prevent such a failure.

EFFECTIVE DATE: February 5, 1990.

Compliance: Required within the next 600 hours time-in-service after the effective date of this AD.

ADDRESSES: BAe Alert Service Bulletin (ASB) Jetstream 29-A-JA-881143, dated February 24, 1989, applicable to this AD

may be obtained from British Aerospace (BAe) PLC, Manager, Product Support, Civil Aircraft Division, Prestwick Airport, Ayrshire, KA9 2RW, Scotland; telephone (44-292) 79888; or British Aerospace Inc., Technical Librarian, P.O. Box 17414, Dulles International Airport, Washington DC 20041; Telephone (703) 435-9100. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Gaulzetti, Aircraft Certification Office, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium; telephone (322) 513.38.30; or Mr. John P. Dow Sr., Project Support Section-Foreign, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD applicable to certain BAe Jetstream Model HP137 Mk 1, 200, 3101 and 3201 airplanes requiring modification of the flap and landing gear emergency selector valve by replacing the nylon detent ball with a stainless steel ball was published in the **Federal Register** on September 15, 1989 (54 FR 38251). The proposal resulted from a report that during a production test flight, a nylon ball valve would not operate satisfactorily which caused a failure of the emergency hydraulic system. Consequently, British Aerospace (BAe) PLC, issued BAe Alert Service Bulletin (ASB) Jetstream 29-A-JA-881143, dated February 24, 1989, which specified a modification of the flap and landing gear emergency selector valve by replacing the nylon detent ball with a stainless steel ball.

The Civil Aviation Authority (CAA), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in the United Kingdom (UK), classified this ASB and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes.

On airplanes operated under UK registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the CAA-UK combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA examined the available information related to the issuance of BAe Alert Service Bulletin (ASB) Jetstream 29-A-JA-881143, dated February 24, 1989, and the mandatory classification of this ASB by the CAA-UK, and concluded that the condition addressed by BAe Alert Service Bulletin (ASB) Jetstream 29-A-JA-881143, dated February 24, 1989, was an unsafe condition that may exist on other airplanes of this type certificated for operation in the United States. Accordingly, the FAA proposed an amendment to part 39 of the Federal Aviation Regulations to include an AD on this subject.

Interested persons have been afforded an opportunity to comment on the proposal. No comments or objectives were received on the proposal or the FAA determination of the related cost to the public. Accordingly, the proposal is adopted without change except for minor editorial corrections.

The FAA has determined that this regulation involves approximately 150 airplanes. The cost for modifying each airplane is estimated to be $180. The total cost to modify the fleet is estimated to be $27,000. The cost of compliance with the proposed AD is so small that the expense of compliance will not have a significant impact on any small entities operating these airplanes.

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.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

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 as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

British Aerospace (BAe) PLC: Applies to Jetstream Model HP 137 Mk 1, 200, 3101 (all serial numbers), and 3201 (serial numbers 790, 795, 800, 805, 810, 814, 818, 819, 821, 823, 824, 828, 831, and 832) airplanes certificated in any category.

Compliance: Required within the next 600 hours time-in-service after the effective date of this AD, unless already accomplished.

To insure proper operation of the emergency gear and flap extension system, accomplish the following:

(a) Modify the emergency gear and flap extension hydraulic system selector valve as described in BAe Alert Service Bulletin Jetstream 29-A-JA881143, dated February 24, 1989.

(b) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(c) An alternate method of compliance or adjustment of the compliance time, which provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000 Brussels, Belgium.

Note: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and send it to the Manager, Brussels Aircraft Certification Office.

All persons affected by this directive may obtain copies of the document referred to herein upon request to British Aerospace Inc., Technical Librarian, P.O. Box 17414, Dulles International Airport, Washington DC, 20041; Telephone (703) 435-9100; or British Aerospace PLC, Aircraft Group, Scottish Division, Prestwick Airport. Ayrshire KA9 2RW U.K. (44-292) 79888; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on December 15, 1989.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-118 Filed 1-3-90; 8:45 am]

BILLING CODE 9910-13-M

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14 CFR Part 39

[Docket No. 89-CE-27-AD, Amdt. 39-6445]

Airworthiness Directives; Cessna Models 310, 320, 340, 401, 402, 411, 414 and 421 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain Cessna Models 310, 320, 340, 401, 402, 411, 414 and 421 airplanes, which requires inspection and replacement, as necessary, of the main landing gear inner barrel bearings. The FAA has received reports of failures of these bearings. These actions will preclude jamming of the oleo strut, and possible subsequent damage to the landing gear system and airframe.

EFFECTIVE DATE: February 5, 1990.

COMPLIANCE: As prescribed in the body of the AD.

ADDRESSES: Cessna Service Bulletin MEB88-7, dated December 2, 1988, applicable to this AD may be obtained from the Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277, or may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Lawrence S. Abbott, Wichita Aircraft Certification Office, FAA, Central Region, 1801 Airport Road, room 100, Wichita, Kansas 67209; Telephone (316) 946-4409.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD requiring an inspection of the main landing gear inner bearing, and replacement if necessary, of any cracked bearings on certain Cessna Models 310, 320, 340, 401, 402, 411, 414 and 421 airplanes, was published in the **Federal Register** on October 17, 1989 (54 FR 42514). The proposal was prompted by reports of eight failures of the main landing gear strut barrel inner bearing on certain Cessna 300 and 400 Series airplanes. Failure of this bearing can result in the shock strut jamming, possibly in the extended position. This can cause the gear retraction system to fail or the gear to collapse after landing, with damage to the airplane and, possible injury to the occupants. Cessna redesigned the bearing, and incorporated it into production in 1980 model airplanes. Cessna has also issued Service Bulletin MEB88-7, dated December 2, 1988, that defines repetitive inspections of the pre-1980 model year production bearing and instructions to replace any bearings found to be cracked. Since the condition described is likely to exist or develop in other Cessna Models 310, 320, 340, 401, 402, 411, 414 and 421 airplanes of the same design, this AD requires a visual and magnetic particle inspection of these bearings, and replacement if found cracked. Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments or objections were received on the proposal, or the FAA determination of the related cost.

Accordingly, the proposal is adopted without change.

The FAA has determined there are approximately 8,367 airplanes affected by the proposed AD. The cost of the initial and each recurring inspection is estimated to be $880 per airplane or a total fleet cost of $7,362,960. The cost of compliance is so small that the expense of compliance will not have a significant impact on any small entities operating these airplanes.

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 would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Therefore, I certify that this action (1) is not a "major rule" under the provisions of Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

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 as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Cessna: Applies to the following models and serial numbered airplanes certificated in any category:

Model	Serial numbers
310	310L0001 through 310R1690
320	320E0001 through 320F0045
340	340-0001 through 340A0801
401	401-0001 through 401B0221
402	402-0001 through 402C0125
411	411-0001 through 411A0300
414	414-0001 through 414A0340
421	421-0001 through 421C0715

Compliance: Require as indicated after the effective date of this AD, unless already accomplished.

To assure structural integrity of the main gear barrel inner bearing and prevent jamming of the inner and outer barrels of the main landing gears, accomplish the following:

(a) Upon the accumulation of 1,300 hours time-in-service (TIS), or within the next 300 hours TIS after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 1,000 hours TIS, inspect the left and right main gear strut barrel inner bearings, Part Numbers 5041108-1 and 5041108-2, in accordance with the following procedures:

(1) Using the appropriate Aircraft Service Manual or Maintenance Manual, refer to the Landing Gear section and use it as a guide to remove the lower barrel and axle assemblies from the upper barrel assemblies.

(2) Remove all oil and grease from the external lock rings, inner ring bearings, and extended stop spacers.

(3) Visually inspect the external lock rings, inner bearings, and extended stop spacers for cracks.

(4) If any cracks are found in the external lock rings or the extended stop spacers, prior to further flight replace the cracked part with a serviceable part.

(5) If any cracks are found in the inner bearings, prior to further flight replace the cracked part with a Part Number (P/N) 5141109-1 bearing.

(6) If no cracks are found, magnetic particle inspect the inner bearings using the procedures specified in Part B, "MAGNETIC PARTICLE NONDESTRUCTIVE INSPECTION PROCEDURES" of Cessna

Service Bulletin MEB88-7, dated December 2, 1988. If any cracks are found, prior to further flight replace the cracked part with a P/N 5141109-1 bearing.

(b) The 1,000 hour repetitive inspections specified in paragraph (a) of this AD are no longer required when the P/N 5141109-1 bearing is installed in each gear.

(c) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(d) An alternate method of compliance or adjustment of the initial or repetitive compliance times which provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

Note: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita Aircraft Certification Office.

All persons affected by this directive may obtain copies of the document referred to herein upon request to the Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on December 19, 1989.

J. Robert Ball,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-119 Filed 1-3-90; 8:45am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-ASW-59; Amdt. 39-6457]

Airworthiness Directives; Enstrom Helicopter Corporation Model F-28, F-28A, F-28C, F-28C-2, F-28F, 280, 280C, 280F and 280FX Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires repetitive inspections and imposes a 1,200-hour time in service life limit on tail rotor spiral miter gear-sets used on certain Enstrom model helicopters. This AD was prompted by three reports of tail rotor gear-set failures which could result in loss of directional control and subsequent loss of the helicopter.

EFFECTIVE DATE: February 1, 1990.

Compliance: As indicated in the body of the AD.

ADDRESSES: The applicable Enstrom Service Directive Bulletin 0078 may be obtained fron Enstrom Helicopter Corporation, P.O. Box 277, Menominee, Michigan 49858, or may be examined in the Regional Rules Docket, Office of the Assistant Chief Counsel, room 158, Building 3B, Federal Aviation Administration, 4400 Blue Mound Road, Forth Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph H. McGarvey, ACE-120C, Chicago Aircraft Certification Office, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone (312) 694-7136.

SUPPLEMENTARY INFORMATION: There have been three reports of tail rotor gear failures with one of these failures causing substantial damage to an Enstrom model helicopter. Subsequent to these reported failures, a new strain survey was conducted, and the FAA has determined that Enstrom tail rotor gearboxes Part Number (P/N) 28-13500-1, 28-13525-1, -3 and -5, containing spiral miter gear-set "Boston Gear XR-137-2YR" and "Boston Gear XR-137-2YL," should no longer be inspected and approved for return to service without a service life limit. Based on a review of all of the relevant data, that service life has been determined to be 1200 hours' total time in service.

Since this condition is likely to exist or develop in other tail rotor gearboxes of this design, an AD is being issued that requires repetitive inspections, replacement of unairworthy tail rotor gearboxes, and retirement from service of those tail rotor gearboxes which have 1,200 or more hours' time in service since the last overhaul on these Enstrom helicopters.

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

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 Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined 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 Regional Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Regional Rules Docket.

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 39.13) as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a); 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Enstrom Helicopter Corporation: Applies to Enstrom Model F-28, F-28A, F-28C, F-28C-2, F-28F, 280, 280C, 280F and 280FX Series Helicopters, equipped with tail rotor gearboxes, P/N 28-13500-1, 28-13525-1, -3, and -5, containing spiral miter gear-set "Boston Gear XR-137-2YR" and "Boston Gear XR-137-2YL." (Docket No. 89-ASW-59)

Compliance is required as indicated, unless already accomplished.

To prevent the loss of tail rotor thrust and directional control, which could result in loss of the helicopter, accomplish the following:

(a) Within the next five hours' time in service—

(1) Determine from the aircraft log book if tail rotor gearbox, P/N 28-13500-1, 28-13525-1, -3, or -5, is installed in the helicopter;

(2) Remove all -1, -3 or -5 tail rotor gearboxes containing spiral miter gear-set "Boston Gear XR-137-2YR" and "Boston Gear XR-137-2YL", with 1,200 or more hours' time in service since the last overhaul, and replace with an airworthy gearbox; and

(3) For tail rotor gearboxes with less than 1,200-hours' time in service since the last overhaul, remove the magnetic chip detector (plug), drain the oil from the tail rotor gearbox, filter the oil using a white filter paper, and inspect the magnetic plug and the filter paper with a ten-power magnifying glass—

(i) If no metal contaminants are found, return the tail rotor gearbox to service;

(ii) If the inspection required by paragraph (a)(3) above reveals the presence of more than 15 thin metal flakes, splinters, or granular-shaped steel particles greater than 0.005-inches thick or longer than 0.015 inches, remove and replace the tail rotor gearbox with an airworthy gearbox; and

(iii) If metal contaminants are found that are fewer in number and smaller than those described in paragraph (ii) above, conduct further servicing and inspection in accordance with paragraph (a)(4).

(4) Flush the gearbox with clean oil and clean the magnetic plug with a cotton swab and/or an air gun.

Note.—Do not clean the magnetic plug with a strong magnet. This weakens the magnet on the chip detector.

(i) Refill the tail rotor gearbox with Mil-L-6082B Shell SAE10W, Mil-L-6082B Texaco SAE 10W, or Mil-L-22851B Phillips SAE 20W-50W lubricant. If any of these lubricants are not available, consult Enstrom Helicopter Corporation, Customer Service Department, for a possible alternative.

(ii) Conduct a serviceability check by flying the helicoper for one hour at various power settings up to full power, and then repeat the inspection required by paragraph (a)(3) above.

(A) If no metal contaminants are found, return the tail rotor gearbox to service.

(B) If the repeat inspection reveals the presence of any metal contaminants, regardless of size or number, remove and replace the tail rotor gearbox with an airworthy gearbox.

(b) At intervals not to exceed 100 hours' time in service on all gearboxes returned to service after passing the inspections of paragraph (a), remove the magnetic chip detector (plug), drain the oil from the tail rotor gearbox, filter the oil using a white filter paper, and inspect the magnetic plug and the filter paper with a ten-power magnifying glass.

(1) If the inspection reveals the presence of any metal contaminants, regardless of size or number, remove and replace the tail rotor gearbox with an airworthy gearbox.

(2) If no metal contaminants are found return the tail rotor gearbox to service.

(c) Within 1,200 hours' time in service since the last overhaul, remove and replace the tail rotor gearbox with an airworthy gearbox.

(d) An alternate method of compliance with this AD, which provides an equivalent level of safety, may be used when approved by the Manager, Chicago Aircraft Certification Office, FAA, 2300 East Devon Avenue, Room 232, Des Plaines, Illinois 60018.

(e) In accordance with Sections 21.197 and 21.199, flight is permitted to a base where the maintenance required by this AD may be accomplished.

This amendment becomes effective February 1, 1990.

Issued in Fort Worth, Texas, on December 22, 1989.

John J. Shapley,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 90-120 Filed 1-3-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-162-AD; Amdt. 39-6448]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, which requires repetitive inspections for disbonding and corrosion; eddy current and ultrasonic inspections of the fuselage longitudinal lap joints for cracks; and repair, if necessary. This amendment is prompted by full-scale fatigue testing which has identified certain structural components which are prone to fatigue cracks. This condition, if not corrected, could result in reduction of the structural integrity of these airplanes.

DATE: Effective February 5, 1990.

ADDRESSES: The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Airbus Industrie Model A300 series airplanes, which requires repetitive inspections for disbonding and corrosion; eddy current and ultrasonic inspections of the fuselage longitudinal lap joints for cracks; and repair, if necessary, was published in the **Federal Register** on October 25, 1989 (54 FR 43430).

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

The commenter supported the rule.

Paragraph B. of the final rule has been clarified to indicate that if no disbonding or corrosion is found in areas other than Section 13 and 14, no further action is required.

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 with the change noted above.

It is estimated that 66 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2,379 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $6,280,560.

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

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (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 is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

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 as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Airbus Industrie: Applies to all Model A300 series airplanes, Serial Number 001 through 156, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To ensure structural integrity of the airplane, accomplish the following:

A. Inspect longitudinal lap joints for cracks as follows:

1. *Inspection of "special" areas,* as defined in paragraph 1.C(1) of Airbus Industrie Service Bulletin A300-53-211, Revision 1, dated April 10, 1989.

a. Prior to the accumulation of 24,000 landings, or within 10 days after the effective date of this AD, whichever occurs later, perform an eddy current inspection in special areas of the longitudinal lap joints, in accordance with paragraph 2.B. of the service bulletin.

b. If no cracks are found, repeat this inspection at intervals not to exceed 6,000 landings.

c. If a crack is detected, repair prior to further flight, in accordance with the service bulletin.

2. *Inspection of "standard" areas,* as defined in paragraph 1.C(2) of Airbus Industrie Service Bulletin A300-53-211, Revision 1, dated April 10, 1989.

a. Prior to the accumulation of 32,000 landings, or within 10 days after the effective date of this AD, whichever occurs later, perform an eddy current inspection of the standard areas of the longitudinal lap joints, in accordance with paragraph 2.B. of the service bulletin.

b. If no crack is found, repeat the inspection at intervals not to exceed:

(1) 6,000 landings for longitudinal lap joints *with* bonded doublers;

(2) 8,000 landings for longitudinal lap joints *without* bonded doublers.

c. If a crack is found, repair prior to further flight, in accordance with the service bulletin.

3. *Inspection of modified or repaired areas* as defined in Tables 1 and 2 of Airbus Industrie Service Bulletin A300-53-211, Revision 1, dated April 10, 1989.

a. Prior to the accumulation of the threshold values (landings since first flight) identified in Tables 1 or 2 of the service bulletin, or within 60 days after the effective date of this AD, whichever occurs later, perform an eddy current inspection of the longitudinal lap joints in modified or repaired areas in accordance with paragraph 2.B. of the service bulletin.

b. If no crack is found, repeat the inspections at intervals not to exceed 6,000 landings for each repair solution identified in Tables 1 and 2 of the service bulletin.

c. If a crack is found, repair prior to further flight, in accordance with the service bulletin.

B. Prior to the accumulation of 24,000 landings or 15 years since new, whichever occurs first, or within 60 days after the effective date of this AD, whichever occurs later, inspect fuselage bonded inner doublers of longitudinal lap joints in Sections 13 through 18 (except Sections 16 and 17 at Stringer 31 left-hand and right-hand) for disbonding and corrosion, in accordance with Airbus Industrie Service Bulletin A300-53-229, dated August 29, 1988, or Revision 1, dated April 10, 1989 or Revision 2, dated July 28, 1989.

1. If no disbonding or corrosion is found in areas *other than* Sections 13 and 14, no further action is required in those areas.

2. If disbonding or corrosion is found in Sections 13 and 14, repeat the inspections of these areas at intervals not to exceed 12,000 landings or 8 years since last inspection, whichever occurs first, in accordance with paragraph 1.B. of the service bulletin.

3. If disbonding is detected, repair prior to further flight, in accordance with the service bulletin.

C. Prior to the accumulation of 24,000 landings or 12 years since new, whichever occurs first, or within 60 days after the effective date of this AD, whichever occurs later, inspect fuselage bonded inner doublers of longitudinal lap joints in Sections 16 an 17 at Stringer 31 left-hand and right-hand for disbonding and corrosion, in accordance with Airbus Industrie Service Bulletin A300-53-229, Revision 2, dated July 28, 1989. Airplanes older than 12 years must be inspected within 12 months after the effective date of this AD.

1. If no disbonding or corrosion is found, no further action is required.

2. If disbonding is detected, repair prior to further flight, in accordance with the service bulletin.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Standardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 5, 1990.

Issued in Seattle, Washington, on December 20, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-112 Filed 1-3-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-ASW-10; Amendment 39-6456]

Airworthiness Directives; McDonnell Douglas Helicopter Company (MDHC) Model 369 Series Helicopters (Including the YOH-6A and OH-6A)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires a one-time inspection of engine-to-transmission driveshaft couplings and removal and replacement with airworthy parts, as necessary, on MDHC Model 369 series helicopters. The AD is needed to prevent failure of certain engine-to-transmission couplings which could result in loss of control of the helicopter.

EFFECTIVE DATE: February 5, 1990.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Helicopter Company, 5000 E. McDowell Road, Attention: Publications Department, MS543/D214, Mesa, Arizona 85205, or may be examined in the Regional Rules Docket, Federal Aviation Administration, Office of the Assistant Chief Counsel, room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas 76193-0007.

FOR FURTHER INFORMATION CONTACT: Mr. Roy McKinnon, Aerospace Engineer, ANM-143L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425, telephone (213) 988-5247.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring a one-time inspection of certain engine-to-transmission driveshaft couplings and replacement.

as necessary, on McDonnell Douglas Helicopter Company (MDHC) Model 369 series helicopters (including the YOH-6A and OH-6A) was published in the **Federal Register** on September 1, 1989 (54 FR 36323).

The proposal was prompted by reports of cracks in the spline area of the engine-to-transmission driveshaft coupling, Part Number (P/N) 369H5660, which may lead to failure of this part on MDHC 369 series helicopters. Failure could, in turn, result in engine overspeed and loss of power to the main rotor transmission and an unplanned autorotation. Since this condition is likely to exist or develop on other helicopters of the same type design, the AD is being issued that requires a one-time inspection and replacement of parts, as necessary, to assure that no coupling (serial numbers 5200 through 5309) are installed on these helicopters.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received. Accordingly, the proposal is adopted without change.

The regulations adopted herein will not have a direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. 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 involves approximately 1,000 helicopters with an approximate cost of $80 for each helicopter. Therefore, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is minimal; and (4) 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.

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 39.13) as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

McDonnell Douglas Helicopter Company (MDHC): Applies to Model 369 series helicopters (including Models YOH-6A and OH-6A) certificated in any category.

Compliance required as indicated, unless already accomplished.

To prevent possible failure of the engine-to-transmission driveshaft coupling, which could result in loss of control of the helicopter, accomplish the following:

(a) Within the next 25 hours' time in service or within 120 days after the effective date of the AD, whichever occurs first, inspect the couplings, MDHC Part Number (P/N) 369H5660, to determine serial numbers.

(b) Replace any couplings, P/N 369H5660, which have serial numbers in the range from 5200 through 5309, with airworthy parts.

(c) Record compliance with paragraph (a) of this AD in the AD compliance record and in the maintenance record of the helicopter log book. This record must include the serial numbers of any deficient couplings found during compliance with this AD.

Note: MDHC Service Information Notices HN-216, DN-157, EN-47, FN-35, dated April 5, 1989, pertain to this subject.

(d) In accordance with FAR §§ 21.197 and 21.199, flight is permitted to a base where the requirements of this AD may be accomplished.

(e) An alternate method of compliance or adjustment of the compliance time which provides an equivalent level of safety, may be used if approved by the Manager, Los Angeles Aircraft Certification Office, ANM-100L, FAA, 3229 East Spring Street, Long Beach, California 90806-2425.

Note: Unairworthy couplings removed from service and in spares inventory should be marked unairworthy. Unairworthy couplings should be purged from spares inventory in accordance with MDHC SIN HN-216, DN-157, EN-47, FN-35, dated April 5, 1989.

This amendment becomes effective February 5, 1990.

Issued in Fort Worth, Texas, on December 21, 1989.

John J. Shapley,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 90-124 Filed 1-3-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-ASW-56; Amdt. 39-6451]

Airworthiness Directives; Sikorsky Aircraft Model S-61N and S-61NM Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment further amends an airworthiness directive (AD) that presently requires periodic inspections for cracks in the main landing gear (large sponson) truss assemblies; a one-time hardness test of the butt-welded lug of sponson truss components; and replacement of the components, as necessary, on Sikorsky Model S-61N and S-61NM series helicopters. The amendment extends the compliance times to alleviate difficulties experienced in accomplishing the hardness test and fluorescent penetrant inspections. The extended compliance times will eliminate unnecessary burdens on operators but, at the same time, provide an equivalent level of safety.

EFFECTIVE DATE: February 5, 1990.

COMPLIANCE: As indicated in the body of the AD.

ADDRESSES: The applicable service bulletin may be obtained from Sikorsky Aircraft, 600 Main Street, Stratford, Connecticut 06601-1381, or may be examined in the Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Bldg. 3B, room 158, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Richard B. Noll, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, FAA, 12 New England Park, Burlington, Massachusetts 01803, telephone (617) 273-7111.

SUPPLEMENTARY INFORMATION: A proposal to amend Amendment 39-6131 (54 FR 6512; February 13, 1989), AD 89-04-01, as amended by Amendment 39-6279 (54 FR 31505; July 31, 1989) and Amendment 39-6340 (54 FR 40639; October 3, 1989), that requires periodic inspections for cracks in the main landing gear (large sponson) truss assemblies; a one-time hardness test of the butt-welded lug of sponson truss components to determine if the hardness is within an approved range; and replacement of the components, as necessary, on Sikorsky Model S-61N and S-61NM series helicopters was

that the compliance time should be extended and found that this may be done without adversely affecting safety, based upon service experience. Therefore, the FAA proposed to amend paragraph (a) to extend the compliance time to 100 hours' time in service for completing the hardness test.

In addition, operators of a fleet of S-61 series helicopters have experienced difficulties in complying with the initial fluorescent penetrant inspections. The inspection has taken more time than anticipated, and sufficient serviceable spare parts are not available for immediate replacement of the parts affected. The result is that the inspection for the fleet of S-61 series helicopters cannot be conducted on a rotation basis. The FAA has determined that an extended compliance time, in terms of number of landings and increased inspection intervals, achieves the same level of safety, considering all available service experience to date. The FAA, therefore, proposed to amend paragraph (b) to allow the initial fluorescent penetrant inspections to be conducted on the basis of the number of landings and to increase the intervals in Table 1 for the repetitive inspections from 500 to 2,500 and 2,500 to 4,700.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received. Accordingly, the proposal is adopted without change.

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 relieving in nature and imposes no additional burden on any person. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is minimal; and (4) 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.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Safety.

published in the **Federal Register** on August 18, 1989 (54 FR 34185).

The proposal was prompted by reports of operators having difficulty in achieving accurate hardness readings. Some operators have elected to remove the truss tube assemblies to conduct a laboratory-type hardness test, and others have replaced the affected truss tube assemblies with serviceable parts, when available. As a result, the hardness test takes much more time than was anticipated. After further consideration, the FAA has determined

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 39.13) as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by further amending Amendment 39-6131 (54 FR 6512; February 13, 1989), AD 89-04-01, as amended by Amendment 39-6279 (54 FR 31505; July 31, 1989), and by Amendment 39-6340 (54 FR 40639; October 3, 1989), by revising paragraph (a) introductory text; by revising paragraph (b) introductory text; and by revising Table 1 as follows:

Sikorsky Aircraft: Applies to Model S-61N and S-61NM helicopters, certificated in any category. (Docket No. 88-ASW-56)

* * * * *

(a) Within the next 100 hours' time in service after the effective date of this AD, conduct a hardness test of each welded lug of sponson truss tube assemblies, Part Numbers (P/N) S6125-51212-4 and 61250-51233-042, aft lower truss tube assembly-left side; S6125-51212-5 and 61250-51233-043, aft lower truss tube assembly-right side; S6125-51214-3 and 61250-51235-041, forward upper truss tube assembly-left and right side; and S6125-51214-4 and 61250-51235-042, aft upper truss tube assembly-left and right side, as follows:

* * * * *

(b) Prior to the accumulation of 1,000 landings after the effective date of this AD, and thereafter at intervals not to exceed those landing intervals stated in Table 1, inspect the sponson truss tube assemblies for cracks in the locations noted in the table as follows:

TABLE 1.—INSPECTION SCHEDULE AND LOCATIONS

[Paragraph (b)]

Inspection interval, number of landings	Sponson truss tube assembly P/N	Inspection locations
2500	S6125-51212-1	Inboard & outboard tube-to-fitting welds and clevis.
	61250-51233-041	Two welded manufacturing holes.
	S6125-51212-4, -5	Inboard & outboard tube-to-fitting welds.
	S6125-51214-3, -4	
	61250-51233-042, -043	
	61250-51235-041, -042	Two welded manufacturing hole.
	S6125-51213-1, -041	Inboard tube-to-fitting weld.
	61250-51234-041	Welded manufacturing hole.
4700	S6125-51212-4, -5	Lug-to-fitting weld.
	S6125-51214-3, -4	Lug hole.
	61250-51233-042, -043	Lug hole.
	61250-51235-041, -042	Lug-to-fitting weld (if applicable)
	S6125-51217-1, -041	Clevis lug hole.

* * * * *

This amendment becomes effective February 5, 1990.

This amendment further amends Amendment 39-6131 (54 FR 6512; February 13, 1989), AD 89-04-01, as amended by Amendment 39-6279 (54 FR 31505; July 31, 1989) and by Amendment 39-6340 (54 FR 40639; October 3, 1989).

Issued in Fort Worth, Texas, on December 21, 1989.

John J. Shapley,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 90-127 Filed 1-3-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-26-AD; Amdt. 39-6441]

Airworthiness Directives; McDonnell Douglas Model DC-9-10, -20, -30, -40, -50, and C-9 (Military) Series Airplanes, Fuselage Numbers 1 through 757 and 773

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), currently applicable to Model DC-9-10, -20, -30, -40, and C-9 (Military) series airplanes, which currently requires inspections for cracks in the control columns. This amendment expands the area of inspection and adds the Model DC-9-50 to the applicability. This amendment is prompted by reports of discontinuities at locations not previously required to be inspected by the existing AD. This condition, if not corrected, could result in the loss of airplane control.

DATES: Effective February 5, 1990.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications C1-L00 (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Lee, Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5325.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 87-13-04, Amendment 39-5656 (52 FR 23946; June 26, 1987), applicable to McDonnell Douglas Model DC-9-10, -20, -30, -40, and C-9 (Military) series airplanes, to expand the area of inspection for cracks in the control columns, add the Model DC-9-50 to the applicability, and require eventual replacement of the control columns, was published in the Federal Register on May 9, 1989 (54 FR 19911).

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

The manufacturer noted that the correct range of airplane fuselage effectivity is 1 through 757 and fuselage 773, rather than 1 through 976, as was specified in the proposal. The FAA concurs, and the applicability statement of the final rule has been changed accordingly.

Almost all of the commenters questioned the necessity for the requirement to replace the control columns. Two operators asserted that inspection records support their allegation that airworthiness can be assured through repetitive inspections. Five commenters suggested there is lack of justification in mandating replacement of elevator control columns. Two operators expressed concerns about the economic feasibility of mandatory replacement. Two operators suggested that inspection findings be surveyed prior to the issuance of mandatory replacement requirement. A commenter suggested that, in lieu of elevator control column replacement, the inspection interval be reduced to 3,500 landings. One operator proposed that FAA retain the eddy current inspections at intervals not to exceed 3,800 landings until the new improved control columns are installed. One commenter noted that a similar AD applicable to Model DC-8 aircraft allows repetitive inspections without requiring mandatory replacement. The FAA has reevaluated the circumstances which prompted the proposal to replace the control columns, and has reconsidered the mandatory replacement requirement. The FAA has determined that the high degree of reliability of the inspection methods, and the frequency of the inspection intervals as proposed, will ensure that cracks will be detected before airworthiness is compromised. Accordingly, the final rule has been revised to delete this requirement.

Several commenters noted that the cost impact analysis in the preamble to the Notice did not include the cost of parts and materials. The FAA acknowledges that the cost of required parts was inadvertently omitted from the economic analysis paragraph in the Notice; however, due to deletion of the replacement requirement, as explained above, no change is necessary in the cost impact paragraph.

One operator suggested the rule include a one-time x-ray inspection of the control columns to detect discrepant parts. The FAA considers this suggestion beyond the scope of this rulemaking action. However, this alternative may be considered as an alternate means of compliance under the provisions of paragraph E. of the final rule.

Since issuance of the NPRM, McDonnell Douglas has issued Revision 3, dated July 6, 1989, to Alert Service Bulletin ASB 27-288. The revision is essentially identical to the second revision, but has added instructions for an ultrasonic inspection method to determine wall thickness at inspection areas. The final rule has been revised to include this revision of the service bulletin as an appropriate service information source.

Paragraph C.1 of the final rule has been revised to include an optional crack blend out provision as a means of repair. (This procedure was previously approved as an alternate means of compliance for AD 87-13-04, Amendment 39-5656.)

Additionally, paragraph C. of the final rule has been revised to clarify that repair or replacement of cracked control columns must be accomplished prior to further flight.

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

There are approximately 759 Model DC-9 series airplanes of the affected design in the worldwide fleet. It is estimated that 538 airplanes of U.S. registry will be affected by this AD, that it will take approximately two manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $43,040.

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 "major rule" under Executive Order 12291; (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 is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

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 as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-5656 (52 FR 23946, June 28, 1987), AD 87-13-04, with the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC-9-10, -20, -30, -40, -50, and C-9 (Military) series airplanes, fuselage numbers 1 through 757 and 773, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect cracks and prevent failures of control columns, accomplish the following:

A. For airplanes not previously inspected in accordance with AD 87-13-04, Amendment 39-5656, prior to the effective date of this amendment: Within 30 days after the effective date of this amendment, or in accordance with the following schedule, whichever occurs later, perform a dye penetrant or eddy current inspection of both control columns, P/N 5614272-1 and 5614272-2 for cracks, in accordance with McDonnell Douglas DC-9 Alert Service Bulletin A27-288, Revision 3, dated July 6, 1989 (hereinafter referred to as A27-288):

Accumulated landings as of July 30, 1987*	Initial inspection from July 30, 1987 (landings)
60,000 or more	1,500
40,000 to 59,999	2,000
30,000 to 39,999	2,500
20,000 to 29,999	3,000
Under 20,000	3,800

* (July 30, 1987, is the effective date of AD 87-13-04, Amendment 39-5656.)

B. For all airplanes: If no cracks are found, accomplish repetitive inspections in accordance with paragraph A., above, at intervals not to exceed 3,800 landings.

Note: For airplanes previously inspected in accordance with AD 87-13-04, the first repetitive inspection required by this paragraph must be performed within 3,800 landings after the last inspection performed in accordance with AD 87-13-04.

C. If crack(s) are found in either control column (Captain's or First Officer's), accomplish one of the following before further flight:

1. Blend out the cracks up to depths of 0.030 inch, maintaining minimum thickness at the specific inspection area in accordance with Table I of McDonnell Douglas DC-9 Alert Service Bulletin A27-288, using an ultrasonic method, and continually inspect at intervals not exceeding 3,800 landings, until such time as the procedures described in paragraph D., below, are accomplished. If cracks are found after blending, or if a crack(s) is found on any previously blended column, replace the control column with a new production control column, P/N's 5614272-501, -503, SB 09270288-3 (Captain's) or 5614272-502, -504, SB 09276288-4 (First Officer's); or

2. Remove the cracked control column, P/N 5614272-1 (Captain's) or 5614272-2 (First Officer's), and replace it with a new production control column, P/N's 5614272-501, -503, SB 09270288-3, or 5614272-502, -504, SB 09276288-4, respectively, in accordance with McDonnell Douglas Service Bulletin 27-288, dated May 18, 1988; or

3. Repair in a manner approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Replacement of the Captain's and First Officer's control column, P/N's 5614272-1 and 5614272-2, with new control columns, P/N's 5614272-501, -503, SB 09270288-3, and 5614272-502, -504, SB 09270288-4, respectively, constitutes terminating action for the requirements of this amendment.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment supersedes Amendment 39-5656, AD 87-13-04.

This amendment becomes effective February 5, 1990.

Issued in Seattle, Washington, on December 19, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-125 Filed 1-3-90; 8:45am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-192-AD; Amdt. 39-6444]

Airworthiness Directives; Fokker Model F-28 Mark 1000, 2000, 3000, and 4000 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to all Fokker Model F-28 Mark 1000, 2000, 3000, and 4000 series airplanes, which required supplemental structural inspections, and repair or replacement, as necessary, to ensure continued airworthiness. This amendment revises the inspection program to add or revise significant structural items to inspect for fatigue cracks. This amendment is prompted by a structural re-evaluation by the manufacturer which identified additional structural elements where fatigue damage is likely to occur. Fatigue cracks in these areas, if not detected and corrected, could result in a reduction of the structural integrity of these airplanes.

DATE: Effective February 5, 1990.

ADDRESSES: The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by revising AD 89-07-16, Amendment 39-6170 (54 FR 11940; March 23, 1989), applicable to all Fokker Model F-28 Mark 1000, 2000, 3000, and

4000 series airplanes, to revise the inspection program to add or revise significant structural items to inspect for fatigue cracks, was published in the **Federal Register** on October 13, 1989 (54 FR 41987).

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

The commenter supported the rule.

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.

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 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

It is estimated that 48 airplanes of U.S. registry will be affected by this AD. Implementation of the inspections, repairs, or replacements specified in the revisions to the SIP document into an operator's maintenance program is estimated to require 103 manhours per airplane per year at an average labor cost of $40 per manhour (approximately $4,120 per airplane). Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $197,760 the first year and annually thereafter.

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 "major rule" under Executive Order 12291; (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 is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

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 as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by revising AD 89-07-16, Amendment 39-6170 (54 FR 11940; March 23, 1989) as follows:

Fokker: Applies to Model F-28 Mark 1000, 2000, 3000 and 4000 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To ensure the continuing structural integrity of these airplanes, accomplish the following:

A. Within six months after the effective date of this AD, incorporate into the FAA-approved maintenance program the inspections, inspection intervals, repairs or replacements defined in the Fokker Structural Inspection Program (SIP) Document No. 28438, Part I, including revisions up through November 1, 1988; and inspect, repair, and replace, as applicable. The non-destructive inspection techniques referenced in this document provide acceptable methods for accomplishing the inspections required by this AD. Inspection results, where a crack is detected, must be reported to Fokker, in accordance with the instructions of the above document.

B. Cracked structure detected during the inspections required by paragraph A., above, must be repaired or replaced prior to further flight, in accordance with the instructions in SIP Document No. 28438, revised November 1, 1988.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment amends Amendment 39-6170, AD 89-07-16.

This amendment becomes effective February 5, 1990.

Issued in Seattle, Washington, on December 19, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-121 Filed 1-3-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-98-AD; Amdt. 39-6442]

Airworthiness Directives; Honeywell Attitude and Heading Reference System AH-600, as Installed in, but Not Limited to, de Havilland Model DHC-8, British Aerospace Model BAe 125-800, Cessna Model 650, and Aerospatiale Model ATR42-300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Honeywell Attitude and Heading Reference Systems (AHRS), with certain Honeywell Attitude and Heading Reference Units (AHRU) installed, which currently requires installation of modified AHRU's in the pilot's system. This amendment requires installation of modified AHRU's in the pilot's, copilot's, and any auxiliary system. This amendment is prompted by the determination that defective AHRU's may have been installed in the pilot, copilot's, and auxiliary AHRS's. This condition, if not corrected, could result in the loss of attitude and heading display to the pilot and copilot.

DATE: Effective February 5, 1990.

ADDRESSES: The applicable service information may be obtained from Honeywell Inc., Sperry Commercial Flight Systems Group, Business and Commuter Aviation Systems Division, 5353 West Bell Road, Glendale, Arizona 85308. This information may be examined at Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert T. Razzeto, Aerospace Engineer, System and Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5355.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 88-26-05, Amendment 39-6093 (53 FR 51094; December 20, 1988), applicable to Honeywell Attitude and Heading Reference System AH-600, as installed in, but not limited to, de Havilland Model DHC-8, British Aerospace Model BAe 125-800, Cessna Model 650, and Aerospatiale Model ATR42-300 series airplanes, to require installation of modified AHRU's in the pilot's, copilot's, and auxiliary system, was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on July 31, 1989 (54 FR 31539), and as a Supplemental NPRM on October 16, 1989 (54 FR 42307).

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

The commenter requested that the proposed 60-day compliance time for the inspection of co-pilot's and auxiliary AHRS be shortened to 30 days. This commenter suggested that the proposed compliance time may be too long to fly with a potential failure at decision height in instrument weather conditions. The FAA does not concur with the need for a shorter inspection compliance time. In developing the proposed compliance time, the FAA determined that the hazard of dual, simultaneous failure has been removed by the current inspection and replacement requirements of AD 88-26-05. The proposed compliance time of 60 days was determined to be appropriate in consideration of the availability of required modification parts, as well as the average utilization rate of the affected operators and the practical aspects of an orderly inspection of the fleet during regular maintenance periods.

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.

There are approximately 117 airplanes of the affected design in the worldwide fleet. It is estimated that 60 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 manhours per airplane to accomplish the required actions and that the average labor cost will be $40 per manhour. Modification parts are at no expense to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $19,200.

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 "major rule" under Executive Order 12291; (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 is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

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 as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6093 (53 FR 51094; December 20, 1988), AD 88-26-05, with the following new airworthiness directive:

Honeywell Inc., Sperry Commercial Flight Systems Group, Business And Commuter Aviation Systems Division (Sperry Corporation): Applies to Honeywell AH-600 Attitude and Heading Reference System (AHRS) Strapdown Attitude and Heading Reference Unit (AHRU), part numbers 7003360-931, -932, -933, -934, -935, and -936, with serial numbers 0100 through 0277. Compliance required as indicated, unless previously accomplished.

Note: These systems are known to be installed in, but not limited to, de Havilland Model DHC-8, British Aerospace Model BAe 125-800, Cessna Model 650, and Aerospatiale Model ATR42-300 series airplanes.

To eliminate the possibility of the primary attitude and heading displays on both sides of the instrument panel failing simultaneously, accomplish the following:

A. Within 10 days after January 9, 1989 (the effective date of Amendment 39-6093), inspect airplanes with Honeywell AH-600 AHRS installed to determine the part number, serial number, and Mod Level of the strapdown AHRU installed in the pilot's (Number 1) AHRS. Prior to further flight after inspection, remove all AHRU part numbers 7003360-931, -932, -933, -934, -935, and -936 with serial numbers 0100 through 0277, without Mod Level "F", from service in the pilot's (Number 1) AHRS. Install the same part number with Mod Level "F" incorporated, or modify the AHRU in accordance with Honeywell Inc., Service Bulletin 7003360-34-32, dated August 2, 1988.

Note: Serial numbers of the strapdown AHRU are eight digit numbers; the first four are date code and the last four are the individual unit identifier. Serial numbers referred to in this AD are the last four numbers of the serial number.

B. Within 60 calendar days after the effective date of this amendment, inspect airplanes with Honeywell AH-600 AHRS installed to determine the part number, serial number, and Mod Level of the strapdown AHRU installed in copilot's (Number 2) AHRS and the auxiliary (Number 3) AHRS. Within 45 days after the inspection, remove all AHRU part numbers 7003360-931, -932, -933, -934, -935, and -936, with serial numbers 0100 through 0277, without Mod Level "F", from service in the copilot's (Number 2) AHRS and the auxiliary (Number 3) AHRS. Install the same part number with Mod Level "F" incorporated, or modify the AHRU in accordance with Honeywell Inc., Service Bulletin 7003360-34-32, dated August 2, 1988.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: This request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Los Angeles Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Honeywell Inc., Sperry Commercial Flight Systems Group, Business and Commuter Aviation Systems Division, 5353 West Bell Road, Glendale, Arizona 85308. These documents may be examined at the

FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment supersedes Amendment 39-6093, AD 88-26-05.

This amendment becomes effective February 5, 1990.

Issued in Seattle, Washington, on December 19, 1989.

Darrell M Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-123 Filed 1-3-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-CE-13-AD; Amdt. 39-6447]

Airworthiness Directives; GROB WERKE GmbH & Company KG (Burkhart Grob) Model TWIN ASTIR, Model TWIN ASTIR TRAINER, Model G103 TWIN II, Model G103A TWIN II ACRO Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to GROB WERKE GmbH & Company KG Model TWIN ASTIR, Model TWIN ASTIR TRAINER, Model G103 TWIN II, Model G103A TWIN II ACRO gliders, which requires an ultrasonic inspection of both end spar spigots for damage and replacement of these spigots as required. This action is prompted by discovery of spigot fatigue failure during laboratory special load spectra fatigue tests. The actions specified in this AD will preclude spigot failure and the resultant loss of the glider.

DATES: *Effective date:* February 5, 1990.

Compliance: As prescribed in the body of the AD.

ADDRESSES: GROB WERKE GmbH Technical Information TM 315-36, dated June 23, 1988, applicable to this AD may be obtained from GROB Systems, Incorporated; Aircraft Division, I-75 and Airport Drive, Bluffton, Ohio 45817; Telephone (419) 358-9015. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Heinz Hellebrand, Brussels Aircraft Certification Staff, FAA, c/o American Embassy, 15 Rue de la Loi B1040, Brussels, Belgium; Telephone 793-21-10, extension 2718; or Mr. James S. Kishi, Small Airplane Directorate, Aircraft Certification Service, FAA, room 1544, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6933.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD requiring ultrasonic inspection of both end spar spigots for damage and replacement of these spar spigots as required on certain GROBE WERKE GmbH & Company KG (Burkhart Grob) Model TWIN ASTIR, Model TWIN ASTIR TRAINER, Model G103 TWIN II, Model G103A TWIN II ACRO gliders was published in the **Federal Register** on July 31, 1989 (54 FR 31531). The proposal resulted from fatigue tests on a GROB WERKE GmbH TWIN ASTIR series glider using a special load spectra that produced spar spigot failure after approximately 14,000 simulated winch launches. To date, no spar spigots have failed during operation. Consequently, GROB WERKE GmbH & Company KG (Burkhart GROB) issued Technical Information TM 315-36, dated June 23, 1988, which specified that both end spar spigots be examined for damage using an ultrasonic inspection method. In case of any damage, TM 315-36 specified that the spar spigots must be exchanged. If no damage is found, TM 315-36 states that inspections have to be repeated every 500 takeoffs until the spar spigots are replaced and that the spar spigots must be replaced by a certain calendar date. In addition, a placard worded NO AEROBATICS is specified for the front and rear cockpit area, and may be removed when the spar spigots are replaced.

The Luftfahrt-Bundesamt (LBA), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in the Federal Republic of Germany, has classified Burkhart GROB Technical Information TM 315-36 and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under Federal Republic of Germany registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of the Luftfahrt-Bundesamt (LBA) combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA examined the available information related to the issuance of Technical Information TM 315-36, dated June 23, 1988, and the mandatory classification of this information by the LBA, and concluded that the condition addressed by this service information was an unsafe condition that may exist on other airplanes of this type certificated for operation in the United States. Accordingly, the FAA proposed an amendment to Part 39 of the Federal Aviation Regulations to include an AD on this subject.

Interested persons have been afforded an opportunity to comment on the proposal. One commenter responded with a proposed STG modifying the original spar spigot, and using this proposed STC as an equivalent means of compliance. Since the proposed modification to the original spar spigot has not been FAA or LBA approved, no change to the AD is warranted at this time. Accordingly, the proposal is adopted without change except for minor editorial clarifications. The FAA has determined that this regulation involves approximately 130 gliders at an approximate one time cost of $1,800 per glider or a one time fleet cost of $234,000. The cost per glider is less than the threshold significant cost amount for those small entities operating one glider and the FAA has determined, on the basis of the aircraft registration records, that less than five percent of the owners of the affected gliders own more than one of the affected gliders and may incur a cost greater than the significant amount threshold.

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. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be

obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

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 as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Grob Werke GmbH & Company KG (Burkhart Grob): Applies to Models TWIN ASTIR and TWIN ASTIR TRAINER (Serial Numbers (S/N) 3000 through 3291); G103 TWIN II (S/N 3501 through 3878, and 33879 through 34078); and G103A TWIN II ACRO (S/N 3544 through 34078) gliders certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To preclude failure of the wing spar spigots, accomplish the following:

(a) Within the next 500 takeoffs after the effective date of this AD, inspect the wing spar spigots for damage in accordance with the ultrasonic inspection procedures specified in GROB WERKE GmbH Technical Information TM 315–36, dated June 23, 1988.

(1) If damage is found, prior to further flight remove and replace the spigot with a Fail-Safe Spigot using the procedures specified in the above-referenced service information.

(2) If no damage is found, within the next 500 takeoffs remove and replace the spigots with Fail-Safe Spigots using the procedures specified in the above-referenced service information.

Note 1: Note 5 in the Type Certificate Data Sheet G39EU Burkhart Grob Model G103 Twin Astir, Model G103 Twin II, and Model G103A Twin II Acro, Revision 3, dated April 2, 1984, states:

"Major airframe repairs must be accomplished at FAA certified repair stations rated for composite construction of small aircraft, using Grob Werke repair methods for the model of interest, approved by the FAA."

The replacement of the wing spigots is considered major airframe repair.

(b) An alternate method of compliance or adjustment of the compliance times which provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Staff, FAA, c/o American Embassy, 15 Rue de la Loi B1040, Brussels, Belgium.

Note 2: The request should be forwarded through an FAA Maintenance Inspector, who may add comments and send it to the Manager, Brussels Aircraft Certification Staff.

All persons affected by this directive may obtain copies of the document referred to herein upon request to Grob Systems, Incorporated; Aircraft Division; I–75 and Airport Drive, Bluffton, Ohio 45817; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on December 20, 1989.

J. Robert Ball,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90–122 Filed 1–3–90; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Parts 21 and 23

[Docket No. 075CE, Special Condition 23-ACE-47]

Special Conditions; Beech Model 55 Series Airplanes, Electronic Flight Instrument System (EFIS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Special Conditions.

SUMMARY: These special conditions are being issued for incorporation of an electronic flight instrument system (EFIS) in the Beech Model 55 Series Airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the airworthiness standards applicable to these airplanes when EFIS is installed. These novel and unusual design features include the installation of electronic displays and the protection of them from high energy radiated electromagnetic fields (HERF) for which the applicable regulations do not contain adequate or appropriate airworthiness standards. These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that provided by the applicable airworthiness standards.

EFFECTIVE DATE: December 14, 1989.

FOR FURTHER INFORMATION CONTACT: Ervin E. Dvorak, Aerospace Engineer, Standards Office (ACE–110), Aircraft Certification Service, Central Region, Federal Aviation Administration, Room 1544, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION

Background

On March 23, 1989, Allied-Signal Aerospace Company, Bendix/King, General Aviation Avionics Division, Olathe, Kansas submitted an application for supplemental type certificate (STC) approval of the design changes necessary to install a Bendix/King EFS–40 Electronic Flight Instrument System (EFIS) on the Beech Model 55 airplane. This installation incorporates an electronic attitude director indicator (EADI) and electronic horizontal situation indicator (EHSI) in lieu of the traditional mechanical or electro-mechanical displays providing similar information to the flight crew.

Type Certification Basis

The type certification basis for the Beech Model 55 airplane is as follows: Part 3 of the Civil Aviation Regulation (CAR) as amended to May 15, 1956 and §§ 23.1385(c) and 23.1387(e) of part 23 of the Federal Regulations (FAR), effective February 1, 1965, as amended by amendments 23–12 and the special conditions adopted by this rulemaking action.

Discussion

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.101 do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane or installation. Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become a part of the type certification basis, as provided by § 21.101(b)(2).

The proposed type design of the Bendix/King EFS–40 EFIS installation in the Beech Model 55 airplane contains a number of novel and unusual design features not envisaged by the applicable airworthiness standards. Special conditions are considered necessary because the applicable airworthiness standards do not contain adequate or appropriate safety standards for the novel or unusual design features of the Bendix/King EFS–40 EFIS installation in the Beech Model 55 series airplane.

Special conditions resulting from this notice will also be applicable to all Beech Model 55 series airplanes for installation of similar EFIS (not limited to the same manufacturer) without further amendment of the special conditions.

Electronic Flight Instrument System (EFIS)

Allied-Signal Aerospace Company, Bendix/King, General Aviation Avionics Division has proposed cathode-ray tube (CRT) electronic display units for primary attitude, heading, and navigation cockpit displays. The cockpit instrument panel configuration would feature two displays, an EADI and EHSI on the pilot side of the instrument panels. All other displays, i.e., airspeed, altitude, vertical speed, etc., will be conventional electromechanical instruments. On some later installations, another EADI and EHSI may be installed on the copilot side.

Emissive color on a CRT display will inevitably appear different than reflective colors on conventional electromechanical displays. Different intensities and color temperatures of ambient illumination will also affect the perceived colors. Therefore, display legibility must be adequate for all cockpit lighting conditions including direct sunlight.

Features of this system are novel and unusual relative to the applicable airworthiness requirements. Current small airplane airworthiness requirements are based on "single-fault" or "fail-safe" concepts and, when promulgated, the FAA did not envision use of complex, safety-critical systems in small airplanes. The current small airplane requirements envisioned instruments that were single function; i.e., a failure would cause loss of only one instrument function, although several instrument functions may have been housed in a common case.

Flight instruments for the pilot are required to be grouped in front of the pilot so deviation from looking forward along the airplane flight path is minimized when the pilot shifts from viewing the flight path to viewing the flight instruments.

For instrument flight, the airplane must be equipped with the minimum flight instruments listed in the operating rules. This minimum listing of instruments includes all instruments that have long been accepted as the minimum for continued safe flight. Standby instruments for flight instruments are not required by the small airplane airworthiness requirements because the FAA has long accepted that the small airplane could be safely flown by using partial panel techniques following a single instrument failure. The basic airman certification program for an instrument flight rules (IFR) rating has long included requirements for the pilot to demonstrate the ability to fly the airplane safely following failure of any one of the previously cited instruments.

The special condition will provide appropriate requirements for installation of electronic displays featuring design characteristics where a single malfunction or failure could affect more than one primary instrument, display, or system. The special condition would also provide requirements to assure adequate reliability of system design function that are determined to be essential for continued safe flight and landing of the airplane.

For installations where electronic displays take the place of traditional instruments, the reliability must not be less than that of the traditional instruments. This concerns the collective reliability of the traditional instruments rather than the reliability of a single traditional instrument. For this reason, the special condition includes requirements needed for their certification.

The special condition will also require a detailed examination of each item of equipment/component of the electronic display system, and installation of the system, to determine if the airplane is dependent upon its function for continued safe flight and landing or if its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with these adverse operating conditions. Each component of the installation identified by such an examination as being critical to the safe operation of the airplane would be required to meet the proposed special condition.

The existing § 23.1309, which was incorporated into Part 23 by amendment 23–14, dated December 20, 1973, has been used as a means of evaluating systems for those airplanes that include § 23.1309 in their type certification basis. The "no-single-fault" or "fail-safe" concept of § 23.1309, along with experience based on service-proven designs and good engineering judgment, have been used to successfully evaluate most airplane systems and equipment. The type certification basis for this airplane does not include § 23.1309, however, the "single fault" concept does not provide an adequate means for determining and evaluating the effect of certain failure conditions which may exist in complex systems such as an EFIS installation. Therefore, the FAA considers it necessary to include the proposed additional system analysis requirements in the certification basis. This will also allow the use of the latest available "rational method" of safety analysis of the systems to assure a level of safety intended in the applicable requirements.

The development of rational methods for safety assessment of systems is based on the premise that an inverse relationship exists between the probability of a failure condition and its effect on the airplane. That is, the more serious the effect, the lower the probability must be that the related failure condition will occur. Rational methods for showing compliance for safety assessment of systems may be shown by the use of numerical analysis but it is not mandatory. In many cases, adequate data is not available for preparing a stand-alone numerical analysis for showing compliance. Therefore, in small airplane certification, a rational analysis based on identification of failure modes and their consequences is frequently a more acceptable substantiation of compliance with the various required levels of system reliability than a numerical analysis alone.

If it is determined that the airplane includes systems that perform critical functions, it will be necessary to show that those systems meet more stringent requirements. These systems would be required to meet requirements establishing either that there will be no failures of that system or that a failure is extremely improbable. Critical functions means those functions whose failure would contribute to or cause a failure condition which would prevent the continued safe flight and landing of the airplane.

The special condition also requires that the occurrence of system(s) failures that would significantly reduce the airplane's capability or the ability of the crew to cope with adverse operating conditions, and thereby be potentially catastrophic, be improbable. It is recognized that any system(s) failure will reduce the airplane's or crew's capability by some degree, but that reduction may not be of the degree leading to potentially catastrophic results.

The special condition provides reliability requirements that are based on the criticality of the system's function and will provide the standards needed for certification of complex safety-critical systems being proposed for installation.

Protection of Systems From High Energy Radiated Electromagnetic Fields (HERF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of

solid state components and digital electronics, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the high energy radiated electromagnetic fields (HERF) incident on the external surface of aircraft. These induced transient currents and voltages can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the electromagnetic environment has undergone a transformation which was not envisioned when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the population of transmitters has increased significantly.

At present, aircraft certification requirements, as well as the industry standards for protection from the adverse effects of HERF, are inadequate in view of the aforementioned technological advances. In addition, some significant safety events have been reported of incidents and accidents involving military aircraft equipped with advanced electronic systems when they were exposed to electromagnetic radiation.

The combined effect of the technological advances in aircraft design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the aircraft. Effective measures against the effects of exposure to high energy radiated electromagnetic fields (HERF) must be provided by the design and installation of these systems. The primary factors that have contributed to this increased concern are: (1) The increasing use of sensitive electronics that perform critical functions; (2) the reduced electromagnetic shielding afforded airplane systems by advanced technology airframe materials; (3) the adverse service experience of military airplanes which use these technologies; and (4) the increase in the number and power of radio frequency emitters and expected future increases.

Cognizant of the need for aircraft certification standards to cope with the developments in technology and environment in 1986, the FAA initiated a high priority program (1) to determine and define the electromagnetic energy levels; (2) to develop and describe guidance material for design, test, and analysis; and (3) to prescribe and promulgate regulatory standards. The FAA sought and received the participation of international airworthiness authorities and industry to develop internationally recognized standards for certification.

At this time, the FAA and other airworthiness authorities have established an agreed level of HERF environment which the airplane is expected to be exposed to in service. While the HERF requirements are being finalized, the FAA has adopted special conditions for the certification of aircraft which employ electrical and electronic systems which perform critical functions. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. This special condition requires that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HERF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2.

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HERF environment, defined below, or

FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10-500 KH$_z$	80	80
500-2000	80	80
2-30 MH$_z$	200	200
30-100	33	33
100-200	33	33
200-400	150	33
400-1000	8.3K	2K
1-2 GH$_z$	9K	1.5K
2-4	17K	1.2K
4-6	14.5K	800
6-8	4K	666
8-12	9K	2K
12-20	4K	509
20-40	4K	1K

(2) The applicant may demonstrate by a laboratory test that the electrical and electronic systems that perform critical functions withstand a peak of electromagnetic field strength of 100 volts per meter in a frequency range of 10KHz to 18GHz. When using a laboratory test to show compliance with the HERF requirements, no credit is given for signal attenuation due to installation.

In view of the revised HERF envelope, the requirement for the fixed value test has been changed to 100 v/m from the previously used value of 200 v/m. The applicant opting for the fixed value laboratory test, in lieu of the HERF envelope, will be subject to post certification reassessment based on the finalized rule requirements. The applicants should be cautioned that choosing 100 v/m may make it difficult, under post certification reassessment requirements, to qualify the installations without design upgrade. If the system should not meet the post certification reassessment requirements, additional protection provisions and/or testing may be required.

A preliminary hazard analysis must be performed by the applicant for approval by the FAA to identify electrical and/or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition which would prevent the continued safe flight and landing of the aircraft. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HERF requirements. The primary electronic flight display and the full authority digital engine control (FADEC) systems are examples of systems that perform critical functions. A system may perform both critical and non-critical functions. Primary electronic flight display systems and their associated components perform critical functions such as attitude, altitude, and airspeed indication. The HERF requirements only apply to critical functions.

Compliance with HERF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or a combination thereof. Service experience alone is not acceptable since such experience in normal flight operations may not include an exposure to the HERF environmental condition. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HERF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

The modulation should be selected as the signal most likely to disrupt the operation of the system under test based on its design characteristics. For example, flight control systems may be susceptible to 3 Hz square wave modulation while the video signals for

electronic display systems may be susceptible to 400 Hz sinusoidal modulation. If the worst case modulation is unknown or cannot be determined, default modulations may be used. Suggested default values are a 1 KHz sine wave with 80% depth of modulation in the frequency range from 10 KHz to 400 MHz and 1 KHz square wave with greater than 90% depth of modulation from 400 MHz to 18 GHz. For frequencies where the unmodulated signal caused deviations from normal operation, several different modulating signals with various waveforms and frequencies should be applied.

Acceptable system performance is attained by demonstrating that the system under consideration continues to perform its intended function during and after exposure to required electromagnetic fields. Deviations from system specification may be acceptable and will need to be independently assessed for each application for approval by the FAA.

Conclusion

In review of the design features discussed for the installation in the Beech Model 55 series airplane, the following special conditions are issued to provide a level of safety equivalent to that intended by the regulations incorporated by reference. This action is not a rule of general applicability and affects only the model/series of airplanes identified in these special conditions.

The substance of these special conditions has been subject to the notice and public comment procedure in several prior instances (54 FR 4317; October 25, 1989), (54 FR 41955; October 13, 1989), (53 FR 14782; April 26, 1988), and (51 FR 37711, October 24, 1986). For this reason, and because a delay would significantly affect the applicant installation of the system and the certification of the airplane, which is imminent, the FAA has determined that good cause exists for adopting these special conditions without further notice. Therefore, special conditions are being issued without substantive change for this airplane and made effective immediately.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, and Safety.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator of the Federal Aviation Administration, the following special conditions are issued as part of the type certification basis for the Beech Model 55 series airplanes:

1. *Electronic Flight Instrument Displays*

In addition to, and in lieu of, the applicable requirements of Part 23 of the FAR and requirements to the contrary, for instruments, systems, and installations whose design incorporates electronic displays that feature design characteristics where a single malfunction or failure could affect more than one primary instrument display or system, and/or system design functions that are determined to be essential for continued safe flight and landing of the airplane, the following special condition applies:

(a) Systems and associated components must be examined separately and in relation to other airplane systems to determine if the airplane is dependent upon its function for continued safe flight and landing, and if its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions. Each system and each component identified by this examination, upon which the airplane is dependent for proper functioning to ensure continued safe flight and landing, or whose failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, must be designed and examined to comply with the following requirements:

(1) It must be shown that there will be no single failure or probable combination of failures under any foreseeable operating condition which would prevent the continued safe flight and landing of the airplane, or it must be shown that such failures are extremely improbable.

(2) It must be shown that there will be no single failure or probable combination of failures under any foreseeable operating condition that would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions, or it must be shown that such failures are improbable.

(3) Warning information must be provided to alert the crew to unsafe system operating conditions and to enable them to take appropriate corrective action. Systems, controls, and associated monitoring and warning means must be designed to minimize initiation of crew action which would create additional hazards.

(4) Compliance with the requirements of this special condition may be shown by analysis and, where necessary, by appropriate ground, flight, or simulator tests. The analysis must consider: (i) Modes of failure, including malfunction and damage from foreseeable sources; (ii) The probability of multiple failures, and undetected faults; (iii) The resulting effects on the airplane and occupants, considering the state of flight and operating conditions; and (iv) The crew warning cues, corrective action required, and the capability of detecting faults.

(5) Numerical analysis may be used to support the engineering examination.

(b) Electronic display indicators, including those incorporating more than one function, may be installed in lieu of mechanical or electromechanical instruments if:

(1) The electronic display indicators: (i) Are easily legible under all lighting conditions encountered in the cockpit, including direct sunlight; (ii) In any normal mode of operation, do not inhibit the primary display of attitude; and (iii) Incorporate sensory cues for the pilot that are equivalent to those in the instrument being replaced by the electronic display units.

(2) The electronic display indicators, including their systems and installations, must be designed so that one display of information essential to safety and successful completion of the flight will remain available to the pilot, without need for immediate action by any crewmember for continued safe operation, after any single failure or probable combination of failures that is not shown to comply with paragraph (a)(1) of this section.

2. *Protection of Electronic Flight Instrument Systems from High Energy Radiated Electromagnetic Fields (HERF)*

(a) Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the airplane is exposed to hight energy radiated electromagnetic fields external to the airplane.

Issued in Kansas City, Missouri on December 14, 1989.

Barry D. Clements

Manager, Small Airplane Directorate Aircraft Certification Service.

[FR Doc. 90-111 Filed 1-3-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 73

[Airspace Docket No. 89-ASW-34]

Alteration of Restricted Areas R-2403A and R-2403B Little Rock, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the boundaries of Restricted Areas R-2403A and R-2403B Little Rock, AR, and clarifies the time of designation of the areas. This action more accurately reflects the using agency requirements and lessens the burden on civil aviation by reducing the size of R-2403A and realigning the boundary between R-2403A and R-2403B to enhance real-time access for nonparticipating aircraft. This action is the result of an FAA utilization review of R-2403A and R-2403B.

EFFECTIVE DATE: 0901 UTC, March 8, 1990.

FOR FURTHER INFORMATION CONTACT: Rich Uhrich, Military Operations Branch (ATO-140), Operations Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-7635.

The Rule

This amendment to part 73 of the Federal Aviation Regulations alters the boundaries of Restricted Areas R-2403A and R-2403B. The results of an FAA airspace utilization review of the R-2403 complex identified that the majority of firing activities conducted by the U.S. Army are contained within the northern portion of R-2403B; and the eastern boundary of R-2403A overlies approximately one nautical mile of land, which is neither controlled nor owned by the U.S. Army. Reducing R-2403A by approximately one nautical mile on the eastern boundary and realigning the common boundary between R-2403A and R-2403B by approximately one-half nautical mile to the south will result in more efficient use of airspace, and allow increased access for civil aviation. The times of designation of R-2403A and R-2403B are redescribed to state actual usage in more clear terms. This amendment involves the internal reconfiguration of existing restricted areas and does not require additional airspace. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 73.24 of part 73 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 73 of the Federal Aviation Regulations (14 CFR part 73) is amended, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510, 1522; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 73.24 [Amended]

2. Section 73.24 is amended as follows:

R-2403A Little Rock, AR [Amended]

By removing the existing boundaries and time of designation and substituting the following:

Boundaries. Beginning at lat. 34°57'00" N., long. 92°16'00" W.; to lat. 34°54'33" N., long. 92°16'00" W.; to lat. 34°54'33" N., long. 92°19'30" W.; to lat. 34°57'00" N., long. 92°19'30" W.; to the point of beginning.

Time of designation. May 1 through August 31, daily 0700-2100 local, other times by NOTAM. September 1 through April 30, Saturday 0700-2100 local and Sunday 0700-1700 local, other times by NOTAM.

R-2403B Little Rock, AR [Amended]

By removing the existing boundaries and time of designation and substituting the following:

Boundaries. Beginning at lat. 34°54'33" N., long. 92°15'00" W.; to lat. 34°51'45" N., long. 92°15'00" W.; to lat. 34°51'45" N., long. 92°19'30" W.; to lat. 34°54'33" N., long. 92°19'30" W.; to the point of beginning.

Time of designation. May 1 through August 31, daily 0700-2100 local, other times by NOTAM. September 1 through April 30, Saturday 0700-2100 local and Sunday 0700-1700 local, other times by NOTAM.

Issued in Washington, DC, on December 26, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 90-128 Filed 1-3-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 26084; Amdt. No. 1415]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment established, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective*: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; 2. The FAA Regional Office of the region in which the affected airport is located; or 3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or 2. The FAA

Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) prescribes new, amended, suspended, or revoke Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in the amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule under Executive Order 1229; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in CFR Part 97

Approaches, Standard Instrument, Incorporation by reference.

Issued in Washington, DC on December 8, 1989.

Daniel C. Beaudette,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 g.m.t. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective March 8, 1990

Mayfield, KY—Mayfield Graves County, VOR/DME-A, Amdt. 5
Mayfield, KY—Mayfield Graves County, RNAV Rwy 18, Amdt. 1
Mayfield, KY—Mayfield Graves County, NDB Rwy 36, Orig.
Baytown, TX—Baytown, VOR Rwy 13, Orig.
Baytown, TX—Baytown, VOR Rwy 31, Orig.
Baytown, TX—Baytown, NDB Rwy 13, Orig.
Baytown, TX—Baytown, NDB Rwy 31, Orig.
Houston, TX—Baytown, VOR Rwy 13, Orig., Cancelled
Houston, TX—Baytown, VOR Rwy 31, Amdt. 1, Cancelled
Houston, TX—Baytown, NDB Rwy 13, Orig., Cancelled
Houston, TX—Baytown, NDB Rwy 31, Amdt. 2, Cancelled

Effective February 8, 1990

North Platte, NE—Lee Bird Field, VOR Rwy 35, Amdt. 17
North Platte, NE—Lee Bird Field, ILS Rwy 30R, Amdt. 5
Dexter, MO—Dexter Muni, NDB Rwy 36, Amdt. 3, Cancelled
Pecos, TX—Pecos Muni, VOR Rwy 14, Amdt. 7

Effective January 11, 1990

Anchorage, AK—Anchorage Intl, NDB Rwy 6R, Amdt. 6
Anchorage, AK—Anchorage Intl, VOR Rwy 6R, Amdt. 12
Anchorage, AK—Anchorage Intl, LOC Rwy 6L, Amdt. 6
Anchorage, AK—Anchorage Intl, ILS Rwy 6R, Amdt. 7
Port Heiden, AK—Port Heiden, NDB/DME Rwy 5, Amdt. 1
Port Heiden, AK—Port Heiden, NDB Rwy 5, Amdt. 4
Port Heiden, AK—Port Heiden, NDB/DME Rwy 13, Amdt. 1
Port Heiden, AK—Port Heiden, NDB Rwy 13, Amdt. 4
McCall, ID—McCall, NDB-A Orig.
DeKalb, IL—DeKalb Taylor Muni, VOR/DME Rwy 27, Amdt. 4
DeKalb, IL—DeKalb Taylor Muni, NDB Rwy 27, Amdt. 2
Fort Wayne, IN—Fort Wayne Muni/Baer Field/, LOC BC Rwy 23, Amdt. 8
Gaithersburg, MD—Montgomery County Arpk, NDB-A Amdt. 2, Cancelled
Ottawa, OH—Putnam County, VOR/DME Rwy 27, Orig.
Ottawa, OH—Putnam County, NDB Rwy 27, Orig.

Ada, OK—Ada Muni, VOR/DME Rwy 17, Orig.
Medford, OR—Medford-Jackson County, VOR/DME-C, Orig.
El Paso, TX—West Texas, VOR/DME-A, Amdt. 1
Houston, TX—Houston Intercontinental, ILS Rwy 8, Amdt. 18
Houston, TX—Houston Intercontinental, ILS Rwy 9, Amdt. 3
Houston, TX—Houston Intercontinental, ILS Rwy 14L, Amdt. 9
Houston, TX—Houston Intercontinental, VOR/DME Rwy 14L, Amdt. 13
Houston, TX—Houston Intercontinental, ILS Rwy 26, Amdt. 13
Houston, TX—Houston Intercontinental, ILS Rwy 27, Amdt. 1
Houston, TX—Houston Intercontinental, ILS Rwy 32R, Amdt. 9
Houston, TX—Houston Intercontinental, VOR/DME Rwy 32R, Amdt. 12
Marshall, TX—Harrison County, VOR/DME-A, Amdt. 4
Marshall, TX—Harrison County, RNAV Rwy 33, Amdt. 1
Abingdon, VA—Virginia Highlands, LOC Rwy 24, Orig.
Wallops Island, VA—Wallops Flight Facility, VOR or TACAN Rwy 17, Amdt. 5
Milwaukee, WI—General Mitchell International, ILS Rwy 19R, Amdt. 8
Milwaukee, WI—General Mitchell International, RADAR-1, Amdt. 22

Effective December 7, 1989

Jonesboro, AR—Jonesboro Muni, VOR Rwy 23, Amdt. 7

Effective November 24, 1989

Paragould, AR—Kirk Field, NDB Rwy 4, Amdt. 2
Pocahontas, AR—Pocahontas Muni, VOR Rwy 36, Amdt. 5
Walnut Ridge, AR—Walnut Ridge Regional, VOR-A, Amdt. 14
Walnut Ridge, AR—Walnut Ridge Regional, VOR/DME Rwy 22, Amdt. 11
Walnut Ridge, AR—Walnut Ridge Regional, LOC Rwy 17, Amdt. 1
Walnut Ridge, AR—Walnut Ridge Regional, NDB Rwy 17, Amdt. 2

Effective November 22, 1989

Oxford, CT—Waterbury-Oxford, NDB Rwy 18, Amdt. 4
Oxford, CT—Waterbury-Oxford, NDB Rwy 36, Amdt. 5
Oxford, CT—Waterbury-Oxford, ILS Rwy 36, Amdt. 8
Oxford, CT—Waterbury-Oxford, RNAV Rwy 18, Amdt. 4

Effective November 21, 1989

Merced, CA—Merced Municipal/Macready Field, VOR Rwy 30, Amdt. 16
Merced, CA—Merced Municipal/Macready Field, ILS Rwy 30, Amdt. 12

[FR Doc. 90-129 Filed 1-3-90; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

[Docket No. 78N-0158]

Uniform Compliance Date for Food Labeling Regulations; Notice to Manufacturers, Packers, and Distributors

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; uniform compliance date.

SUMMARY: The Food and Drug Administration (FDA) is establishing January 1, 1993, as its new uniform compliance date with all FDA final food labeling regulations that are published in the **Federal Register** after January 1, 1990, and before January 1, 1992.

FDA periodically has announced uniform compliance dates with new food labeling requirements because the economic impact of requiring individual label changes on separate dates would probably be substantial. In addition, industry needs sufficient lead time to make label changes and the current uniform compliance date of January 1, 1991, is less than 1 year away. Therefore, the agency has concluded that a new uniform compliance date should be established.

EFFECTIVE DATE: January 1, 1993, for compliance with food labeling regulations published after January 1, 1990, and before January 1, 1992, except as otherwise provided in individual regulations.

FOR FURTHER INFORMATION CONTACT: Raymond W. Gill, Center for Food Safety and Applied Nutrition (HFF-300), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0162.

SUPPLEMENTARY INFORMATION: FDA periodically issues various regulations requiring changes in labeling for packaged food. If these labeling changes were individually required on separate dates, the cumulative economic impact on the food industry of frequent changes would probably be substantial. Therefore, the agency periodically has announced uniform effective dates for compliance with new food labeling requirements (see, e.g., the **Federal Register** of October 19, 1984 (49 FR 41019)). Use of a uniform compliance date also provides for an orderly and economical industry adjustment to new labeling requirements by allowing sufficient lead time to plan for the use of existing label inventories and the development of new labeling materials. The agency believes that this policy serves consumers' interest as well because the increased cost of multiple short-term label revisions that would otherwise occur would likely be passed on to consumers in the form of higher food prices.

The agency has decided that a new uniform compliance date of January 1, 1993, should be established for future FDA regulations requiring changes in food labels where special circumstances do not justify a different compliance date. Action is appropriate now because the current uniform compliance date is less than 1 year away. The agency has selected January 1, 1993, to ensure adequate time for implementation of any changes in food labeling that may be required by FDA final regulations published after January 1, 1990, and before January 1, 1992.

The agency encourages industry, however, to comply with new labeling regulations earlier than the required date wherever this is feasible. Thus when industry members voluntarily change their labels, FDA believes that it is appropriate that they incorporate any new requirements that have been published as final regulations up to that time.

The new uniform effective date will apply only to final FDA food labeling regulations published after January 1, 1990, and before January 1, 1992. Those regulations will specifically identify January 1, 1993, as their compliance date. If any food labeling regulation involves special circumstances that justify a compliance date other than January 1, 1993, the agency will determine for that regulation an appropriate compliance date that will be specified when the regulation is published.

This notice is not intended to change existing requirements. Therefore, all final FDA food labeling regulations previously published in the **Federal Register** that announced January 1, 1991, as their compliance dates will still go into effect on that date. Final regulations published in the **Federal Register** with compliance date earlier than January 1, 1991 (e.g., January 1, 1989), are also unaffected by this notice.

The current uniform effective date of January 1, 1991, for new final regulations affecting the labeling of food products was announced in the **Federal Register** of November 7, 1988 (53 FR 44861). Foods initially introduced or initially delivered for introduction into interstate commerce on or after January 1, 1991,

are still required to comply with any final FDA regulations that identify January 1, 1991, as their compliance date.

Dated: December 28, 1989.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-157 Filed 1-3-90; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 440

[Docket No. 89N-0494]

Antibiotic Drugs; Nafcillin Sodium Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new injectable dosage form of nafcillin sodium, nafcillin sodium injection. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective February 5, 1990; written comments, notice of participation, and request for hearing by February 5, 1990; data, information, and analyses to justify a hearing by March 5, 1990.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD-520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new injectable dosage form of nafcillin sodium, nafcillin sodium injection. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in part 440 (21 CFR part 440) by redesignating § 440.241 as § 440.241a and adding new §§ 440.241 and 440.241b to provide for the inclusion of accepted standards for this product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, FDA finds that notice and comment procedure is unnecessary and not in the public interest. This final rule, therefore, becomes effective February 5, 1990. However, interested persons may, on or before February 5, 1990, submit comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before February 5, 1990, a written notice of participation and request for hearing, and (2) on or before March 5, 1990, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this document and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 440

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 440 is amended as follows:

PART 440—PENICILLIN ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR part 440 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

§ 440.241a [Redesignated from § 442.241]

2. Section 440.241 is redesignated as § 440.241a and new §§ 440.241 and 440.241b are added to read as follows:

§ 440.241 Nafcillin sodium injectable dosage forms.

§ 440.241b Nafcillin sodium injection.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Nafcillin sodium injection is a frozen, aqueous, iso-osmatic solution of nafcillin sodium which may contain one or more suitable and harmless buffer substances and a tonicity adjusting agent. Each milliliter contains nafcillin sodium equivalent to 20 or 40 milligrams of nafcillin. Its nafcillin content is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of nafcillin that it is represented to contain. It is sterile. It is nonpyrogenic. Its pH is not less than 6.0 and not more than 8.5. The nafcillin sodium monohydrate used conforms to the standards prescribed by § 440.41(a)(1).

(2) *Labeling.* it shall be labeled in accordance with the requirements of § 432.5 of this chapter. In addition, this drug shall be labeled "nafcillin sodium injection."

(3) *Requests for certification; samples.* In addition to complying with the

requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(A) The nafcillin sodium monohydrate used in making the batch for potency, moisture, pH, crystallinity, nafcillin content and identity.

(B) The batch for nafcillin content, sterility, pyrogens, and pH.

(ii) Samples, if required by the Center for Drug Evaluation and Research:

(A) The nafcillin sodium monohydrate used in making the batch: 10 packages, each containing approximately 300 milligrams.

(B) The batch:

(*1*) For all tests except sterility: A minimum of 10 immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay.* Thaw the sample as directed in the labeling. The sample solution used for testing must be at room temperature.

(1) *Nafcillin content.* Proceed as directed in § 440.241a(b)(1), except use the thawed solution.

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section.

(3) *Pyrogens.* Proceed as directed in § 436.32(a) of this chapter, except inject a sufficient volume of the undiluted solution to deliver 80 milligrams of nafcillin per kilogram.

(4) *pH.* Proceed as directed in § 436.202 of this chapter, using the undiluted solution.

Dated: December 20, 1989.

Sammie R. Young,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 90-67 Filed 1-3-90; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 440

[Docket No. 89N-0493]

Antibiotic Drugs; Oxacillin Sodium Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new injectable dosage form of oxacillin sodium, oxacillin sodium injection. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective February 5, 1990; written comments, notice of participation, and request for hearing by February 5, 1990; data, information, and analyses to justify a hearing by March 5, 1990.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD-520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new injectable dosage form of oxacillin sodium, oxacillin sodium injection. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in 21 CFR part 440 by redesignating § 440.249 as § 440.249a and by adding new §§ 440.249 and 440.249b to provide for the inclusion of accepted standards for this product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, FDA finds that notice and comment procedure is unnecessary and not in the public interest. This final rule, therefore, becomes effective February 5, 1990. However, interested persons may, on or before February 5, 1990, submit comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before February 5, 1990, a written notice of participation and request for hearing, and (2) on or before March 5, 1990, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this document and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 440

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 440 is amended as follows:

PART 440—PENICILLIN ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR part 440 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

§ 440.249a [Redesignated from § 440.249]

2. Section 440.249 is redesignated as § 440.249a and new §§ 440.249 and 440.249b are added to subpart C to read as follows:

§ 440.249 Oxacillin sodium injectable dosage forms.

§ 440.249b Oxacillin sodium injection.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Oxacillin sodium injection is a frozen aqueous, iso-osmotic solution of oxacillin sodium which may contain one or more suitable and harmless buffer substances and a tonicity adjusting agent. Each milliliter contains oxacillin sodium equivalent to 20 or 40 milligrams of oxacillin. Its oxacillin content is satisfactory if it is not less than 90 percent and not more than 115 percent of the number of milligrams of oxacillin that it is represented to contain. It is sterile. It is nonpyrogenic. Its pH is not less than 6.0 and not more than 8.5. The oxacillin sodium monohydrate used conforms to the standards prescribed by § 440.49(a)(1), except that the pH of an aqueous solution containing 30 milligrams per milliliter is not less than 4.0 and not more than 7.0.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter. In addition, this drug shall be labeled "oxacillin sodium injection".

(3) *Requests for certification: samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(A) The oxacillin sodium monohydrate used in making the batch for potency, moisture, pH, oxacillin content, crystallinity, and identity.

(B) The batch for oxacillin content, sterility, pyrogens, and pH.

(ii) Samples, if required by the Center for Drug Evaluation and Research:

(A) The oxacillin sodium monohydrate used in making the batch: 10 packages, each containing approximately 300 milligrams.

(B) The batch:

(*1*) For all tests except sterility: A minimum of 10 immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay.* That the sample as directed in the labeling. he sample solution used for testing must be at room temperature.

(1) *Oxacillin content.* Proceed as directed in § 440.249a(b)(1), except use the thawed solution.

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the method described in paragraph (e)(1) of that section.

(3) *Pyrogens.* Proceed as directed in § 436.32(a) of this chapter, except inject a sufficient volume of the undiluted solution to deliver 20 milligrams of oxacillin per kilogram.

(4) *pH.* Proceed as directed in § 436.202 of this chapter, using the undiluted solution.

Dated: December 21, 1989.

Sammie R. Young,

Acting Director Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 90-68 Filed 1-3-90; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 452

[Docket No. 89N-0439]

Antibiotic Drugs; Erythromycin Estolate and Sulfisoxazole Acetyl Oral Suspension

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new oral dosage form of erythromycin estolate, erythromycin estolate and sulfisoxazole acetyl oral suspension. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective (February 5, 1990; written comments, notices of participation, and requests for hearing by (February 5, 1990); data, information, and analyses to justify a hearing by March 5, 1990).

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter A. Dionne, Center for Drug Evaluation and Research (HFD-520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new oral dosage form of erythromycin estolate, erythromycin estolate and sulfisoxazole acetyl oral suspension. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in part 452 (21 CFR part 452) to provide for the inclusion of accepted standards for this product by adding new § 452.115g.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, FDA finds that notice and comment procedure is unnecessary and not in the public interest. This final rule, therefore, becomes effective Febraury 5, 1990. However, interested persons may, on or before February 5, 1990, submit comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before February 5, 1990, a written notice of participation and request for hearing, and (2) on or before (March 5, 1990, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that

no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 452

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic ct and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 452 is amended as follows:

PART 452—MACROLIDE ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR part 452 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

2. New § 452.115g is added to Subpart B to read as follows:

§ 452.115g Erythromycin estolate and sulfisoxazole acetyl oral suspension.

(a) *Requirements for certification—(1) Standards of identity, strength, quality, and purity.* Erythromycin estolate and sulfisoxazole acetyl oral suspension is erythromycin estolate and sulfisoxazole acetyl with suitable and harmless buffer substances, preservatives, solvents, stabilizers, emulsifiers, dispersing agents, colorings, and flavorings. Each milliliter contains erythromycin estolate equivalent to 25 milligrams of erythromycin and 120 milligrams of sulfisoxazole. Its erythromycin content is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of erythromycin that it is represented to contain. Its sulfisoxazole acetyl content is satisfactory if it is not less than 90 percent and not more than 115 percent of the number of milligrams of sulfisoxazole that it is represented to contain. Its pH is not less than 3.5 and not more than 6.5. The erythromycin estolate used conforms to the standards prescribed by § 452.15(a)(1). The sulfisoxazole acetyl used conforms to the standards prescribed by the U.S.P. XXII.

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(A) The erythromycin estolate used in making the batch for potency, moisture, pH, crystallinity, and identity.

(B) The sulfisoxazole acetyl used in making the batch for all U.S.P. XXII specifications.

(C) The batch for erythromycin content, sulfisoxazole content, and pH.

(ii) Samples, if required by the Center for Drug Evaluation and Research:

(A) The erythromycin estolate used in making the batch: 10 packages, each containing not less than 500 milligrams.

(B) The batch: a minimum of 15 immediate containers.

(b) *Tests and methods of assay*—(1) *Erythromycin content.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Remove an accurately measured representative volume of the suspension and dilute with sufficient methyl alcohol to give a concentration of 2.5 milligrams per milliliter (estimated). Dilute the entire mixture with sufficient 0.1*M* potassium phosphate buffer, pH 8.0 (solution 3), to give a concentration of 1.0 milligram of erythromycin base per milliliter (estimated). Hydrolyze in a 60 °C constant temperature water bath for 2 hours or at room temperature for 16 to 18 hours. Further dilute with solution 3 to the reference concentration of 1.0 microgram of erythromycin base per milliliter (estimated).

(2) *Sulfisoxazole content.* Proceed as directed in § 436.328 of this chapter.

(3) *pH.* Proceed as directed in § 436.202 of this chapter, using the drug as it is prepared for dispensing.

Dated: December 20, 1989.

Sammie R. Young,

Acting Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 90-66 Filed 1-3-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 203

[Docket No. R-89-1447; FR-2657-F-01]

RIN 2502-AE74

Revision to FHA Insurance on Hawaiian Home Lands and Assignment Regulations to Remove Dependence on Temporary Mortgage Assistance Payments Program Rule

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: A final rule was published on March 5, 1987 (52 FR 6915) to implement the Temporary Mortgage Assistance Payments (TMAP) program, which contained provisions needed to fully explain the mortgage assignment process and to make it conform to current statutory requirements. When the Hawaiian Home Lands rule was published (March 16, 1987, 52 FR 8064), the Department anticipated that the effective date for the TMAP rule was imminent. The TMAP rule has not yet been made effective. This rule revises the Hawaiian Home Lands rule to remove reliance on the published but ineffective TMAP rule, and revises the Assignment Program regulation to conform it to current statutory requirements pending the effectiveness of the TMAP rule that would have made similar changes.

EFFECTIVE DATE: February 5, 1990 except for § 203.350(e). The approval number for this collection will be published separately in the **Federal Register** with a notice of effectiveness of this rule.

FOR FURTHER INFORMATION CONTACT: David E. Pinsky, Assistant General Counsel, Home Mortgage Division, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-5303. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in §§ 203.350(c), 203.665 (a) and (b) have been approved by the Office of Management and Budget and assigned control numbers 2635-0093, 2502-0340, and 2502-0169,

respectively. The information collection contained in § 203.350(e) has been submitted to the Office of Management and Budget for expedited review under the Paperwork Reduction Act of 1980. The approval number for this collection will be published separately in the **Federal Register** with the notice of effectiveness of this rule. Until that time, no person may be subjected to a penalty for failure to comply with this information collection requirement.

The annual public reporting burden of this requirement, including the time for reviewing instructions, searching any existing data sources needed, gathering and maintaining any data needed, and completing and reviewing the collection of information—to the extent the collection does not coincide with existing requirements of State or local law—is stated in the chart included under the heading of Findings and Certifications. Send comments regarding the burden estimates or any other aspect of this information collection to the Department of HUD, Rules Docket Clerk, 451 Seventh Street, SW., Washington, DC 20410, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for HUD.

II. Background

The Department's general authority to accept assignment of a mortgage on a one- to four-family dwelling from a mortgagee is contained in section 230(b) of the National Housing Act (12 U.S.C. 1715u(b)). That section authorizes the Secretary to accept assignment and provide assistance to a mortgagor if the mortgagor's default was caused by circumstances beyond the mortgagor's control and the mortgagor has reasonable prospects of being able to repay the mortgage obligation. Section 203.350(a) of the Department's regulations has implemented this general authority, and that provision was revised in the TMAP rule to reflect the statutory requirement for the mortgagor to have reasonable prospects for repayment. However, since that rule has not been made effective, § 203.350(a) fails to reflect this statutory requirement. This rule makes effective § 203.350(a) as it was published in the TMAP rule.

Section 247 of the National Housing Act (12 U.S.C. 1715z-12) authorizes HUD to insure mortgages on homestead leaseholds on Hawaiian Home Lands. This insurance is not subject to any limitation in any other section of the National Housing Act that the Secretary determines is contrary to promoting the availability of this insurance. Under this authority, the Hawaiian Home Lands rule (§ 203.439(b)) provides that a mortgagee may seek to assign its interest when such a mortgage is 180 days or more in default, and the TMAP rule added § 203.350(c) to authorize HUD to accept an assignment of an insured mortgage on Hawaiian Home Lands under certain circumstances. This assignment provision differs from HUD's general authority to accept assignment of a home mortgage under section 230, described above. Since the TMAP rule has not been made effective, there is no current special regulatory authority for accepting assignment of mortgages insured pursuant to section 247 of the National Housing Act. (There is a provision in the currently effective § 203.350(b) for acceptance of assignment of mortgages insured pursuant to 248 of the National Housing Act, a provision for FHA insurance of mortgages on Indian reservation properties that is similar to the Hawaiian Home Lands provision.) This rule makes effective § 203.350(c) as published in the TMAP rule.

Another change contained in the TMAP rule was to include the regulatory requirement for filing an assignment for record as paragraph (e) to § 203.350 (a provision concerning assignment of mortgages on Seneca Nation properties is being inserted as paragraph (d) by another final rule), instead of as a separate § 203.350a. Of course, this change also has been ineffective, but this rule now makes it effective and corrects a cross-reference to that provision that is found in § 203.404(a)(4).

Section § 203.439(a), the general provision concerning mortgage servicing for mortgages on Hawaiian Home Lands property, contains a reference to regulatory provisions that are inapplicable to the program. At the time the Hawaiian Home Lands rule was published, the program was an obligation of the Mutual Mortgage Insurance Fund and, as such, would have been subject to the provisions of §§ 203.420 through 203.425 concerning distributive shares. Because HUD determined that these provisions should not apply to the program, § 203.439(a) stated that these provisions did not apply. However, now that the Hawaiian Home Lands program has been made an obligation of the General Insurance Fund by statutory amendment, that statement is unnecessary and it is being removed in this rule.

Section 203.665 of the TMAP rule, which prescribes the procedure for a mortgagee to follow to assign a mortgage on Hawaiian Home Lands property to HUD, contained a paragraph about TMAP relief, and its forbearance relief paragraph relied on the content of the TMAP paragraph. This rule removes the TMAP paragraph and fleshes out the forbearance paragraph to include the relevant criteria previously contained only in the TMAP one, so that it can stand alone—in the absence of a TMAP program.

The regulations have contained no specific reference to a rate of interest charged with respect to assistance provided to a mortgagor under the assignment program. Assistance under this program has been in the form of forbearance, deferring payments due under the mortgage loan, and interest has continued to accrue at the note rate on all overdue amounts. However, section 230(b) of the National Housing Act provides that any interest rate charged by the Secretary on repayment of assistance provided under the assignment program may not exceed the interest rate chargeable under section 230(a) for the TMAP program.

Section 230(a) was amended by section 428 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) to require that the interest rate charged on TMAP assistance be the rate that is established for Veteran's Administration-guaranteed mortgages when the Secretary approves assistance. Since the rate charged in the assignment program may not exceed the VA rate, and charging the note rate on arrearages and any advances made during the forbearance period could exceed the VA rate at the time the Secretary accepted assignment of a mortgage and approved forbearance (if mortgage rates had decreased since the issuance of the original mortgage loan), this rule amends § 203.654(b) to add a sentence stating this limitation, to be determined at the time the assignment is accepted by the Secretary to make the regulations conform to the 1987 statutory amendment.

III. Justification for final rule

It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, despite the exemption contained in 5 U.S.C. 553 from the requirement to solicit public comment for these rules. However, in accordance with 24 CFR part 10, the Department may omit solicitation of public comment before publishing a final rule in a particular case, if such comment is not required by statute and solicitation and consideration of public comment are "impracticable, unnecessary or contrary to the public interest."

In this case, no statute requires that public comment be solicited. Moreover, most of the changes are ones that have been published previously in a final rule (TMAP) that was developed after consideration of public comment. It is in the interest of mortgages and mortgagors who participate in the Hawaiian Home Lands mortgage insurance program to have a fully operational program, including provisions for action by HUD in the event of default by the mortgagor. The other changes made in this rule are a direct result of statutory changes—removal of an obsolete reference to provisions that would have no effect since the Hawaiian Home Lands mortgage insurance program was moved from the MMIF to the GIF, and insertion of a reference to a new cap on the amount of interest to be charged on assignment assistance. Both of these changes are ones on which comment is unnecessary. The former has no practical effect, and the latter has only a beneficial effect on defaulted mortgagors. Therefore, it would be in the public interest to omit solicitation of public comments through issuance of a proposed rule and to make these changes effective at the earliest possible date by way of this final rule.

IV. Findings and Certifications

A. *Environment.* A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying from 7:30 a.m. to 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

B. *Executive Order 12291.* This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 issued by the President on February 17, 1981, and therefore no regulatory impact analysis is necessary. It will not have an annual effect on the economy of $100 million or more. Furthermore, it will not cause a major increase in cost or prices for consumer, individual industries, Federal, State, or local government agencies, or geographic regions, nor have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

C. *Regulatory Flexibility Act.* Under the Regulatory Flexibility Act (5 U.S.C. 601), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule will permit mortgage lenders to assign defaulted mortgages to HUD and obtain mortgage insurance benefits as intended by Congress and will require that the rate of interest charged in the assignment program not exceed the statutory limit.

D. *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 contained in this do not have federalism implications and, thus, are not subject to review under the Order. The rule relates to HUD's functions as an insurer of mortgages and to benefits provided defaulted homeowners but will not interfere with State or local government functions.

E. *Executive Order 12606, the Family.* The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule, as distinguished from its statutory basis, does not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule merely implements fairly explicit statutory requirements.

F. *Regulatory Agenda.* This rule was listed as item 1048 on the Department's semiannual agenda of regulations published on October 30, 1989 (54 FR 44702, 44721), under Executive Order 12291 and the Regulatory Flexibility Act.

G. *Information Collection Requirements.* The information collection contained in § 203.250(e) has been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Information on the public reporting burden is that section is provided as follows:

Description of requirement	Section No.	Number of respond-ents	Freq. of response	Est. Avg. Resp. Time	Est. Annual Burden (Hrs.)
Recordation of assignment	203.350(e)	8,258	1.5	.5	6,194
Total Burden					6,194

H. *Catalog.* The Catalog of Federal Domestic Assistance program number for this rule is 14.117, Mortgage insurance—homes.

I. List of Subjects in 24 CFR Part 203

Loan programs: housing and community development; Hawaiian natives; Mortgage insurance; Home improvement, Indians: lands; Reporting and recordkeeping requirements; Solar energy.

Accordingly, 24 CFR part 203 is amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for Part 203 continues to read as follows:

Authority: Secs. 203, 211, National Housing Act (12 U.S.C. 1709, 1715b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)). In addition, subpart C is also issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

2. In § 203.350, paragraph (a) is revised and paragraphs (c) and (e) are added, to read as follows:

§ 203.350 Assignment of defaulted mortgage.

(a) *In general.* The Secretary will accept an assignment of any mortgage covering a one- to four-family residence if the Secretary finds that the criteria for acceptance of an assignment under § 203.650 have been satisified.

* * * * *

(c) *Assignment of mortgages insured pursuant to section 247, National Housing Act.* Notwithstanding the provisions of paragraph (a) of this section, the Secretary will, upon application by the mortgagee, agree to accept an assignment of any mortgage insured pursuant to section 247 of the National Housing Act (§ 203.43i of this part) where the mortgagor has been in default for more than 180 days, provided

that the requirements of § 203.665 are satisfied.

* * * * *

(e) *Filing assignment for record.* Within 30 days of the Secretary's written agreement to accept assignment of a defaulted mortgage, or within such additional time as the Secretary authorizes in writing, the mortgagee must file the assignment for record.

(Information collections contained in paragraphs (b) and (c) have been approved by the Office of Management and Budget under control numbers 2502-0340 and 2535-0093, respectively.)

§ 203.350a [Removed]

3. Section 203.350a is removed.

§ 203.404 [Amended]

4. In § 203.404(a)(4), the term "§§ 203.350a" is removed, and the term "§§ 203.350(e)" is substituted in its place.

§ 203.439 [Amended]

5. In § 203.439(a), the words "and § 203.420 through § 203.425" are removed, and the word "and" is added before the word "203.368".

6. In § 203.654, paragraph (b) is revised to read as follows:

§ 203.654 Preliminary review and determination by the Secretary.

* * * * *

(b) If after preliminary review, the Secretary determines that assignment should be accepted, the mortgagee shall assign the mortgage upon notification by the Secretary. The rate of interest to be charged on amounts forborne will be determined by the Secretary at this time, and it shall be the lower of the interest rate of the insured mortgage or the rate established under section 1803(c) of title 38, United States Code (for VA-guaranteed mortgages).

* * * * *

7. Section 203.665 is revised and the undesignated center heading preceding it is republished to read as follows:

Mortgages in Default on Property Located on Hawaiian Home Lands

§ 203.665 Processing defaulted mortgages on property located on Hawaiian home lands.

(a) *Assignment.* Before a mortgagee requests the Secretary to accept assignment (under § 203.350(c)) of the mortgage insured pursuant to section 247 of the National Housing Act (§ 203.43i of this part), the mortgagee must submit documents showing that the requirements of § 203.604 have been met.

(b) *Forbearance.* (1) The Secretary will make forbearance relief available to a mortgagor where the mortgage is assigned in accordance with § 203.350(c), if all of the conditions of § 203.650(a)(3) through (a)(6) are met, and none of the conditions specified in paragraph § 203.650(b)(1) or (b)(2) exist, and the mortgagor and mortgagee furnish the Secretary, within 15 days of the date of the Secretary's request, all the information requested to assist in a preliminary determination of whether or not to forbear.

(2) The amount forborne, period of reduced or suspended payments, review of the mortgagor's circumstances, and payment of the mortgage after the period of reduced or suspended payments, will be in accordance with policies for assignments accepted under § 203.650.

(Information collections contained in paragraphs (a) and (b) of this section have been approved by the Office of Management and Budget under control numbers 2502-0340 and 2502-0169, respectively.)

Dated: October 30, 1989.

C. Austin Fitts,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 90-102 Filed 1-3-90; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8279]

RIN 1545-AM31

Definition of a Qualified Business Unit

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations relating to the definition of a qualified business unit under section 989 of the Internal Revenue Code of 1986. This section was added to the Code by section 1261 of the Tax Reform Act 1986. These final regulations define the term "Qualified Business Unit" and affect taxpayers who must make income tax determinations for their QBUs for taxable years beginning after December 31, 1986.

EFFECTIVE DATE: These regulations are effective for taxable years beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Carl Cooper of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224, (Attention: CC:CORP:T:R(INTL-983-86)) and (202-566-6795, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On June 8, 1988, the **Federal Register** published proposed amendments (53 FR 20612) to the Income Tax Regulations (26 CFR part 1) under section 989 of the Internal Revenue Code of 1986. These amendments added regulations under section 989 of the Internal Revenue Code of 1986 defining the term "Qualified Business Unit" (QBU). This section was added to the Code by section 1261 of the Tax Reform Act of 1986 (Pub. L. 99-514, 100 Stat. 2085, 2090). No written comments responding to this notice were received. No public hearing was requested or held.

Explanation of Provisions

Section 1.989 (a)-1 (a) provides that the effective date of these regulations is generally for taxable years beginning after December 31, 1986.

Section 1.989 (a)-1 (b) expands the definition of QBU to include partnerships, trusts, and estates. In addition, a branch of a partnership, trust, or an estate may qualify as a QBU. Because a partnership, trust, or estate is treated as a QBU of each of the partners or beneficiaries, section 987 (relating to branch transactions) may apply to remittances from a partnership, trust, or estate to partners or beneficiaries. A QBU also includes activities that produce income or loss effectively connected with a United States trade or business.

Section 1.989 (a)-1 (c) provides that a trade or business for purposes of section 989 (a) is generally any specific unified group of activities that constitute (or could constitute) an independent economic enterprise carried on for profit, the expenses related to which are deductible under section 162 and 212 (rather than only section 162). Thus, all activities engaged in for profit are eligible for QBU status.

Section 1.989 (a)-1 (d) provides that books and records include those used to determine effectively connected income or loss.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C.

chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is Carl Cooper of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects in 26 CFR Part 1

Income taxes, aliens, exports, DISC, Foreign investments in U.S., Foreign tax credit, FSC, Sources of income, U.S. investments abroad.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

Income Tax Regulations

PART 1—[AMENDED]

Paragraph 1. The authority for part 1 continues to read in part:

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

§§ 1.989 (a)-0T and 1.989 (a)-1T [Removed]

Par. 2. Sections 1.989 (a)-0T and 1.989 (a)-1T are removed and new § 1.989 (a)-1 is added to read as follows:

§ 1.989 (a)-1 Definition of a qualified business unit.

(a) *Applicability*—(1) *In general.* This section provides rules relating to the definition of the term "qualified business unit" (QBU) within the meaning of section 989.

(2) *Effective date.* These rules shall apply to taxable years beginning after December 31, 1986. However, any person may apply on a consistent basis § 1.989 (a)-1T (c) of the Temporary Income Tax Regulations in lieu of § 1.989 (a)-1 (c) to all taxable years beginning after December 31, 1986, and on or before February 5, 1990. For the text of the temporary regulation, see 53 FR 20612 (June 8, 1988).

(b) *Definition of a qualified business unit*—(1) *In general.* A QBU is any separate and clearly identified unit of a trade or business of a taxpayer provided that separate books and records are maintained.

(2) *Application of the QBU definition*—(i) *Persons.* A corporation is QBU. An individual is not a QBU. A partnership, trust, or estate is a QBU of a partner or beneficiary.

(ii) *Activities.* Activities of a corporation, partnership, trust, estate, or individual qualify as a QBU if—

(A) The activities constitute a trade or business; and

(B) A separate set of books and records is maintained with respect to the activities.

(3) *Special rule.* Any activity (wherever conducted and regardless of its frequency) that produces income or loss that is, or is treated as, effectively connected with the conduct of a trade or business within the United States shall be treated as a separate QBU, provided the books and records requirement of paragraph (d)(2) of this section is satisfied.

(c) *Trade or business*—The determination as to whether activities constitute a trade or business is ultimately dependent upon an examination of all the facts and circumstances. Generally, a trade or business for purposes of section 989(a) is a specific unified group of activities that constitutes (or could constitute) an independent economic enterprise carried on for profit, the expenses related to which are deductible under section 162 or 212 (other than that part of section 212 dealing with expenses incurred in connection with taxes). To constitute a trade or business, a group of activities must ordinarily include every operation which forms a part of, or a step in, a process by which an enterprise may earn income or profit. Such group of activities must ordinarily include the collection of income and the payment of expenses. It is not necessary that the activities carried out by a QBU constitute a different trade or business from those carried out by other QBUs of the taxpayer. A vertical, functional, or geographic division of the same trade or business may be a trade or business for this purpose provided that the activities otherwise qualify as trade or business under this paragraph (c). However, activities that are merely ancillary to a trade or business will not constitute a trade or business under this paragraph (c). Activities of an individual as an employee are not considered by themselves to constitute a trade or business under this paragraph (c).

(d) *Separate books and records*—(1) *General rule.* Except as provided in paragraph (d)(2) of this section, a separate set of books and records shall include books of original entry and ledger accounts, both general and subsidiary, or similar records. For example, in the case of a taxpayer using the cash receipts and disbursements method of accounting, the books of original entry include a cash receipts and disbursements journal where each receipt and each disbursement is recorded. Similarly, in the case of a taxpayer using an accrual method of accounting, the books of original entry include a journal to record sales (accounts receivable) and a journal to record expenses incurred (accounts payable). In general, a journal represents a chronological account of all transactions entered into by an entity for an accounting period. A ledger account, on the other hand, chronicles the impact during an accounting period of the specific transactions recorded in the journal for that period upon the various items shown on the entity's balance sheet (*i.e.*, assets, liabilities, and capital accounts) and income statement (*i.e.*, revenues and expenses).

(2) *Special rule.* For purposes of paragraph (b)(3) of this section, books and records include books and records used to determine income or loss that is, or is treated as, effectively connected with the conduct of a trade or business within the United States.

(e) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). Corporation X is a domestic corporation. Corporation X manufactures widgets in the U.S. for export. Corporation X sells widgets in the United Kingdom through a branch office in London. The London office has its own employees and solicits and processes orders. Corporation X maintains in the U.S. a separate set of books and records for all transactions conducted by the London office. Corporation X is a QBU under paragraph (b)(2)(i) of this section because of its corporate status. The London branch office is a QBU under paragraph (b)(2)(ii) of this section because (1) the sale of widgets is a trade or business as defined in paragraph (c) of this section; and (2) a complete and separate set of books and records (as described in paragraph (d) of this section) is maintained with respect to its sales operations.

Example (2). A domestic corporation incorporates a wholly-owned subsidiary in Switzerland. The domestic corporation is a manufacturer that markets its product abroad primarily through the Swiss subsidiary. To facilitate sales of the parent's product in Europe, the Swiss subsidiary has branch offices in France and West Germany that are responsible for all marketing operations in those countries. Each branch has its own employees, solicits and processes orders, and maintains a separate set of books and records. The domestic corporation and the Swiss subsidiary are both QBUs under paragraph (b)(2)(i) of this section because of their corporate status. The French and West German branches are QBUs of the Swiss subsidiary. They satisfy paragraph (b)(2)(ii) because each constitutes a trade or business (as defined in paragraph (c) of this section) and because separate sets of books and records (as described in paragraph (d) of this section) of their respective operations is

maintained. Each branch is considered to have a trade or business although each is a geographical division of the same trade or business.

Example (3). W is a domestic corporation that manufactures product X in the United States for sale worldwide. All of W's sales functions are conducted exclusively in the United States. W employs individual Q to work in France. Q's sole function is to act as a courier to deliver sales documents to customers in France. With respect to Q's activities in France, a separate set of books and records as described in paragraph (d) is maintained. Under paragraph (c) of this section, Q's activities in France do not constitute a QBU since they are merely ancillary to W's manufacturing and selling business. Q is not considered to have a QBU because an individual's activities as an employee are not considered to constitute a trade or business of the individual under paragraph (c).

Example (4). The facts are the same as in example (3) except that the courier function is the sole activity of a wholly-owned French subsidiary of W. Under paragraph (b)(2)(i) of this section, the French subsidiary is considered to be a QBU.

Example (5). A corporation incorporated in the Netherlands is a subsidiary of a domestic corporation and a holding company for the stock of one or more subsidiaries incorporated in other countries. The Dutch corporation's activities are limited to paying its directors and its administrative expenses, receiving capital contributions from its United States parent corporation, contributing capital to its subsidiaries, receiving dividend distributions from its subsidiaries, and distributing dividends to its domestic parent corporation. Under paragraph (b)(2)(i) of this section, the Netherlands corporation is considered to be a QBU.

Example (6). Taxpayer A, an individual resident of the United States, is engaged in a trade or business wholly unrelated to any type of investment activity. A also maintains a portfolio of foreign currency-denominated investments through a foreign broker. The broker is responsible for all activities necessary to the management of A's investments and maintains books and records as described in paragraph (d) of this section, with respect to all investment activities of A. A's investment activities qualify as a QBU under paragraph (b)(2)(ii) of this section to the extent the activities engaged in by A generate expenses that are deductible under section 212 (other than that part of section 212 dealing with expenses incurred in connection with taxes).

Example (7). Taxpayer A, an individual resident of the United States, is the sole shareholder of foreign corporation (FC) whose activities are limited to trading in stocks and securities. FC is a QBU under paragraph (b)(2)(i) of this section.

Example (8). Taxpayer A, an individual resident of the United States, markets and sells in Spain and in the United States various products produced by other United States manufacturers. A has an office and employs a salesman to manage A's activities in Spain, maintains a separate set of books and records with respect to his activities in Spain, and is engaged in a trade or business as defined in paragraph (c) of this section. Therefore, under paragraph (b)(2)(ii) of this section, the activities of A in Spain are considered to be a QBU.

Example (9). Foreign corporation FX is incorporated in Mexico and is wholly owned by a domestic corporation. The domestic corporation elects to treat FX as a domestic corporation under section 1504(d). FX operates entirely in Mexico and maintains a separate set of books and records with respect to its activities in Mexico. FX is a QBU under paragraph (b)(2)(i) of this section. The activities of FX in Mexico also constitute a QBU under paragraph (b)(2)(ii) of this section.

Example (10). F, a foreign corporation, computes a gain of $100 from the disposition of a United States real property interest (as defined in section 897(c)). The gain is taken into account as if F were engaged in a trade or business in the United States and as if such gain were effectively connected with such trade or business. F is a QBU under paragraph (b)(2)(i) of this section because of its corporate status. F's disposition activity constitutes a separate QBU under paragraph (b)(3) of this section.

Dated: November 9, 1989.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved:

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 90-186 Filed 1-3-90; 8:45 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-291; RE: Notice No. 687]

RIN 1512-AA07

Arroyo Grande Valley Viticultural Area (87F-147P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area known as Arroyo Grande Valley which is located in San Luis Obispo County, California. The petition was submitted by the proprietors of two wineries in the area. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify wines they purchase. The use of this viticultural area as an appellation of origin will help winemakers distinguish their products from wines made in other areas.

EFFECTIVE DATE: February 5, 1990.

FOR FURTHER INFORMATION CONTACT: Robert L. White, Coordinator, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, room 6237, Washington, DC 20226, telephone (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in title 27, Code of Federal Regulations, part 4. These regulations allow the establishment of definitive American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine. On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added to title 27 a new part 9 providing for the listing of approved American viticultural areas.

Section 4.25a(e)(1), title 27, CFR, defines an American viticultural area as a delimited grape growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9. Section 4.25a(e)(2) outlines the procedures for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Petition

By letter dated July 8, 1987, Don Talley of Talley Vineyards and William S. Greenough of Saucelito Canyon Vineyard filed a petition for the establishment of an "Arroyo Grande Valley" viticultural area in San Luis Obispo County, California.

The Arroyo Grande Valley is approximately 12 miles southeast of the town of San Luis Obispo. The western leg of the boundary of the viticultural area is about three miles directly east of the Pacific Ocean at Grover City. The area covers approximately 67 square miles. The principal stream in the area is the Arroyo Grande Creek which meanders approximately 12 miles in a southwesterly direction from the spillway of Lopez Lake to the Pacific Ocean. The viticultural area includes substantially all the drainage of the Arroyo Grande Creek including the (upper) Arroyo Grande Creek. Feeding waters into the Arroyo Grande Creek are Tar Spring Creek, Los Berros Creek and Lopez Lake into which flow the (upper) Arroyo Grande Creek, Wittenberg Creek and the creek in Lopez Canyon. Tributaries to the (upper)

Arroyo Grande Creek are Phoenix Creek and Saucelito Creek.

Within the viticultural area are four vineyards totaling 350 acres planted in wine grapes and three bonded wineries. The Edna Valley viticultural area lies immediately to the northwest, the boundary of Los Padres National Forest straddles the north leg of the boundary, the Santa Maria viticultural area lies to the southeast of Arroyo Grande Valley, and the Pacific Ocean communities of Oceano, Grover City and Arroyo Grande abut the southwestern leg of the boundary. In response to this petition, ATF published a notice of proposed rulemaking, Notice No. 687, in the **Federal Register** on July 20, 1989 (54 FR 30398), proposing the establishment of the Arroyo Grande Valley viticultural area.

Comments

No comments were received during the 45-day comment period which ended on September 5, 1989.

Name and History

The mission at San Luis Obispo farmed the bottomlands in the valley from 1780 until 1842 when the Mexican governor granted "Rancho Arroyo Grande" to Zefarino Carlon. Today, the names "Arroyo Grande" and "Arroyo Grande Valley" can be found on many maps of the area. Commercial vineyards were first planted in 1880 in Saucelito Canyon. The oldest winery in San Luis Obispo County, St. Remy, was also established in Saucelito Canyon in 1880 and produced wines until National Prohibition. This winery identified itself as being from Arroyo Grande.

Geographical/Climatological Features

The Arroyo Grande Valley viticultural area is mainly distinguished from surrounding areas by differences in climate and, to a lesser extent, by soil. These differences are based on the following:

(a) Climate

The primary characteristic distinguishing Arroyo Grande Valley from neighboring areas is climate. The climate ranges from high Region I to Region II as classified by the University of California system of heat summation. The climate during the growing season is influenced by the proximity of the Arroyo Grande Valley to the Pacific Ocean. The marine air produces frequent morning and evening fog. This distinguishes the area from inland areas of San Luis Obispo County which are not open to the ocean and have much higher summer temperatures and colder winter temperatures.

The climate during the months of March, April and May is dominated by a strong onshore air flow bringing cold winds which delay early season growing and fruit set of the grapevines. Because the Arroyo Grande Valley is shielded by the mountain range on the northwest side, the effects of the onshore air flow are moderated.

The valley experiences a long dry moderate summer season and a mild winter season. The average rainfall is 20 inches with about 80 percent of the rain falling between December and March.

The valley floor ranges from sea level to 400 feet above sea level. The viticultural area takes in higher elevations from 300 to 1,000 feet in elevation. Present grape plantings are on low hills near the valley floor. During the summer growing season, the sun shines more than 90 percent of the day. Temperatures of 100 degrees F occur nearly every year. Average maximum readings for July are in the 90's and range from about 92 degrees F at higher elevations to 98 degrees F at lower elevations with occasional highs ranging from 110 degrees F to 115 degrees F.

The climate of the area is characterized by cool summer night temperatures, often dropping to 30 degrees below daytime highs.

The Arroyo Grande Valley, as a whole, is slightly warmer than the Santa Maria Valley viticultural area to the south, and somewhat cooler than the Edna Valley and Paso Robles viticultural areas to the north, as determined by the average total number of degree days during the growing season.

The Arroyo Grande Valley usually gets more precipitation each year than the Santa Maria Valley to the south or the Paso Robles area to the north. Edna Valley, to the immediate northwest, usually gets just slightly less precipitation than Arroyo Grande Valley.

The Arroyo Grande Valley is oriented on a northeast-southwest axis whereas both Edna Valley and Santa Maria Valley are oriented on a northwest-southeast axis. This northeast-southwest orientation for Arroyo Grande Valley results in prevailing southwesterly winds in the valley.

Farm Advisor Statement

Mr. John H. Foott, Farm Advisor, Cooperative Extension, University of California, San Luis Obispo County, states that Arroyo Grande Valley is definitely a valley with a climate and terrain different from the Paso Robles and Edna Valley appellations. Arroyo Grande Valley has a southwest orientation to the coast, which gives it some protection from northwest winds. Fog in the summer keeps the valley cool and would designate it as a Region I, according to Mr. Foott. The fog usually burns back in the late morning hours, which gives a gentle warming in the afternoon—ideal for good wine grape quality. These are the items that distinguish the Arroyo Grande Valley from the other areas of the county.

Statement from Professor Fountain

Mr. H. Paul Fountain, Professor of Viticulture, Crop Science Department, California Polytechnic State University, states that Arroyo Grande Valley has many climate characteristics similar to the Edna Valley. The area is much different from most of the grape growing areas of San Luis Obispo County, particularly the northern parts of the county including Paso Robles and Shandon.

The greatest difference between Arroyo Grande and the Paso Robles/Shandon area is temperature. Paso Robles is much warmer in the summer and colder in the winter. The difference is not only the high and low temperatures during the growing season, but the length of time each day that the maximum temperatures occur.

The Arroyo Grande area in west of the Santa Lucia Mountain range and experiences the moderating coastal influences. Early morning fogs (many times up until 9 to 10 a.m.) and afternoon coastal onshore breezes during the growing season keep this area much cooler and the maximum temperatures of shorter duration than the grape growing area east of the Santa Lucia Mountain range.

Consequently, the climate of the Arroyo Grande Valley is different from the other grape growing areas of San Luis Obispo County.

(b) Soils

Soils within the Arroyo Grande Valley viticultural area are shallow and moderately deep, moderately sloping to extremely steep, and well drained. Some soils on the valley floor are very deep, nearly level to moderately sloping, somewhat poorly drained and well drained silty clay loam and sandy clay loam soils.

Boundaries

The boundaries of the Arroyo Grande Valley viticultural area as proposed in the notice are adopted. An exact description of these boundaries is discussed in the regulations portion of this document. ATF believes that these boundaries delineate an area with

distinguishable geographic and climatic features.

Miscellaneous

ATF does not wish to give the impression by approving the Arroyo Grande Valley viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being distinct from surrounding areas, not better than other areas. By approving the area, wine producers are allowed to claim a distinction on labels and advertisements as to origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of Arroyo Grande Valley wines.

Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (February 17, 1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603 and 604) are not applicable to this final rule because the final rule will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96-511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Robert L. White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

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

Authority: 27 U.S.C. 205.

Paragraph 2. The Table of Sections in subpart C is amended to add the title of § 9.129 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

§ 9.129 Arroyo Grande Valley.

* * * * *

Paragraph 3. Subpart C is amended by adding § 9.129 to read as follows:

§ 9.129 Arroyo Grande Valley.

(a) *Name.* The name of the viticultural area described in this section is "Arroyo Grande Valley."

(b) *Approved maps.* The appropriate maps for determining the boundary of Arroyo Grande Valley viticultural area are four U.S.G.S. topographical maps of the 1:24,000 scale:

(1) "Arroyo Grande, NE, California," edition of 1965, photorevised 1978.

(2) "Tar Spring Ridge, California," edition of 1967.

(3) "Nipomo, California," edition of 1965.

(4) "Oceano, California," edition of 1965, photorevised 1979.

(c) *Boundary:* The Arroyo Grande Valley viticultural area is located in San Luis Obispo County in the State of California. The boundary is as follows:

(1) Beginning on the "Arroyo Grande" map at the point of intersection of State Route 227 and Corbit Canyon Road in Arroyo Grande Township, the boundary proceeds approximately 0.1 mile, in a northwesterly direction, along the roadway of State Route 227 to the point where State Route 227 intersects with Printz Road in Poorman Canyon in the Santa Manuela land grant;

(2) Then northwesterly, approximately 1.5 miles, along Printz Road to its intersection with Noyes Road in the Santa Manuela land grant;

(3) Then northerly, approximately 1.5 miles, along Noyes Road to its intersection with State Route 227 (at vertical control station "BM 452") in the Santa Manuela land grant;

(4) Then in a northeasterly direction in a straight line approximately 1.4 miles to the intersection of Corbit Canyon Road with an unnamed, unimproved road at Verde in the Santa Manuela land grant;

(5) Then approximately 1.9 miles in a generally northeasterly direction, along the meanders of said unimproved road to its easternmost point, prior to the road turning back in a northwesterly direction to its eventual intersection with Biddle Ranch Road;

(6) Then in a northwesterly direction approximately 1.13 miles in a straight line to the summit of an unnamed peak identified as having an elevation of 626 feet in the Santa Manuela land grant;

(7) The easterly, approximately 0.46 mile in a straight line, to the summit of an unnamed peak identified as having an elevation of 635 feet, in the Santa Manuela land grant;

(8) Then east northeasterly, approximately 0.27 mile in a straight line, to the summit of an unnamed peak identified as having an elevation of 799 feet, in the Santa Manuela land grant;

(9) Then easterly, approximately 0.78 mile in a straight line, to the summit of an unnamed peak identified as having an elevation of 952 feet, in the Santa Manuela land grant;

(10) Then easterly, approximately 0.7 mile in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,188 feet, in the southwest corner of section 29, T. 31 S., R. 14 E.;

(11) Then east southeasterly, approximately 0.9 mile in a straight line, to the point at which Upper Arroyo Grande Road crosses the spillway of Lopez Dam in section 32, T. 31 S., R. 14 E. (see "Tar Spring Ridge" map);

(12) Then, in a generally easterly direction, approximately 3.64 miles along Upper Arroyo Grande Road (under construction) to the point where the broken red line for the proposed location of said road diverges in a northerly direction from the light duty

roadbed of said road in the Arroyo Grande land grant (north of section 35, T. 31 S., R. 14 E.);

(13) Then, in a generally northerly direction, approximately 2.5 miles, along the broken red line for the proposed location of Upper Arroyo Grande Road to its point of intersection with an unnamed unimproved road (this intersection being 1.2 miles northwest of Ranchita Ranch) in the Arroyo Grande land grant;

(14) From the point of intersection of the proposed location of Upper Arroyo Grande Road and the unnamed unimproved road, the boundary proceeds in a straight line, east northeasterly, approximately 1.8 miles, to the summit of an unnamed peak identified as having an elevation of 1,182 feet, in the northwest corner of section 19, T. 31 S., R. 15 E.;

(15) Then southeasterly, approximately 1.8 miles in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,022 feet, in the northeast corner of section 29, T. 31 S., R. 15 E.;

(16) Then west southwesterly, approximately 0.84 mile in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,310 feet, in the northeast corner of section 30, T. 31 S., R. 15 E.;

(17) Then south southeasterly, approximately 1.46 miles in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,261 feet, in section 32, T. 31 S., R. 15 E.;

(18) Then southeasterly, approximately 0.7 mile in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,436 feet, in the northwest corner of section 4, T. 32 S., R. 15 E.;

(19) Then southwesterly, approximately 1.07 miles in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,308 feet, in the Huasna land grant;

(20) Then west northwesterly, approximately 1.50 miles in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,070 feet, along the east border of section 1, T. 32 S., R. 14 E.;

(21) Then south southeasterly, approximately 1.38 miles in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,251 feet, in the Hausna land grant;

(22) Then southwesterly, approximately 0.95 mile in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,458 feet, in the Santa Manuela land grant;

(23) Then southeasterly, approximately 0.8 mile in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,377 feet, in the Huasna land grant;

(24) Then southwesterly, approximately 1.4 miles in a straight line, to the summit of an unnamed peak identified as having an elevation of 1,593 feet, in the Santa Manuela land grant (See "Nipomo" map);

(25) Then southwesterly, approximately 1.1 miles in a straight line, to the jeep trail immediately north of the summit of an unnamed peak identified as having an elevation of 1,549 feet, just north of section 35, T. 32 S., R. 14 E.;

(26) Then north northwesterly, approximately 2.73 miles along the jeep trail on Newsom Ridge to the point of intersection of said jeep trail and an unnamed unimproved road (immediately north of section 28, T. 32 S., R. 14 E.);

(27) Then southerly, approximately 1.63 miles along said unimproved road to its intersection with Upper Los Berros No. 2 Road in section 33, T. 32 S., R. 14 E.;

(28) Then southwesterly, approximately 3.27 miles along the stream in Los Berros Canyon (of which approximately 2.0 miles are along Upper Los Berros No. 2 Road) to the point at which U.S. Highway 101 crosses said stream in section 35, T. 12 N., R. 35 W. (See "Oceano" map);

(29) Then across U.S. Highway 101 and continuing in a southwesterly direction approximately 0.1 mile to Los Berros Arroyo Grande Road;

(30) Then following Los Berros Arroyo Grande Road in generally a northwesterly direction approximately 4 miles until it intersects with Valley Road;

(31) Then following Valley Road in generally a northerly direction approximately 1.2 miles until it intersects with U.S. Highway 101;

(32) Then in a northwesterly direction along U.S. Highway 101 approximately .35 mile until it intersects with State Highway 227;

(33) Then in a northeasterly and then a northerly direction along State Highway 227 approximately 1.4 miles to the point of beginning.

Signed: November 29, 1989.

Daniel R. Black,

Acting Director.

Approved: December 15, 1989.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Trade and Tariff Enforcement).

[FR Doc. 90-3 Filed 1-3-90; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is amending its regulation at 28 CFR 2.65(c)(2) regarding the timing of interim hearings for prisoners sentenced pursuant to the repealed Youth Corrections Act (formerly 18 U.S.C. 5005 *et seq.*). This modification implements the provisions of a court order in the class action case of *Watts* v. *Belaski*, Civil Action No. 78-M-495 (D. Colo.), which authorizes the Commission to schedule YCA prisoners for interim hearings at intervals beyond the interval of six months provided by the Commission's present regulation. The court order allows the Commission to schedule an interim hearing every nine months for a prisoner sentenced to a YCA term of less than seven years, and every twelve months for a prisoner sentenced to a YCA term of seven years, and every twelve months for a prisoner sentenced to a YCA term of seven years or more.

EFFECTIVE DATE: February 5, 1990.

FOR FURTHER INFORMATION CONTACT: Rockne Chickinell, Office of General Counsel, U.S. Parole Commission, Telephone (301) 492-5959.

SUPPLEMENTARY INFORMATION: In January, 1989, the Parole Commission began implementing nationwide revised procedures for making parole determinations for prisoners sentenced under the repealed Youth Corrections Act. See 28 CFR 2.65, added in 53 FR 49653-56 (December 9, 1988). These procedures were initially developed by the Commission to satisfy court orders in the class action litigation of *Watts* v. *Belaski*, Civil Action No. 78-M-495 (D. Colo.). Section 2.65(c)(2) now provides that YCA prisoners should receive an interim hearing every six months. Prior to the issuance of the court order requiring interim hearings on this schedule, the Commission had contended that the YCA did not require such frequent parole hearings, and that it could properly evaluate a YCA prisoner's response to treatment and other new information in his case using a hearing schedule with an interval of more than six months. For comparison, the statute at 18 U.S.C. 4208(h) requires

interim hearings every 18 or 24 months, depending on the length of the prisoner's sentence.

In December, 1988, the district court in Colorado issued an order allowing the Parole Commission to schedule interim hearings every nine months for a prisoner who has a YCA sentence of less than seven years (those sentenced under former 18 U.S.C. 5010(b)), and a hearing every twelve months for a prisoner who was sentenced under the YCA to a term of seven years or more (those sentenced under former 18 U.S.C. 5010(c)). This order also permits the Commission to refrain from scheduling any further hearings for a YCA prisoner who is continued to the expiration of his sentence and who has less than twelve months remaining to be served prior to his release or prior to his scheduled transfer to a community treatment center.

Therefore, the Commission is adopting a rule which implements the order of the district court noted above. The Commission published a proposed rule on this subject and sought public comment on the proposal. See 53 FR 27844–45 (June 30, 1989). No public comment was received. There are no changes from the proposed rule in this final version of the rule. This rule will become effective on [thirty days from date of publication], and will be used for any hearing conducted on or after that date with regard to a YCA inmate or parolee.

This rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Lists of Subjects in 28 CFR Part 2

Administrative practice and procedure, prisoners, probation and parole.

28 CFR part 2 is amended as follows:

1. The authority citation for part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Section 2.65 is amended by revising paragraph (c)(2) to read as follows:

PART 2—[AMENDED]

§ 2.65 Youth Corrections Act.

* * * * *

(c) *Parole hearings and progress reports.* * * *

(2) An interim hearing must be scheduled for an inmate every nine months if the inmate is serving a sentence of less than seven years. If the inmate is serving a sentence of seven years or more, the interim hearing must be scheduled every twelve months. If the inmate has been continued to the expiration of his sentence, and he has less than twelve months remaining to be served prior to his release or his transfer to a community treatment center, no further hearing is required. In addition, within 60 days of receipt of any special progress report from the warden recommending parole, the prisoner shall be scheduled for a special interim hearing, unless the recommendation can be timely considered at a regularly scheduled interim hearing. An institutional staff member who has personal knowledge of the case shall be present to assist the examiners in their evaluation of the prisoner's conduct, program performance, and response to treatment.

* * * * *

Dated: November 16, 1989.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 90–82 Filed 1–3–90; 8:45 am]

BILLING CODE 4410–01–M

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28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Review Hearings for Federal Prisoners

AGENCY: U.S. Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is amending its regulation at 28 CFR 2.14(a)(1)(ii) and (iii) to ensure that a prisoner who was granted a presumptive parole date not more than six months beyond the parole eligibility date can be considered for an advancement of the presumptive parole date, and for pre-release placement in a halfway house six months prior to completion of the minimum term. Under the present rule, the interim hearing at which the prisoner's program achievement will be considered is in some cases not held until the docket of hearings immediately preceding the month of parole eligibility. The Commission has concluded that a hearing held only a month before the prisoner is eligible for parole (*i.e.*, at completion of the minimum term), may not leave sufficient time for an advancement in the presumptive date and a pre-release transfer to a halfway house to prepare the prisoner for release on parole. Accordingly, the rule is amended to require the interim hearing to be held six months before the prisoner is eligible for parole, in those limited number of cases in which the prisoner was granted a presumptive parole date not more than six months beyond the minimum term and where at least 24 months have elapsed since the initial hearing.

EFFECTIVE DATE: February 5, 1990.

FOR FURTHER INFORMATION CONTACT: Linda W. Marble, Director, Case Operations, U.S. Parole Commission, telephone (301) 492–5952.

SUPPLEMENTARY INFORMATION: The problem addressed in this procedural rule change arises only in the case of a prisoner serving a sentence that carries a minimum term that exceeds the 24-month time span between the initial parole hearing required under 28 CFR 2.12(a), and the first statutory interim hearing required by 28 CFR 2.14(a)(1)(ii). In such a case, the statutory interim hearing will not be held "* * * until the docket of hearings immediately preceding the month of parole eligibility." 28 CFR 2.14(a)(1)(iii). If the Commission has initially established a presumptive date, the Commission may decide, at the statutory interim hearing, to grant an advancement of that presumptive parole date, pursuant to 28 CFR 2.60, if it finds "superior program achievement," or for other clearly exceptional circumstances. The earliest possible date that could be set would be the parole eligibility date (completion of the minimum term).

If such an advancement were granted following a hearing held only one month before the parole eligibility date under § 2.14(a)(1)(iii), and the original presumptive parole date was not more than six months beyond the parole eligibility date, the Bureau of Prisons would have no opportunity to consider the prisoner for halfway house placement prior to release on parole, even though such placement may have been originally intended.

For example, a prisoner who has a parole eligibility date at 60 months on a 15-year sentence, and who is granted a presumptive parole date for 65 months after an initial hearing held at the outset of the sentence, would not receive his statutory interim hearing until the docket of hearings immediately preceding the month of parole eligibility (at 59 months). If the presumptive date were advanced from 65 to 60 months, the Bureau could only provide halfway house placement if the advancement were ordered at some point earlier than 59 months. The rule set forth below is intended to correct this possibility. It does not purport to address any other situation, or to alter substantive policy concerning whether or not an eligible prisoner should be granted an advancement for "superior program achievement" under 28 CFR 2.60.

This rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

Title 28, part 2 of the CFR is amended as follows:

PART 2—[AMENDED]

1. The authority citation for part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Section 2.14 is amended by revising paragraphs (a)(1)(ii) and (iii) as follows:

§ 2.14 Subsequent proceedings.

(a) *Interim proceedings.* * * *

(1) * * *

(ii) In the case of a prisoner with a maximum term or terms of seven years or more, every twenty-four months (until released); *provided* that, in the case of a prisoner whose presumptive parole date exceeds the minimum term by no more than six months, and where at least twenty-four months has elapsed since the initial hearing, such prisoner shall be entitled to an interim hearing six months preceding the month of parole eligibility.

(iii) In the case of a prisoner with an unsatisfied minimum term, other than described under paragraph (a)(1)(ii) of this section, the first interim hearing shall be deferred until the docket of hearings immediately preceding the month of parole eligibility.

* * * * *

Dated: December 14, 1989.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 90-83 Filed 1-3-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care and Financing Administration

42 CFR Parts 412, and 413

[BPD-375-CN]

RIN 0938-AC27

Medicare Program; Changes in Payment Policy for Direct Graduate Medical Education

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of final rule.

SUMMARY: This document corrects technical errors to the final rule published in the September 29, 1989 issue of the **Federal Register** [FR Doc. 89-23026], beginning on page 40286.

FOR FURTHER INFORMATION CONTACT: Rudy Kozojet, (301) 966-4543; Bernadette Schumaker (ESRD exception criteria), (301) 966-4568.

SUPPLEMENTARY INFORMATION: We are making the following corrections to the September 29, 1989 document:

1. On page 40286, in the third column, in the 12th line from the bottom, the phrase "Section 186(v)(1)(A) of the Act" is corrected to read "Section 1861(v)(1)(A) of the Act".

2. On page 40294, in column 2, in the first line of the sixth paragraph from the top, the phrase "Day 1 and Day 2" is corrected to read "Part I and Part II".

3. On page 40300, in the second column, in the 17th line from the top, the term "classifying" is corrected to read "clarifying".

4. On page 40314, in the third column, in the 10th line from the top, the phrase "$570 million" is corrected to read "$440 million".

§ 412.113 [Corrected]

5. On page 40315, in the second column, in § 412.113(b)(2), the term "§ 413.85" is corrected to read "§ 413.86".

§ 413.86 [Corrected]

6. On page 40316, in the second column, in § 413.86(b), in the definition of FMGEMS, the phrase "[Days I and II]" is corrected to read "[Part I and Part II]" and in the third column, in the 3rd line from the top, the word "district" is corrected to read "distinct".

7. On page 40317, in the first column, in § 413.86(e)(1)(iv), the phrase "paragraph (j)(2) of this section" is corrected to read "paragraph (j)(1) of this section" and in § 413.86(e)(1)(v), the term "coats" is corrected to read "costs".

8. On page 40318, in the second column, in § 413.86(h)(2) on the sixth line, the following additional text is inserted after the term "factor": "for a graduate of a foreign medical school who was in a residency program both before and after July 1, 1986 but".

9. On page 40319, in the second column, in Table 1a., in the 5th line of the footnote, the term "average" is corrected to read "percentage".

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance)

Dated: December 27, 1989.

James E. Larson,

Acting Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 90-175 Filed 1-3-90; 8:45 am]

BILLING CODE 4120-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-215; RM-5742, RM-5791, RM-6017, RM-6176, RM-6294, RM-6557, RM-6558]

Radio Broadcasting Services; Campbellsville, Smiths Grove, Cave City, and Liberty, KY, and Donelson and Mt. Juliet, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Hilltopper Broadcasting, Inc., substitutes Channel 296C2 for Channel 296A at Smiths Grove, Kentucky, modifies the license for Station WBLG(FM) to specify operation on the higher powered channel, substitutes Channel 281A for Channel 280A at Campbellsville, Kentucky, modifies the license of Heartland Communications, Inc., for Station WCKQ(FM) to specify the new channel, and substitutes Channel 279A for Channel 294A at Cave City, Kentucky, and modifies Steven M. Newberry's construction permit for Station WHHT(FM). Channel 296C2 can be allotted to Smiths Grove in compliance with the Commission's minimum distance separation requirements. The coordinates for Smiths Grove are 36-50-10 and 86-16-40. Channel 281A can be allotted to Campbellsville at the present site of Station WCKQ in compliance with the Commission's minimum distance separation requirement. The coordinates for Campbellsville are 37-20-05 and 85-22-36. Channel 279A can be allotted to Cave City at the construction permit site in compliance with the Commission's minimum distance separation requirements. The coordinates for Cave City are 37-06-39 and 85-58-41. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 5, 1990.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Second Report and Order, MM Docket No. 88-

215, adopted December 1, 1989, and released December 22, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for part 73 continues to read as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by amending the entry for Campbellsville, Kentucky, by adding Channel 281A and removing Channel 280A; by amending the entry for Cave City, Kentucky; by adding Channel 279A and removing Channel 294A; and by amending the entry for Smiths Grove, Kentucky, by adding 296C2 and removing 296A.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-72 Filed 1-3-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-335; RM-6743]

Radio Broadcasting Services; Cloquet, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 243A to Cloquet, Minnesota, as that community's second FM service, in response to a petition filed by WKLK, Inc. Canadian concurrence has been obtained for this allotment at coordinates 46-43-12 and 92-28-12.

DATES: Effective February 12, 1990; The window period for filing applications for Channel 243A will open on February 13, 1990, and close on March 15, 1990.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-335, adopted December 7, 1989, and released December 27, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for part 73 continues to read as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by adding Channel 243A at Cloquet.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-162 Filed 1-3-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 611

[Docket No. 91200-9300]

Foreign Fishing Regulations

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: NOAA issues a final rule to implement a technical amendment of activity codes for foreign fishing permits to indicate more specifically the activities in the Exclusive Economic Zone (EEZ) authorized under each foreign fishing permit. Foreign vessels that conduct any fishing activity within the EEZ must have a permit authorizing that activity, even if the fish involved were or are to be taken outside the EEZ. This action will clarify the types of support activities authorized by a permit. It is intended to improve the descriptive information on authorized fishing operations entered on the foreign fishing permit forms.

EFFECTIVE DATE: January 1, 1990.

ADDRESSES: Comments on information collection provisions may be sent to the Operations Support and Analysis Division, F/CM1, National Marine Fisheries Service (NMFS), 1335 East-West Highway, Silver Spring, MD 20910, and also to the Office of Information and Regulatory Affairs of OMB, (Attention: Paperwork Reduction Project-0648-075, Office of Management and Budget (OMB), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Alfred J. Bilik, (301) 427-2337, or telex 467856 US COMM FISH CI.

SUPPLEMENTARY INFORMATION: A change in the definition of fishing published at 53 FR 13412 on April 25, 1988, requires that foreign vessels have fishing permits to conduct in the EEZ any activity that involves fish, without regard to whether such fish are fish over which the United States exercises exclusive fishery management authority.

Prior to this change in the definition of fishing, foreign fishing permits were required for any activity in the EEZ involving fish only if those fish were subject to exclusive U.S. fishery management authority. This effectively meant that a foreign fishing permit was required for fishing activities conducted by a foreign vessel in the EEZ only if:

(1) The fish were harvested by the foreign vessel under a total allowable level of foreign fishing (TALFF) allocation or other Magnuson Act authority;

(2) The fish were harvested by a U.S. vessel and received at sea by that foreign vessel in the EEZ (JVP);

(3) The fish were received by a foreign vessel in the EEZ for transshipment and were harvested and processed by a U.S. vessel (DAP); or were harvested by a U.S. vessel and processed at sea by a foreign vessel (or were just harvested by a U.S. vessel) (JVP); or were harvested and processed in the EEZ by another foreign vessel (TALFF); or

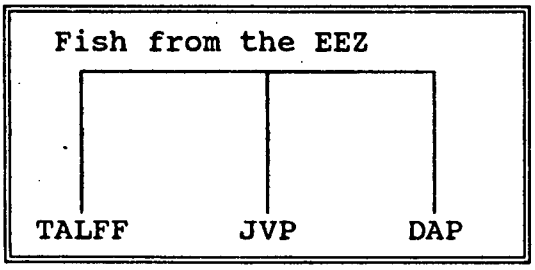
(4) The foreign vessel conducted any other support in the EEZ which involved fish managed under U.S. authority. This included any activities such as bunkering, provisioning, and any other such support operation in the EEZ.

The activities which a foreign fishing permit authorizes the vessel to conduct are specified through standardized numeric permit activity codes which are entered on each permit authorization and the permit form completed aboard the vessel. The current codes correspond only to the activities described above.

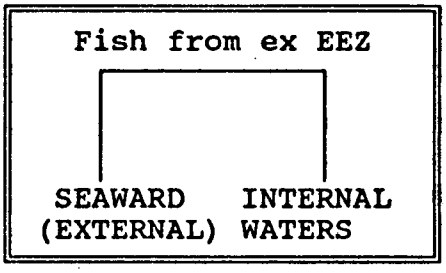
The redefinition of fishing on April 25, 1988, had the result of adding new activities in the EEZ that required specific authorizations under foreign fishing permits. The new activities were: (1) Processing in the EEZ of fish harvested seaward of the EEZ; (2) transshipment in the EEZ of fish

harvested seaward of the EEZ; (3) transshipment in the EEZ of fish that were processed in the internal waters of a State under an authorization by the Governor of that State; and (4) support or supply activities in the EEZ involving vessels that have fished or will fish outside the EEZ. A diagrammatic comparison is included below. Box A indicates the classes of fishing requiring a permit prior to the change in the definition of fishing; Box B shows additional classes requiring a permit after the change.

BOX A



BOX B



Until now, NMFS provided authorizations for the new activities in the EEZ described immediately above through non-standardized textual annotations on the appropriate permits. To facilitate management of the changes resulting from the April 25, 1988, redefinition, NOAA now issues a technical amendment of 50 CFR 611.3(c) and the affected sections to provide standardized specific information in the permits on the activities authorized under each permit. The new codes and associated activities adopted under this technical amendment are shown in the table below.

Activity in EEZ	Fish from the EEZ		Fish from ex EEZ	
	Code	Fish	Code	Fish
CATCHING, TAKING, HARVESTING	1	TALFF	--	
PROCESSING	2	TALFF	--	INTERNAL
	4	JVP	7	EXTERNAL
TRANSSHIPPING	3	TALFF	8	INTERNAL
	5	JVP	8	EXTERNAL
	6	DAP		
SUPPORTING	9	TALFF, JVP, DAP	9	INTERNAL, EXTERNAL

The new activity codes above will be assigned to authorizations under foreign vessel permits issued in 1990. Activities for which no codes are shown are not within the purview of the Magnuson Act. Thus, a permit cannot be issued for such activities under provisions of 50 CFR 611.3.

The code assigned to each permit issued will be consistent with the approved application. This change does not have any substantive impact upon foreign fishing beyond that which resulted from the change in the definition of "fishing" on April 25, 1988, but it will provide a uniform system of numeric codes to avoid lengthy notations that were formerly required on permits to allow "new" fishing activities.

This change in the activity codes was reviewed by the concerned NMFS regional staff and other NOAA and Coast Guard units. There were different needs in each region, but this uniform system was adopted because the foreign fishing permit program is a national program. NOAA will implement the revision of activity codes by this technical amendment of 50 CFR 611.3(c) and the affected sections of 50 CFR part 611, subparts A and B at the beginning

of the new fishing year on January 1, 1990.

Approved activity codes are defined as follows:

1—Catching, scouting, processing, transshipping, and supporting foreign vessels. Activity is limited to fish harvested or to be harvested by foreign vessels in the EEZ.

2—Processing, scouting, transshipping, and supporting foreign vessels. Activity is limited to fish harvested or to be harvested by foreign vessels in the EEZ.

3—Transshipping, scouting, and supporting foreign vessels. Activity is limited to fish harvested or to be harvested by foreign vessels in the EEZ.

4—Processing, scouting, transshipping, and supporting U.S. vessels delivering fish to foreign vessels. Activity is limited to the receipt of unprocessed fish harvested or to be harvested by U.S. vessels.

5—Transshipping, scouting, and supporting foreign vessels. Transshipments limited to fish received or to be received from foreign vessels processing fish from U.S. harvesting vessels.

6—Transshipping, scouting, and supporting U.S. vessels. Transshipments limited to U.S. harvested fish processed aboard U.S. vessels.

7—Processing, transshipping, and supporting foreign vessels. Activity is limited to fish harvested or to be harvested by foreign vessels seaward of the EEZ.

8—Transshipping and supporting foreign vessels. Activity is limited to fish harvested or to be harvested seaward of the EEZ by foreign vessels or fish duly authorized for processing in the internal waters of one of the States.

9—Supporting U.S. fishing vessels and U.S. fish processing vessels and any foreign fishing vessels authorized under any activity code under this section.

The affected paragraphs of §§ 611.2 and 611.7 are amended to conform activity codes and definitions referenced in these paragraphs to the new activity codes adopted by this technical amendment. Section 611.2 is amended by revising the definition of *Support* to remove references to transferring or transporting fish or fish products from that definition and including these terms under a new definition of *Transship*. Section 611.7(a)(9) is amended to align fishing operations requiring approval which are listed in this prohibitions provision with the new activity codes. Sections 611.4 (c)(6), (c)(7) and (c)(8) are amended to include the permit activity codes in TRANSFER, OFFLOADED and RECEIVED messages.

Classification

This final rule, technical amendment, is issued under 50 CFR part 611. Because this rule only makes minor, non-substantive corrections, the Assistant Administrator for Fisheries, NOAA, finds that it is unnecessary under 5 U.S.C. 553(b)(B) to provide for public comment, and that there is good cause under 5 U.S.C. 553(d) not to delay for 30 days its effective date so that it can be applied to foreign fishing permits effective on January 1, 1990. Additionally, the prior public comment and delay of effective date requirements of 5 U.S.C. 553 are inapplicable under paragraph (a)(2) of that section because the changes are being made to improve agency management of the foreign fishing vessel activity authorization process.

Because this rule is being issued without prior comment, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act and none has been prepared.

This rule makes minor technical changes to a rule that has been determined not to be a major rule under Executive Order 12291. There is no change in the regulatory impacts previously reviewed and analyzed.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

This rule contains a collection-of-information requirement for the purposes of the Paperwork Reduction Act. These information collection requirements were previously approved by OMB and given OMB control number 0648-0075. Total burden hours approved were 14,631 hours. Public reporting burden for the collection of information under § 611.4(c) (6), (7), and (8) is estimated to average 0.2 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to NMFS/NOAA and to OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 611

Fisheries, Fishing, Foreign relations.

Dated: December 28, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 611 is amended as follows:

PART 611—[AMENDED]

1. The authority citation for 50 CFR part 611 continues to read as follows:

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

2. Section 611.2 is amended by revising the definition of *Support* as follows and adding the following new definition entitled *Transship* immediately after the revised definition of *Support:*

§ 611.2 Definitions.

* * * * *

Support means any operation by a vessel assisting fishing by foreign or U.S. vessels, including supplying water, fuel, provisions, fish processing equipment, or other supplies to a fishing vessel.

Transship means offloading and onloading or otherwise transferring fish or fish products and/or transporting fish or fish products made from fish.

* * * * *

3. Section 611.3 is amended by revising paragraph (c) as follows:

§ 611.3 Vessel permits.

* * * * *

(c) *Activity codes.* Permits to fish under a GIFA may be issued by the Assistant Administrator for the activities described below, but the permits may be modified by regulations of this part, and by the conditions and restrictions attached to the permit (see paragraphs (e)(1)(v) and (1) of this section). The Assistant Administrator may issue a permit, as appropriate, for one or more of the activity codes listed below. The activity codes are described as follows:

Activity code 1—Catching, scouting, processing, transshipping, and supporting foreign vessels. Activity is limited to fish harvested or to be harvested by foreign vessels in the EEZ.

Activity code 2—Processing, scouting, transshipping, and supporting foreign vessels. Activity is limited to fish harvested or to be harvested by foreign vessels in the EEZ.

Activity code 3— Transshipping, scouting, and supporting foreign vessels. Activity is limited to fish harvested or to be harvested by foreign vessels in the EEZ.

Activity code 4—Processing, scouting, transshipping, and supporting U.S. vessels delivering fish to foreign vessels. Activity is limited to the receipt of unprocessed fish harvested or to be harvested by U.S. vessels.

Activity code 5—Transshipping, scouting, and supporting foreign vessels. Transshipments limtied to fish received or to be received from foreign vessels processing fish from U.S. harvesting vessels.

Activity code 6—Transshipping, scouting, and supporting U.S. vessels. Transshipments limited to U.S. harvested fish processed aboard U.S. vessels.

Activity code 7—Processing, transshipping, and supporting foreign vessels. Activity limited to fish harvested or to be harvested by foreign vessels seaward of the EEZ.

Activity code 8—Transshipping and supporting foreign vessels. Activity is limited to fish harvested or to be harvested seaward of the EEZ by foreign vessels or fish duly authorized for processing in the internal waters of one of the States.

Activity code 9—Supporting U.S. fishing vessels and U.S. fish processing vessels and any foreign fishing vessels authorized under any activity code under this section.

* * * * *

4. Section 611.4 is amended by revising paragraphs (c)(6), (c)(7), and (c)(8) as follows:

§ 611.4 Vessel reports.

* * * * * *

(c) * * *

(6) TRANSFER. The operator of each FFV which anticipates a transshipping operation in which the FFV will receive fish or fisheries products must specify the date, time, position and area the FFV will conduct the TRANSFER and the name and IRCS of the other FFV or U.S. vessel involved (action code TRANSFER). The report must include the permit activity code under which the transfer will be made. The message must be transmitted prior to the transfer and delivered within 24 hours of its transmittal. The movement of raw fish from a permitted foreign catching vessel or, under an activity code 4, from a U.S. fishing vessel to the reporting processing vessel and the return of nets or codends is not considered a transfer.

(7) OFFLOADED. Each operator must specify the date, time, position and area the FFV OFFLOADED fish or fisheries products TO another FFV or a U.S. vessel in a transfer, the other FFV's or U.S. vessel's name, IRCS, Permit Activity Code under which the transfer was made, species (by species code from Appendix D to this subpart) and quantity of fish and fisheries products (by product code from Appendix E to this subpart and by product weight to the nearest hundredth of a metric ton) offloaded (action code OFFLOADED TO). The message must be transmitted within 12 hours after the transfer is completed and delivered within 24 hours of its transmittal and before the FFV ceases fishing in the EEZ.

(8) RECEIVED. Each operator must specify the date, time, position and area the vessel RECEIVED fish or fisheries products FROM another FFV in a transfer, the other FFV's or U.S. vessel's name, IRCS, Permit Activity Code under which the receipt was made, species (by species code from Appendix D to this subpart) and quantity of fish and fisheries products (by product code from Appendix E to this subpart and by product weight to the nearest hundredth of a metric ton) received (action code RECEIVED FROM). The message must be transmitted within 12 hours after the transfer is completed and delivered within 24 hours of its transmittal and before the vessel ceases fishing in the EEZ.

* * * * * *

5. Section 611.7 is amended by revising paragraph (a)(9) as follows:

§ 611.7 Prohibitions.

* * * * * *

(a) * * *

(9) Retain or attempt to retain within the EEZ, directly or indirectly, any U.S. harvested fish, unless the FFV has a permit for activity codes 4 or 6.

* * * * * *

6. Section 611.10 is amended by revising paragraphs (b) and (d) as follows:

§ 611.10 Fishing operations.

* * * * * *

(b) *Scouting.* Each FFV authorized for Activity Codes 1 through 6 may scout for fish. Scouting may be conducted only in the fisheries area authorized by the scouting vessel's permit and under such other circumstances as may be designated in these regulations or the permit.

* * * * * *

(d) *Support.* Each FFV with activity code 1, 2, 3, 5, or 8 may support other permitted FFVs. Each FFV with activity code 4 or 6 may support U.S. vessels. Support operations may be conducted only in the fisheries areas authorized by the supporting vessel's permit, and under such other circumstances as may be designated in these regulations or the permit.

* * * * * *

[FR Doc. 89-30395 Filed 12-29-89; 9:06 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 3
Thursday, January 4, 1990

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 AGRICULTURE

Federal Corp Insurance

7 CFR Part 425

[Amdment. 2; Doc. No. 7639S]

Peanut Crop Insurance Regulations; Withdrawal of Proposed Rulemaking

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) publishes this notice for the purpose of withdrawing a notice of proposed rulemaking (NPRM) amending the Peanut Crop Insurance Regulations to standardize the unit structure and to establish units by share where there is a landlord/tenant relationship. FCIC has determined that, in the best interests of peanut policyholders, the notice of proposed rulemaking should be withdrawn.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: On Thursday, September 7, 1989, FCIC published an NPRM in the **Federal Register** at 54 FR 37116, which proposed to amend the Peanut Crop Insurance Regulations (7 CFR part 425) to standardize the unit structure and to establish units by share where there is a landlord/tenant relationship. Several comments were received and reviewed by FCIC. After review of the comments, it was determined that no changes would be made to the current Peanut Crop Insurance Regulations and that the NPRM should be withdrawn.

Therefore the proposed rule published at 54 FR 37116 is hereby, withdrawn.

Done in Washington, DC, on December 15, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 90-99 Filed 1-3-90; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 929

[Docket No. AO-341-A5; FV-89-109]

Cranberries Grown in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Hearing on Proposed Amendment of Marketing Agreement and Order No. 929, as Amended

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to consider amending Marketing Agreement and Order No. 929 (7 CFR part 929). The marketing agreement and order, hereinafter referred to as the "order", regulate handlers of cranberries grown in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The purpose of the hearing is to receive evidence on 20 proposals to amend provisions of the order and agreement. With the exception of a proposal submitted by the Fruit and Vegetable Division, Agricultural Marketing Service (AMS) to make conforming changes, the proposed amendments were submitted by the Cranberry Marketing Committee (Committee), the agency responsible for local administration of the order. The proposals include provisions that would: (1) Authorize the Committee to conduct production research and development; (2) calculate annual allotments on the basis of sales histories; (3) add tenure provisions for Committee members; (4) establish provisions regarding excess cranberries; (5) require handlers to pay assessments on the wieght of acquired cranberries; and (6) make other miscellaneous changes that would be consistent with the proposed changes. The proposals are designed to improve the administration, operation and functioning of the cranberry marketing order program.

DATES: The hearing will begin at 9:00 a.m. in Plymouth, Massachusetts, on January 17, 1990. Additional hearing sites are as follows: 9:00 a.m. in Medford, New Jersey, on February 6, 1990; 9:00 a.m. in Wisconsin Rapids, Wisconsin, on February 13, 1990; and 9:00 a.m. in Portland, Oregon, on February 15, 1990.

ADDRESSES: The hearing sites are the Sheraton Plymouth, 180 Water Street, Plymouth, Massachusetts 02360; the Sheraton Post Inn, Route 70 & 290, Cherry Hill, New Jersey 08035; the Mead Inn, 451 East Grant Avenue, Wisconsin Rapids, Wisconsin 54494; and the Green/Wyatt Federal Building, Room 333, 1220 SW. Third Avenue, Portland, Oregon 97205.

FOR FURTHER INFORMATION CONTACT: Jacquelyn R. Schlatter or Patricia A. Petrella, Marketing Specialists, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525-S, Washington, DC 20250-0200; telephone (202) 447-5120.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291 and Departmental Regulation 1512-1.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small business. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impact of the proposals on small businesses.

The hearing is called pursuant to the provisions of the Agricultual Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*) hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

Except for proposal No. 20 on conforming changes, which is submitted by the Fruit and Vegetable Division, AMS, the proposals have been submitted by the Cranberry Marketing

Committee. The Committee works with the Department in administering the marketing agreement and order. These proposals have not received the approval of the Secretary of Agriculture.

The Committee believes that the proposed changes would improve the administration, operation and functioning of the cranberry marketing order.

The public hearing is held for the purpose of: (i) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the marketing agreement and order; (ii) determinig whether there is a need for the proposed amendments to the marketing agreement and order; and (iii) determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

All persons wishing to submit written material in evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time this hearing notice is issued and until the issuance of a final decision in this proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel, except designated employees of the Office of General Counsel assigned to represent the Committee in this rulemaking proceeding; and the Fruit and Vegetable Division, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

List of Subjects in 7 CFR Part 929

Connecticut, Cranberries, Marketing agreements and orders, Massachusetts, Minnesota, Michigan, New Jersey, Long Island in the State of New York, Oregon, Rhode Island, Washington, Wisconsin.

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals:

Proposals Submitted by the Cranberry Marketing Committee

Proposal No. 1

Amend § 929.10 to read as follows:

§ 929.10 Handle.

(a) "Handle" means (1) to can, freeze, or dehydrate cranberries within the production area or (2) to sell, consign, delivery, or transport (except as a common or contract carrier of cranberries owned by another person) fresh cranberries or in any other way to place fresh cranberries in the current of commerce within the production area or between the production area and any point outside thereof in the United States or Canada.

(b) The term "handle" shall not include: (1) The sale of nonharvested cranberries; (2) The delivery of cranberries by the grower thereof to a handler having packing or processing facilities located within the production area; (3) The transportation of cranberries from the bog where grown to packing or processing facility located within the production area; or (4) The cold storage or freezing of excess cranberries for the purpose of temporary storage during periods when an annual allotment percentage is in effect prior to their disposal, pursuant to § 929.59.

Proposal No. 2

Delete § 929.13.

Proposal No. 3

Add a new § 929.13 to read as follows:

§ 929.13 Sales History.

"Sales History" means the number of barrels of cranberries established for a grower by the committee pursuant to § 929.48.

Proposal No. 4

Amend § 929.15 to read as follows:

§ 929.15 Annual allotment.

A grower's annual allotment for a particular crop year is the number of barrels of cranberries determined by multiplying such grower's sales history by the allotment percentage established pursuant to § 929.49 for such crop year.

Proposal No. 5

Amend § 929.16 to read as follows:

§ 929.16 Established cranberry acreage.

"Established cranberry acreage" means acreage which is presently producing cranberries, or has produced cranberries during any of the preceding five years, and from which such cranberries have entered into the current of commerce.

Proposal No. 6

Add a new § 929.17 to read as follows:

§ 929.17 Barrel.

"Barrel" means a quantity of cranberries equivalent to 100 pounds of cranberries.

Proposal No. 7

Amend § 929.21 to read as follows:

§ 929.21 Term of office.

The term of office for each member and alternate member of the committee shall be for two years, beginning on August 1 of each even numbered year and ending on the second succeeding July 31. Members and alternate members shall serve the term of office for which they are selected and have been qualified until their respective successors are selected and have been qualified. Beginning on August 1 of the even numbered year following the adoption of this amendment, committee members shall be limited to three consecutive terms. The consecutive terms of office for alternate members shall not be limited. Members serving three consecutive terms can again become eligible to serve on the committee by not serving for one full term as either a member or an alternate member, unless specifically exempted by the Secretary.

Proposal No. 8

Amend § 929.41 to read as follows:

§ 929.41 Assessments.

(a) As a handler's pro rata share of the expense which the Secretary finds are reasonable and likely to be incurred by the committee during a fiscal period, a handler shall pay to the committee assessments on all cranberries he or she acquires as the first handler thereof during such period, except as provided in § 929.55: *Provided,* That no handler shall pay assessments on excess cranberries as provided in § 929.57. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each handler during a fiscal period, in an amount designated to secure funds sufficient to cover the expenses which may be incurred during such period, and to

accumulate and maintain a reserve fund equal to approximately one fiscal period's expenses. At any time during or after the fiscal period, the Secretary may increase the assessment rate in order to secure funds sufficient to cover any later findings by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all cranberries acquired during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal year, before sufficient operating income is available from assessments, the committee may accept the payment of assessments in advance and may also borrow money for such purposes.

(c) If a handler does not pay such assessment within the period of time prescribed by the committee, the assessment shall be increased by either a late payment charge, or an interest charge, or both, at rates prescribed by the committee, with the approval of the Secretary.

Proposal No. 9

Amend § 929.45 to read as follows:

§ 929.45 Research and development.

(a) The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research, and market development projects designed to assist, improve or promote the marketing, distribution, consumption or efficient production of cranberries. The expense of such projects shall be paid from funds collected pursuant to § 929.41, or from such other funds as approved by the Secretary.

(b) The committee may, with the approval of the Secretary, establish rules and regulations as necessary for the implementation and operation of this section.

Proposal No. 10

Delete § 929.48.

Proposal No. 11

Add a new § 929.48 to read as follows:

§ 929.48 Sales history.

(a) Determination of sales history.

(1) The initial sales history shall be computed by the committee for each grower using the best four out of six years of such grower's sales history, which shall include all commercial sales from the first complete crop year following adoption of this amendment, plus the prior five years of history of commercial sales, except as otherwise provided in paragraph (a)(5) of this section. For a grower with four years or less of commercial sales history, the initial sales history shall be computed by the committee using all available years of such grower's commercial sales history.

(2) A new sales history shall be computed for each grower after each crop year, in the same manner as for the initial sales history, except that the most recent crop year shall be used instead of the earliest crop year, and except as otherwise provided in paragraph (a)(4) of this section. The committee, with the approval of the Secretary, may, by regulation, alter the number and identity of years to be used in computing these subsequent sales histories.

(3) A new sales history shall be calculated for each grower after each crop year, including a crop year when a volume regulation has been established, using a formula determined by the committee, with the approval of the Secretary.

(4) Beginning with the first complete crop year following the adoption of this section, if a grower has no commercial sales from such grower's established cranberry acreage for three consecutive crop years, due to forces beyond the grower's control, the committee shall compute a level of commercial sales for the fourth year for that acreage using an estimated production, obtained by crediting the grower with the average sales from the preceding three years during which sales occurred. Any and all relevant factors regarding the grower's lost production may be considered by the committee prior to establishing a sales history for such acreage.

(5) The committee shall compute a sales history for a grower who has no history of sales associated with such grower's cranberry acreage, during a period when a volume regulation has been established, using the greater of the following:

(i) The total commercial sales from a grower's cranberry acreage, or

(ii) The state average yield per acre multiplied by the grower's cranberry producing acreage. *Provided,* That a grower receiving a sales history computed under either of these methods shall not be eligible to have deficiencies filled.

(b) Grower report. Each grower who wishes to market cranberries under the marketing order shall file a report with the committee by January 15 of each crop year, indicating the total acreage harvested, the total commercial cranberry sales in barrels from such acreage, and the amount of any new or renovated acreage planted.

(c) The committee may establish with the approval of the Secretary, rules and regulations necessary for the implementation and operation of this section.

Proposal No. 12

Amend § 929.49 to read as follows:

§ 929.49 Marketable quantity, allotment percentage and annual allotment.

(a) Marketable quantity and allotment percentage. If the Secretary finds, from the recommendation of the committee or from other available information, that limiting the quantity of cranberries purchased from or handled on behalf of growers during a crop year would tend to effectuate the declared policy of the Act, the Secretary shall determine and establish a marketable quantity for that crop year.

(b) The marketable quantity shall be apportioned among growers by applying the allotment percentage to each grower's sales history, established pursuant to § 929.48. Such allotment percentage shall be established by the Secretary and shall equal the marketable quantity divided by the total of the growers' sales histories. Except as provided in paragraph (f) of this section, no handler shall purchase or handle on behalf of any grower cranberries not within such grower's annual allotment.

(c) In any crop year in which the production of cranberries is estimated by the committee to be equal to or less than its recommended marketable quantity, the committee may recommend and the Secretary may increase or suspend the allotment percentage applicable to that year. In the event it is found that the market demand is greater than the marketable quantity previously set, the committee may recommend and the Secretary may increase such quantity.

(d) Issuance of annual allotments. The committee shall require all growers to qualify for their allotment by filing with the committee, on or before April 15 of each year, a form wherein growers include the following information: The location of their cranberry producing acreage from which their annual allotment will be produced; the amount of acreage which will be harvested; changes in location, if any, of annual allotment; and such other information, including a copy of any lease agreement, as is necessary for the committee to administer this part. On or before June 1, the committee shall issue to each grower an annual allotment determined by applying the allotment percentage established pursuant to paragraph (b) of this section to the grower's sales history.

(e) On or before June 1 of any year in which an allotment percentage is established by the Secretary, the committee shall notify each handler of the annual allotment that can be handled for each grower whose total crop is delivered to that handler. In cases where a grower delivers a crop to more than one handler, such grower's annual allotment will be apportioned equitably among the handlers.

(f) Growers who do not produce cranberries equal to their computed annual allotment may transfer their unused allotment to the grower's handler. The handler shall equitably allocate the unused annual allotment to growers with excess cranberries who deliver to such handler. Growers may enter into an agreement with the handler as to the disposition of their unused annual allotment. Unused annual allotment remaining after all such transfers have occurred shall be transferred to the committee pursuant to paragraph (g) of this section.

(g) Handlers who receive cranberries more than the sum of their growers' annual allotments have "excess cranberries," pursuant to § 929.59, and shall so notify the committee. Handlers who have remaining unused allotment pursuant to paragraph (f) of this section are "deficient" and shall so notify the committee. The committee shall equitably distribute unused allotment to all handlers having excess cranberries.

(h) The committee may establish with the approval of the Secretary, rules and regulations necessary for the implementation and operation of this section.

Proposal No. 13

Amend § 929.50 to read as follows:

§ 929.50 Transfers.

(a) Transfers to another grower. A grower who owns cranberry acreage on which a sales history has been established may transfer the acreage and sales history to another grower. When transfers of acreage occur, transfers of sales history will be made under the following conditions:

(1) A lease agreement between the owner of the cranberry producing acreage and a lessee: Terms of such lease agreement shall be filed with the committee prior to the committee recognizing such transfer. The lease agreement filed with the committee shall include the following information:

(i) Name of owner and lessee;

(ii) Starting and ending dates of the lease;

(iii) Amount of acreage transferred; and

(iv) The amount of sales history transferred.

(2) Total sale of cranberry acreage. When there is a sale of a grower's total cranberry producing acreage, the seller and buyer shall file a completed transfer form with the committee and the buyer will have immediate access to the sales history computation process.

(3) Partial sale or lease of cranberry acreage. When less than the total cranberry producing acreage is sold or leased, sales history associated with the portion of the acreage being sold or leased shall be transferred with the acreage. The seller or lessor shall provide the committee with a completed transfer or lease form outlining such distribution of acreage and sales history between the parties. Such transfer or lease form shall include that percentage of the sales history, as defined in § 929.48(a)(1), attributable to the acreage being transferred or leased.

(4) No transfer shall be recognized by the committee unless the transferee and transferor notify the committee in writing.

(5) In a year of nonregulation, in the absence of any sales history associated with the cranberry acreage being transferred or leased, the committee shall determine the buyer's or lessee's sales history by using the state average yield per acre times the cranberry producing acreage.

(6) During a year when a volume regulation has been established, no transfer or lease of cranberry producing acreage, without accompanying sales history, shall be recognized until the committee is in receipt of a completed transfer or lease form.

(b) The committee may establish, with the approval of the Secretary, rules and regulations, as needed, for the implementation and operation of this section.

Proposal No. 14

Amend § 929.52 by revising paragraph (a) to read as follows:

§ 929.52 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of cranberries whenever the Secretary finds, from the recommendations and information submitted by the committee, or from other available information, that such regulation will tend to effectuate the declared policy of the Act. Such regulation shall limit the total quantity of cranberries which may be handled during any fiscal period either by fixing the free and restricted percentages, which percentages shall be applied to cranberries acquired by handlers during such fiscal period in accordance with § 929.54, or by establishing an allotment percentage in accordance with § 929.49.

Proposal No. 15

Amend § 929.55 to read as follows:

§ 929.55 Interhandler transfer.

(a) Transfer of cranberries from one handler to another may be made without prior notice to the committee, except during a period when a volume regulation has been established. If such transfer is made between handlers who have packing or processing facilities located within the production area, the assessment and withholding obligations provided under this part shall be assumed by the handler who agrees to meet such obligation. If such transfer is to a handler whose packing or processing facilities are outside of the production area, such assessment and withholding obligation shall be met by the handler residing within the production area.

(b) All handlers shall report all such transfers to the committee on a form provided by the committee four times a year or at other such times as may be recommended by the committee and approved by the Secretary.

(c) The committee may establish with the approval of the Secretary, rules and regulations necessary for the implementation and operation of this section.

Proposal No. 16

Add a new § 929.59 to read as follows:

§ 929.59 Excess cranberries.

(a) Whenever the Secretary establishes an allotment percentage, pursuant to § 929.52, handlers shall be notified by the committee of such allotment percentage and shall withhold from handling such cranberries in excess of the total of their growers' annual allotments obtained during such period. Such withheld cranberries shall be defined as "excess cranberries" after all unused allotment has been allocated.

(1) Excess cranberries received by a handler shall be made available for inspection by the committee or its representatives from the time they are received until final disposition is completed. Such excess cranberries shall be identified in such manner as the committee may specify in its rules and regulations with the approval of the Secretary.

(2) All matters dealing with handler held excess cranberries shall be in accordance with such rules and regulations established, as needed by the committee, with the approval of the Secretary.

(b) Prior to January 1, or such other date as recommended by the committee and approved by the Secretary, handlers holding excess cranberries shall submit to the committee a written plan outlining procedures for the systematic disposal of such cranberries in the outlets prescribed in § 929.61.

(c) Prior to March 1, or such other date as recommended by the committee and approved by the Secretary, all excess cranberries shall be disposed of pursuant to § 929.61.

Proposal No. 17

Redesignate §§ 929.60. 929.61, 929.62, and 929.63 of *Reports and Records* as §§ 929.62, 929.63, 929.64, and 929.65, respectively. In addition, redesignate §§ 929.65, 929.66, 929.67, 929.68, 929.69, 929.70, 929.71, 929.72, 929.73, 929.74, and 929.75 of *Miscellaneous Provisions* as §§ 929.67, 929.68, 929.69, 929.70, 929.71, 929.72, 929.73, 929.74, 929.75, 929.76, and 929.77, respectively.

Proposal No. 18

Add a new § 929.60 to read as follows:

§ 929.60 Handling for special purposes.

Regulations in effect pursuant to §§ 929.10, 929.41, 929.47, 929.48, 929.49, 929.51, 929.52, or 929.53 or any combination thereof, may be modified, suspended, or terminated to facilitate handling of excess cranberries for the following purposes:

(a) Charitable institutions:

(b) Research and development projects described pursuant to § 929.61;

(c) Any nonhuman food use;

(d) Foreign markets, except Canada; and

(e) Other purposes which may be recommended by the committee and approved by the Secretary.

Proposal No. 19

Add a new § 929.61 to read as follows:

§ 929.61 Outlets for excess cranberries.

(a) Noncommercial outlets. Excess cranberries may be disposed of only in the following noncommercial outlets that the committee finds, with the approval of the Secretary, meet the requirements outlined in paragraph (c) of this section:

(1) Charitable institutions; and

(2) Research and development projects approved by the U.S. Department of Agriculture for the development of foreign and domestic markets, including, but not limited to, dehydration, radiation, freeze drying, or freezing of cranberries.

(b) Noncompetitive outlets. Excess cranberries may be sold to outlets that the committee finds, with the approval of the Secretary, are noncompetitive with established markets for regulated cranberries and meet the requirements outlined in paragraph (c) of this section. These outlets include:

(1) Any nonhuman food use; and

(2) Foreign markets, except Canada.

(c) Requirements for diversion. The following requirements, as applicable, shall be met by the handler diverting excess cranberries into noncompetitive or noncommercial outlets:

(1) Diversion to charitable institutions. A statement from the charitable institution shall be submitted to the committee showing the quantity of cranberries received and certifying that the cranberries will be utilized by the institution;

(2) Diversion to research and development projects. A report shall be given to the committee describing the project, quantity of cranberries diverted, and date of disposition;

(3) Diversion to a nonhuman food use. Notification shall be given to the committee at least 48 hours prior to such disposition; and

(4) Diversion to foreign markets, except Canada. A copy of the on-board bill of lading shall be submitted to the committee showing the amount of cranberries loaded for export.

(d) The storage and disposition of all excess cranberries withheld from handling shall be subject to the supervision and accounting control of the committee.

(e) The committee, with the approval of the Secretary, may establish as needed, rules and regulations for the implementation and operation of this section.

Proposal Submitted by the Fruit and Vegetable Division, Agricultural Marketing Service

Proposal No. 20

Make such changes as may be necessary to the marketing agreement and order to conform with any amendment thereto that may result from the hearing.

Dated: January 2, 1990.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 90-274 Filed 1-2-90; 1:27 pm]

BILLING CODE 3410-02-M

7 CFR Part 948

[Docket No. FV-90-113]

Irish Potatoes Grown in Colorado—Area 2; Proposed Reapportionment of Committee Membership

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would reapportion handler membership on the Colorado Potato Administrative Committee, San Luis Valley Office, Area 2 (committee). The change is intended to provide more equitable handler representation on the committee in recognition of recent changes that have occurred in the relative importance of the various handler groups in Colorado Area 2.

DATE: Comments must be received by February 5, 1990.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone (202) 447-5331.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 97 and Marketing Order No. 948 (7 CFR part 948), both as amended, regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are authorized by the Agricultural Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 handlers of Colorado Area 2 potatoes under this marketing order, and approximately 290 potato producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the handlers and producers of Colorado Area No. 2 potatoes may be classified as small entities.

The Colorado Potato Administrative Committee, San Luis Valley Office, Area 2 (committee) is established under the terms of the marketing order to work with the Department in administering the program. The committee consists of 12 members, of which 7 are producers and 5 are handlers. Producer membership is allocated geographically among the counties comprising the production area. Handler membership is currently allocated among three defined categories. Handlers that are qualified as producers' cooperative marketing associations are entitled to one member of the committee. Bulk handlers, defined as those whose primary business is shipping bulk loads of potatoes for seed or to repackers, are entitled to one member. Three members are selected to represent handlers that do not fall into the two previous categories. Areas, subdivisions of areas, the distribution of representation among the subdivision of areas, or among marketing organizations within respective areas may be reestablished by the Secretary upon area committee recommendation pursuant to § 948.53.

The committee met on November 16, 1989, and unanimously recommended that membership on the Area 2 committee be reestablished and that handler membership be reapportioned by eliminating the producers' cooperative marketing association category and increasing the number of members allocated to the bulk handler category from one to two.

Until recently, between 10 and 15 percent of the Colorado Area 2 potato crop was handled by producers' cooperative marketing associations. Changes in handler affiliations over the past year have reduced this category's share of the total volume handled to less than five percent. The committee therefore believes that it is no longer equitable to provide this handler category with one of the five handler member positions on the committee. By eliminating this category, only two would remain—bulk handlers and all other handlers. Those handlers previously classified as producers' cooperative marketing associations would therefore fall into the "all other handlers" category.

While the volume of the crop handled by producers' cooperative marketing associations has declined, that handled by bulk shippers has increased. The committee estimates that bulk shippers now account for approximately 37 percent of the total volume of potatoes handled. The committee therefore recommended that this handler group be allocated 2 or 5, or 40 percent, of the total number of handler member positions. The committee believes that this will provide adequate and equitable industry representation in view of the current distribution of shipments among the handler groups.

Committee members serve 2-year terms of office beginning May 1 with one-half of the membership selected each year. Of the current handler members, the one representating producers' cooperative marketing associations is serving a term that expires on April 30, 1990. The committee recommended that this member continue to serve the remainder of this term, and that this change in apportionment be effective for nominations for members to serve the term beginning May 1, 1990.

Based on the above, the Adminstrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received in response to this request for comments will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 948

Colorado, Marketing agreements and orders, Potatoes.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 948 be amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended, 7 U.S.C. 601–674.

2. Section 948.150 is amended by revising paragraph (a) to read as follows:

§ 948.150 Reestablishment of committee membership.

* * * * *

(a) Area No. 2 (San Luis Valley): Seven producers and five handlers selected as follows:

Three (3) producers from Rio Grande County;

One (1) producer from Saguache County;

One (1) producer from Conejos County;

One (1) producer from Alamosa County;

One (1) producer from all other counties in Area No. 2;

Two (2) handlers representing bulk handlers in Area No. 2;

Three (3) handlers representing handlers in Area No. 2 other than bulk handlers.

* * * * *

Dated: December 28, 1989

William J. Doyle

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–185 Filed 1–3–90; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89–NM–251–AD]

Airworthiness Directives; Aerospatiale Model ATR42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to all Aerospatiale Model ATR42 series airplanes, which currently requires inspections to detect cracks in each main landing gear (MLG) wheel, and replacement, if necessary. This condition, if not corrected, could lead to complete failure of the wheel. This action would eliminate the requirement to periodically inspect certain wheels

with specific serial numbers. This proposal is prompted by a report that wheels which have been assembled in the manufacturer's factory prior to being placed in service have not exhibited cracks.

DATE: Comments must be received no later than February 20, 1990.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-251-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Robert C. McCracken, Standardization Branch, ANM-113; telephone (206) 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator 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 post card on which the following statement is made: "Comments to Docket Number 89-NM-251-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On April 22, 1988, the FAA issued AD 88-09-04, Amendment 39-5907 (53 FR 15362; April 29, 1988), to require inspections to detect cracks in each main landing gear (MLG) wheel, and replacement, if necessary. That action was prompted by reports of cracks on inboard wheel halves. This condition, if not corrected, could lead to complete failure of the wheel.

Since issuance of that AD, Aircraft Braking Systems Corporation, manufacturer of the Model ATR42 MLG wheels, has been examining service data and investigating the cause of cracking. Analysis of the data for wheels with Part Number (P/N) 5006856-2 that have been reworked in the field indicates that they have continued to develop cracks, while the same part number wheels assembled in the manufacturer's factory have not developed cracks. This is attributed to the wheels reworked in the field having suffered fatigue damage in service prior to rework; those assembled in the factory have not been in service, and therefore do not have pre-existing fatigue damage.

Since issuance of AD 88-09-04, Aerospatiale has issued Service Bulletin ATR42-32-0017, Revision 1, dated May 20, 1988, which describes procedures for the installation of a new reinforced inboard wheel half and a modified hub spacer. This revision is merely clarifying in nature; in substance, it is identical to the original issue of the service bulletin, which was referenced in the AD.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would supersede AD 88-09-04 with a new airworthiness directive that would eliminate the requirement to periodically inspect P/N 5006856-2 MLG wheels which have been assembled in the factory. Wheels with P/N 5006856, 5006856-1, and 5006856-2 which have been field reworked will continue to require inspection and replacement, if necessary, in accordance with the service bulletin previously described. Based on the survey data described above, the FAA has determined that the currently required periodic inspection of factory built wheels can be eliminated without adversely affecting safety.

Additionally, since the issuance of AD 88-09-04, the number of Model ATR42 series airplanes in service has increased. Since the original AD addressed all Model ATR42 series airplanes, the economic impact statement has been revised to reflect the number of airplanes estimated to be currently in service.

It is estimated that 53 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $16,960.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

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 as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-5907 (53 FR 15362; April 29, 1988), AD 88-09-04, with a new airworthiness directive, as follows:

Aerospatiale: Applies to all Model ATR42 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent failure of the main landing gear wheel, due to cracked spokes, accomplish the following:

A. For wheels with Loral Part Number (P/N) 5006856, 5006856-1, and 5006856-2, having serial numbers OCT83-001 through OCT86-071: Within 7 days or 100 landings after the last inspection in accordance with AD 88-09-04, whichever occurs later, perform a visual inspection of the inboard wheel halves, with the airplane jacked, to detect cracks, in accordance with Loral Systems Group Service Bulletin ATR42-32-40-1, Revision 2, dated June 23, 1987. Repeat the inspection at intervals not to exceed 7 days or 100 landings, whichever occurs later. If a crack is detected, only one additional landing may be made after the detection of that crack before the cracked inboard wheel half must be replaced.

B. For wheels with Loral Part Number (P/N) 5006856, 5006856-1, and 5006856-2, having serial numbers OCT83-001 through OCT86-377, with the exception of serial numbers OCT86-001 through OCT86-071: At each tire change, perform an eddy current inspection or other nondestructive test of the inboard wheel halves to detect cracks, in accordance with Loral Systems Group Service Bulletin ATR42-32-40-1, Revision 2, dated June 23, 1987. Replace any cracked inboard wheel half before further flight.

Note: MLG wheels with Loral Part Number 5006856-2, serial numbers OTC86-001 through OCT86-071 and NOV86-072 through AUG87-376, are factory built new wheels, and are not subject to the repetitive inspection requirements of paragraphs A. and B., above.

C. Replacement of inboard wheel halves with a new reinforced half wheel and replacement of the existing hub spacer with a modified hub spacer, in accordance with Aerospatiale Service Bulletin ATR42-32-0017, dated January 19, 1988, or Revision 1, dated May 20, 1988 (reference Loral Service Bulletin ATR42-32-40-4, dated July 15, 1987), constitutes terminating action for the repetitive inspections required by paragraphs A. and B., above.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on December 20, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-130 Filed 1-3-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-252-AD]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A300 series airplanes, which would require repetitive high frequency eddy current (HFEC) inspections for cracks in the horizontal stabilizer center box top integral skin, and repair, if necessary. This proposal is prompted by a structural reassessment by the manufacturer using fatigue test tear-down results and damage tolerance calculations. This condition, if not corrected, could result in reduced structural integrity of the airplane.

DATE: Comments must be received no later than February 20, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-252-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator 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 post card on which the following statement is made: "Comments to Docket Number 89-NM-252-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Airbus Industrie Model A300 series airplanes. During a structural reassessment using damage tolerance calculations and fatigue test tear-down results, the manufacturer determined that the horizontal stabilizer center box top integral skin was subject to cracking. This condition, if not corrected, could lead to reduced structural integrity of the airplane

Airbus Industrie has issued Service Bulletin A300-55-0036, dated April 7, 1989, which describes procedures for repetitive high frequency eddy current (HFEC) inspections for cracks in the horizontal stabilizer center box top integral skin, and repair, if necessary. The DGAC has classified this service bulletin as mandatory, and has issued Airworthiness Directive 89-109-097(B) addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive HFEC inspections for cracks in the horizontal stabilizer center box top integral skin, and repair, if necessary, in accordance with the service bulletin previously described.

It is estimated that 46 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $14,720.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

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 as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Airbus Industrie: Applies to Model A300 series airplanes, as listed in Airbus Industrie Service Bulletin A300-55-0036, dated April 7, 1989, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To ensure continued structural integrity of these airplanes, accomplish the following:

A. Perform a high frequency eddy current (HFEC) inspection of the horizontal stabilizer center box top integral skin, in accordance with Airbus Industrie Service Bulletin A300-55-0036, dated April 7, 1989, as follows:

1. Model A300 B2 Series Airplanes:

a. For airplanes that have accumulated less than 17,800 landings, the initial inspection must be performed prior to the accumulation of 19,800 landings.

b. For airplanes that have accumulated at least 17,800 landings but not more than 22,800 landings, the initial inspection must be performed within 2,000 landings after the effective date of this AD.

c. For airplanes that have accumulated 22,800 or more landings, the initial inspection must be performed within 1,000 landings after the effective date of this AD.

2. Model A300 B4-100 and B4-2C series airplanes:

a. For airplanes that have accumulated less than 16,100 landings, the initial inspection must be performed prior to the accumulation of 17,600 landings.

b. For airplanes that have accumulated at least 16,100 landings but not more than 19,600 landings, the initial inspection must be performed within 1,500 landings after the effective date of this AD.

c. For airplanes that have accumulated 19,600 or more landings, the initial inspection must be performed withimn 750 landings after the effective date of this AD.

3. Model A300 B4-200 series airplanes:

a. For airplanes that have accumulated less than 12,900 landings, the initial inspection must be performed prior to the accumulation of 14,400 landings.

b. For airplanes that have accumulated at least 12,900 landings but not more 16,400 landings, the initial inspection must be performed within 1,500 landings after the effective date of this AD.

c. For airplanes that have accumulated 16,400 or more landings, the initial inspection must be performed within 750 landings after the effective date of this AD.

B. If no cracks are found, repeat the inspections required by paragraph A., above at the following intervals:

1. For Model A300 B2 series airplanes, repeat the inspection at intervals not to exceed 13,900 landings.

2. For Model A300 B4-100 and B4-2C, repeat the inspection at intervals not to exceed 12,400 landings.

3. For Model A300 B4-200 series airplanes, repeat the inspection at intervals not to exceed 10,100 landings.

C. If cracks are found, repair prior to further flight, in accordance with Airbus Industrie Service Bulletin A300-55-0036, dated April 7, 1989. Repeat inspections thereafter at intervals specified in paragraph B., above.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington,

Issued in Seattle, Washington, on December 20, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-131 Filed 1-3-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-248-AD]

Airworthiness Directives; Boeing Model 737-300 and 737-400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 737-300 and 737-400 series airplanes, which would require an inspection of the left engine fuel feed tube assembly for proper clearance between the adjacent wing/strut structural brace, and adjustment or replacement, if necessary. This proposal is prompted by reports of fuel leaks caused by chafing of the engine fuel feed tube in the wing/strut area. This condition, if not corrected, could result in fuel leakage causing a potential engine strut fire hazard.

DATES: Comments must be received no later than February 20, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-248-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington, 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Bray, Propulsion Branch, ANM-140S; telephone (206) 431-1969. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator 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 post card on which the following statement is made: "Comments to Docket Number 89-NM-248-AD." The post card will be date/time stamped and returned to the commenter.

Discussion:

On April 13, 1989, the FAA issued AD 88-10-01, Amendment 39-6200 (54 FR 18275; April 28, 1989), to require inspection and adjustment and replacement, if necessary of the fuel feed tubes on the right engine of Boeing Model 737-300 series airplanes. That action was taken as a result of fuel leaks caused by chafing of the fuel feed tube against the thermal anti-ice duct.

Since issuance of that AD, further investigation has revealed chafing of the left engine against an adjacent wing/strut structural brace. Chafing of a fuel feed tube, if undetected, could result in fuel leakage causing potential engine strut fire hazard.

The FAA has reviewed and approved Boeing Service Bulletins 737-28-1084, dated September 4, 1989, and 737-28-1055 Revision 1, dated October 27, 1988, which together describe procedures for inspection and adjustment or replacement of the engine fuel feed tube assemblies.

Since this condition is likely to exist or develop on other airplanes of this same type design, and AD is proposed which would require an inspection of the left engine fuel feed tube assembly for proper clearance between the adjacent wing/strut structural brace, and adjustment or replacement of the damaged fuel tube assembly, if necessary, in accordance with the service bulletins previously described.

There are approximately 500 Model 737-300 and 737-400 series airplanes of the affected design in the worldwide fleet. It is estimated that 225 airplanes of U.S. registry would be affected by this AD, that it would take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $45,000.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

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 as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Boeing: Applies to Model 737-300 and 737-400 series airplanes, listed in Boeing Service Bulletin 737-28-1084, dated September 14, 1989, certificated in any category. Compliance required within 3 months after the effective date of this AD, unless previously accomplished.

To prevent a fire hazard associated with a fuel leak, due to the fuel tube assembly chafing against the adjacent wing/strut structural brace, accomplish the following:

A. Accomplish one of the following:

1. Inspect the left engine fuel feed tube assembly for proper clearance and chafing, in accordance with Boeing Service Bulletin 737-28-1055 Revision 1, dated October 27, 1988. If inadequate clearance is found, prior to further flight, adjust the fuel tube in accordance with the service bulletin. Replace any chafed fuel tube, prior to further flight, with a serviceable fuel tube, in accordance with Boeing Service Bulletin 737-28-1084, dated September 14, 1989.

2. Replace the left engine fuel feed tube in accordance with Boeing Service Bulletin 737-28-1084, dated September 14, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on December 20, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-132 Filed 1-3-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-222-AD]

Airworthiness Directives; Boeing Model 737-400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all Boeing Model 737-400 series airplanes, which would require modification of the auxiliary power unit (APU) instrumentation wiring. This proposal is prompted by reports that the APU exhaust gas temperature (EGT) indication incorrectly read "zero" following an APU shutdown, including an APU shutdown associated with an aborted APU start. This condition, if not corrected, could result in undetected overtemperature damage to the APU rotor structure, which could then result in rotor failure and possible structural damage to the airplane.

DATES: Comments must be received no later than February 24, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-222-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Related service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen S. Bray, Propulsion Branch, ANM-140S; telephone (206) 431-1958. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator 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 post card on which the following statement is made: "Comments to Docket Number 89-NM-222-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

During a manufacturer's production flight test, an operational deficiency was detected in the APU EGT indication system, in that the APU EGT gauge may incorrectly read "zero" immediately following a normal APU shutdown or a shutdown associated with an aborted start. This operational deficiency does not allow the flightcrew to monitor APU EGT following an APU shutdown. Monitoring APU EGT following APU shutdown is part of the flightcrew's recommended procedure in such situations. This condition, if not corrected, could result in undetected damage to the APU rotor structure, and subsequently could result in undetected damage to the APU rotor structure, and subsequently cause rotor failure and possible structural damage to the airplane.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed that would require the modification of the APU EGT instrumentation, which adds a hard wired power source to assure continuous APU EGT indication to the flight compartment following all APU shutdowns. Boeing is currently preparing a service bulletin which will contain the electrical modification to the APU EGT indication system. If this service bulletin has been approved prior to the issuance of the final rule, the FAA may consider referencing it in the final rule as one approved method of compliance.

There are approximately 55 Model 737-400 series airplanes of the affected design in the worldwide fleet. It is estimated that 18 airplanes of U.S. registry would be affected by this AD, that it would take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The parts required by this proposed AD may be furnished or fabricated from the operators' existing stock or purchased from industry sources; therefore, parts cost is estimated to be negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,200.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant

rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

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 proposed to amend part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

Boeing: Applies to all Model 737-400 series airplanes certificated in any category. Compliance required within the next 1,000 hours time-in-service after the effective date of this AD, unless previously accomplished.

To prevent auxiliary power unit (APU) rotor failure resulting from an undetected EGT overtemperature condition, accomplish the following:

A. Modify the APU instrumentation wiring in a manner that will assure continuous flight-compartment APU exhaust gas temperature (EGT) indication following an APU shutdown. The modification must be accomplished in a manner approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive may obtain copies of related service information by contacting Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on December 22, 1989.

Darrell M. Pederson

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-133 Filed 1-3-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-258-AD]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all British Aerospace Model BAC 1-11 200 and 400 series airplanes, which would require repetitive dye penetrant or eddy current inspections to detect cracks in the retraction jack attachment arm lugs on the nose landing gear housing, and repair, if necessary. This proposal is prompted by reports of collapse of the nose landing gear due to fatigue cracks in the retraction jack attachment arm lugs. This condition, if not corrected, could result in collapse of the nose landing gear.

DATES: Comments must be received no later than February 27, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-258-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator 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 post card on which the following statement is made: "Comments to Docket Number 89-NM-258-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on British Aerospace Model BAC 1-11 series airplanes. There has been a report of collapse of the nose landing gear due to fatigue cracks in the retraction jack attachment arm lugs on the nose landing gear housing. This condition, if not corrected, could lead to collapse of the nose landing gear.

British Aerospace has issued Alert Service Bulletin 32-A-PM5946, Issue 1, dated April 6, 1987, which describes procedures for repetitive dye penetrant or eddy current inspections to detect cracks in the retraction jack attachment arm lugs on the nose landing gear housing, and repair, if necessary. The

United Kingdom CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require repetitive dye penetrant or eddy current inspections to detect cracks in the retraction jack attachment arm lugs on the nose landing gear housing, and repair, if necessary, in accordance with the service bulletin previously described.

It is estimated that 70 airplanes of U.S. registry would be affected by this AD, that it would take approximately one-half manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,400.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

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 as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

British Aerospace: Applies to all Model BAC 1-11 200 and 400 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent collapse of the nose landing gear, accomplish the following:

A. Prior to the accumulation of 15,000 landings or within 150 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 15,000 landings, perform a dye penetrant of eddy current inspection of the lower faces of both lugs of the jack attachment arm on the nose landing gear housing over an area not less than 0.5 inch forward and aft of change in lug section, in accordance with British Aerospace Alert Service Bulletin 32-A-PM5946, Issue 1, dated April 6, 1987.

B. If cracks are found, repair or replace with a serviceable part, prior to further flight, in accordance with British Aerospace Alert Space Bulletin 32-A-PM5946, Issue 1, dated April 6, 1987.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements to this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on December 26, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-134 Filed 1-3-90; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 89-NM-257-AD]

Airworthiness Directives; British Aerospace Model BAe-146 Series Airplanes on Which Modifications HCM50075A, B, and C., Have Been Incorporated

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe-146 series airplanes, which would require an inspection of the quick disconnect couplings in the yellow and auxiliary systems hydraulic lines to the wheel brake units to ensure all couplings are fully tightened, and retightening and securing of the quick-disconnect couplings. This proposal is prompted by reports that in-service airplanes were found to have loose quick-disconnect couplings. This condition, if not corrected, could result in hydraulic fluid becoming isolated in the brake unit, and subsequent brake drag or loss of braking on the associated wheel brake unit.

DATES: Comments must be received no later than February 27, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-257-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-

1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator 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 post card on which the following statement is made: "Comments to Docket Number 89-NM-257-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model BAe-146 series airplanes. There have been recent reports that in-service airplanes were found to have loose, "backed-off" quick-disconnect couplings. If the couplings are allowed to become too loose, hydraulic fluid could become isolated in the brake unit. This condition, if not corrected, could result in brake drag or loss of braking on the associated wheel brake unit.

British Aerospace has issued Service Bulletin 32-A101, dated September 1, 1989, which describes procedures to inspect the quick disconnect couplings in the yellow and auxiliary systems hydraulic lines to the wheel brake units to ensure all couplings are fully tightened, and procedures to retighten and secure quick-disconnect couplings. The United Kingdom CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require an inspection to ensure tightness of the quick-disconnect couplings in the yellow and auxiliary systems hydraulic lines to the wheel brake units, and retightening and securing of the quick-disconnect couplings, in accordance with the service bulletin previously described.

It is estimated that 61 airplanes of U.S. registry would be affected by this AD, that it would take approximately one-half manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,220.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

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 as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

British Aerospace, PLC; Applies to Model BAe-146 series airplanes, on which modifications HCM50075A, B, and C have been incorporated, certificated in any category. Compliance is required within 30 days after the effective date of this AD, unless previously accomplished.

To prevent brake drag or complete loss of braking, accomplish the following:

A. Inspect the quick-disconnect couplings in the yellow and auxiliary systems hydraulic lines to the wheel brake units on the left and right main landing gear for being finger tight, retighten to-finger-tight torque and secure the quick-disconnect couplings with a corrosion-resistant steel lockwire, in accordance with British Aerospace Service Bulletin 32-A101, dated September 1, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on December 26, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-135 Filed 1-3-90; 8:45 am]

BILLING CODE 4910-13

14 CFR Part 39

[Docket No. 89-NM-229-AD]

Airworthiness Directives; British Aerospace Model BAe 146-100A, -200A, and -300A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes, which would require installation of a warning placard on a shelf beneath the flap electronic control unit (ECU) stating that the equipment must not be removed or re-racked in flight, and a placard on the circuit breaker panel stating that circuit breakers must not be pulled in flight. This proposal is prompted by reports of flight crews removing or re-racking the flap system ECU or pulling associated circuit breakers while in flight, which could result in in-flight of the flap ECU. This condition, if not corrected, could result in loss of wing flaps' asymmetry protection and would adversely affect airplane controllability.

DATE: Comments must be received no later than February 20, 1990.

ADDRESS: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-229-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168. The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing Address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator 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 overal 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 post card on which the following statement is made: "Comments to Docket Number 89-NM-229-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes. There have been reports of flight crews' removing or re-racking the flap system electronic control unit (ECU) or pulling associated circuit breakers while in flight. That action could result in an asymmetric wing flap condition if a flap shaft disconnect occurs after the ECU (1) has been deactivated by pulling the circuit breaker, or (2) has failed due to re-racking the ECU in flight. This condition, if not corrected, could result in loss of flap asymmetry protection and would adversely affect airplane controllability.

British Aerospace has issued Service Bulletin 11-36-01104A&B, dated May 10, 1989, which describes procedures to install a warning placard on Shelf 5 beneath the flap computer stating, "WARNING: THIS EQUIPMENT MUST NOT BE REMOVED OR RE-RACKED IN FLIGHT," and a warning placard on circuit breaker panel 131-11-00 stating, "WARNING—C/BREAKERS MUST NOT BE PULLED IN FLIGHT." The Kingdom CAA has classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require the installation of a warning placard on shelf No. 5 beneath the flap computer and on circuit breaker panel 131-11-00, in accordance with the service bulletin previously described.

It is estimated that 61 airplanes of U.S. registry would be affected by this AD, that it would take approximately one manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost for the required placards is $27. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,087.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

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 as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

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

British Aerospace: Applies to Model BAe 146-100A, Serial Numbers E1002 through E1100, E1102, and E1103; Model BAe 146-200A, Serial Numbers E2012 through E2113, E2115 and E2118; and Model BAe 146-300A, Serial Numbers E3118 through E3123 and E3125; certificated in any category. Compliance is required within 30 days after the effective date of this AD, unless previously accomplished.

To prevent loss of asymmetry protection and loss of airplane controllability, accomplish the following:

A. Install a warning placard on shelf No. 5 beneath the flap computer, in accordance with British Aerospace Service Bulletin 11-36-01104A&B, dated May 10, 1989, stating,

Warning—This Equipment Must not be Removed or Re-Racked in Flight

B. Install a warning placard on circuit breaker panel 131-11-00, in accordance with British Aerospace Service Bulletin 11-36-01104A&B, dated May 10, 1989, stating,

Warning—C/Breakers Must not be Pulled in Flight

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, D.C. 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on December 20, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-136 Filed 1-3-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 76N-052G]

RIN 0905-AA06

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use, Reopening of Record for Receipt of Comments Regarding the Marketing Status of Combination Drug Products Containing Promethazine Hydrochloride; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of administrative record; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the proposed rule that reopened the administrative record for over-the-counter (OTC) cold, cough, allergy, bronchodilator, and antiasthmatic combination drug products to accept additional comments and data concerning combination drug products containing promethazine hydrochloride (54 FR 48914; November 28, 1989). Ronald G. Chesemore, the authorized official who signed the document, was incorrectly listed as "Ronald S. Chesemore". This document corrects that inadvertent error.

FOR FURTHER INFORMATION CONTACT: T. Rada Proehl, Regulations Editorial Staff (HFC-222), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 89-27808, appearing at page 48914 in the **Federal Register** of Tuesday, November 28, 1989, the following correction is made: On page 48915, 2d column, at the end of the document, "Ronald S. Chesemore" is corrected to read "Ronald G. Chesemore".

Dated: December 26, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-65 Filed 1-3-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-399-88]

RIN 1545-AM16

Treatment of Dual Consolidated Losses; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the definition of "dual consolidated losses" for purposes of determining whether the net operating loss of a domestic corporation is available to reduce the taxable income of any other member of its affiliated group.

DATES: The public hearing will be held on Friday, March 2, 1990, beginning at 1 p.m. Outlines of oral comments must be mailed by Thursday, February 15, 1990.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, attn: CC:CORP:T:R, (IL-399-88), room 4429, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Angela D. Wilburn, of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-566-3935, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 1503(d) which was added by section 1249 of the Tax Reform Act of 1986 (Pub. L. 99-514). The proposed regulations appeared in the **Federal Register** for Friday, September 8, 1989, on page 37346 (54 FR 37346).

The rules of § 601.601 (a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Thursday, February 15, 1990, an outline of the oral comments/testimony to be presented at

the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building until 12:45 p.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Cynthia E. Grigsby,

Acting Chief, Regulations Unit, Assistant Chief Counsel, (Corporate).

[FR Doc. 90-65 Filed 1-3-90; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3702-5]

Approval and Promulgation of Implementation Plans for Ohio

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA proposes to reinstate the federally promulgated sulfur dioxide (SO_2) emission limitations for the Centerior Energy Corporation's Eastlake and Avon Lake plants (previously named the Cleveland Electric Illuminating (CEI) Company) as part of the Ohio State Implementation Plan (SIP).

On June 24, 1980, USEPA promulgated SO_2 emission limitations for the Eastlake and Avon Lake plants. The limits were based on the use of the CRSTER (rural) model. USEPA has determined that because the immediate vicinity of each plant was rural, the use of CRSTER (the single-source guideline model for non-urban areas) was appropriate.

On October 2, 1986, the U.S. Court of Appeals for the Sixth Circuit reversed USEPA's use of the CRSTER model for these plants, (*Remand of Ohio, et al.* v. *U.S. EPA*, Case Nos. 80-3575, 3576, 3579, 3581, 3582, and 81-3525). The Court remanded the case to USEPA to test and evaluate the model as an adequate forecasting technique for these plants and, thus, determine whether the CRSTER model established SO_2 emission limitations that adequately protect the National Ambient Air Quality Standards (NAAQS). Additionally the Court established interim SO_2 emission limitations as set by the Ohio Administrative Code Rules for the Avon Lake and Eastlake plants.

In response to the Court action, a model evaluation study has been completed. The study demonstrates that USEPA's use of the CRSTER model produced emission limits that adequately protect the NAAQS. This notice summarizes the analysis of the model, discusses the technical issues cited by the Court, and proposes to reinstate the previously promulgated SO_2 emission limitations, recordkeeping and reporting requirements and the compliance test method and procedures for the Avon Lake and Eastlake plants.

DATES: Comments must be received on or before February 5, 1990. Requests for a public hearing on this proposal must be received by no later than January 19, 1990. A time and place for a public hearing will be published at a later date if one is requested.

ADDRESSES: Comments on this proposed rule should be sent to: (Please submit an original and five copies, if possible.) Gary Gulezian, Chief, Regulatory Analysis Section (5AR-26), Air and Radiation Branch, U.S. Environmental Protection Agency, Region V, 230 S. Dearborn Street, Chicago, Illinois 60604.

Copies of all information relevant to this action are contained in the docket for this revision (5A-88-1). This docket is available for inspection at the above Regional Office and at: Central Docket Section (A-130), U.S. Environmental Protection Agency, Room West Gallery-1, 401 M Street, SW., Washington, DC 20460.

The model evaluation study is also available at the following address: Ohio Environmental Protection Agency, 1800 WaterMark Drive, Columbus, Ohio 43266-0149.

FOR FURTHER INFORMATION CONTACT: Debra Marcantonio at (312) 886-6088 (It is recommended that you telephone the contact person above before visiting the Regional Office.)

SUPPLEMENTARY INFORMATION: This notice discusses USEPA's analysis in six parts: I. Background Information; II. Model Evaluation Study; III. Response to Technical Issues; IV. Stack Height Issues; V. Modeling Supporting Repromulgation of Emission Limits; and VI. Proposed Action.

I. Background Information

On August 27, 1976, USEPA promulgated the sulfur dioxide (SO_2) State Implementation Plan (SIP) for Ohio, including emission limits of 1.43 pounds of SO_2 per million British Thermal Units (lbs./MMBTU) for the CEI[1] Eastlake plant and 1.5 lbs./MMBTU for the CEI Avon Lake plant. These emission limitations were based on the use of the RAM-urban model, the appropriate USEPA model for the Cleveland (urban) metropolitan area. The Eastlake plant is located in Lake County, Ohio, and the Avon Lake plant is located in Lorain County, Ohio.

On June 19, 1979, USEPA proposed to revise the SO_2 emission limitations for the Eastlake and Avon Lake plants (i.e., 6.58 lbs./MMBTU for Eastlake and 6.09 lbs./MMBTU for Avon Lake). USEPA chose to propose emission limits that reflect status quo emissions based on: (a) Its determination that neither the existing RAM-urban nor RAM-rural models are appropriate for setting emission limits for the two plants (i.e., air quality data demonstrate that neither model accurately predicts the impact of the plants); (b) the installation of Good Engineering Practice stacks at both plants; and (c) current air quality data. USEPA stated that "in the absence of a more appropriate modeling technique, an emission limit based on the status quo emissions represents a reasonable margin of safety (pending collection of further monitoring data) * * *". As part of its proposed rulemaking, USEPA required CEI to expand the ambient monitoring system to ensure that status quo emissions will protect the NAAQS and to develop site-specific information on ground-level concentrations caused by the plants.

On February 22, 1980, USEPA announced the technical design of the expanded monitoring programs at Eastlake and Avon Lake. The objective of the monitoring program identified by USEPA were to: (1) Assess the attainment status in the vicinity of the CEI plants, (2) assess the expected location of maximum ground-level concentrations due to the CEI plants, (3) evaluate the influence of Lake Erie on these concentrations, (4) collect data necessary to develop control strategies adequate to protect the NAAQS, and (5) aid in the refinement or development of a site-specific model for these lake shore plants.

[1] Although these plants are now owned by the Centerior Energy Corporation, for purposes of discussing the regulatory history of the plants, references will be made to the previous name, the CEI Company.

On June 24, 1980, USEPA promulgated revised SO_2 emission limitations for the CEI plants (Eastlake–5.64 lbs./MMBTU, Avon Lake–4.65 lbs./MMBTU). The revised limits were based on the use of the CRSTER (rural) model and a new taller (merged) stack at each plant. USEPA determined that since the immediate vicinity of each plant was rural, the use of CRSTER (the benchmark model for non-urban areas) was appropriate. In addition, screening analyses with a state-of-the-art shoreline fumigation technique (Lyons-Cole model) suggested that in most cases the high concentrations associated with lake shore fumigation would not be greater for these plants than the high concentrations calculated by CRSTER for Class A stability conditions. Thus, USEPA concluded that the emission limitations based on CRSTER would be adequate to ensure attainment and maintenance of the SO_2 National Ambient Air Quality Standards (NAAQS).

In August 1980, CEI, the North American Coal Corporation (NACCO), the NACCO Mining Company, and the Northern Ohio Lung Association (NOLA) filed petitions for reconsideration. The petitioners stated that they had no opportunity to comment on the use of the CRSTER model and Class A stability meteorological conditions and on a revision to USEPA's Stack Height policy (which was proposed at the same time USEPA promulgated the revised emission limitations). On January 27, 1981, USEPA granted the petitions for reconsideration and, consequently, solicited further comments from interested parties. On July 22, 1981, after consideration of all public comments, USEPA reaffirmed the new emission limitations.

CEI, NACCO, NACCO Mining Company, NOLA, Ohio, and Massachusetts subsequently filed suit in the U.S. Court of Appeals for the Sixth Circuit. Pennsylvania, New York, New Hampshire, the Ohio Mining and Reclamation Association (OMRA), and the Youghiogheny and Ohio (Y&O) Coal Company were allowed to intervene.

By orders of March 17, 1981, and April 10, 1981, the Court Clerk divided the parties into three groups: Group I (Massachusetts, NOLA, Pennsylvania, New Hampshire, and New York)—those challenging the limits as too lenient; Group II (USEPA); and Group III (CEI, NACCO, NACCO Mining, Y&O Coal, OMRA, and Ohio)—those challenging the limits as too restrictive.

On February 26, 1986, the Court ruled that USEPA acted arbitrarily in using the CRSTER model to set emission limitations "* * * without adequately validating, monitoring, or testing its reliability or its trustworthiness in forecasting pollution in the vicinity of these plants, and we order further action to test and validate the model as an adequate forecasting technique for these plants." In addition, the Court noted that it had no information about "* * * what effect Lake Erie has on the diffusion of sulfur dioxide from these plants built along the shoreline * * *." Claiming the "changing of course by rescinding a rule" requires closer judicial scrutiny, the Court cited USEPA's change of modeling techniques, and the resulting 400 percent increase in allowable SO_2 emissions, without evaluation, validation, or empirical testing as the basis for its decision. The Court did note, however, that it was not insisting that all models be validated at all sites. On October 2, 1986, the Court issued its judgment entry and order of remand. The Court reversed USEPA's use of the CRSTER Model for these plants and remanded the case to USEPA for further proceedings consistent with the Court's opinion. Additionally, the Court established interim sulfur dioxide emission limitations as set by the Ohio Administrative Code Rules for the Avon Lake and Eastlake plants.

II. Model Evaluation Study

CEI has recently performed and submitted a model evaluation study entitled "Evaluation of the Use of the CRSTER Model at the Eastlake and Avon Lake Plants". The purpose of the study was to evaluate the performance of the CRSTER model against actual monitored concentrations of SO_2 in the vicinity of the Eastlake and Avon Lake Plants. A more detailed discussion of the model evaluation procedures used in this analysis is contained in the study mentioned above and in USEPA's March 3, 1988, technical support document for this action. For purposes of this notice, the following information is provided.

This study involved evaluating the following models: CRSTER (UNAMAP Version 5),[2] MPTER (UNAMAP Version 5), and Lyons-Cole. CRSTER and the Lyons-Cole model were used by USEPA in its 1980 promulgation of the CEI limitations. MPTER was run by USEPA to assist in designing the expanded monitoring networks. The UNAMAP Version 5 CRSTER and MPTER models were run in a mode similar to the UNAMAP Version 4 models used in 1980.

To determine whether the models were acceptable in an absolute sense, it was necessary to establish some minimum performance standards. USEPA determined that these standards should be based on the USEPA rural model evaluation studies for four other midwestern powerplants: Kincaid, Clifty Creek, Muskingum River, and Paradise. These four studies have been cited by USEPA as support for the CRSTER model. Therefore, to be acceptable, the performance of CRSTER at Eastlake and Avon Lake must be as good as, or better than, its performance at Kincaid, Clifty Creek, Muskingum River, and Paradise.

For the Lyons-Cole model, there are no previous evaluation studies which define a clear set of performance standards. It should be noted that USEPA did not rely on the Lyons-Cole model results directly in its 1980 rulemaking because the SO_2 concentrations it predicted were generally lower than the concentrations calculated by CRSTER and Class A stability conditions. Thus, the validity of this finding (i.e., CRSTER was more restrictive than the Lyons-Cole) was all that was evaluated here.

The data for Eastlake were collected over the period August 1981–July 1982 and for Avon Lake over the period November 1980–October 1981. These two periods reflect the 12 consecutive months during which both the SO_2 and meteorological data capture were at a maximum.

Two data sets (meteorological data) were considered for each plan: Cleveland surface/Buffalo upper air National Weather Service (NWS) and on-site tower data. The on-site meteorological data were available for the 12-month periods identified above for each plant. The NWS data were used also because the 1980 promulgation relied on NWS data (although the time periods differ).

The results of the study are as follows:

A. Eastlake

CRSTER and MPTER both overestimated the maximum 1-hour concentration, but slightly underestimated the maximum 3-hour and 24-hour concentrations. This result of overestimating 1-hour concentrations and underestimating 3-hour and 24-hour concentrations was also found for the 25 highest concentrations.

[2] USEPA's "Guideline on Air Quality Models (Revised)", July 1986 and "Supplement A to the Guideline on Air Quality Models (Revised)", July 1987 recommends air quality modeling techniques that should be applied to SIP revisions for existing sources. In rural areas with multiple sources (e.g., single plant with separated stacks), the recommended model is MPTER. In rural areas with single sources (e.g., single plant with co-located stacks), the recommended model is CRSTER. (The Lyons-Cole model was identified in a previous version of the guideline as a possible technique applicable to lake/sea breezes.) The recommended guideline models are available through the User's Network for Applied Modeling of Air Pollution (UNAMAP).

The final scores suggest MPTER is a slightly more accurate model than CRSTER for Eastlake. (Given that the two stacks are within approximately 160 meters and the effective stack heights are similar, the similarity in results is not unexpected.)

B. Avon Lake

CRSTER and MPTER overestimated the maximum 1-hour, 3-hour, and 24-hour concentrations. This result of overestimating concentrations for all three averaging times was also found for the 25 highest concentrations.

The final scores suggest that MPTER is a more accurate model than CRSTER for Avon Lake. This result is not unexpected given the variation in effective stack heights and stack locations at the plant.

C. Kincaid, Clifty Creek, Muskingum River and Paradise

As noted above, the performance standards were based on the existing USEPA rural model evaluation studies for Kincaid, Clifty Creek, Muskingum River, and Paradise. To be acceptable for Eastlake and Avon Lake, CRSTER (or MPTER) had to perform as well as, or better than, it did at Kincaid, Clifty Creek, Muskingum River, and Paradise. Using the same performance measures and scoring schemes, the final scores of CRSTER and MPTER for Eastlake and Avon Lake fall safely within the range of scores for these four plants. Thus, CRSTER and MPTER have been demonstrated to be as accurate for the Eastlake and Avon Lake plants as for the other midwestern power plants.

D. Lakeshore Fumigation

Lyons-Cole, CRSTER, and monitored data were compared for the hours satisfying the lakeshore fumigation criteria (approximately 350 hours for each plant).

The results show that the Lyons-Cole model overpredicted the highest and 25 highest 1-hour concentrations at both plants and, thus, may be a conservative tool for this situation. Furthermore, CRSTER yielded even greater 1-hour concentrations, thus, substantiating USEPA's finding in 1980 that concentrations associated with lakeshore fumigation would not be higher here than the non-lakeshore fumigation concentrations calculated by CRSTER.

III. Response to Technical Issues

In its decision, the Court raised two main technical issues. These issues, along with USEPA's response, are addressed below.

(1) *Issue*: Need for a site-specific model validation study.

Response: CEI has performed, under USEPA's direction, an evaluation study for the three models relied upon by USEPA in its 1980 promulgation of emission limitations for Eastlake and Avon Lake. This study was performed in accordance with current USEPA procedures for evaluating air quality models (i.e., "Interim Procedures for Evaluating Air Quality Models (Revised)", September 1984) and considered the most recent data bases and evaluation studies (i.e., "Evaluation of Rural Air Quality Simulation Models", with Addenda A, C, D). This study is available for review in the docket for this action. Consequently, USEPA believes that this study is responsive to the Court's order.

In its February 26, 1986, opinion, the Court referred to the accepted "factor of two" accuracy for CRSTER as being "unimpressive". It should be noted that CRSTER (and MPTER) were shown to be considerably more accurate for Eastlake and Avon Lake. Here, the two models were shown to produce the highest and 25 highest concentrations that were generally within 30 percent of the measured values. The few results which fell outside this accuracy range, were overpredictions (which increases the margin of safety in the emission limitations).

(2) *Issue*: Lack of information on lakeshore effects.

Response: As part of USEPA's original promulgation, USEPA performed a special analysis to determine whether more restrictive emission limitations than those indicated by CRSTER were necessary. This analysis was documented in USEPA's Technical Support Document and was included in the docket. Based on this analysis, USEPA found that the maximum concentrations from lakeshore fumigation are generally lower than the concentrations estimated by CRSTER. This finding was substantiated by the model evaluation study performed by CEI under USEPA's direction.

IV. Stack Height Issues

The state of Ohio has reviewed both plants relative to USEPA's Stack Height Regulations. The previous modeling assumed credit for taller merged stacks at Eastlake and Avon Lake. At Eastlake, the four 91.4 meter stacks serving Boilers 1–4 were replaced with one 164.6 meter stack in 1978. At Avon Lake, the two 89.9 meter stacks serving Boilers 9 and 10 were replaced with one 152.4 meter stack in 1977. Physical stack height and merged stack credits have been determined to be acceptable, as discussed below.

A. Physical Stack Height Credit

(1) *Eastlake*—The Good Engineering Practice (GEP) heights for Stacks 6 and 5 are 138.3 meters and 183 meters (actual grandfathered stack height). USEPA's 1980 modeling was based on stack heights of 163 meters for both stacks. Ohio EPA performed modeling for Eastlake using the creditable GEP heights (see discussion below).

(2) *Avon Lake*—The GEP formula height for Stack 9 is 166 meters, which is slightly above the actual height (152.4 meters).

On January 22, 1988, the United States Court of Appeals for the District Circuit remanded to USEPA the provision in the Stack Height Regulations which grandfathered sources that raised their stacks prior to October 1, 1983, up to the GEP formula height from demonstration requirements (40 CFR 51.100(kk)(2)) Thus, these emission limitations may be subject to review and possible revision. If USEPA's response to the Court remand modifies the applicable regulations, then USEPA will notify the State on the need to reexamine the emission limits for these two plants. At this time, USEPA is not relying on any information (such as fluid modeling demonstrations) which may be required as a result of its response to the Court for the purposes of this proposed approval; consistency with the 1985 Regulations is all that is required. USEPA's proposed approval of these plants' limits is intended to avoid delay in the establishment of federally enforceable emission limits, while awaiting resolution of the remand.

B. Merged Stack Credit

On December 4, 1986, January 5, 1987, and May 7, 1987, CEI provided an affirmative demonstration for stack merging for the Avon Lake and Eastlake plants following the guidance outlined in "Implementation of Stack Height Regulations Exceptions from Restrictions on Credit for Merged Stacks" (October 28, 1985). This demonstration is based on the facts that the: (1) Merging was performed in conjunction with the installation of new pollution control equipment (electrostatic precipitators—ESPs), (2) Location of the new ESPs prevented tying in the ductwork from the new ESPs to the existing stacks, (3) Taller physical stack height was necessary to avoid a documented building downwash problem (based primarily on fluid modeling studies), (4) Existing stacks could be raised only a minimal amount,

and (5) Space constraints precluded building multiple new stacks.

USEPA accepts this demonstration as justifying merged stack credit.

In summary, USEPA has reviewed the stack credits relied on in the 1980 SIP modeling analysis and has determined that, except for the two stacks at Eastlake (which are discussed below), the credits are consistent with USEPA's current Stack Height Regulations.

V. Modeling Supporting Repromulgation of Emission Limitations

As noted above, USEPA believes that the use of the CRSTER (and MPTER) models for Eastlake and Avon Lake has been supported by a site-specific evaluation study. USEPA, therefore, intends to rely on these models to support this rulemaking action.

For Avon Lake, USEPA believes that the 1980 SIP modeling based on CRSTER (and MPTER) is appropriate because the assumed stack credits are consistent with the Stack Height Regulations. That modeling showed that the controlling concentration was 1280 $\mu g/m^3$ (3-hour average) based on the oil-fired units emitting at 0.32 lb/MMBTU and the coal-fired units emitting at 4.65 lbs/MMBTU. With the addition of a refined background concentration of 14 $\mu g/m^3$, the total concentration (1294 $\mu g/m^3$) is less than the 3-hour ambient standard (1300 $\mu g/m^3$).

For Eastlake, the 1980 SIP modeling is not appropriate because the assumed stack heights are not consistent with the Stack Height Regulations. USEPA, therefore, considered a more recent modeling analysis for Eastlake performed by the Ohio Environmental Protection Agency (OEPA). OEPA's modeling consisted of running MAXT24 with five years of representative National Weather Service meteorological data, both stacks at the creditable good engineering practice stack heights, and consideration of multiple operating loads. (MPTER, which is the appropriate model according to the model evaluation study, and MAXT24 are equivalent models.) This modeling showed that the controlling concentration was 1182 $\mu g/m^3$ (3-hour average) based on an emission level of 5.64 lbs/MMBTU.

With the addition of a refined background concentrations of 16 $\mu g/m^3$, the total concentration (1198 $\mu g/m^3$) is less than the 3-hour ambient standard. Since this result supports the same emission limit determined in the 1980 SIP modeling, it is clear that the emission limit is not affected by undue stack height credit. Therefore, the limits set by the 1980 SIP modeling are acceptable with respect to the Stack Height Regulations.

VI. Proposed Action

Based on the model evaluation study and the modeling analyses for the Centerior Energy Corporation's Avon Lake and Eastlake plants, USEPA is proposing to reinstate the 1980 sulfur dioxide emission limitations, recordkeeping and reporting requirements, and the compliance test method and procedures for these plants.

The emission limitations being proposed today are:

Eastlake—Stack 6 (Boilers 1–4): 5.64 lbs/MMBTU
Stack 5 (Boiler 5): 5.64 lbs/MMBTU
Avon Lake—Stack 1 (Boilers 1,2) = 0.32
Stack 2 (Boilers 3,4) = 0.32
Stack 3 (Boilers 5,6) = 0.32
Stack 4 (Boilers 7,8) = 0.32
Stack 9 (Boilers 9,10) = 4.65
Stack 7 (Boiler 11) = 4.65
Stack 8 (Boiler 12) = 4.65

The compliance test method and procedures used for determining compliance for the Eastlake and Avon Lake plants is the stack gas sampling as specified in 40 CFR 60.46. Compliance tests shall be conducted under such conditions as the Administrator shall specify based on representative performance of the affected facility. Notification and recordkeeping procedures shall be those prescribed in 40 CFR 60.7. The owner or operator shall make available to the Administrator such records as may be necessary to determine the conditions of the performance tests. See 40 CFR 52.1881(b)(2).

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. This action affects only two plants, the Centerior Energy Corporation's Eastlake and Avon Lake plants.

Under Executive Order 12291, this action is not "Major." It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: June 27, 1988.

Valdas V. Adamkus,

Regional Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart KK—Ohio

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1881 is amended by revising (b)(35)(vi) and (b)(38)(iii) to read as follows:

§ 52.1881 Control strategy: Sulfur oxides (sulfur dioxide).

* * * * *

(b) * * *

(35) * * *

* * * * *

(vi) The Centerior Energy Corporation, or any subsequent owner or operator of the Eastlake Plant in Lake County, Ohio, shall not cause or permit the emission of sulfur dioxide from any stack at the Eastlake Plant in excess of 5.64 pounds of sulfur dioxide per million Btu actual heat input. Recordkeeping and reporting requirements and compliance test methods are those found at paragraph (b)(2) of this section.

* * * * *

(38) * * *

* * * * *

(iii) The Centerior Energy Corporation, or any owner or operator of the Avon Lake Plant in Lorain County, Ohio, shall not cause or permit the emission of sulfur dioxide in pounds per million Btu actual heat input from any stack at the Avon lake Plant in excess of the rates specified below:

Stack No., Boiler identification and Emission limit

Avon Lake—Stack 1 (Boilers 1,2) = 0.32
Stack 2 (Boilers 3,4) = 0.32
Stack 3 (Boilers 5,6) = 0.32
Stack 4 (Boilers 7,8) = 0.32
Stack 9 (Boilers 9,10) = 4.65
Stack 7 (Boiler 11) = 4.65
Stack 8 (Boiler 12) = 4.65

Recordkeeping and reporting requirements and compliance test

method are those found at paragraph (b)(2) of this section.

* * * * *

[FR Doc. 90-188 Filed 1-3-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 580 and 581

[Docket No. 89-24]

Miscellaneous Amendments to Rules of Practice and Procedure

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking; enlargement of time to comment.

SUMMARY: The Federal Maritime Commission, by notice published November 24, 1989; 54 FR 48648, proposed to amend its Rules of Practice and Procedure, applicable to proceedings before the Commission. The purpose of the amendments is to clarify certain filing and service requirements and to add a provision regarding the handling of confidential materials filed in Commission proceedings. Counsel for Matson Navigation Co., and the President of the Maritime Administrative Bar Association, ("MABA") have requested extensions of time of one week and five weeks respectively to comment on the proposed rules. Upon consideration of the requests, a one-month extension of time to comment is hereby granted. This determination recognizes the desirability of obtaining the views of MABA, and balances their representation as to the "complicated and time consuming" process of developing a position against the Commission's interest in avoiding unnecessary delay of proceedings.

DATE: Comments due on or before January 26, 1990.

ADDRESS: Send comments (original and fifteen copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573-0001, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573-0001, (202) 523-5725.

Joseph C. Polking,

Secretary.

[FR Doc. 90-138 Filed 1-3-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 2, and 95

[PR Docket No. 89-599; FCC 89-342]

Establishment of a Personal Emergency Locator Transmitter Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: This notice of proposed rule making proposes to implement a new Personal Emergency Locator Transmitter Service for use by individuals in remote areas. The proposed new radio service will address an identified but unmet need for emergency radio communications. The proposal will provide state and local governments and certain private entities recognized by governmental entities the communications capability needed to maximize personal emergency communications needs in remote areas.

DATES: Comments must be received on or before March 20, 1990, and reply comments on or before April 19, 1990.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: James A. Shaffer, Special Services Division, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554; or telephone (202) 632-7197.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of proposed rule making, PR Docket No. 89-599, adopted December 12, 1989, and released December 20, 1989. The complete text of the notice of proposed rule making, including Appendices, is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The full text also may be purchased from the Commission's copy contractor: International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037; telephone 202-857-3800.

Summary of Notice of Proposed Rule Making

1. This Notice of proposed rule making (Notice) proposes to establish a new radio servie to provide individuals in remote areas a means to alert others of distress situations and to assist search and rescue personnel in locating those in distress. An increasing number of individuals are participating in outdoor recreational activities in remote areas which in turn is leading to an increase in the number of emergency situations requiring search and rescue efforts. Currently, there is no personal emergency locator device available for use by the general public.

2. The notice proposes to establish a new radio service under part 95 (47 CFR 95) to provide personal emergency locator transmitters to the general public. The type of system proposed would consist of a base station and associated portable (mobile) units. Eligibility for a base station license would be limited to governmental agencies and private organizations whose primary function is search and rescue. Sheriff's departments, a state or federal park service and ski resorts are expected to be typical licensees. Mobile units would not be individually licensed but instead use would be authorized under the base station license. The Notice, however, specifically asks for comments regarding the structure of the proposed licensing system.

3. Because personal emergency locator transmitters would be relied on for safety of life and property, the Notice proposes technical standards to promote interoperability throughout the United States. Additionally, the Notice proposes certain design specifications to assure a reasonable level of reliability. Comments on the need for technical standards and design specifications are requested. Because this new personal service must not adversely affect existing international aviation and maritime emergency systems, the frequencies 121.500 MHz and 243.000 MHz cannot be used.

4. The ultimate success of this system depends on numerous base stations being installed in wilderness or ski areas by governments or private contractors. The more base stations installed, the greater the total area of the country covered. A satellite based detection system is also a possibility as more PELTS transmitters are brought on line.

5. The Notice proposes using the newly allocated 220-22 MHz band. The Notice, however, specifically asks for comments regarding the choice of frequency band. The 220-222 MHz band was recently reallocated for land mobile use to develop narrowband technologies (*Report and Order*, Gen Docket No. 87-14, 3 FCC Red 5287(1988)). Further the Commission adopted a *notice of proposed rule making* this November proposing to divide this band into two hundred 5 kHz channel pairs. The use of one five channel block (five channel pairs) is proposed to develop a personal emergency communications service that

would permit two-way voice communications between individuals, base stations and search and rescue units, as well as emergency alerting and homing capabilities. Additionally, because this band is shared between Government and non-Government users, it woud allow the Government to provide such service in its numerous national parks and national forests. A new radio service in the 220–222 MHz band would have a limited impact on existing users. Further, this band has good propagation characteristics for isolated and wooded areas. The Notice proposes that the frequencies be available on a shared basis among all users. Because several entities in the same area could operate on the same channel the Notice solicits comments on alternative licensing schemes but states that the objective is to emphasize resolution at the local level.

6. The proposed rules are set forth at the end of this document.

Initial Regulatory Flexibility Analysis

7. Pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), our initial analysis is as follows:

Reason for Action

8. We propose to adopt a new Personal Emergency Locator Transmitter Service (PELTS) to address an identified but unmet need for emergency radio communications.

Objectives

9. The objective of the proposed rules is to provide personal emergency communications and alerting capabilities in remote areas.

Legal Basis

10. The proposed action is authorized under sections 4(i), 303(f) and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f) and (r).

Reporting recordkeeping and other compliance requirements

11. PELTS base stations would be licensed and the licensee required to maintain station records for the license term, including: (1) The license, (2) copies of letters from the licensee to the FCC concerning name or mailing address changes, (3) copies of answers to discrepancy notices, (3) an STA or waiver of these rules, (4) copy of any renewal application submitted to the FCC and not yet acted upon, (5) a copy of any FCC waiver to use an antenna higher than the rules normally, allow, and (6) a copy of the FCC consent to a licensee corporation's change in its corporate control.

Federal rules which overlap, duplicate, or conflict with these rules

12. These proposed rules do not overlap, duplicate or conflict with other Federal rules.

Description, potential impact, and number of small entities involved

13. We have included an Initial Regulatory Flexibility Analysis in this document because we cannot, at this juncture, determine with any specificity the number of manufacturers who would avail themselves of the opportunity to make PELTS equipment, or the number of small entities that would be users of the PELTS. Moreover, we are soliciting comment on the very nature of the service and the equipment to be used in the service. We will examine this proceeding's impact on small entities further in the Final Regulatory Flexibility Analysis in this proceeding after evaluation of the relevant comments. We believe, however, that any impact will be beneficial. *Any significant alternatives minimizing the impact on small entities and existing licensees and consistent with the stated objectives*

14. Since we are soliciting comment on the very nature of the service and the equipment to be used in the service we are unable to evaluate any significant alternatives minimizing the impact of small entities and existing licensees. We will examine significant alternatives that minimize the impact on small entities further in the Final Regulatory Flexibility Analysis in this proceeding after evaluation of the relevant comments.

Procedural Matters

15. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new information collection requirement on the public. Implementation of any new requirement will be subject to appoval by the Office of Management and Budget as prescribed by the Act.

16. This is a non-restricted notice and comment rule making proceeding. See § 1.1206(a) of the Commission's Rules, 47 CFR 1.1206(a), for rules governing permissible *ex parte* contacts.

17. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before March 20, 1990 and reply comments on or before April 19, 1990. The Commission will consider all relevant and timely comments before taking final action in this proceeding. The proposal may have impact on both U.S. firms doing business in foreign countries and foreign firms doing business in the U.S. Therefore, pursuant to the 1989 Canada-United States Trade Agreement (Pub. L. 100–449, 102 Stat. 1851) the Commission will provide a ninety day comment period.

18. A copy of this Notice of Proposed Rule Making will be forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 0

Administrative practice and procedure.

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 2

Frequency allocations, Radio.

47 CFR Part 95

Communications equipment, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Proposed Rules

Parts 0, 1, 2, and 95 of title 47 of the Code of Federal Regulations are proposed to be amended a follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: 47 U.S.C. 154, 303 unless otherwise noted. Implement 5 U.S.C. 552, unless otherwise noted.

2. Section 0.401(b)(4)(i) is amended by adding the following after General Mobile Radio Service (FCC Form 574 only): Federal Communications Commission, General Mobile Service, P.O. Box 360373M, Pittsburgh, PA 15251–6373:

§ 0.401 Location of Commission Offices.

* * * * *

(b) * * *

(4) * * *

(i) * * *

Personal Emergency Locator Transmitter Service (FCC Form 574 only):

Federal Communications Commission, Attn: PELT Service, Gettysburg, PA 17326.

* * * * *

PART 1—PRACTICE AND PROCEDURE

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

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

4. Section 1.926(a)(1) is amended by revising the first sentence of the paragraph to read as follows:

§ 1.926 Application for renewal of license.

(a) * * *

(1) Renewal of station authorizations in the Private Land Mobile Radio Services (part 90 of this chapter), the General Mobile Radio Service (part 95, subpart A of this chapter), and the Personal Emergency Locator Transmitter Service (part 95, subpart F of this chapter) shall be submitted on FCC Form 574–R when the licensee has received that Form in the mail from the Commission. * * *

* * * * *

5. Section 1.951(a)(1) is amended by revising the heading to paragraph (a), adding a paragraph (a)(3), removing paragraph (c) and redesignating paragraph (d) as paragraph (c) as follows:

§ 1.951 How applications are distributed.

* * * * *

(a) Special Services Branch. * * *

(3) General Radio Section applications: Amateur, General Mobile, Disaster and Personal Emergency Locator Transmitters.

* * * * *

6. Section 1.952(b) is amended by revising the entries under the heading Personal Radio Services to read as follows:

§ 1.952 How file numbers are assigned.

* * * * *

(b) * * *

Personal Radio Services

ZA—General Mobile Radio Service
ZB—Personal Emergency Locator Transmitter Service

* * * * *

7. Section 1.1112 is amended by revising paragraph (b) to read as follows:

§ 1.1112 General exemptions to charges.

* * * * *

(b) Applicants in the Special Emergency Radio, Public Safety Radio, and Personal Emergency Locator Transmitter services.

* * * * *

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

8. The authority citation for part 2 continues to read as follows:

Authority: Secs. 4, 302, 303, 307, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 302, 303, 307, unless otherwise noted.

9. Section 2.106 is amended by modifying the 220–225 MHz band and adding a footnote US314 as follows:

§ 2.106 Table of frequency allocations.

United States table		FCC use designators	
Government allocation (MHz)	Nongovernment allocations (MHz)	Rule part(s)	Special-use frequencies
(4)	(5)	(6)	(7)
* * *	* * *	* * *	* * *
220–222	220–222		
Land mobile	Land mobile	Private land mobile (90).	
US314	US314	Personal (95).	

* * * * *

US314 The frequency bands 220.9775–220.9975 and 221.9775–221.9975 MHz are limited to Personal Emergency Locator Transmitter Service operations.

* * * * *

PART 95—PERSONAL RADIO SERVICES

10. The authority citation for part 95 continues to read as follows:

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

11. Section 95.601 is amended by revising the last two sentences of the paragraph to read as follows:

§ 95.601 Basis and purpose.

* * * The Personal Radio Services are the GMRS (General Mobile Radio Service), the R/C (Radio Control Radio Service), the CB (Citizens Band Radio Service), and the PELTS (Personal Emergency Locating Transmitter Radio Service). For operating rules, see part 95, subpart A—GMRS; subpart C—R/C; subpart D—CB; subpart F—PELTS.

12. In § 95.603, paragraph (d) is added to read as follows:

§ 95.603 Type acceptance required.

* * * * *

(d) Each PELTS trasmitter (a transmitter that operates or is intended to operate at a station authorized in the PELTS) must be type accepted.

13. Section 95.626 is added to read as follows:

§ 95.626 PELTS transmitter channel frequencies.

(a) The PELTS transmitter channel frequencies are:

Frequency MHz	Channel designator	Use
220.9775 [1]	1	Assistance/emergency (base).
220.9825 [1]	2	Assistance/emergency (base).
220.9875 [2]	3	Information (base).
220.9925 [2]	4	Short-distance (mobile).
220.9975 [2]	5	Short-distance (mobile).
221.9775 [1]	6	Assistance/emergency (mobile).
221.9825 [1]	7	Assistance/emergency (mobile).
221.9875 [2]	8	Short-distance (mobile).
221.9925 [2]	9	Short-distance (mobile).
221.9975 [2]	10	Emergency notification/homing (mobile).

[1] Channels 1 and 2 are paired with Channels 6 and 7 respectively for full duplex operation. Mobile relay (mobile-to-mobile through a base station) operations are not permitted on these frequencies.
[2] Reserved for unpaired simplex communications.

(b) Each PELTS base transmitter must be maintained to within a frequency tolerance of ± 0.0001 per cent, and mobile units must be maintained to within a frequency tolerance of ± 0.00015 percent.

14. In § 95.627 paragraphs (d) and (e) are designated (e) and (f) respectively and a new paragraph (d) is added to read as follows:

§ 95.627 Emission types.

* * * * *

(d) For PELTS operations on all channels only emission types J3E or J2D will be authorized.

* * * * *

15. In § 95.629 paragraph (c) is added to read as follows:

§ 95.629 Emission bandwidth.

* * * * *

(c) The maximum authorized bandwidth for any emission type transmitted by a PELTS transmitter is 3.6 kHz.

16. In § 95.631 the table in paragraph (b) is amended by adding a new entry and a new paragraph (b)(10) is added before the "note" to read as follows:

§ 95.631 Unwanted radiation.

* * * * *

(b) * * *

Transmitter	Emission type	Applicable paragraphs
* * * *		
PELTS	As specified in 95.627(d).	(10)
* * * *		

(10) For PELTS transmitters that operate in 5 kHz channel assignments in the 220–222 MHz frequency band, the power of any emission shall be attenuated below the power of the highest emission contained within that channel in accordance with the following schedule:

(i) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 1.8 kHz up to and including 2.5 kHz: At least 100 (f_d − 1.8) decibels;

(ii) On any frequency removed from the center of the authorized bandwidth by more than 2.5 kHz up to and including 5 kHz: At least 70 + 4 (f_d − 2.5) decibels; and,

(iii) On any frequency removed from the center of the authorized bandwidth by more than 5 kHz: At least 80 decibels.

(iv) Emission power shall be measured in peak values.

(v) The resolution bandwidth of the instrumentation used to measure the emission power is as follows: for measuring emissions up to (and including) 5 kHz from the center of the authorized bandwidth: 100 Hz; and, for measuring emissions more than 5 kHz from the center of the authorized bandwidth: 10 kHz. The power level of the highest emission within the channel, to which the attenuation is referenced, should be remeasured for each change in resolution bandwidth.

17. In § 95.633 the first sentence of paragraph (b) is revised and a new paragraph (f) is added to read as follows:

§ 95.633 Modulation standards.

* * * * *

(b) Each GMRS and PELTS transmitter, except a GMRS mobile station or a PELTS mobile station transmitter with a power output of 2.5 W or less, must automatically prevent a greater than normal audio level from causing overmodulation. * * *

* * * * *

(f) A PELTS transmitter shall be exempt from the audio low-pass filter requirements of this section, provided that transmitters used for digital emissions must be type accepted with the digital modulating signal or signals specified by the manufacturer. The type acceptance application shall contain such information as may be necesssary to demonstrate that the transmitter complies with the emission limitations specified in § 95.631.

18. In § 95.635 paragraphs (d) and (e) are added to read as follows:

§ 95.635 Maximum transmitter power.

* * * * *

(d) No PELTS base transmitter, under any conditions of modulation, shall exceed 100 watts output power.

(e) No PELTS mobile transmitter, under any conditions of modulation, shall exceed 3 watts of outpout power.

19. In § 95.649 paragraph (b)(4) is revised to read as follows:

§ 95.649 Instructions and warnings.

* * * * *

(b) * * *

(4) For a GMRS transmitter and a PELTS base station transmitter, warnings concerning licensing requirements and information concerning license application procedures.

20. A new § 95.653 is added to read as follows:

§ 95.653 Mobiles in PELTS.

(a) Mobiles in PELTS must have the ability to transmit on all PELTS mobile channels.

(b) Mobiles in PELTS must meet the following requirements:

(1) Have a positive means of turning the equipment off. When an on-off switch is employed a guard must be provided to prevent inadvertent operation.

(2) The exterior of the equipment must have no sharp edges or projections. Means must be provided to fasten the equipment to a person.

(3) Be powered by a battery contained within the transmitter case and be equipped with a visual indication of a low battery condition. The visual indicator must indicate when 75 percent of the battery's useful life has expired.

(4) Have operating instructions understandable by untrained personnel permanently displayed on the outside of the equipment.

(5) Have an attached warning label clearly stating that channel 10 is to be used only for emergency alerting and is effective only in areas where there is a watch/response system in place.

(6) Be waterproof and float free in calm fresh water with at least its upper 10 cm (4 inches) out of the water.

(7) Have a visible or audible indicator that clearly shows that the device is operating. The indicator must be protected from damage due to dropping or contact with other objects.

(8) Meet the requirements of paragraphs (b)(1) through (7) of this section after free falls onto hard surfaces 3 times from a height of 18 meters (60 feet).

21. A new subpart F is added to read as follows:

Subpart F—Personal Emergency Locator Transmitter Service (PELTS)

General Provisions

Sec.
95.701 Scope.
95.703 Definitions.
95.705 Eligibility.
95.707 License requirements.
95.709 Channel sharing.
95.711 Where to contact the FCC.

Licensing

95.721 Application for station license.
95.723 Basic application information.
95.725 Signature.
95.727 Modification of license.
95.729 Discontinuance of station operation.
95.731 License term.
95.733 Transfer or assignment of license.
95.735 License renewal.

Special Restrictions on Location and Antenna Height

95.741 Operation near FCC monitoring stations.
95.743 Operation in the National Quiet Zone.
95.745 Operation on environmentally or historically important land.
95.747 Operation near the Canadian border.
95.749 Authorized area of operation.
95.751 Antenna height considerations.
95.753 Additional information for stations with antennas higher than normally allowed.
95.755 Servicing station transmitters.

Operator Requirements

95.761 General licensee duties.
95.763 Permissible communications.
95.765 Station identification.
95.767 Station records.

Transmitter Control

95.771 Station control point.
95.773 Controlling a station from a remote point.
95.775 Interconnection.

Subpart F—Personal Emergency Locator Transmitter Service (PELTS)

General Provisions

§ 95.701 Scope.

The PELTS is a land mobile radio service available to eligibles and is

intended primarily for short-distance personal and emergency communications in isolated areas. The service provides a means of alerting or establishing communications with either other individuals or a point from which emergency assistance can be obtained. The technical parameters for PELTS operation are set forth in subpart E.

§ 95.703 Definitions.

(a) *Mobile station.* A station which transmits while moving or during temporary stops at unspecified points.

(b) *Base station.* A station at a specified site authorized to communicate with mobile stations or mobile receivers.

§ 95.705 Eligibility.

Licenses for Personal Emergency Locator transmitter base stations will only be granted to governmental entities or private organizations recognized by governmental entities to perform search and rescue functions. Licenses will not be granted to a foreign government or a representative of a foreign government. Eligibility for PELTS mobile stations will not be limited.

§ 95.707 License requirements.

An entity must obtain a license from the Commission prior to operating a base station in PELTS at any geographic location within or over the territorial limits of any area where radio services are regulated by the FCC. No individual license is required to operate a PELTS mobile station. Mobile use is authorized under the authority of the base station license.

§ 95.709 Channel sharing.

(a) Channels assigned in the PELTS are available only on a shared basis and will not be assigned for the exclusive use of any licensee. All applicants and licensees shall cooperate in the selection and use of channels in order to reduce interference and to make the most effective use of the authorized facilities. (See § 95.626 for specific uses of channels.)

(b) Licensees of PELTS stations suffering from or causing harmful interference are expected to cooperate and resolve such problems by mutually satisfactory arrangements. If the licensees are unable to do so, the FCC may impose restrictions including specifying the transmitter power, antenna height, or area or hours of operation of the station concerned. Further, the use of any frequency at a given geographical location may be denied when, in the judgment of the FCC, its use in that location is not in the public interest; the use of any channel may be restricted as to specified geographical areas, maximum power, or other operating conditions.

§ 95.711 Where to contact the FCC.

(a) Write to: The nearest FCC Field Office:

(1) For license application forms (see § 95.721);

(2) To report interference; or

(3) To find out if the FCC has type-accepted a certain transmitter for use in the PELTS (see 95.651).

(b) Write to:

Federal Communications Commission, Attention: PELTS, Gettysburg, Pennsylvania 17326.

(1) To ask questions about a license application or about these Rules;

(2) To file a license application (see § 95.721);

(3) To request a duplicate license;

(4) To notify the FCC of a change in name (see § 95.727) or mailing address;

(5) To request consent to a change in the control of a licensee corporation (see § 95.731);

(6) To return a license to the FCC for cancellation;

(c) Write to:

Chief, Field Operations Bureau, Federal Communications Commission, Washington, DC 20554.

To consult with the FCC about putting a land station at a point within 4.8 kilometers (3 miles) of an FCC monitoring station (see § 95.751).

Licensing

§ 95.721 Application for station license.

(a) An application (FCC Form 574) for a new station license shall be submitted to: Federal Communications Commission, Attention: PELTS, Gettysburg, PA 17326.

(b) The application will be returned to the applicant if it is defective. An application is defective if:

(1) The form is not completely filled out;

(2) All necessary additional information is not included; or

(3) All necessary certifications have not been made.

(c) The Commission may, without a hearing, grant an application in part or subject to terms or conditions or with privileges other than those requested. The applicant will be presumed to have accepted the grant as conditioned unless the applicant files a written rejection of the grant as made within 30 days from the date of the grant or the effective date of the grant, whichever is later. If the Commission receives notice of rejection of such a grant, the Commission will vacate its original action and will set the application for hearing.

§ 95.723 Basic application information.

The following information is required in all applications for a license for a new or modified base station:

(a) Applicant's name;

(b) Applicant's mailing address (an address in the United States where mail from the FCC can be received);

(c) Station class;

(d) Number of base stations and mobile units;

(e) Each base station location;

(1) Latitude and longitude within one second; and

(2) Street address (if none, local directions to station);

(f) Antenna height for each base station, and antenna ground elevation for each base station;

(g) Area of operation;

(h) Applicant's signature (see § 95.755);

(i) Transmitting channels requested;

(j) Transmitter power;

(k) Effective radiated power (ERP);

(l) Emission designator;

(m) Primary control point and telephone number;

(n) Eligibility statement; and

(o) Copy of recognition issued by governmental entity.

§ 95.725 Signature.

(a) If the applicant is an individual, he/she must sign the application.

(b) If the applicant is any other entity, the following individual must sign the application:

If the entity is:	The individual who signs is:
(1) A partnership	A partner;
(2) A corporation	An officer, director, or employee;
(3) An association	An officer;
(4) A governmental unit	An official.

§ 95.727 Modification of license.

When the information about the licensee stated on the license changes, the licensee must take the following step(s):

(a) The following changes require the license to file an application (FCC Form 574) for modification of a license. The licensee may not operate under the new parameters until the FCC has approved the license modification.

(1) Change in frequency;

(2) Change in power;

(3) Change in antenna height;

(4) Change in station location;

(5) Change in number of mobile units; or

(6) Change in corporate ownership, control, or corporate structure.

(b) The following changes also require the licensee to notify the Commission. Notification in these cases, however, may be by letter addressed to Federal Communications Commission, Attention: PELTS, Gettysburg, Pennsylvania 17326. The letter must clearly specify the name and mailing address as they appear on the license, the station call sign(s), and the new name or mailing address. A copy of the letter sent to the Commission must be kept with the station records.

(1) Change in mailing address; or

(2) Change in name only of the licensee without changes in ownership, control or corporate structure.

(c) The licensee must keep the license document until:

(1) The license expires; or

(2) The license is terminated by the FCC; or

(3) The licensee obtains a different license for the PELTS system.

§ 95.729 Discontinuance of station operation.

If a station license is no longer desired, it must be sent to the Federal Communcations Commission, attention: PELTS, Gettysburg, Pennsylvania 17326 with a written request that it be cancelled. Alternatively, the licensee may notify the Commission of discontinuance of station operation by using FCC Forms 405–A or 574–R.

§ 95.731 License term.

A license for a base station is usually issued for a 5-year term. (FCC prints the expiration date on the license.)

§ 95.733 Transfer or assignment of license.

(a) The licensee must not transfer, assign, sell or give the license for a base station to any other entity except if the licensee of a base station is a corporation, and there is a change in the control of the corporation with prior Commission approval. The licensee must request consent for the change of control from the FCC on FCC Form 703. The FCC document granting such consent must be kept with the station records.

(b) If the licensee sells or gives away the station equipment, the new owner must obtain a new license before using it, unless the new owner uses the equipment in an already licensed PELTS base station.

§ 95.735 License renewal.

(a) The licensee of a base station may apply to the FCC to renew the license for another term by filling out FCC Form 574–R (or FCC 405–A when the licensee has not received FCC Form 574–R within 30 days of the expiration of the license) and sending it to the Federal Communcations Commission, Attention: PELTS, Gettysburg, PA 17326, providing that the license has not expired and that any changes are limited to the mailing address and/or the name (see § 95.729).

(b) If the license renewal application is sent to the FCC before the existing license term expires, the renewal application is timely filed and the base station may continue to operate under the expired license until the FCC acts on the license renewal application. (A copy of the license renewal application sent to the FCC must be kept with the station records until the renewed license, or notification of other FCC action, is received.)

Special Restrictions on Location and Antenna Height

§ 95.741 Operation near FCC monitoring stations.

The FCC may impose additional restrictions on a PELTS base station if it is located within 4.8 kilometers (3 miles) of an FCC monitoring station and the station's transmissions degrade, obstruct or repeatedly interrupt the operation of the monitoring station. Before applying for a license to operate a base station at such a location, or before applying to modify operation of a station already licensed for such a location, the FCC should be consulted by writing to Chief, Field Operations Bureau, Federal Communications Commission, Washington, DC 20554.

§ 95.743 Operation in the National Quiet Zone.

(a) If any applicant seeks to operate in the National Quiet Zone (as defined below) notice must be sent to:

Director, National Radio Astronomy Observatory, P.O. Box 2, Green Bank, West Virginia 24944.

of intent to file with the FCC an application for a license for a new or modified base station located within the National Quiet Zone. The National Quiet Zone is an area within the States of Maryland, Virginia, and West Virginia, which is bounded by:

(1) 39°15′ N. on the North;

(2) 78°30′ W. on the East;

(3) 37°30′ N. on the South; and

(4) 80°30′ W. on the West.

(b) Provide the following details about the proposed station in the notice:

(1) Antenna point (latitude and longitude);

(2) Antenna height;

(3) Antenna directivity;

(4) Transmitting channel(s);

(5) Emission; and

(6) Transmitter output.

(c) Include in the application to the FCC the date the notice was sent to the Observatory.

§ 95.745 Operation on environmentally or historically important land.

An application for new or modified license that may have a significant effect on the environment as defined in § 1.1307 must be accompanied by an Environmental Assessment. (See § 1.1311.) For environmental requirements with regard to construction prior to Commission authorization. (See § 1.1312.)

§ 95.747 Operation near the Canadian border.

The United States and the Government of Canada coordinate channel assignments to certain radio stations in areas along their common borders north of Line A and east of Line C. (See § 1.955 of the FCC Rules.)

§ 95.749 Authorized area of operation.

You are authorized to operate your PELTS station from:

(a) Within or over any area of the world where radio services are regulated by the FCC. Those areas are within the territorial limits of:

(1) The fifty United States.

(2) The District of Columbia.

Caribbean Insular areas

(3) Commonwealth of Puerto Rico.

(4) Navassa Island.

(5) United States Virgin Islands (50 islets and cays).

Pacific Insular areas

(6) American Samoa (seven islands).

(7) Baker Island.

(8) Commonwealth of Northern Mariana Islands.

(9) Guam Island.

(10) Howland Island.

(11) Jarvis Island.

(12) Johnston Island (Islets East, Johnston, North and Sand).

(13) King Reef.

(14) Midway Island (Islets Eastern and Sand).

(15) Palmyra Island (more than 50 islets).

(16) Wake Island (Islets Peale, Wake and Wilkes).

(b) Any other area of the world, except within the territorial limits of areas where radio services are regulated by—

(1) An agency of the United States other than the FCC.

(2) Any foreign government.

(c) An aircraft or ship, with the permission of the captain, within or over any area of the world where radio services are regulated by the FCC or upon or over international waters. You must operate your station according to any applicable treaty to which the United States is a party.

§ 95.751 Antenna height considerations.

(a) A base station antenna (the station's radiating structure (for transmitting, receiving or both), including the tower, mast or pole supporting it and everything attached to the structure) must not be a hazard to aircraft. The licensee of a base station must obtain FCC permission (see § 95.753) before the uppermost tip of an antenna may be higher than permitted by paragraphs (b), (c) and (d) of this section.

(b) Regardless of any other requirement of this section, an antenna may always be at least:

(1) 6.1 meters (20 feet) above the ground or above the building or tree upon which the antenna is mounted; or

(2) Equal to the height of an existing antenna to which the base station antenna is attached.

(c) The antenna may be as high as 61 meters (200 feet) above the ground, unless it will be within 6.1 kilometers (20,000 feet) of an airport or heliport.

(d) If the antenna is near an airport or heliport listed in the FAA's (Federal Aviation Administration's) Airport Facilities Directory, or near an airport or heliport operated by the Department of Defense, it must not be higher than:

(1) One meter higher than the airport elevation for every 100 meters from the nearest runway if the runway is longer than one kilometer (3,281 feet), and is within 6.1 kilometers (20,000 feet) of the antenna; or

(2) Two meters higher than the airport elevation for every 100 meters from the nearest runway if the runway is no longer than one kilometer (3,281 feet), and is within 3.1 kilometers (10,000 feet) of the antenna; or

(3) Four meters higher than the heliport elevation for every 100 meters from the nearest landing pad if the pad is within 1.5 kilometers (5,000 feet) of the antenna.

(e) If the FCC grants permission to put an antenna higher than normally allowed in paragraphs (b), (c), and (d) of this section, the licensee may be required to mark the antenna with bright paint and light it up at night (see part 17 of the FCC Rules).

§ 95.753 Additional information for stations with antennas higher than normally allowed.

(a) An applicant for a license for a new or modified base station seeking permission to have an antenna higher than normally allowed (see § 95.751) must:

(1) Request on FCC Form 574 an antenna height greater than normally allowed; and

(2) Notify the Federal Aviation Administration on FAA Form 7460-1 that the antenna would be higher than normally allowed.

§ 95.755 Servicing station transmitters.

(a) The station licensee shall be responsible for the proper operation of the station at all times and is expected to provide for observations, servicing and maintenance as often as may be necessary to ensure proper operation. All adjustments or tests during or coincident with the installation, servicing, or maintenance of the station should be performed by or under the immediate supervision and responsibility of a person certified as technically qualified to perform transmitter installation, operation, maintenance, and repair duties in the private land mobile services and fixed services by an organization or committee representative of users in those services.

(b) Except as provided in paragraph (c) of this section, test signals during internal adjustments to a station transmitter must be made using a non-radiating simulated antenna.

(c) Brief test signals using a radiating antenna may be transmitted to adjust the antenna to the station transmitter or to detect or measure spurious radiation. These test transmissions must not be longer than one minute during any five-minute period. These test transmissions shall not interfere with communications already in progress on the operating frequency, and shall be properly identified as required, but may be otherwise unmodulated as appropriate.

Operator Requirements

§ 95.761 General licensee duties.

(a) The licensee is responsible for the proper operation of the station at all times.

(b) The licensee must have access to the station equipment and be able to disable it.

§ 95.763 Permissible communications.

(a) Channels 1, 2, 6, and 7 are limited to emergency assistance voice communications involving safety of life and property.

(b) Channel 3 is limited to one-way non-commercial informational voice messages pertaining, but not limited to, such information as weather conditions, hazards, closings, rest stops, and location of first-aid stations or other assistance.

(c) Channels 4, 5, 8, and 9 are limited to short distance personal voice communications.

(d) Channel 10 is limited to non-voice emergency alerting/homing transmissions.

(e) Priority must be given to emergency communications. Communications not pertinent to constructive handling of the emergency situation is prohibited.

(f) PELTS stations are not authorized to communicate:

(1) Messages in connection with any activity that is against Federal, state or local law;

(2) False or deceptive messages;

(3) Intentional interference;

(4) Music, whistling, sound effects, or other transmissions to amuse, entertain, or attract attention;

(5) Obscene, profane, or indecent language;

(6) Advertisements or offers for the sale of goods or services.

§ 95.765 Station identification.

(a) Every PELTS base station must transmit a station identification:

(1) Following the transmission of communications or a series of communications; and

(2) Every 15 minutes during a long transmission.

(b) The station identification is the call sign assigned to the base station;

(c) A unit number may be included after the call sign in the identification.

(d) The station identification must be clearly transmitted by voice in the English language, with each letter and digit separately and distinctly transmitted (letters may be said using a phonetic alphabet, *See,* International Telecommunications Union Radio Regulations, Appendix 24).

§ 95.767 Station records.

(a) The licensee must keep records for the base station during the license term (see § 95.729), except that the licensee need not keep authorizations which have expired.

(b) Records include the following documents (where applicable):

(1) A copy of the current license document;

(2) Copies of letters from the licensee to the FCC concerning name or mailing address changes (see § 95.727);

(3) Copies of answers to discrepancy notices;

(4) A grant of Special Temporary Authority (STA) or waiver of these rules;

(5) A copy of any renewal application submitted to the FCC and not yet acted upon (see § 95.733);

(6) A copy of the FCC consent to a licensee corporation's change in its corporate control (see § 95.731).

§ 95.769 Station inspection.

If an authorized FCC representative wishes to inspect any station or station records, the licensee or station operator must make the station available for inspection.

Transmitter Control

§ 95.771 Station control point.

(a) Each base station must have a control point where the station operator can communicate messages and control the station by:

(1) Causing it to transmit and to cease transmitting;

(2) Taking all necessary and reasonable precautions to assure that unauthorized or improper operations do not occur;

(3) Refraining from making any transmissions that may have the reasonably anticipated effects of causing improper operation of others' equipment; and

(4) In cases of recurrent interference, obeying any Commission-imposed additional requirements or restrictions designed to mitigate such interference.

(b) The control point for each station must be at that station, unless the license authorizes the station to be controlled from a remote point.

§ 95.773 Controlling a station from a remote point.

(a) A station operator may control a base station from a remote point through a control link (a connection between the remote control point and the remotely controlled station). The control link must be either:

(1) A wireline control link solely for purposes of transmitter control for messages which are both conveyed by a wireline control link and transmitted by a base station; or

(2) A radio control link.

(b) The remotely controlled station must not make unauthorized transmissions.

(c) The station operator must perform the required duties (see 95.761) when controlling the station from a remote point in the same manner as when controlling it locally at the station point. Should the control link fail to function so that the station operator cannot perform the required duties, the remotely controlled station must not transmit.

(d) The FCC does not consider a station as being remotely controlled if the connection is a wireless or mechanical control link, and the station and its control point are both:

(1) On the same vehicle; or

(2) At the same street address, or within 152 meters (500 feet) of each other.

(e) Any device used to establish a wireline control link which is attached to the public switched telephone network must be registered with the FCC and must comply with the standards incorporated in a registration program to protect the public switched telephone network from harm (see part 68 of the FCC Rules).

§ 95.775 Interconnection.

No station in the PELTS may be interconnected to the public switched telephone network. Wireline or radio circuits or links furnished by common carriers, which are used by licensees or other authorized persons for transmitter control (including dial-up transmitter control circuits) or as an integral part of an authorized private internal system of communication are not considered to be interconnected for purposes of this section.

[FR Doc. 90-91 Filed 1-3-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-587, RM-6602]

Radio Broadcasting Services; Bisbee and Green Valley, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Southwestern Wireless, Inc., proposing the substitution of FM Channel 221C2 for Channel 221A at Green Valley, Arizona, and modification of its license for Station KQYT(FM) accordingly, to provide that community with its first wide coverage area FM service. Additionally, the petitioner proposes the substitution of Channel 222A for channel 221A at Bisbee, Arizona, to accommodate petitioner's proposal. Coordinates for Channel 221C2 at Green Valley are 31-56-04 and 110-55-52. Coordinates for Channel 222A at Bisbee are 31-28-52 and 109-57-30.

DATES: Comments must be filed on or before February 12, 1990, and reply comments on or before February 27, 1990.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Michael L. Glaser and Joseph P. Benkert, Esqs., Gardner, Carton & Douglas, 1001 Pennsylvania Ave., NW., Suite 750, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-587 adopted December 1, 1989 and released December 22, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-73 Filed 1-3-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-585, RM-7035]

Radio Broadcasting Services; Eatonton, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule

SUMMARY: The document requests comments of a petition by Steven D. King ("petitioner"), proposing the allotment of Channel 262A To Eatonton, Georgia, as that community's first local FM service. The coordinates for the proposal are North Latitude 33-24-16 and West Longitude 83-21-07.

DATES: Comments must be filed on or before February 12, 1990, and reply

comments on or before February 27, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Steven D. King, P.O. Box 90357, Atlanta, GA 30364.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-585, adopted December 1, 1989, and released December 22, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-74 Filed 1-3-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-586, RM-7034]

Radio Broadcasting Services; Millen, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Radio Millen Broadcasting Co., Inc., requesting the substitution of Channel 235C3 for Channel 235A at Millen, Georgia, and modification of its construction permit (BPH-88016MD) to specify operation on the higher class channel. Channel 235C3 can be allotted to Millen in compliance with the Commission's minimum distance separation requirements at the construction permit site. The coordinates for this allotment are North Latitude 32-43-52 and West Longitude 81-51-40. In accordance with § 1.420(g) of the Commission's Rules, competing expressions of interest in use of Channel 235C3 at Lafayette will not be considered and petitioner will not be required to demonstrate the availability of an additional equivalent channel for use by such by such interested parties.

DATES: Comments must be filed on or before February 12, 1990, and reply comments on or before February 27, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: John P. Bankson, Jr., Hopkins, Sutter, Hamel & Park, 888 16th Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-586, adopted December 1, 1989, and released December 22, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.520.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-75 Filed 1-3-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-584, RM-7023]

Radio Broadcasting Services; Kekaha, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Algoma Broadcasting Co., requesting the substitution of Channel 277C1 for Channel 277A at Kekaha, Hawaii, and modification of the construction permit (BPH-881102MC) to specify the higher powered channel. Channel 277C1 can be allotted to Kekaha in compliance with the Commission's minimum distance separation requirements at the construction permit site. The coordinates for this allotment are North Latitude 21-58-16 and 159-42-46. In accordance with § 1.420(g) of the Commission's Rules, competing expressions of interest in use of Channel 277C1 at Kekaha will not be considered and petitioner will not be required to demonstrate the availability of an additional equivalent channel for use by such interested parties.

DATES: Comments must be filed on or before February 12, 1990, and reply comments on or before February 27, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Timothy D. Martz, President, Algoma Broadcasting Co., P.O. Box 36, Fairfield, CT 06430 (petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530..

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-584, adopted December 1, 1989, and released December 22, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC

Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-76 Filed 1-3-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-577, RM-7093]

Radio Broadcasting Services; Hutchinson, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by KWHK Broadcasting Company, Inc., proposing the substitution of FM Channel 246C3 for Channel 246A at Hutchinson, Kansas, and modification of the construction permit for Channel 246A.

DATES: Comments must be filed on or before February 12, 1990, and reply comments on or before December 22, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Rodney Joyce, Dan J. Alpert, Ginsburg, Feldman & Bress, Chartered, 1250 Connecticut Avenue, NW, Suite 800, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-577, adopted December 5, 1989, and released December 22, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Karl Kensigner,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-77 Filed 1-3-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-578, RM-7167]

Radio Broadcasting Services; Ocean City, MD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a proposal filed by Joseph A. Booth, requesting the allotment of FM Channel 295A to Ocean City, Maryland, as that community's third FM broadcast service. The coordinates for Channel 295A are 38-20-00 and 75-05-18.

DATES: Comments must be filed on or before February 12, 1990, and reply comments on or before February 27, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Stephen T. Yelverton, Maupin Taylor Ellis & Adams, P.C., 1130 Connecticut Ave., NW., Suite 750, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of proposed Rule Making, MM Docket No.89-578, adopted December 5, 1989, and released December 22, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-78 Filed 1-3-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-588, RM-7161]

Radio Broadcasting Services; St. James, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by J. Eric Hoehn, proposing the substitution of Channel 259C3 for Channel 258A at St. James, Missouri, and modification of the construction permit for Station KZYQ to specify the higher class channel. The coordinates for Channel 259C3 are 38–04–38 and 91–38–06.

DATES: Comments must be filed on or before February 12, 1990, and reply comments on or before February 27, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: J. Eric Hoehn, KZYQ Radio, P.O. Box 7573, Columbia, Missouri 65205.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–588, adopted December 1, 1989, and released December 22, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–79 Filed 1–3–90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-576, RM-7058]

Radio Broadcasting Services; Helena, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Hi-Line Radio Fellowship, Inc., proposing the allotment of FM Channel *276C to Helena, Montana, and reservation of the channel for noncommercial educational use. The coordinates for Channel *276C are 46–36–42 and 112–01–46. Canadian concurrence will be requested for the allotment at Helena.

DATES: Comments must be filed on or before February 12, 1990, and reply comments on or before February 27, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Marvin R. Calahan, President, Hi-Line Radio Fellowship, Inc., P.O. Box 4111, Helena, Montana 59604.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–576, adopted December 5, 1989, and released December 22, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–80 Filed 1–3–90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-574, RM-7068]

Radio Broadcasting Services; Wanchese, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: The Commission requests comments on a petition by WOBR, Inc., seeking the substitution of Channel 237C3 for Channel 237A at Wanchese, North Carolina, and the modification of its license for Station WOBR-FM to specify the higher powered channel. Channel 237C3 can be allotted to Wanchese in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.6 kilometers (4.1 miles) northeast to avoid a short-spacing to Station WRNS-FM, Channel 236C, Kinston, North Carolina, and to accommodate petitioner's desired transmitter site. The coordinates for this allotment are North Latitude 35-53-20 and West Longitude 75–35–20. Competing expression of interest in use of Channel 237C3 at Wanchese will not be accepted and we will not require the petitioner to demonstrate the availability of an additional equivalent class channel for their use.

DATES: Comments must be filed on or before February 12, 1990, and reply comments on or before February 27, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mark J. Prak, Esq., Tharrington, Smith & Hargrove, 209 Fayetteville Street Mall, P.O. Box 1151, Raleigh, North Carolina 27602 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Burea, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89–574, adopted December 1, 1989, and

released December 22, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Member of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-81 Filed 1-3-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-597, RM-7118]

Radio Broadcasting Services; Wiggins, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by John F. White proposing the substitution of Channel 250C2 for Channel 250A at Wiggins, Mississippi. Petitioner also requests modification of his construction permit to specifiy operation on Channel 250C2. The coordinates for Channel 250C2 are 30-40-23 and 89-09-48.

DATES: Comments must be filed on or before February 20, 1990, and reply comments on or before March 7, 1990.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David D. Oxenford, Lisa C. Wilson, Fisher, Wayland, Cooper & Leader, 1255 23rd Street, NW., Suite 800, Washington, DC 20037, (counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-597, adopted December 7, 1989, and released December 27, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-165 Filed 1-3-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-582, RM-7066]

Radio Broadcasting Services; Archbold, OH

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Nobco, Inc., seeking the substitution of Channel 241A for Channel 240A at Archbold, Ohio, in order to facilitate an increase in power for Station WMTR-FM beyond its present 3 kilowatts. Channel 241A can be allotted to Archbold in compliance with the Commission's minimum distance separation requirements and can be used at the transmitter site specified in its outstanding construction permit. The coordinates for this allotment are North Latitude 41-33-29 and West Longitude 84-11-08. Canadian concurrence is required since Archbold is located within 320 kilometers of the U.S.-Canadian border. Competing expressions of interest in use of Channel 241A at Archbold will not be accepted.

DATES: Comments must be filed on or before February 12, 1990, and reply comments on or before December 20, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: William S. Reyner, Jr., Esq., Katherine A Schoff, Esq., Hogan & Hartson, Columbia Square, 555 Thirteenth Street, NW., Washington, DC 20004 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-582, adopted December 5, 1989, and released December 20, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-164 Filed 1-3-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-596, RM-7144]

Radio Broadcasting Services; Canton, SD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Dallas M. Tarkenton seeking the substitution of Channel 274A for Channel 273A at Canton, South Dakota, in order to permit operation with 6 kW of power. Channel 274A can be allotted to Canton in compliance with the Commission's minimum distance separation requirements and can be used at the site specified in Tarkenton's pending application. The coordinates for this allotment are North Latitude 43-17-05 and West Longitude 96-32-49. Since no change in the class of channel is proposed, petitioner will be permitted to amend his application to specify the alternate Class A channel without loss of cut-off protection.

DATES: comments must be filed on or before February 20, 1990, and reply comments on or before March 7, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dallas M. Tarkenton, 100 Wexford Place, Athens, Georgia 30606 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-596, adopted December 7, 1989, and released December 27, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037..

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-166 Filed 1-3-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-598, RM-7148]

Radio Broadcasting Services; Lampasas and Franklin, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Shamrock Communications, Inc., licensee of Station KLTD(FM), Channel 256C1, Lampasas, Texas, proposing the substitution of Channel 255C1 for Channel 256C1 at Lampasas, and the modification of its license to specify operation on the new channel. In order to accomplish the channel change, Channel 270A must be substituted for vacant but applied for Channel 255A at Franklin, Texas. The coordinates for Channel 255C1 at Lampasas are 30-43-34 and 97-59-23, the present transmitter site of Station KLTD(FM). The coordinates for Channel 270A at Frankling are 31-01-36 and 96-29-00. The proposal requires concurrence of the Mexican government since Lampasas is located within 320 kilometers (199 miles) of the U.S.-Mexican border.

DATES: Comments must be filed on or before February 20, 1990, and reply comments on or before March 7, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Kenneth E. Satten, Esq., Christine V. Simpson, Esq., Wilkinson, Barker, Knauer & Quinn, 1735 New York Avenue, NW., Washington, DC 20006 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-598, adopted December 7, 1989, and released December 27, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-167 Filed 1-3-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-589, RM-7050]

Radio Broadcasting Services; La Crosse, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Vaughn Broadcasting Group, licensee of Station WLXR-FM, Channel 285A, La Crosse, Wisconsin, proposing the substitution of Channel 292C3 for Channel 285A at La

Crosse, and the modification of its station's license to specify operation on Channel 293C3 accordingly. The proposal could provide La Crosse with an additional wide coverage area FM service. The current transmitter site of Station WLXR-FM can be used to accomplish the proposed allotment at coordinates 43-47-30 and 91-15-25.

DATES: Comments must be filed on or before February 20, 1990, and reply comments on or before March 7, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Clifford M. Harrington, Esq., Fisher, Wayland, Cooper & Leader, 1255 23rd Street NW., Suite 800, Washington, DC 20037 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-589, adopted December 1, 1989, and released December 27, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-168 Filed 1-3-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 90

[PR Docket No. 89-552; FCC 89-327]

Private Land Mobile Radio Services; Rules for Use of the 220-222 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend part 90 of its rules to establish service rules for use of the 220-222 MHz band by the private land mobile services. Adoption of such service rules is necessary before the Commission can grant licenses to land mobile operators in the allocated band. The proposed rule are intended to provide a framework that will allow operational flexibility to licensees and, at the same time, promote the development of equipment utilizing narrowband technology.

DATES: Interested persons may file comments on or before March 15, 1990, and reply comments on or before April 26, 1990.

FOR FURTHER INFORMATION CONTACT: F. Ronald Netro or Eugene Thomson, Private Radio Bureau, Land Mobile and Microwave Division, (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making* (*Notice*), PR Docket No. 89-552, adopted November 28, 1989, and released December 15, 1989. The full text of the *Notice* is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857-3800.

Summary of Notice of Proposed Rule Making

1. On September 6, 1988, the Commission issued a *Report and Order* (53 FR 36287 9/19/88) in General Docket No. 87-14 reallocating the 220-222 MHz band from the fixed, land mobile, and amateur services solely for private and federal government land mobile use. The *Report and Order* stated that the Commission would develop service rules for the newly-allocated band in another proceeding. On November 21, 1988, United Parcel Service of America, Inc. (UPS) filed a Petition for Rule Making proposing specific service rules. This *Notice* examines the UPS proposals and makes alternative proposals.

2. The Commission proposes to divide the 220-222 MHz band into two hundred 5 kHz channel pairs, with corresponding transmit and receive frequencies separated by 1 MHz. Comments are requested of three alternative channeling plans developed to emphasize trunked systems, blocks of contiguous channels for non-trunked and individual channel assignments, and digital data systems. Specific blocks of channels are designated for nationwide or local use for commercial (private carrier) or non-commercial (individual licensee) use, with some blocks limited to data only communications. The spectrum will also be shared between Government and non-Government users except for the nationwide blocks, with two 5-channel nationwide blocks reserved for Government use and the remaining nationwide blocks for non-Government use. Frequency coordination will not be required.

3. The Commission proposes to permit any entity eligible under Subparts B-E of 47 CFR part 90 to have access to the frequencies in the band rather than dividing the band into specific service pools. The Commission proposes to impose specific entry criteria on nationwide applicants, including a certification that they have a financial commitment or sufficient assets to support construction and operation of the system for the term of the license. Nationwide applicants must also certify that they will construct base stations in at least 70 of the top 100 MSA's. The Commission proposes to process both nationwide and non-nationwide applications on a first-come, first-served basis, supplemented by lottery proceedings if necessary.

4. Except for nationwide systems, the Commission proposes a twelve month construction period and a five year license term. For non-Government nationwide systems, the Commission proposed a ten year construction period and a ten year license term. The nationwide construction period will be divided into four benchmark periods, with penalties for the licensee's failure to meet certain requirements at each benchmark. Specifically, as a condition of license, nationwide licensees must construct base stations in at least 10% of the markets designated in their applications within two years of licensing, in at least 40% of the markets designated within four years of licensing, in at least 70% of the markets designated within six years of licensing, and in all designated markets within ten years of licensing. The licensee will lose the entire nationwide block allocation if it does not meet the 10% and 40% benchmarks at the end of the two and

four-year periods, respectively. If it has not meet the 70% and 100% construction levels at the end of the six and ten-year periods, authorizations for the unbuilt facilities will cancel automatically. The Commission proposes to authorize all channels on an exclusive basis without imposing loading standards.

5. Technical standards are proposed that specify a maximum size base station facility as one that terminates an effective radiated power (ERP) of 200 watts at a height above average terrain of 90 meters. This should provide a service area of about 35 kilometers and permit a 120 kilometer reuse of the frequency. Permissible transmitter power will be decreased as antenna height increases. The proposed maximum mobile power is 20 watts ERP. Equipment frequency tolerances and a spectral density emission mask are proposed to minimize energy spillover into adjacent channels.

Authority: Authority for the action taken is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

List of Subjects in 47 CFR Part 90

Private Land Mobile Radio Services, 220–222 MHz Service Rules, Radio.

Amendatory Text

It is proposed to amend 47 CFR part 90 as follows:

1. The authority citation for part 90 continues to read as follows:

Authority: Sec. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2(a). The following sections of 47 CFR part 90 are amended by adding the frequency band 220–222 MHz and the accompanying limitation at the appropriate location in the Table of Frequencies contained in each section to read as follows:

47 CFR sections
90.17(b) Add 220–222 MHz and limitation (4) to Table
90.19(d) Add 220–222 MHz and limitation (4) to Table
90.21(b) Add 220–222 MHz and limitation (17) to Table
90.23(b) Add 220–222 MHz and limitation (19) to Table
90.25(b) Add 220–222 MHz and limitation (23) to Table
90.53(a) Add 220–222 MHz and limitation (8) to Table
90.63(c) Add 220–222 MHz and limitation (26) to Table
90.65(b) Add 220–222 MHz and limitation (17) to Table
90.67(b) Add 220–222 MHz and limitation (37) to Table
90.69(b) Add 220–222 MHz and limitation (13) to Table
90.71(b) Add 220–222 MHz and limitation (10) to Table
90.73(c) Add 220–222 MHz and limitation (37) to Table
90.75(b) Add 220–222 MHz and limitation (44) to Table
90.79(c) Add 220–222 MHz and limitation (27) to Table
90.81(c) Add 220–222 MHz and limitation (1) to Table
90.89(b) Add 220–222 MHz and limitation (22) to Table
90.91(b) Add 220–222 MHz and limitation (20) to Table
90.93(b) Add 220–222 MHz and limitation (16) to Table
90.95(c) Add 220–222 MHz and limitation (19) to Table

2(b). The following sections of 47 CFR part 90 are amended by removing "Reserved" and adding the following text "Subpart T contains rules for assignment of frequencies in the 220–222 MHz band":

47 CFR sections
90.17(c)(4)
90.19(e)(4)
90.21(c)(17)
90.23(c)(19)
90.25(c)(23)
90.53(b)(8)
90.63(d)(26)
90.65(c)(17)
90.67(c)(37)
90.69(c)(13)
90.71(c)(10)
90.73(d)(37)
90.75(c)(44)
90.79(d)(27)
90.81(d)(1)
90.89(c)(22)
90.91(c)(20)
90.93(c)(16)
90.95(d)(19)

3. 47 CFR 90.149 is amended by revising paragraph (a) and adding a new paragraph (c) to read as follows:

§ 90.149 License term.

(a) Except as indicated in paragraph (c) of this section, licenses for stations authorized under this part will be issued for a term not to exceed five years from the date of the original issuance, modification or renewal.

* * * * *

(c) Nationwide authorizations under subpart T will be issued for a term not to exceed ten years from the date of the original issuance, modification or renewal.

4. 47 CFR 90.175 is amended by adding paragraph (f)(14) to read as follows:

§ 90.175 Frequency coordination requirements.

* * * * *

(f) * * *

(14) Applications for frequencies in the 220–222 MHz band.

5. 47 CFR 90.205 is amended by revising in the following frequency bands the table in paragraph (b) and paragraph (b)(12) to read as follows:

§ 90.205 Power.

* * * * *

(b) * * *

Frequency range (MHz)	Maximum output power (watts)	Maximum effective radiated power (ERP) (watts)
* * *	*	*
216 to 220	(3 9)	(4)
220 to 222		12 200
222 to 470	3 5 350	
* * *	*	*

(12) Transmitter peak envelope power shall be used to determine ERP.

* * * * *

6. 47 CFR 90.209 is amended by revising paragraph (j) and adding paragraphs (l) and (m) to read as follows:

§ 90.209 Bandwidth limitations.

* * * * *

(j) Except as indicated in paragraphs (l) and (m) of this section, for transmitters that operate on channels spaced 5 kHz apart (see § 90.271), the power of any emission shall be attenuated below the peak envelope power (P) in accordance with the following schedule:

* * * * *

(l) For transmitters that operate on 5 kHz channel assignments in the 220–222 MHz frequency band, the power of any emission shall be attenuated below the power of the highest emission contained within that channel in accordance with the following schedule:

(1) On any frequency removed from the center of the authorized bandwidth by a displacement frequency (f_d in kHz) of more than 1.8 kHz up to and including 2.5 kHz: At least $100(f_d-1.8)$ decibels.

(2) On any frequency removed from the center of the authorized bandwidth by more than 2.5 kHz up to and including 5 kHz: At least $70+4(f_d-2.5)$ decibels.

(3) On any frequency removed from the center of the authorized bandwidth by more than 5 kHz: At least 80 decibels.

(4) Emission power shall be measured in peak values.

(5) The resolution bandwidth of the instrumentation used to measure the emission power is as follows: 100 Hz for measuring emissions up to (and including) 5 kHz from the center of the authorized bandwidth, and 10 kHz for measuring emissions more than 5 kHz

from the center of the authorized bandwidth. The power level of the highest emission within the channel, to which the attenuation is referenced, shall be remeasured for each change in resolution bandwidth.

(m) For transmitters that operate on 25 kHz (5-channel) or 50 kHz (10-channel) contiguous channel assignments in the 220–222 MHz band, the power of any emission shall be attenuated below the power of the highest emission contained within the authorized bandwidth in accordance with the following schedule:

(1) On any frequency removed from the edge of the authorized bandwidth up to, but not including, 2.5 kHz: At least 70 decibels.

(2) On any frequency removed from the edge of the authorized bandwidth by 2.5 kHz or more: At least 80 decibels.

(3) The authorized bandwidth is equal to 5 kHz multiplied by the number of channels employed by the transmitter.

(4) Emission power shall be measured in peak values.

(5) The resolution bandwidth of the instrumentation used to measure the emission power is as follows: 100 Hz for measuring emissions up to (and including) 2.5 kHz from the edge of the authorized bandwidth and 10 kHz for measuring emissions more than 2.5 kHz from the edge of the authorized bandwidth. The power level of the highest emission within the channel, to which the attenuation is referenced, shall be remeasured for each change in resolution bandwidth.

7. 47 CFR 90.211 is amended by revising paragraph (d)(2) to add references to § 90.209 (l) and (m) to read as follows:

§ 90.211 Modulation requirements.

* * * * *

(d) * * *

(2) Transmitters subject to the emission limitations of paragraphs (f), (g), (h), (j), (l), or (m) of § 90.209 shall be exempt from the audio low-pass filter requirements of this section, provided that transmitters used for digital emissions must be type accepted with the digital modulating signal or signals specified by the manufacturer. The type acceptance application shall contain such information as may be necessary to demonstrate that the transmitter complies with the emission limitations specified in paragraphs (f), (g), (h), (j), (l), or (m) of § 90.209.

8. 47 CFR 90.213 is amended by adding footnote 18 to the 50–450 MHz band in the Frequency Tolerance Table to read as follows:

§ 90.213 Frequency tolerance.

(a) * * *

	Frequency Tolerance			
*	*	*	*	*
50–450	[5 6 17 18].0005	[5 6 17 18].0005	[5 17 18].0005	[7 17 18].005
*	*	*	*	*

[18] In the 220–222 MHz band, base stations shall maintain the carrier frequency to within ±0.0001 per cent, and mobiles shall maintain the carrier frequency to within ±0.00015 per cent.

9. 47 CFR 90.233 is amended by revising paragraph (c) to add a reference to Subpart T to read as follows:

§ 90.233 Base/mobile non-voice operations.

* * * * *

(c) Provisions of this section do not apply to authorizations for paging, telemetry, rediolocation, AVM, radioteleprinter, radiofacsimile, radio call box operations, or authorizations granted pursuant to subpart T of this part.

10. 47 CFR 90.238 is amended by removing "Reserved" and adding text to paragraph (f) to read as follows:

§ 90.238 Telemetry operations.

* * * * *

(f) 220–222 MHz as available under subpart T of this part.

* * * * *

11. 47 CFR 90.243 is amended by adding a sentence to the end of paragraph (a)(1) to read as follows:

§ 90.243 Mobile relay stations.

(a) * * *

(1) * * * Mobile relay operations will be authorized in the 220–222 MHz band.

* * * * *

12. 47 CFR 90.419 is amended by revising paragraph (a) to read as follows:

§ 90.419 Points of communication.

* * * * *

(a) Base stations licensed under subpart T of this part and those in the Public Safety and Special Emergency Radio Services that operate on frequencies below 450 MHz, may communicate on a secondary basis with other base stations, operational fixed stations, or fixed receivers authorized in these services.

* * * * *

13. 47 CFR 90.425 is amended by adding paragraph (d)(8) to read as follows:

§ 90.425 Station identification.

* * * * *

(d) * * *

(8) It is a base or mobile station in the 220–222 MHz band authorized to operate on an nationwide basis in accordance with subpart T of this part.

14. 47 CFR 90.555 is amended by adding the 220–222 MHz frequency band to the combined frequency list in paragraph (b) to read as follows:

§ 90.555 Combined frequency listing.

* * * * *

(b) Combined frequency list

Frequency	Services	Special limitations
*	*	*
220–222	All Svcs. Exc. RS	See Subpart T
*	*	*

15. 47 CFR part 90 is amended by adding a new subpart T to read as follows:

Subpart T—Regulations Governing Licensing and Use of Frequencies in the 220–222 MHz Band

90.701 Scope.

Applications for Authorizations

90.703 Eligibility.
90.705 Forms to be used.
90.709 Special limitations on amendment of applications an on assignment or transfer of authorizations licensed under this subpart.

Policies Governing the Processing of Applications and the Selection and Assignment of Frequencies for Use in the 220–222 MHz Band

90.711 Processing of applications.
90.713 Entry Criteria.
90.715 Frequencies available.
90.717 Channels available for nationwide systems in the 220–222 MHz band.

90.719 Individual channels available for assignment in the 220–222 MHz band.
90.721 Channels available for trunked systems in the 220–222 MHz band.
90.723 Selection and assignment of frequencies.
90.725 Construction requirements.
90.727 Extended implementation schedules.
90.729 Limitations on powers and antenna height.
90.731 Restrictions on operational-fixed stations.
90.733 Permissible operations.
90.735 Station identification.
90.737 Supplemental reports required of licensees.
90.739 Number of systems authorized in a geographical area.
90.741 Special licensing requirements for commercial systems.
90.743 Temporary permit.

Subpart T—Regulations Governing Licensing and Use of Frequencies in the 220–222 MHz Band

§ 90.701 Scope.

Frequencies in the 220–222 MHz band are available for land mobile use for both Government and non-Government operations. This subpart sets out the regulations governing the licensing and operation of non-Government systems operating in the 220–222 MHz band. It includes eligibility requirements, application procedures, and operational and technical standards for stations licensed in these bands. The rules in this subpart are to be read in conjunction with the applicable requirements contained elsewhere in this part; however, in case of conflicts, the provisions of this subpart shall govern with respect to licensing and operation in this frequency band.

Applications for Authorizations

§ 90.703 Eligibility.

The following persons are eligible for licensing in the 220–222 MHz band.

(a) Any person eligible for licensing under subpart B, C, D or E of this part.

(b) Any person proposing to provide communications service to any person eligible for licensing under subpart B, C, D or E of this part on a not-for-profit, cost-shared basis.

(c) Any person, except wire line telephone common carriers, eligible under this part proposing to provide on a commercial basis, station and ancillary facilities for the use of federal government agencies and persons eligible for licensing under subpart B, C, D or E of this part.

§ 90.705 Forms to be used.

Applications for all radio facilities under this subpart must be prepared on FCC Forms 574 and 574A and must be submitted or filed in accordance with § 90.127.

§ 90.709 Special limitations on amendment of applications and on assignment or transfer of authorizations licensed under this subpart.

(a) Except as indicated in paragraph (b) of this section, the Commission will not consent to the following:

(1) Any request to amend an application so as to substitute a new entity as the applicant;

(2) Any application to assign or transfer a license for a non-nationwide system prior to the completion of construction of facilities; or

(3) Any application to transfer or assign a license for a nationwide system before the licensee has constructed at least 40% of the proposed system prusuant to the provisions of § 90.725(a).

(b) The Commission will grant the applications described in paragraph (a) of this section if:

(1) The request to amend an application or to transfer or assign a license does not involve a substantial change in the ownership or control of the applicant; or

(2) The changes in the ownership or control of the applicant are involuntary due to the original applicant's insolvency, bankruptcy, incapacity, or death.

Policies Governing the Processing of Applications and the Selection and Assignment of Frequencies for Use in the 220–222 MHz Band

§ 90.711 Processing of applications.

(a) Applications will be processed on a first-come, first-served basis. When multiple applications are filed on the same day for frequencies in the same geographic area, and insufficient frequencies are available to grant all applications, these applications will be considered mutually exclusive and will be subject to lottery proceeding pursuant to 47 CFR 1.972.

(b) All applications will first be considered to determine whether they are substantially complete and acceptable for filing. If so, they will be assigned a file number and put in pending status. If not, they will be dismissed.

(c) Except as otherwise provided in this section, all applications in pending status will be processed in the order in which they are received, determined by the date on which the application was received by the Commission in its Gettysburg, Pennsylvania Office (or the address set forth at § 0.401(b) for applications requiring the fees established by Part 1, Subpart G of this chapter).

(d) Each application that is accepted for filing will then be reviewed to determine whether it can be granted. Frequencies will be assigned by the Commission pursuant to the provisions of § 90.723.

(e) An application which is dismissed will lose its place in the processing line.

(f) If an application is returned for correction and resubmitted and received by the Commission within 60 days from the date on which it was returned to the applicant, it will retain its place in the processing line. If it is not received within 60 days, it will lose its place in the processing line.

§ 90.173 Entry criteria.

(a) As set forth in § 90.717, two blocks of ten and six blocks of five contiguous channels have been set aside for exclusive assignments for non-Government use on a nationwide basis. The assignment of these frequencies will only be to applicants who:

(1) Certify that, within ten years of receiving a license, they will construct a minimum of one base station in at least 70 of the top 100 MSAs;

(2) Certify that they will meet the construction requirements set forth in § 90.725;

(3) Submit a ten year schedule detailing plans for construction of the proposed system as well as an itemized estimate of the cost of constructing and operating the system during the ten year term of the initial license;

(4) Demonstrate that they have sufficient financial resources to construct and operate the proposed system for the initial ten year term of license; *i.e.*, that they have net current assets sufficient to cover estimated costs or a firm financial commitment sufficient to cover estimated costs.

(b) Applicants relying on personal or internal resources for the showing required in paragraph (a) of this section must submit financial statements certified within one year of the date of the application showing net current assets sufficient to meet estimated construction and operating costs. They must also submit a balance sheet dated no more than sixty days before the date of the application showing the continued availability of sufficient net current assets. The applicant or an officer of the applicant's organization must attest to the validity of the unaudited balance sheet.

(c) Applicants submitting evidence of a firm financial commitment for the showing required in paragraph (a) of this section must obtain the commitment from a *bona fide* commercially acceptable source, *e.g.*, a state or

federally chartered bank or savings and loan institution, other recognized financial institution, the financial arm of a capital equipment supplier, or an investment banking house. If the lender is a non-conventional source, the lender must also demonstrate that it has funds available to cover the total commitments it has made. The lender's commitment shall contain a statement that the lender:

(1) Has examined the financial condition of the applicant including, where applicable, audited financial statements, and has determined that the applicant is creditworthy; and

(2) Has examined the financial viability of the proposed system for which the applicant intends to use the commitment; and

(3) Is willing to provide a sum to the applicant sufficient to cover the realistic and prudent estimated costs of construction and operation of the system for the initial term of license; and

(4) Is willing to enter into the commitment solely on the basis of the lender's relationship with the applicant.

§ 90.715 Frequencies available.

(a) The following table indicates the channel designations of frequencies available for assignment to eligible applicants under this subpart. Frequencies shall be assigned in pairs, with base station frequencies taken from the 220–221 MHz band with corresponding mobile and control station frequencies being 1 MHz higher and taken from the 221–222 MHz band. Only the lower half of the frequency pair(s) is listed in the table.

TABLE OF 220–222 MHz CHANNEL DESIGNATIONS

Channel No.	Base frequency (MHz)
1	220.0025
2	220.0075
* * * * *	
199	220.9925
200	220.9975

(b) The 200 channels are divided into three sub-bands as follows:

Channel No.	Sub-band	Frequencies (MHz)
1–60	A	220.0–220.3/221.0–221.3
61–140	C	220.3–220.7/221.3–221.7
141–200	B	220.7–221.0/221.7–222.0

§ 90.717 Channels available for nationwide systems in the 220–222 MHz band.

Channels 21–30 and 51–60 are 10-channel blocks available to applicants eligible in all part 90 services only for nationwide non-commercial systems for voice and/or data use. Channels 81–85 and 86–90 are 5-channel blocks available to applicants eligible in all part 90 services only for nationwide non-commercial systems for voice and/or data use. The term "non-commercial system" is defined as a system that will be used only for a licensee's internal use. Channels 141–145, 146–150, 151–155, and 156–160 are 5-channel blocks available to non-Government applicants only for nationwide commercial systems for voice and/or data use. The term "data," for purposes of this subpart, includes the transmission of text, control codes, and other informaton typical of machine-to-machine communications. Digitized voice signals are considered data signals under this subpart. Channels 111–115 and 116–120 are 5-channel blocks available for Government nationwide use only.

§ 90.719 Individual channels available for assignment in the 220–222 MHz band.

(a) Channels 161–200 are available to both Government and non-Government applicants. Non-Government access to these channels will be limited to applicants eligible in all part 90 services for non-commercial operations until March 31, 1995, after which time commercial operations to serve part 90 eligibles and the Government may be authorized. Channels 161–170 will be available for voice and data operations and Channels 171–200 will be assigned only for data systems. Channels 171–200 will be set aside for data only operations until March 31, 2000.

(b) After March 31, 2000, Channels 171–200 will be assigned singly or in contiguous channel groups for data and/or voice operations.

§ 90.721 Channels available for trunked systems in the 220–222 MHz band.

The channel groups listed in Table 1 are available to both Government and non-Government applicants for trunked-only operations for non-Commercial or commercial operations to serve all part 90 elgibles and the Government.

TABLE 1.—TRUNKED CHANNEL GROUPS

Group No.	Channel Nos.
1	1–31–61–91–121
2	2–32–62–92–122
* * * * *	
19	19–49–79–109–139
20	20–50–80–110–140

§ 90.723 Selection and assignment of frequencies.

(a) Applications for frequencies in the 220–222 MHz band shall specify the number of frequencies requested and whether their intended use is for 5 or 10-channel nationwide systems, commercial or non-commercial use, 5-channel trucked systems, individual data/voice use, or individual data only use. All frequencies in this band will be assigned by the Commission.

(b) Channels will be assigned pursuant to §§ 90.717, 90.719, and 90.721 of this subpart.

(c) Applicants will be assigned only the number of channels justified to meet their requirements. Except for the 10-channel nationwide assignments, the maximum number of frequencies that will be assigned to an applicant at any one time is five.

(d) Base stations utilizing channels assigned from Sub-band A (220.000–220.300 MHz) will be separated from base stations utilizing channels assigned from Sub-Band B (220.700–221.000 MHz) as follows:

GEOGRAPHIC SEPARATION OF SUB-BAND A BASE STATION RECEIVERS AND SUB-BAND B BASE STATION TRANSMITTERS

Separation distance (kilometers)	Effective radiated power (watts)*
0.0–0.3	0
0.3–0.5	5
0.5–0.6	10
0.6–0.8	20
0.8–2.0	25
2.0–4.0	50
4.0–50	100
Over 5.0	200

* Transmitter peak envelope power shall be used to determine effective radiated power.

(e) A mobile station is authorized to transmit on any frequency assigned to its associated basse station.

(f) Except for nationwide assignments, the separation of co-channel systems will be 120 kilometers.

§ 90.725 Construction requirements.

(a) Licensees granted nationwide authorizations will be required to construct base stations in the markets designated in the application as follows:

(1) In at least 10% of the markets designated within two years of licensing, in at least 40% within four years, in at least 70% within six years, and in all designated markets within ten year of licensing.

(2) Licensees not meeting the two and four year criteria shall lose the entire authorization, but will be permitted a six month period to convert the system to

non-nationwide channels, if such channels are available.

(3) Licensees not meeting the six and ten year criteria shall lose the authorizations for the facilities not constructed, but will retain exclusivity for its constructed facilities.

(4) Progress reports will be filed at the conclusion of each of the above periods to inform the Commission of the status of the system.

(b) Except as provided in § 90.709, licenses for nationwide systems may be assigned or transferred only after the licensee has constructed at least 40% of the proposed system. The assignee or transferee of a nationwide system is subject to the construction benchmarks and reporting requirements in paragraph (a). The assignee or transferee is not subject to the entry criteria described in § 90.713.

(c) Licensees authorized non-nationwide systems will be permitted twelve months to construct the system. Authorizations for systems not constructed within twelve months from the date of grant will cancel automatically.

§ 90-727 Extended implementation schedules.

Except for nationwide and commercial systems, a period of up to three (3) years may be authorized for constructing and placing a system in operation if:

(a) The applicant submits justification for an extended implementation period. The justification must include reasons for requiring an extended construction period, the construction schedule (with milestones), and must show either that:

(1) The proposed system will serve a large fleet of mobile units and will involve a multi-year cycle for its planning, approval, funding, purchase, and construction; or

(2) The proposed system will require longer than twelve months to place in operation because of its purpose, size, or complexity; or

(3) The proposed system is to be part of a coordinated or integrated area-wide system which will require more than 12 months to construct; or

(4) The applicant is a local governmental agency and demonstrates that the government involved, funding, and purchasing the proposed system.

(b) Authorizations under this section are conditioned upon the licensee's compliance with the submitted extended implementation schedule. Failure to meet the schedule will result in loss of authorizations for facilities not constructed.

§ 90.729 Limitations of power and antenna height.

(a) The permissible effective radiated power (ERP) with respect to antenna heights shall be determined from the Table. These are maximum values and applicants are required to justify power levels requested.

EQUIVALENT POWER AND ANTENNA HEIGHTS

Antenna height above average terrain (HAAT), meters	Effective radiated power, watts
Up to 90	200
90 to 120	100
120 to 150	75
150 to 200	50
200 to 275	25
Above 275	20

(b) The maximum permissible ERP for mobile units is 20 watts. Portable units are considered as mobile units.

§ 90.731 Restrictions on operational-fixed stations.

(a) Except for control stations, operational-fixed stations will not be authorized in the 220–222 MHz band. Licensees may utilize their authorized frequencies for fixed signaling in accordance with § 90.235 of this part.

(b) Control stations associated with one or more mobile relay stations will be authorized only on the assigned frequency of the associated mobile station. Use of a mobile service frequency by a control station of a mobile relay system is subject to the condition that harmful interference shall not be caused to stations of licensees authorized to use the frequency for mobile service communications.

§ 90.733 Permissible operations.

(a) Systems authorized in the 220–222 MHz band may be used:

(1) Only for base/mobile and mobile relay transmission on a primary basis, and fixed voice and signaling transmissions on a secondary basis. Paging operations are not permitted in this band.

(2) Only by persons who are eligible for facilities under either this subpart on in the radio services included in subpart B, C, D, or E of this part.

(3) Only for the transmission of messages or signals permitted in the services in which the licensees are eligible.

(b) When two or more contiguous channels are authorized to a single licensee (up to a ten channel nationwide block), more than a single emission may be utilized within the authorized bandwidth. In such cases, the frequency stability requirements of § 90.209(1) shall be met.

§ 90.735 Station identification.

(a) Except for nationwide and trunked systems authorized in the 220–222 MHz band, station identification is required pursuant to § 90.425.

(b) Systems authorized on nationwide frequencies pursuant to this subpart do not require station identification.

(c) Trunked systems shall employ and automatic device to transmit the call sign of the base station at 30 minute intervals. The identification shall be made on the lowest frequency in the base station trunked group assigned to the licensee. If this frequency is in use at the time identification is required, the identification may be made at the termination of the communication in progress on this frequency.

(d) Station identification may be by voice or International Morse Code. If the call sign is transmitted in International Morse Code, it must be at a rate of between 15 to 20 words per minute, and by means of tone modulation of the transmitter, with the tone frequency being between 800 and 1000 hertz.

§ 90.737 Supplemental reports required of licensees.

(a) Licensees of nationwide systems must file progress reports pursuant to § 90.725(a)(4) of this subpart.

(b) Licensees offering service on a commercial basis must maintain records of the names and addresses of each customer and the dates that service commenced and terminated. These records must be made available to the Commission upon request. Such licensees must report at the time of license renewal the number of mobile units being served.

(c) Non-commercial trunked system licensees must report at the time of license renewal the number of mobile units being served.

(d) Except for licensees of nationwide systems, all licensees must report whether construction of the facility has been completed within 12 months of the date of grant of their license.

(e) All reports must be filed with the Land Mobile Branch, Licensing Division, Private Radio Bureau, Gettysburg, PA 17326.

§ 90.739 Number of systems authorized in a geographical area.

There shall be no limit on the number of systems authorized to operate in any one given area except that imposed by frequency assignment limitations. No person shall have a right to protest any application or grant on

grounds other than violation of any of the provisions of this subpart.

§ 90.741 Special licensing requirements for commercial systems.

End users on commercial systems must be licensed for any associated control points, control stations, and mobile units and only licensed end users are authorized to use those systems.

§ 90.743 Temporary permit.

An applicant for a license to utilize an already authorized facility may operate its station(s) for a period of up to 180 days under a temporary permit evidenced by a properly executed certification of FCC Form 572 after filing a formal application for station license, provided the antenna(s) employed by the control station(s) is(are) 6.1 meters or less above ground of 6.1 meters or less above a man-made structure other than an antenna tower to which it is affexed.

Federal Communications Commission.

Donna R. Searcy,

Secretary

[FR Doc. 90-222 Filed 1-3-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 605

[Docket No. 82-J]

School Bus Operations

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice of proposed rulemaking: withdrawal.

SUMMARY: This Notice withdraws an advance notice proposing alternative revisions to the Urban Mass Transportation Administration's regulations governing school bus operations. UMTA is taking this action based upon its determination that the proposed changes are unnecessary.

DATES: This withdrawal is effective January 4, 1990.

FOR FURTHER INFORMATION CONTACT: Susan Schruth, Office of Chief Counsel, Urban Mass Transportation Administration, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-4063.

SUPPLEMENTARY INFORMATION: On October 12, 1982, UMTA published an Advance Notice of Proposed Rulemaking (ANPRM) for its charter and school bus regulations, 49 CFR parts 604 and 605, respectively. An NPRM was issued for the charter bus regulation on March 6, 1986, with a final rule published on April 13, 1987. UMTA, however, delayed taking action with regard to the Part 605 school bus regulations.

The October 12, 1982, ANPRM had included both the charter bus and the school bus regulations because private operators and recipients had expressed similar questions and concerns about them. In general, their complaints focused on the balanced UMTA attempted to strike between minimizing the burdens placed on recipients and maximizing the protections for private operators.

With regard to the school bus regulations in Part 605, UMTA proposed three alternatives in the ANPRM which it asked the public to comment on. UMTA's first alternative was to retain the original provisions. Its second proposal called for changing several aspects of the "tripper service" concept in the original regulation. The "tripper service" concept allows recipients to modify existing mass transit routes to accommodate school students. UMTA's third alternative suggested defining "exclusive school bus service" in the regulation in a way that would exclude recipients.

UMTA received 86 comments to the school bus regulatory proposals as a result of the ANPRM. Some commenters indicated dissatisfaction with the current regulations, which have remained unchanged since Part 605 was first promulgated on April 1, 1976. The majority, however, were more critical of various aspects of the ANPRM's proposed alternatives. Although UMTA considered taking further action, it encountered a number of delays.

In the seven years since the ANPRM's publication, the agency has not experienced any new problems with the school bus regulation's existing provisions and does not anticipate that this situation will change. Because the current regulations appear to be functioning adequately, UMTA has decided that revising Part 605 is unnecessary at this time. Consequently, UMTA is withdrawing the ANPRM's school bus provisions and terminating further action in this matter. In the event UMTA makes a contrary determination in the future, it will issue a new NPRM at that time.

For these reasons, the October 12, 1982, proposal to amend Part 605's school bus provisions is hereby withdrawn.

Dated: December 29, 1989.

Brian W. Clymer,

Administrator.

[FR Doc. 90-177 Filed 1-3-90; 8:45 am]

BILLING CODE 4910-57-M

Notices

Federal Register
Vol. 55, No. 3
Thursday, January 4, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Meat Import Limitations; First Quarterly Estimate

Public Law 88–482, enacted August 22, 1964, as amended by Public Law 96–177, Public Law 100–418, and Public Law 100–449 (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of bovine, sheep except lamb, and goats; and processed meat of beef or veal (Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.20, 0201.20.40, 0201.20.60, 0201.30.20, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.20, 0202.20.40, 0202.20.60, 0202.30.20, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00), which may be improted, other than products of Canada, into the United States in any calendar year. Such limitations are to be imposed when the Secretary of Agriculture estimates that imports of articles, other than products of Canada, provided for in Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.40, 0201.20.60, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.40, 0202.20.60, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1990 by subsection 2(c) as adjusted under subsection 2(d) of the Act.

In accordance with the requirements of the Act, I have made the following estimates:

1. The estimated aggregate quantity of meat articles prescribed by subsection 2(c) as adjusted by subsection 2(d) of the Act for calendar year 1990 is 1,242.0 million pounds.

2. The first quarterly estimated of the aggregate quantity of meat articles which would, in the absence of limitations under the Act, be imported during calendar year 1990 is 1,150 million pounds.

Done at Washington, DC this 27th day of December, 1989.

Roland R. Vautour,

Acting Secretary of Agriculture.

[FR Doc. 90–183 Filed 1–3–90; 8:45 am]

BILLING CODE 3410-10-M

Agricultural Marketing Service

[No. FV-90-201]

Perishable Agricultural Commodities Act—Industry Advisory Committee Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Act (Public Law No. 92–463 and Public Law No. 100–414), notice is hereby given of the Fourth meeting of the Perishable Agricultural Commodities Act (PACA) Industry Advisory Committee. The Committee will meet on January 18, 1990 beginning at 8:30 a.m. through 4:30 p.m. at the Hyatt Regency Phoenix, 122 North 2nd Street, Phoenix, Arizona 85004–2379.

FOR FURTHER INFORMATION CONTACT: John D. Flanagan, (202) 447–2272.

SUPPLEMENTARY INFORMATION: The 20 member Perishable Agricultural Commodities Act Industry Advisory Committee, appointed by the Secretary of Agriculture, represents fruit and vegetable growers, shippers, brokers, processors, wholesalers, and retailers. The Committee was established pursuant to the Public Law 100–414, to discuss policies and procedures relating to the administration of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a *et seq.*) and identify areas where the law and program might be enhanced to ensure program efficiency and equitable treatment among the various segments of the fruit and vegetable industry. The Committee will report on its findings and develop recommendations for consideration by Congress and The Secretary of Agriculture. Its interim report was submitted to the Secretary of Agriculture, the House Committee on Agriculture, and the Senate Committee on Agriculture, Nutrition, and Forestry on September 26, 1989. A final report containing the results of the Committee's review and its recommendations will be submitted no later than May 1, 1990. The Committee's meeting will be open to the public. Due to the limitation of time, the public will not be allowed to participate in the meeting. Statements may be submitted before or after the meeting to Mr. John D. Flanagan at the address listed below.

The names of Committee members, agenda, and other information pertaining to the meeting may be obtained from John D. Flanagan, Chief, PACA Branch, Room 2095 So., Fruit and Vegetable Division, Agricultural Marketing Service, USDA, P.O. Box 96456, Washington, DC 20090–6456, telephone (202) 447–2272.

Done at Washington, DC, this 28th day of December 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 90–184 Filed 1–3–90; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-810]

Final Determination of Sales at Less Than Fair Value: Mechanical Transfer Presses from Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that mechanical transfer presses (MTPs) from Japan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of MTPs from Japan. The ITC will determine within 45 days of the publication of this notice, whether these imports materially injure, or threaten material injury to, the U.S. industry.

EFFECTIVE DATE: January 4, 1990.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, James P. Maeder, Jr. or V. Irene Darzenta, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3965, 377-4929 and 377-0186, respectively.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that MTPs from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The estimated weighted-average dumping margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

On August 18, 1989, the Department published an affirmative preliminary determination (54 FR 34208). Since that time, the following events have occurred. On August 31, 1989, at the request of the petitioners, the Department published the postponement of both the final determination and public hearing (54 FR 36046). Verification of the questionnaire responses of Komatsu Ltd. (Komatsu) and Komatsu America Industries Corp. (KAIC), and Aida Engineering, Ltd. (Aida) and Aida Engineering Inc. (Aida U.S.) was conducted in Japan from September 11 through 22, 1989. Prior to verification on August 30, 1989, Komatsu submitted corrections to certain clerical errors it found in its response. Interested parties submitted comments for the record in their case briefs dated November 6, 1989, and in their rebuttal briefs dated November 14, 1989. A public hearing was held on November 16, 1989.

Period of Investigation

The period of investigation (POI) covers MTPs sold and shipped in the period January 1, 1987 through January 31, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after this date is now classified solely according to the appropriate HTS item numbers. The HTS item numbers are provided for convenience and U.S. Customs Service purposes. The written description remains dispositive as to the scope of product coverage.

Prior to January 1, 1989, mechanical transfer presses were classifiable under items 674.3583, 674.3587, 674.3592, 674.3594, 674.3596, 674.5315, and 674.5320 of the *Tariff Schedules of the United States Annotated* (TSUSA). Until July 1, 1989, this merchandise was classifiable under HTS subheadings 8462.29.00, 8462.39.00, 8462.49.00, 8462.99.00, and 8466.94.50. Effective July 1, 1989, the Committee for Statistical Annotation of the Tariff Schedules changed the tariff classification of mechanical transfer presses. Mechanical transfer presses are currently classifiable under HTS item numbers 8462.99.0035 and 8466.94.5040.

For purposes of this investigation, the term "mechanical transfer press" refers to automatic metal-forming machine tools with multiple die stations in which the workpiece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be assembled or unassembled.

For purposes of the final determination, we have clarified the scope language describing the merchandise under investigation by adding the phrase "designed as an integral part of the press" when referring to the transfer mechanism. This clarification is based on comments received from petitioners and respondents in their case and rebuttal briefs, respectively.

Such or Similar Comparisons

Komatsu, whose home market was viable, claimed that it had sales of merchandise in the home market during the period of investigation which were similar to certain MTPs sold to the United States. For purposes of the preliminary determination, we found that for all except one of the recommended comparisons, the claimed differences in merchandise adjustment exceeded 20 percent of the home market price. Therefore, we preliminarily determined that with the exception of one model, the home market MTPs were not similar to the U.S. MTPs.

For purposes of the final determination, however, we determined that none of the MTPs sold to the United States could reasonably be compared to an MTP sold in the home market because the claimed cost differences could not be tied to differences in the physical characteristics of the MTPs. (*See, DOC Position* to *Comment 26* in the "Interested Party Comments" section of this notice.) Therefore, we have used constructed value as the basis for calculating foreign market value.

Similarly, although its home market was viable, Aida claimed that there were no sales of merchandise which were sufficiently similar to those sold to the United States to serve as a basis for comparison. Based on information developed during the investigation, we agree with Aida. Therefore, we have used constructed value as the basis for calculating foreign market value.

Fair Value Comparisons

To determine whether sales of MTPs from Japan to the United States were made at less than fair value, we compared the United States price to the foreign market value, as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

Because all sales were made to unrelated parties prior to importation, we based the United States price on purchase price, in accordance with section 772(b) of the Act, for both respondents in this investigation.

A. Komatsu

For Komatsu, we calculated purchase price based on packed, f.o.b. Japanese port prices; packed, p.o.e., duty paid, on carrier prices; or packed, delivered prices, as appropriate. We based gross unit price on the documented contract price, rather than the "allocated price" as reported by Komatsu. (*See, DOC Position* to *Comment 1* in the "Interested Party Comments" section of this notice.) We made deductions where appropriate for foreign inland freight, foreign inland insurance, ocean freight, air freight, U.S. inland freight, loading charge, unloading charge, brokerage and handling, marine insurance, U.S. Customs duty and fees, export proceed insurance, reassembly insurance, installation and installation supervision, and discounts. We added uncollected or rebated duties pursuant to section 772(d)(1)(B) of the Act and section 353.41(d)(ii) of the Department's regulations (19 C.F.R. § 353.41(d)(ii)). For an explanation of the treatment of spare parts, and installation and supervision, see *DOC Position* to *Comment 3* in the "Interested Party Comments" section of this notice.

B. Aida

For Aida, we calculated purchase price based on packed, ex-go down, Japanese port prices or packed, f.o.b., U.S. port prices, as appropriate. We made deductions, where appropriate, for foreign inland freight and insurance, ocean freight, brokerage and handling, stevedoring charges, marine insurance, air freight, U.S. Customs duty and fees, and installation supervision. For an explanation of the treatment of accessory items and installation supervision, see *DOC Position* to *Comment 3* in the "Interested Party Comments" section of this notice.

Foreign Market Value

In accordance with section 773(a)(2) of the Act, we calculated foreign market value for both respondents based on constructed value for the reasons stated in the "Such or Similar Merchandise" section of this notice.

Constructed Value

In accordance with section 773(e) of the Act, we calculated foreign market value based on constructed value (CV). The CV included materials, fabrication, general expenses, profit, and packing. For both respondents: (1) Actual general expenses were used since these exceeded the statutory minimum requirement of ten percent of materials and fabrication; (2) the statutory eight percent minimum profit was applied; and (3) imputed credit costs were included in home market selling expenses. Home market selling expenses were used pursuant to section 773(e)(1)(b) of the Act, which provides that constructed value include an amount for general expenses equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise under consideration which are made by producers in the home market.

Because of the inclusion of imputed credit costs in selling expenses, the interest expenses reflected in the company books were reduced in order to avoid double counting. We adjusted CV for differences in circumstances of sale in accordance with 19 CFR 353.56. For Komatsu, this adjustment was made for differences in credit, warranty, technical service, and after-sale expenses. For Aida, this adjustment was made for credit and warranty expenses. The CV data submitted by the respondents were relied upon except in those instances when the costs were not appropriately quantified or valued.

The following adjustments were made to Komatsu's CV data:

(1) Loss on disposal of inventories, idle depreciation expense, disposal of fixed assets, and special profits and losses related to labor costs were included in CV.

(2) General expenses were revised by adjusting the cost of sales (COS) on which the G&A expense ratio was calculated to be consistent with the methodology used to calculate each product's cost of manufacture (COM).

(3) Net interest expense was adjusted to include the short-term interest income related to production operations as an offset to total interest expense.

(4) Capitalized interest was recalculated for three of the projects using the average annual short-term interest rate experienced during the POI as reported in Komatsu's consolidated financial statement as of March 31, 1989. Interest was not capitalized on the other projects. *See, DOC Position* to *Comment 4.*

(5) The cost of spare parts was included in the COM of the MTPs in those cases in which spare parts were included as part of the MTP sale.

The following adjustments were made to Aida's CV data:

(1) The COM of each MTP was adjusted: (a) To include costs which had been erroneously omitted from cost accounting reports due to errors; (b) to eliminate freight and packing expenses which had been included in COM; (c) to include freight-in costs which had been excluded from COM; (d) to include scrap expenses charged to "Loss on Sale of Inventories and Write-down of Inventories"; and (e) to reclassify installation supervision from COM to movement charges.

(2) The COM for the two MTPs sold as part of a package was adjusted: (a) To eliminate the cost of a load meter and sensors, which were determined to be a separate sale of accessories; and (b) to include miscellaneous processing costs related to the package. These processing costs were allocated to each piece of equipment in the package based upon the COM.

(3) The COM of one MTP was adjusted to eliminate the cost of production of tooling dies which was determined to be a separate sale of an accessory.

(4) General expenses were revised by adjusting the COS on which the G&A expense ratio was calculated to be consistent with the methodology used to calculate each product's COM.

Interested Party Comments

Comment 1: Petitioners argue that the Department should reject Komatsu's constructed unit prices for the MTPs contained in package sales. Petitioners contend that clearly identifiable prices exist in the sales documentation for nine of the presses included in package sales and that these prices should be used in the Department's analysis. Petitioners allege that Komatsu constructed prices solely for the purpose of this investigation.

Komatsu contends that the individual prices indicated in the sales contracts are not commercially or economically meaningful to it or its customers. Further, Komatsu contends that once a customer has agreed upon a particular package of equipment, the customer does not have the option of cancelling any part of the package without the total package price being renegotiated. Therefore, Komatsu argues, the only meaningful price is the total package price.

Komatsu argues that it was appropriate to calculate the prices for individual MTPs sold in packages by allocating the total package price on the basis of cost of manufacturing. Komatsu cites *Large Power Transformers (LPTs) from Japan,* 51 FR 21197 (June 11, 1986), in which the Department developed prices for individual transformers in package or system sales on the basis of cost plus an allocated portion of the profit.

Komatsu further asserts that its internal orders to the plant should not be used to assign values to individual items in a package because they do not establish meaningful prices. Komatsu states that the orders to the plant are internal Komatsu documents that are not reviewed or confirmed by the customers and that the prices shown on them do not represent negotiated and agreed-upon unit prices. Komatsu explains further that the orders to the plant assign a price to individual items in the package by allocating the total package price based on the estimated cost of manufacture of the items. The prices in the orders to the plant are often adjusted by Komatsu for internal accounting purposes. Komatsu contends that the allocation of the package price based on cost of manufacture actually prevents manipulation of prices.

DOC Position: We agree with petitioners. The Department prefers not to engage in the allocation of prices because allocations can introduce distortions. Therefore, the Department's policy is to use line-item contract prices where they exist. Only if line-item contract prices do not exist, or if the Department has no confidence in those that do, does it accept alternative pricing methodologies. Where available, contract prices for the MTPs were used.

In *LPTs from Japan,* Hitachi (the respondent in that case) claimed that it was unable to identify a price or value for LPTs in package sales. Therefore, as best information available, the Department developed a price for the individual machines on the basis of cost plus an allocated portion of profit. Nevertheless, the Department's preference in the LPTs investigation was for an actual contract price.

Contrary to Komatsu's assertions about the role of internal orders to the plant, the Department did not rely on these documents for purposes of determining individual MTP prices. However, the Department did use internal orders to the plant in order to break down line item prices for certain movement charges and specification changes contained in the purchase orders related to one particular sale. In fact, the Department relied on sales contracts and purchase orders to determine individual MTP prices.

In this investigation, separate contract prices exist for the MTPs in three of the four package sales. Moreover, Komatsu did not provide sufficient support for its argument that the contract prices were not commercially or economically meaningful to its customers. In fact, many of the sales documents that Komatsu submitted specifically indicate that the individual prices for each piece of equipment and service were important to the customer. For instance, for two of the sales, one of which was a package sale, the customers specifically required in their requests for quotation that suppliers quote separate, per unit prices for each machine in order to afford individual analysis.

Furthermore, contrary to Komatsu's arguments about its cancellation policy, according to express provisions in the terms and conditions sections in certain of its sales documentation, the buyers had the option of terminating part of the contract without having to renegotiate the terms and prices for the remainder of the merchandise covered by the contract. The Department found another indication that individual MTP prices existed and had commercial and/or economic significance by virtue of the fact that the terms and conditions sections of certain sales documents contained various state sales and use tax provisions. These provisions would apply depending on an individual MTP's ultimate state of destination.

In addition, the Department notes that petitioners' arguments regarding the customer's need to know individual press costs for corporate record-keeping, accounting, tax, and Customs duty purposes were uncontroverted by Komatsu. The Department finds petitioners' point reasonable that because the typical customer in this industry has to track its capital expenditures and depreciation expenses, it would require a price for each piece of equipment purchased. Because Komatsu failed to demonstrate that the allocation formula it used to value its individual presses was ever used for either corporate record-keeping, accounting, tax, or Customs duty purposes, the Department had no reason to believe that the values resulting from Komatsu's proposed methodology were either commercially or economically meaningful.

Finally, while the Department considers the contract prices in this investigation to be reliable indicators of the value of the subject merchandise, the Department is mindful of Komatsu's point that prices can be "manipulated." Should the Department find, in the context of any administrative reviews of this case, that individual contract prices are not meaningful, it will reexamine this issue.

Comment 2: Aida contends that the Department should treat the sales of two MTPs as components of a single contract and should allocate the total contract price among the two presses in the package based on COM. Aida claims that the low gross profit found on one press in the preliminary determination was not due to underpricing, but was caused by the fact that actual production cost turned out to be higher than expected. As such, Aida should not be penalized with a dumping margin due to this unanticipated higher cost. Alternatively, the Department should combine these presses for purposes of margin calculation.

Petitioners maintain that the Department correctly calculated the margins of dumping on Aida's package sale and that Aida's claim should be rejected because it is untimely and unreasonable. Petitioners believe that Aida must accept the consequences of its business decisions. They point out that Aida priced two presses of different sizes separately and incurred different manufacturing costs to produce each press. Thus, the Department should perform its analysis for each of these presses based on the prices actually charged and the manufacturing costs incurred to produce each press.

DOC Position: We agree with petitioners. At verification, we observed that separate prices were actually charged for the presses at issue. As explained in the verification report, we verified these prices based on contractual documentation. It is the Department's preference to base its fair value analysis on line-item prices, rather than price allocations, whenever possible. *See, DOC Position* to *Comment 1.*

Comment 3: Petitioners argue that the prices charged for options (such as installation and supervision, spare parts and tooling) purchased along with the presses should not be included in the gross price of the MTP used as the starting price in the Department's analysis. They claim that the options provided by the respondents are not similar to the expense items generally encountered by the Department because in this case the customers pay clearly identifiable and segregable prices for these options. Petitioners cite *Certain Internal-Combustion, Industrial Forklift Trucks from Japan,* 53 FR 12552 (April 15, 1989) (Forklifts), to support their argument.

Specifically, petitioners argue that (1) the reported MTP prices should be reduced by the price of spare parts and tooling to arrive at a starting price for each MTP; and (2) Department precedents do not support deducting installation costs from price because they are neither charges nor a circumstance of sale.

Komatsu argues that the prices paid by customers for installation and installation supervision should be included as part of the MTP price in the Department's analysis. Komatsu maintains that these services should be treated as either charges or circumstances of sale adjustments because reassembly and installation are necessary upon delivery to the customer's facilities due to the large size of the presses. Komatsu maintains that costs for reassembly and installation are not costs of manufacturing, as they are incurred after the MTP has left the factory. Accordingly, these costs should be treated as an adjustment to price in order to make the comparison at the ex-factory level pursuant to the Act, and should be excluded from the constructed value calculation pursuant to 19 U.S.C. 1677(e)(1)(A). Furthermore, Komatsu states that not all customer contracts specify a clearly identifiable and segregable price for these services. Also, Komatsu contends that these services, with the exception of installation, are not optional because they can only be provided by Komatsu. Komatsu asserts that it does not sell these services apart from its press sales. With respect to spare parts, Komatsu argues that the Department should not include profit in the adjustment for spare parts because the furnishing of spare parts is actually a service provided with the sale and not a separate product. Any profit in the MTP package sale relates to the sale of

the MTP or other equipment, and not to the provision of spare parts.

Aida argues that the items petitioners seek to exclude from margin analysis have been included by the Department from the outset of the investigation. The Department required that installation supervision, spare parts and tooling dies included in a mechanical transfer press sale be treated as part of the sale of subject merchandise for purposes of both price and cost in the questionnaires. Furthermore, Aida notes that the petition itself mentions these items as possible parts of the total MTP price. Additionally, Aida states that it does not view these items as options. In none of Aida's sales did separate prices or price break-outs exist in the contractual documentation for either spare parts or installation supervision. With respect to one U.S. sale, die tooling was purchased by the customer with the press and was part of the delivered press. Aida maintains that the fact that the die tooling was covered by a separate purchase order does not separate it from the sale of the press.

DOC Position: For purposes of the final determination, we have determined that the prices charged for spare parts, tooling and other accessories associated with the basic machine which are separately identified in the contractual sales documentation should not be included in the gross price of the MTP used in our analysis. *See, DOC Position* to *Comment 1* regarding the significance of the individual prices in "package" deals.

First, with respect to spare parts, we have not included the price and/or cost of spare parts in the MTP price and/or constructed value where the price and/or cost of spare parts has been separately broken out from the price of the basic machine in the sales documentation because they are not subject to this investigation. The Department has determined that there is a separate sale of spare parts when the price has been broken out in the sales documents.

Where the price of spare parts has not been separately identified in the sales documentation, the Department has used, as best information available, the verified reported prices for MTPs inclusive of spare parts. For certain package sales made by Komatsu where the price and cost of the spare parts for each press in the package have not been separately identified, we have allocated the cost of the spare parts to the individual pieces of equipment in the package according to the cost of manufacture, as best information available pursuant to section 776(c) of the Act. *See, Large Power Transformers from France,* 49 FR 36888, 36893 (September 20, 1984); and *Forklifts.* (In these instances, we also included the cost of the spare parts in the constructed value.)

Second, we have determined that certain accessories associated with the basic machine, such as die tooling, the load meter and load sensor, which are separately identified in the contractual documentation, are not an "integral part" of the press and are, therefore, outside the scope of this investigation. Where appropriate, therefore, we have segregated these elements of the sale from the verified price and cost of manufacture of the MTP, respectively, for purposes of our analysis.

With respect to installation and installation supervision, however, we have determined that these expenses should be treated as movement charges. Due to their large size, it is necessary to disassemble MTPs for shipment and delivery to the customer's facilities. Upon delivery to the customer's premises, the presses must be reassembled (installed) in order to function. Because disassembly and reassembly are necessary to deliver the merchandise, we have determined that installation and related supervision expenses are movement charges. Therefore, we have deducted the installation and installation supervision costs from the verified MTP prices when installation and/or supervision of installation were included in the contract price for the press.

Comment 4: Petitioners argue that the respondents should be required to capitalize interest expenses on the production of MTPs. Petitioners claim that MTPs meet the capitalized interest requirements of Financial Accounting Standards Board (FASB) #34, (*i.e.,* MTPs are discrete projects which are produced over a period of time, and the effect of capitalizing interest would be material). Petitioners cite *Offshore Platform Jackets and Piles from Japan,* 51 FR 11788 (April 7, 1986) in support of their argument.

Komatsu argues that interest expense should not be capitalized for the following reasons: (1) The classification of interest expense as either capitalized interest or general expenses is irrelevant because Komatsu's general expenses exceed the ten percent minimum required by the statute for CV; (2) the period of financing is relatively short because the production period is typically less than one year and the actual production costs occur late in the production cycle; and (3) according to Japanese Generally Accepted Accounting Principles (GAAP), interest is not capitalized on these products. Komatsu maintains that Japanese GAAP, not U.S. GAAP, should be used with respect to interest capitalization because the legislative history supports the use of GAAP in the home market for determining the cost of manufacturing (COM).

Aida argues that it does not capitalize interest on MTPs in its normal accounting records and that Japanese GAAP does not allow interest to be capitalized on these products. Furthermore, Aida argues that interest would not be capitalized on these products even if the Department applied U.S. GAAP because: (1) Capitalized interest must be an allocation of actual interest costs during the period, but Aida had a zero net interest expense; (2) even if there were interest expenses, the difference between expensing and capitalizing interest would be immaterial given that production takes less than one year; (3) presses are products which are routinely manufactured and, therefore, would not qualify for interest capitalization under FASB #34; and (4) capitalization of interest in constructed value is the exception, not the rule.

Moreover, Aida claims that MTPs are not the size of the products in the *Offshore Platform Jackets and Piles* case, no special financing is required, and the manufacturing process is not a long-term project. Therefore, Aida asserts that capitalized interest is not applicable to its cost of manufacturing.

DOC Position: The Department was guided by U.S. GAAP on this issue. In general, the Department adheres to GAAP in the country of manufacture when the Department is satisfied that such principles reasonably reflect the variable and fixed costs incurred by that company. However, in those cases where we found that foreign GAAP does not appropriately value all costs, we generally apply U.S. GAAP. We determined that Japanese GAAP did not adequately account for the cost of financing long-term production.

In terms of determining whether interest expenses had to be capitalized, pursuant to the criteria of FASB #34, we analyzed the financing costs of work-in-process inventory using company-specific interest rates and production periods to determine the materiality of these costs in relationship to the other manufacturing costs. For three of Komatsu's thirteen presses, the impact on financing costs of capitalizing interest as opposed to expensing it was material. Since these financing costs were necessary for the manufacturing process and could be identified with the production of specific presses, the

Department capitalized interest and considered it part of COM for these presses. Appropriate adjustments were made to general interest expenses to account for this capitalization. Interest was not capitalized for the other Komatsu MTPs or for those manufactured by Aida because the capitalized interest would not be material. Therefore, FASB #34 does not apply.

Comment 5: Komatsu argues that petitioners lack standing to file the petition underlying the antidumping proceeding, claiming, among other things, that Verson is not a producer of MTPs, and that the Department should investigate whether the petition was filed "on behalf of" the domestic industry. Komatsu contends that the Department should investigate Verson's status as an interested party because Verson has subcontracted some of its work for orders of large MTPs in the past, acting as an assembler rather than a producer. Furthermore, Komatsu contends that there is nothing in the statute, its legislative history, or the Department's regulations that requires petitioners or respondents to affirmatively demonstrate that the petitioners have or lack standing. Rather, it should be the responsibility of the Department to conduct an investigation to obtain the relevant information in order to ensure that the statutory requirements are met, especially in this case where there are relatively few domestic producers.

Petitioners maintain that they have standing for basic reasons: (1) Verson is an MTP producer; and (2) two of the petitioners are certified unions which are representative of the workers in the mechanical transfer press industry.

DOC Position: We agree with petitioners. The Department presumes that a petitioner has standing unless it is informed to the contrary. The Department has consistently taken the position that the "on behalf of" requirement does not mandate a petitioner to establish affirmatively that the majority of a particular industry supports the petition. *See, e.g., Frozen Concentrated Orange Juice from Brazil,* 52 FR 8324 (March 17, 1987); *Atlantic Groundfish from Canada,* 51 FR 1010 (January 9, 1986); *Stainless Steel Hollow Products from Sweden,* 52 FR 37810 (October 9, 1987). Rather, the Department accepts the petitioner's representation that it has filed "on behalf of" the domestic industry until it is positively established that a majority of the domestic industry opposes the petition. Thus, the onus is on the domestic industry opposing the investigation to demonstrate that the petitioner's standing is in jeopardy.

As stated in our final determination in the antidumping investigation *Certain Electrical Aluminum Redraw Rod from Venezuela,* 53 FR 24755 (June 30, 1988), "When a member or members of the domestic industry challenge the assertion of the petitioner that it has filed 'on behalf of' the domestic industry, the Department will examine the challenge." *See also, Offshore Platform Jackets and Piles from Korea,* 51 FR 11779 (April 7, 1986) (petition stands as long as no opposition from domestic industry). In this case, no member of the domestic industry has made such a challenge. Furthermore, while Komatsu originally raised the standing issue within the time period prescribed in 19 CFR 353.31, it failed at that time to provide supporting factual information for its allegation, as required by 19 CFR 353.31(c)(2). Therefore, because no member of the U.S. industry has challenged petitioners' standing and Komatsu has failed to substantiate its standing allegation with supporting factual documentation in a timely manner, the Department has no basis upon which to investigate this issue.

Comment 6: Petitioners assert that the Department should reject Komatsu's submissions of August 24 and 30, 1989, because they were unsolicited and the corrections contained therein amounted to a new questionnaire response. Petitioners further object to revisions to the response which were submitted at verification.

Komatsu argues that the Department's regulations permit submissions of factual information up until seven days before the scheduled date on which the verification is to commence. Komatsu maintains that the corrections submitted in its August 30, 1989 submission did not constitute a new questionnaire response and that the corrections submitted at verification were minor.

DOC Position: We agree with Komatsu. The Department's memorandum to the file dated August 22, 1989, outlines a telephone conversation with counsel for Komatsu during which we requested the information contained in Komatsu's August 24, 1989 submission. Also, in the Department's letter dated August 25, 1989, to counsel for Komatsu, we requested the revised data contained in Komatsu's submission of August 30, 1989. The corrections, while affecting many of the data fields, were not so extensive as to warrant rejection of the submissions. No new sales or methodologies used to calculate the reported data were submitted. The revised data contained in the August 30, 1989 response and that submitted at verification are appropriately characterized as corrections of clerical errors.

Comment 7: Petitioners contend that, with regard to the presses for which the prices were not verified, the Department should either apply the highest dumping margin listed in the petition as best information available or exclude these presses from our analysis.

DOC Position: We disagree. The Department normally does not verify the sales data for each reported transaction, either because of the number of transactions or the complexity of the sales involved. Instead, the Department normally selects a sample of transactions for review at verification. In this case, due to the complexity of the sales process, the number of specification changes throughout the production process, and the number of sales documents involved, we followed our usual practice of selecting only certain sales for verification. We reviewed the sales documentation for four of the reported sales to the United States, which covered nine of the thirteen reported presses sold during the POI.

Comment 8: Petitioners argue that averaging the prices and the cost of manufacturing for two presses that Komatsu sold to the United States, which were sold in a package along with other equipment and are alleged to be identical by Komatsu, is unreasonable because Komatsu has not demonstrated that the units are identical. Petitioners also argue that averaging the movement charges for these presses is unreasonable and that the Department should use press-specific charges.

Komatsu claims that these MTPs are identical. Komatsu explains that it averaged the data for these MTPs because it seemed the logical course given the fact that the presses were identical. Komatsu states that if the Department were to decide that use of averages is not appropriate, the Department could use the separate data for each press which was submitted with its June 26, 1989 response.

DOC Position: We used the individual contract prices, as described in our response to *Comment 1.* Because we have a preference for and have used the line-item contract prices in this case, we also used specific cost data for the individual presses, where available, in the calculation of constructed value, and specific movement charges.

Comment 9: Petitioners argue that the Department should not accept

Komatsu's adjustments for unidentified specification changes for two presses, which occurred after shipment of these MTPs.

Komatsu maintains that modifications that are based on oral agreements are often made before shipment and the formal documents are not prepared until later. Komatsu further maintains that the customer sometimes requests additional changes after shipment as part of the installation process.

DOC Position: We agree with Komatsu. It is the nature of these machines that specification changes can be and frequently are made throughout the entire production process and after delivery. During the installation of an MTP and after the MTP has begun to operate, the customer may determine that certain changes and/or additions must be made to the press in order for it to produce the optimum product. Therefore, any charge resulting from such changes has been included in the price.

Comment 10: Petitioners claim that the sales documentation for one Komatsu sale indicates that a "commission" to the customer was included in the price to the customer. Petitioners urge that this commission be treated as a discount. Further, petitioners argue that the formal purchase order from the customer indicates that Komatsu agreed to incur certain charges for shipping the merchandise from the Japanese port to the United States, including Customs duty charges, even though the reported delivery terms were FOB Japanese port.

Petitioners also state that prices which are listed on an internal notice of order acceptance do not coincide with those in the purchase order. Petitioners argue that the Department should use the lower prices in its analysis. Petitioners further point out that in Komatsu's narrative history of the sale, it misquoted the contract.

Komatsu argues that the commission paid to the customer of this sale was treated as a discount, not as a commission. Komatsu further argues that the translation of the portion of the sales documentation regarding the Customs duty charges was an incorrect translation of the Japanese. Komatsu contends that the quoted section of the purchase order stated that Komatsu was to pay any excess of the actual charges over the estimated amounts. Komatsu states that, in the end, it did not have to pay any amounts for the charges because the amounts paid by the customer under the contract were sufficient.

DOC Position: We treated the commission to the customer as a discount in the preliminary determination, which is how it was reported by Komatsu. With regard to the alleged price discrepancies in the internal notices of acceptance and the purchase order, because we have decided to use contract prices, as described in the *DOC Position* to *Comment 1,* we used the prices listed in the formal purchase order for the MTPs in this package. We disagree with petitioners about the significance of the misquotation of a sales document price in the narrative description of the history of this sale. Because we are relying on the actual sales documents for purposes of our analysis, Komatsu's written description of them is not dispositive.

Comment 11: Petitioners argue that the Department should reject Komatsu's reported price for one MTP. Petitioners assert that Komatsu has not submitted complete sales documentation for this MTP and that the reported price for it includes merchandise not subject to this investigation.

Komatsu contends that all sales documentation was provided and that no document exists with a more detailed price breakdown for this sale.

DOC Position: We agree with petitioners that the sales documentation clearly indicates that merchandise which is not subject to this investigation is included in the reported price for one MTP. Komatsu had allocated this price based on the cost of manufacturing of the MTP plus equipment not subject to the investigation. At verification, we were unable to find any sales documentation which provided a separate price or cost breakdown for the MTP. However, we did find orders to the plant which broke down the total package price in the sales contract between the MTP with the attachments and a blanking press, which is not under investigation. As described in the *DOC Position* to *Comment 1,* we used the sales documentation to determine prices to the extent possible. Because we had neither an individual price for the MTP in this package sale, nor an individual cost of manufacturing with which we could allocate the total package price, the Department used, as best information available, the price breakdowns in the orders to the plant as the price for the MTP inclusive of the attachments that are not under investigation, pursuant to 19 CFR 353.37 (1989).

Comment 12: Petitioners argue that the Department should reject Komatsu's reported dates of sale for three of the MTPs sold to the United States because Komatsu and the customers continued to negotiate specification changes after those dates.

Komatsu contends that, for two of the MTPs, the Department should use the date of the initial agreement as the date of sale. With regard to the other MTP, Komatsu argues that the Department should base the date of sale on the date the internal order to the plant was issued. Komatsu argues that internal orders to the plant are sufficient evidence of the date of sale.

DOC Position: We agree with Komatsu. While the term "sale" is not defined in either the Act or the regulations, the Department has consistently found that a sale has occurred when all basic terms are agreed upon. *See, e.g., Certain Stainless Steel Butt-Weld Pipe and Tube Fittings from Japan,* 53 FR 3227 (February 4, 1988). In the case of large, custom-made merchandise, the Department's policy regarding date of sale has favored establishing date of sale at an earlier point in the sale transaction process than at a later point, as it might in the case of fungible-type commodities wich are offered for sale in the ordinary course of trade. *See, eg., Offshore Platform Jackets and Piles from Japan;* and *Large Power Transformers from Japan.* The Department's differential approach to the date of sale issue, depending on the type of merchandise involved, reflects its recognition of the commercial realities and issues that are unique to the construction and sale of products that constitute large capital equipment. Therefore, in this case, the Department found it appropriate to use the date that the initial order was made as the date of sale when, as here, this document represented the parties' agreement as to the basic terms of the sale. The Department also considered it appropriate to use an internal order to the plant to determine the date of sale when no documentation prior to the date of this document existed, as was the case with certain Komatsu transactions. In *Certain Forged Steel Crankshafts from the Federal Republic of Germany,* 52 FR 28179 (July 28, 1987), the Department detemined that, in the absence of a formal written confirmation of a sale, the date of sale could be based on the earliest written evidence of an agreement. Furthermore, given the industry involved and the inherent nature of the construction process of these large, custom-made machines, it is routine for minor specification changes to be made, as occurred in this case, during the production process and after delivery. The specification changes in this case were minor and did not significantly alter the basic terms of the sales contracts.

Comment 13: Petitioners argue that Komatsu understated the amounts of certain movement charges associated with its U.S. sales. Specifically, petitioners assert that a service charge that was charged to Komatsu by Komatsu's subsidiary which usually arranges for transportation services with unrelated subcontractors should be included in Komatsu's movement charges and deducted from the United States price. Since such data was not provided for each reported sale, petitioners argue that the Department should apply the highest percentage observed at verification to all foreign inland freight, loading and ocean freight deductions.

Komatsu argues that it would be inappropriate to make an adjustment for payments to a related company. Komatsu points out that, under U.S. GAAP, a parent and subsidiary are a single consolidated entity and the payments from a parent to its subsidiary do not constitute an expense to the consolidated company.

DOC Position: We agree with Komatsu. Because the party which arranged the transportation services is a wholly-owned subsidiary of Komatsu, we consider all charges made by the subsidiary to Komatsu to be intra-company transfers of funds. Therefore, we have only deducted the movement charges paid by the subsidiary to the unrelated transportation subcontractors.

Comment 14: Petitioners argue that the Department should make an adjustment for commissions which were paid by Komatsu to KAIC. Petitioners contend that evidence of these commissions appears on the orders to the plant for two MTPs. Petitioners also argue that what Komatsu reported as commission expenses for certain sales were either found not to be sales commissions or did not have sufficient specific supporting documentation and should not be accepted as commissions by the Department.

Komatsu argues that it paid a commission to KAIC on only one sale. In this instance, KAIC paid a commission to an unrelated company and that commission was reported in Komatsu's response. Komatsu also argues that it is not the Department's practice to make adjustments for commissions paid to related companies. Komatsu further argues that the reported commission expenses that the Department found at verification to be expenses for after-sales servicing and maintenance or expenses for services provided in arranging U.S. transportation of the MTPs to the end-user were necessary for the consummation of the sale. Therefore, a commission offset should be made for them to foreign market value. Komatsu argues that in *Large Power Transformers from Japan,* 48 FR 26498 (June 8, 1983), the Department considered a commission paid by Toshiba to Mitsui to be a selling expense for which an offset to the foreign market value was made.

DOC Position: With regard to the commission paid by Komatsu to KAIC, the Department found at verification that this was not actually the payment of a sales commission. We determined that the payment from Komatsu to KAIC was an intra-company transfer of funds that were used to pay an unrelated U.S. subcontractor for after-sales servicing and maintenance for two MTPs. Therefore, we did not perform a commission offset adjustment for this expense.

Further, the Department has determined that after-sales servicing and maintenance expenses and expenses for arranging transportation services are not similar to the situation regarding commissions in *Large Power Transformers from Japan.* In that case, Mitsui possessed the licenses necessary to consummate the sale. The sale could not have been made without the product being sold through Mitsui. In this case, however, the after-sales servicing and maintenance and expenses incurred for arranging transportation services were not necessary to consummate the sale of the MTPs. We find that these expenses are directly related to the sales under consideration and included them in our adjustment to FMV for differences in circumstances of sale, in accordance with 19 CFR 353.56(b) (1989).

In addition, we did not accept commissions for which no supporting documentation was provided at verification.

Comment 15: Petitioners argue that the Department should reject Komatsu's revised interest rate reported in its August 30, 1989 submission. In the calculation of its revised interest rate, Komatsu excluded foreign currency loans from banks, Tokkin Money Trust loans, and back-to-back purchasing agreements because it claimed that these were investment loans. Petitioners assert that Komatsu was unable to distinguish these loans from other borrowings. Petitioners state that money is a fungible commodity and that Komatsu used all of its short-term borrowings to finance its working capital requirements. Therefore, all of its borrowings should be used to calculate Komatsu's short-term borrowing rate.

Komatsu argues that the borrowings that were excluded from its revised interest rate calculation were used exclusively for investment purposes and not to finance its working capital requirements. Komatsu contends that the revised interest rate more accurately reflects the true cost of its short-term borrowings during the POI and that it should be used in the final determination.

DOC Position: We agree with petitioners. The foreign currency loans, Tokkin Money Trust loans, and back-to-back purchasing agreements that Komatsu excluded in the calculation of its revise short-term interest reported in its August 30, 1989 submission are classified as short-term loans in Komatsu's financial system. We accept petitioners, argument that money is a fungible commodity and that all short-term borrowings can be used to finance working capital requirements. In fact, at verification, Komatsu was unable to show how its foreign currency or overdraft loans were used. Therefore, the Department used all of Komatsu's short-term borrowings to calculate Komatsu's short-term borrowing rate.

Comment 16: Petitioners argue that KAIC's short-term interest rate reported in its June 26, 1989 submission and the revised rate presented at verification should be rejected, and, as best information available, the U.S. prime commercial rate be used. Petitioners explain that KAIC's reported interest rate is at odds with both the interest rates of the company's short-term loans, as reported in its audited financial statements, and with the U.S. commercial bank lending rates to prime borrowers during the POI. This latter rate ranged from 7.5 percent during January 1987 to 10.50 percent duing January 1989.

Komatsu argues that, at verification, the Department traced KAIC's reported loans to bank invoices and advices and that no discrepancies were found. Therefore, KAIC's reported interest should be used in the final determination.

DOC Position: We agree with respondent. We found no discrepancies with the data reviewed at verification. Therefore, the Department used Komatsu's revised interest rates presented at verification. The revision of this rate is appropriately categorized as the correction of a clerical error.

Comment 17: Petitioners argue that the credit period should begin at the time that shipment of the MTP from the plant has begun, not at the time when the MTP has already been delivered. Petitioners argue that once shipment has begun, Komatsu is incurring the cost of financing a completed product that is on its way to the customer. Petitioners further claim that merely because it may

take several weeks to complete shipment from the plant to the customer does not reduce the financing expenses incurred by Komatsu.

Komatsu argues that the Department should use the date that shipment was completed as date of shipment. Komatsu maintains that shipment cannot be considered made until all parts of the MTP have actually left the factory since, in any case, payment for the merchandise can not be claimed by Komatsu until the entire product has been shipped.

DOC Position: We agree with Komatsu. We found at verification that the shipping invoice from the common carrier to Komatsu's related company which arranges for shipment was not issued until the last day of the month of the ending date of shipment. This indicates that the date on which shipment of the last part of an MTP from the plant occurs is considered by the shipper and Komatsu to be the date of shipment for the MTP as a unit and the point at which the shipment is concluded.

Comment 18: Petitioners argue that, with regard to package sales, the Department should assign the earliest payments made for the package to the items in the package that are not subject to this investigation, not to the MTPs in the package.

Komatsu contends that the Department verified the payments by reviewing the documentation that was available and that no discrepancies were found. Komatsu states that (1) KAIC was not involved in the sale of two MTPs, and (2) the Department reviewed the payment documents associated with this sale. Therefore, the Department reviewed the payment documentation from the unrelated customer to Komatsu. Komatsu asserts that the reported dates of payment should be used in the final determination.

DOC Position: We agree with Komatsu. Upon review of the payment documentation, the Department has determined that payments received for a package sale cannot be attributed to any particular item in the package. Therefore, a payment made for the package was allocated to the MTPs according to the ratio of the payment amount to the total package price.

Comment 19: Petitioners allege that Komatsu's warranty claim methodology is unreasonable. They assert that Komatsu's warranty claim categories are too broad. Petitioners claim that instead of Komatsu basing its home market expense claim on such or similar merchandise, Komatsu's claim reflects all large- and medium-sized home market MTPs without regard to the design or size of the U.S. MTP sales under investigation. Petitioners claim that this methdology creates distortions. They further assert that Komatsu has failed to explain whether the warranty expenses incurred on Komatsu's U.S. transplant sales (sales to Japanese companies in the United States) were included in its home market or U.S. warranty expense claim. Thus, the Department should use the best information available to calculate Komatsu's warranty expense claims in the home market and the United States. As best information available, the Department should calculate one weighted-average warranty expense amount applicable to medium-sized presses and one weighted-average warranty expense amount applicable to large size presses, and factor in the respective expenses to the appropriate constructed values and U.S. sales values.

Komatsu argues that it is appropriate to calculate separate warranty expense rates for large- and medium-sized presses because the warranty services for them were generally provided through different organizational structures. In addition, Komatsu states that the warranty expense and sales figures used in the U.S. warranty calculation included expenses and sales for transplants and that the figures used in the home market warranty calculation do not. With regard to the warranty calculation methodology, Komatsu contends that the methodology matches the current warranty costs to the sales to which they relate and predicts the costs likely to be incurred in the future. Komatsu argues that a ratio derived by dividing current warranty costs by current sales would not provide an accurate prediction of the warranty expenses that are likely to be incurred in the future on the current sales. Komatsu contends that its methodology is the most reasonable and accurate method for predicting the warranty costs to be incurred on the sales during the period of investigation and that the reported warranty expenses should be used in the final determination.

DOC Position: We agree with Komatsu. Komatsu allocated warranty costs on the basis of total warranty costs incurred on MTPs sold during discrete periods in past years. In doing so, Komatsu estimated total warranty costs it anticipates may be claimed on the presses under investigation over the life of those MTPs. Since such costs may be incurred several years from now, we have determined that this methodology was reasonable and, accordingly, have used it in our final analysis.

Comment 20: Petitioners argue that Komatsu understated its U.S. advertising expense claim because, while Komatsu acknowledged that certain home market advertising expenses were actually incurred on behalf of U.S. transplant sales, Komatsu did not provide a breakdown of these expenses. Petitioners argue that, as best information available, the Department should base Komatsu's U.S. advertising expense claim on the total of its claimed U.S. advertising expenses and its home market advertising claim amount. With regard to KAIC's U.S. advertising expense claim, petitioners argue that the Department should adjust the advertising expense ratio using the total sales revenues reported in KAIC's audited financial statements.

Komatsu argues that KAIC's advertising expense relates to the sales made through the Detroit and Chicago offices. Komatsu asserts that it was, therefore, appropriate to assign a portion of KAIC's advertising expenses to the sales made through the Detroit office and to include the value of those sales in the denominator of the advertising expense rate calculation.

DOC Position: We agree with petitioners. Komatsu officials acknowledged at verification that many of the reported advertising expenses incurred in the home market for home market sales were also incurred for sales to Japanese transplant companies in the United States. Komatsu provided no breakdown as to which expenses were incurred on behalf of sales to the Japanese transplants. Therefore, the Department has based Komatsu's U.S. advertising expense claim on the total of its claimed U.S. and home market advertising expenses. Further, we adjusted KAIC's advertising expense ratio using the total sales revenue in KAIC's audited financial statements.

Comment 21: Petitioners claim that Komatsu is not entitled to a duty drawback adjustment under section 772(d)(1)(B) of the Act. Petitioners argue that because the constructed value of the U.S. merchandise does not include these duties, it would be inappropriate to add these duties to U.S. price.

DOC Position: The Department added the claimed duty drawback amounts to the U.S. price, in accordance with section 772(d)(1)(B) of the Act. Because these amounts were not included in the materials costs in the calculation of COM, the Department has added these uncollected duties to the CV.

Comment 22: Petitioners argue that the Department should reject Komatsu's U.S. import duty reduction claims that it made on one sale. Petitioners claim that

Komatsu has not demonstrated that it received, or will receive, U.S. import duty refunds on any of its units. Petitioners also argue that the amounts of the duty refund claimed by Komatsu are overstated, in that the refund claim covers machines not under investigation.

Komatsu argues that there is no reason to believe that it will not receive the claimed refunds. Komatsu further contends that the claimed duty refund amount for one MTP related only to that MTP. It did not include the refund attributable to other equipment in the same entry.

DOC Position: We agree with petitioners. We cannot take unliquidated claims into account. There is no guarantee that Komatsu will receive the reported U.S. import duty refunds. Komatsu did not demonstrate that similar claims have been granted, in the full amounts claimed, in the past. Therefore, the Department did not allow a reduction in the amount of duty paid for this one sale.

Comment 23: Petitioners argue that the Department should include bad debt expense in Komatsu's indirect selling expenses on its U.S. sales. Petitioners claim that bad debt expenses were included in indirect selling expenses for home market sales.

Komatsu argues that it excluded bad debt expenses in its response because it has never incurred bad debt expenses on sales of MTPs and it does not expect that it ever will. Moreover, Komatsu is required to obtain export proceed insurance on all of its export sales of all products to protect it against non-payment. Further, Komatsu contends that bad debt expenses were not included in indirect selling expenses for home market sales of MTPs. Komatsu argues that bad debt expenses should not be included in SG&A in the constructed value calculation because adjustments should only be made for expenses actually incurred. Provisions for bad debt do not constitute actual expenses.

DOC Position: A provision for bad debt expense is included in Komatsu's financial statements. Accordingly, the Department used home market indirect selling expenses, inclusive of bad debt expense, in the calculation of constructed value.

Comment 24: Komatsu argues that the Department should treat fixed warranty and technical service expenses as direct expenses. Komatsu cites *AOC International* v. *United States,* Slip Op. 89-127 (Sept. 11, 1989), where the Court of International Trade found that, in order to qualify for a circumstance-of-sale adjustment under the regulations, it is only necessary for the circumstance to be directly related to the sales. The costs used to determine the amount of the adjustment do not need to be directly related to the sales.

DOC Position: We disagree with respondent. The Department has followed its normal policy and treated fixed warranty and technical service expenses as indirect selling expenses. The AOC decision is not yet final. Accordingly, the Department does not consider it binding precedent.

Comment 25: Petitioners argue that the weighted-average interest rate used in the calculation of credit expense should be used in the calculation of Komatsu's capitalized interest. Komatsu claims that the Department should use the average actual interest cost based on average asset value for the POI.

DOC Position: We disagree with both the petitioners and the respondent. We used the average of the annual short-term interest rates experienced during the POI that was reported in Komatsu's consolidated 1989 financial statements. We consider this rate to accurately reflect Komatsu's experience during the production periods.

Comment 26: Petitioners argue that the Department should reject Komatsu's differences in merchandise (difmer) adjustments and use CV as the basis for determining FMV. Petitioners claim that the difmers are substantial and that Komatsu made adjustments for differences in cost, not adjustments for differences in merchandise.

Komatsu argues that the Department erred in rejecting most of its difmer claims for the preliminary determination because the Department incorrectly based the 20 percent test for comparison purposes on the home market sales prices and not on the U.S. COM. Furthermore, Komatsu states that the difmers it reported are only for the differences in merchandise, not for differences in cost, and should be accepted for the final determination.

DOC Position: We agree with petitioners. The methodology used by Komatsu to account for difmers did not identify the costs specifically related to the different characteristics of the MTPs being compared. Komatsu netted all variable costs incurred to build the MTPs being compared, adjusting for certain cost differences arising from the different time periods during which the two presses being compared were being produced. Because the manufacturing costs were not associated with specific physical characteristics, there was no basis for determining if the adjusted net variable costs related only to the different physical characteristics or included other costs resulting from other production efficiencies and other timing differences. Furthermore, Komatsu's method of identifying identical parts may not have accounted for all identical characteristics of the MTPs being compared. Hence, a difmer adjustment may have been made for items which were ineligible for a difmer claim.

Moreover, MTPs are extremely complex pieces of equipment consisting of thousands of different components and requiring months to produce. Thus, even if the costs had been identified with the specific physical characteristics, thousands of adjustments would be required. In these circumstances, the Department determined that merchandise sold in the home market could not be reasonably be compared to merchandise sold in the United States and, hence, could not be considered similar within the meaning of section 771(16)(c) of the Act.

Comment 27: Petitioners argue that the "payment delay offset" should not be included in the calculation of capitalized interest for related party purchases. They contend that the grace period for payment allowed by related suppliers represents an interest-free, related party loan in which the related suppliers finance a portion of Komatsu's carrying costs. Therefore, this "payment delay offset" should not be deducted from interest expense.

DOC Position: We agree with petitioners. However, the portion of materials and services provided by related suppliers is relatively small. A disallowance of the "offset" would have an insignificant effect on the interest calculation and, consequently, an insignificant effect on CV. Therefore, no adjustment was made pursuant to 19 CFR 353.59 (1989).

Comment 29: Petitioners argue that the depreciation expense on idle equipment should be included in factory overhead as these expenses are part of the cost of maintaining all factory assets.

Komatsu argues that since it follows Japanese GAAP, it did not include non-operating depreciation expense in the COM or in general expenses. Komatsu also claims that including this expense would have had an insignificant effect on CV.

DOC Position: We agree with petitioners. The depreciation expense on idle equipment was classified as a non-operating expense on Komatsu's MOF reports. The depreciation was incurred on idle manufacturing equipment. Therefore, this depreciation is a manufacturing cost incurred in the course of doing business. Thus, the

Department included this expense in its CV calculations.

Comment 30: Petitioners argue that the costs of inventory items which are scrapped or disposed of due to obsolescence should be included in the cost of materials.

Komatsu argues that the losses on disposal of inventories are not related to the production of the MTPs under investigation and, therefore, should be excluded from CV.

DOC Position: We agree with the petitioners. Because the loss on disposal of inventories is a manufacturing cost, it was included in CV.

Comment 31: Petitioners argue that Komatsu's revised calculation of net interest expense should be rejected as it was submitted after the preliminary determination and verification. Petitioners also claim that it is not consistent with Department's normal practice of offsetting short-term interest income against long-term interest expense.

Komatsu argues that it is the Department's normal practice to offset total interest expense with short-term interest income. Accordingly, Komatsu submitted a revised interest expense calculation in its case brief.

DOC Position: We agree with Komatsu. Short-term interest income related to operations may be used as an offset to total interest expense. Komatsu did not submit any new information after verification, only a revised interest calculation based on data which was in its original submission. All components of interest income and interest expense were reviewed during verification.

Comment 32: Petitioners argue that Komatsu has understated its reported home market profit by including the profit earned on the sale of *all* presses in the home market, not just MTPs. The petitioners claim that each type of press has a different cost and profit structure and the profits of the other types of presses should not be aggregated with those of the MTPs.

Komatsu argues that, for purposes of calculating profit, the "general class or kind" is "all presses" as reported in its response. Komatsu notes that no matter how profit is calculated, whether from audited company-wide financial statements, parent-company Ministry of Finance reports, or internal management reports, the profit is less than eight percent. Therefore, the statutory minimum profit of eight percent should be applied.

DOC Position: Because all alternative methods of calculating profit result in profit percentages less than the statutory minimum, we do not need to make a decision relative to this issue. Therefore, we have used the statutory eight percent minimum in the CV calculations.

Comment 33: Aida disagrees with the methodology used by the Department in its preliminary determination which entailed making a credit expense adjustment for differences in circumstances of sale by adding imputed U.S. interest expense to general expenses and decreasing actual interest expense by a factor proportional to Aida's accounts receivable in calculating constructed value. Aida argues that this methodology was incorrect because (1) interest and other costs in constructed value are to be actual costs, not imputed costs, and (2) imputed interest is a circumstance of sale adjustment to be applied after constructed value is calculated. Aida maintains that the circumstance of sale adjustment for differences in credit terms should be made after constructed value is calculated, by deducting home market imputed credit and adding U.S. imputed credit.

Petitioners maintain that the methodology used by the Department in its preliminary determination was appropriate. Alternatively, if the Department accepts Aida's argument, petitioners argue that the home market credit expense claim should be based solely on sales of MTPs with the same tonnage capacity. The Department should not accept Aida's credit expense claim based on the weighted-average payment period for all of its home market MTP sales, as not all types of presses sold in the home market during the POI were sold in the United States market during the POI.

DOC Position: Section 773(e)(1)(b) of the Act states that constructed value shall include "an amount for general expenses and profit equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise under consideration which are made by producers in the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, * * * " Therefore, it is appropriate to include *home market* selling expenses, including credit, in constructed value. (*See, Tapered Roller Bearings from Japan,* 52 FR 30700 (August 17, 1987))

Although Aida has claimed no sales of merchandise in the home market during the POI which were similar to that sold to the U.S., it has claimed that it has sales to the U.S. of the same general class or kind. Accordingly, we have used home market credit costs in calculating constructed value and made a circumstance of sale adjustment for U.S. credit costs.

Moreover, in computing the home market credit expense, we have calculated an imputed value based on the terms of those home market sales. At the same time, actual finance expenses of the company were reduced to avoid double counting. This imputation is necessary because once the constructed value has been calculated, a circumstance of sale adjustment is made to account for differing credit terms in the home and U.S. markets. Given that the circumstance of sale adjustment is made on the basis of imputed home market and U.S. credit exenses, it would be inconsistent not to use the imputed home market credit expense in the constructed value.

Comment 34: Petitioners maintain that the Department should base its credit expense calculation solely on the payment dates and amounts of the MTP sale for one of Aida's U.S. sales, excluding tooling.

Aida maintains that the die tooling was sold and delivered with the press and, therefore, was properly included in the overall press price and cost of manufacture in accordance with the Department's instructions. Based on this fact, the Department should reject petitioners' argument with respect to the credit expense calculation for this U.S. sale.

DOC Position: We agree with petitioners. See *DOC Position* to *Comment 3* above.

Comment 35: Petitioners argue that Aida failed to report ocean freight and marine insurance charges on one U.S. sale in the currency in which the charges were incurred. Petitioners claim that Aida reported the ocean freight and marine insurance charges for this sale in yen. However, Aida U.S. was first invoiced for these charges in U.S. dollars. Due to exchange rate fluctuations that occurred from the date of sale to the time the charge was incurred, petitioners maintain that the ocean freight charge used by the Department in its preliminary determination was substantially understated. In order to be consistent with U.S. GAAP, petitioners argue that the Department should convert Aida's ocean freight and marine insurance charges: for this U.S. sale from yen to dollars based on the exchange rate in effect on the date Aida incurred the ocean freight charge.

Aida maintains that it was invoiced for ocean freight and marine insurance charges in yen, paid these charges in yen, and correctly reported these charges in yen. Aida refutes petitioners, argument that the yen cost incurred by

Aida should be converted to U.S. dollars at the exchange rate used on the bill of lading by citing 19 CFR 353.60 (1989). Aida points out that the regulations require that all conversions of foreign currency into U.S. currency be made at the rate in effect on the date of sale.

DOC Position: We agree with Aida. Our review of the subject invoices at verification showed that the charges were incurred in yen. Furthermore, pursuant to section 773(a)(l) of the Act and 19 CFR 353.60 (1989), the Department is directed to convert foreign currency into U.S. currency at the exchange rate in effect on the date of sale.

Comment 36: Petitioners maintain that Aida's reported price for one U.S. sale is overstated. Because the load meter will be used commonly among the five different presses in the package, petitioners argue that the Department should allocate the price of the load meter based on the manufacturing costs of each of the five presses.

Aida contends that the price and cost of the load meter were properly assigned to that particular press for the reasons set forth in its July 24, 1989 response. Furthermore, Aida's treatment of the load meter in its sales and constructed value submissions was consistent with the treatment of the load meter in its financial and cost accounting documents (*i.e.*, the price and cost of the load meter was included in the amounts recorded in Aida's accounting system and cost accounting for that particular press, respectively).

DOC Position: In this case we have determined that the load meter assigned to this sale is not within the scope of the investigation because it is an accessory, and not an "integral" part of the basic machine. Furthermore, the load meter has an identifiable and segregable price. See also *DOC Position* to *Comment 3* above. Therefore, we have not included the price or manufacturing cost for this item in either the MTP price or COM.

Comment 37: Petitioners argue that the Department should deduct Aida's advertising expenses directed to the end-user from the U.S. price. Petitioners contend that Aida U.S. was reimbursed by Aida for certain operating expenses incurred on behalf of Aida, including advertising. Furthermore, they maintain that because Aida did not provide the precise amount of advertising expenses associated with its three U.S. sales to trading companies, the Department should deduct the total reimbursement amount for certain operating expenses that Aida U.S. reported in its audited financial statements from the purchase price.

Aida maintains that the advertising expenses incurred by Aida U.S. were incurred for advertising directed to end-users in the U.S. for sales (including various products not under investigation) by Aida U.S. to U.S. end-users. Aida states that the sales to the trading companies were negotiated and concluded by the parent company in Japan. Therefore, the expenses of advertising in the U.S. were completely unrelated to the sales of the trading companies. Aida points out that an adjustment for advertising is not required for advertising directed to end-users. Aida states that it did not assume any advertisinq costs on behalf of a purchaser. Advertising was directed to end-users by Aida on Aida's behalf. The trading companies who purchased presses for resale to end-users were not dealers or merchandisers of Aida presses, and none of the advertising was made in order to assist them in making sales of Aida products.

DOC Position: We agree with Aida. At verification, Aida explained that, with respect to product specifications on which advertising is focused, negotiations occurred between the end-user and Aida, not between the trading company and Aida. We found no evidence to the contrary during our review of the sales documentation. Therefore, pursuant to 19 CFR 353.56(a)(2) (1989), Aida appropriately claimed these advertising expenses as indirect selling expenses. Futhermore, advertising expenses are not deducted from U.S. price for purchase price transactions.

Comment 38: Petitioners argue that the Department should deduct as a direct expense from Aida's reported U.S. sales price an amount equal to the ratio of the product liability insurance premium to the total insured value of Aida's U.S. gross price in the final determination.

Aida maintains that its single product liability insurance policy covers all sales without regard to product or market. As such, the amount of premium cost was properly allocated as a general and administrative expense. Furthermore, Aida argues that even if the premium were to be directly allocated, the appropriate method of allocation is to divide the annual premium by Aida's total annual sales or cost of manufacture.

DOC Position: We verified that the product liability insurance policy covered all sales of Aida presses on a worldwide basis. The policy was not solely and directly applicable to MTPs. Therefore, we have treated product liability insurance premiums as indirect selling expenses since these are fixed expenses and are not incurred with each sale made. We saw no evidence of reserves for settlements or litigation fees concerning the subject merchandise during the POI. *See, Antifriction Bearings (Other Than Tapered Roller Bearings) from the FRG,* 54 FR 18992, 19065 (May 3, 1989); and *Forklifts.*

Comment 39: Petitioners contend that Aida failed to explain the transaction process for sales to trading companies. Specifically, Aida did not explain whether it invoiced the end-user or the trading company, nor did it provide the Department with the invoice amount from Aida to the trading company. Petitioners argue that the Department should deduct a portion of sales value from the gross price as best information available because Aida failed to provide commission amounts usually paid to trading companies in conjunction with three of its sales.

Aida maintains that it has provided the Department with all requested information concerning the sales made through trading companies in its responses and at verification. As reported in its responses and confirmed at verification, the sales were made by Aida to the trading companies, and Aida invoiced the trading companies for the presses. With respect to petitioners, arguments concerning commissions, Aida states that it paid commissions only on the sale of one U.S. press. No commissions were paid on the sales made to trading companies.

DOC Position: We agree with Aida. Both in its responses and at verification, Aida explained the transaction process for the sales made through trading companies. Invoices to the trading companies and payment documentation were examined at verification. Trading companies became involved only after negotiations were already in progress. We found no evidence of commissions for these sales at verification.

Comment 40: Petitioners maintain that the Department should follow the methodology for treating indirect selling expenses used in the preliminary determination for two of Aida's U.S. sales; however, for a third U.S. sale it should include U.S. indirect selling expenses in constructed value. With respect to this third sale, petitioners contend that U.S. indirect selling expenses reported in Aida Engineering, Inc.'s audited financial statements should be used as a percentage of sales value during 1988 and 1989.

Aida argues that the Department should use Aida's verified home market indirect selling expenses in calculating general expenses for the final determination in accordance with

section 773(e)(1)(B) of the Act, as amended. Aida states that U.S. indirect selling expenses are relevant only in analyzing ESP transactions, not purchase price transactions as in the case of Aida's four U.S. sales.

DOC Position: We agree with respondent. Based on Departmental practice, home market selling expenses are appropriate for use in constructed value. See *DOC Position* to *Comment 33* above. Though Aida has claimed no sales of "similar" merchandise in the home market during the POI, it has claimed sales of the same general class or kind. Therefore, in accordance with section 773(e)(1)(b) of the Act, we have used Aida's home market indirect selling expenses in constructed value for purposes of the final determination.

Comment 41: Petitioners argue that Aida should be required to calculate profit on MTPs of similar tonnage rather than on all MTPs for CV.

Aida argues that profit was correctly calculated on the basis of home market sales of the general class or kind of merchandise subject to investigation. Aida notes that the profit on similar tonnage MTPs was also less than eight percent. Therefore, the statutory minimum should be used.

DOC Position: At verification, the Department reviewed the profit earned on similar-sized MTPs and on all MTPs sold in the home market. In all cases the profit earned on sales was less than the statutory minimum of eight percent. Therefore, we used the statutory minimum in the CV calculations.

Comment 42: Petitioners argue that certain processing costs accumulated by Aida in a separate job order for a package sale should be allocated to each piece of equipment in the package based upon the COM of each press or piece of equipment.

Aida argues that although it had no records of the actual time spent on each piece of equipment, the work report indicates that work was performed on all of the machines. Therefore, the aggregate costs in the separate job order should be allocated equally to all of the equipment. Aida states that although there are a greater number of descriptive work entries related to the MTPs rather than to the other equipment, these entries do not indicate the amount of time and effort involved in these processing costs.

DOC Position: We agree with petitioners. Aida could not specifically identify the costs incurred for each specific press or piece of equipment. However, we reviewed the work report related to these costs at verification and it appeared that a greater amount of work was performed on the more expensive pieces of equipment. Therefore, we allocated these miscellaneous costs based on the COM of each press or piece of equipment in the package.

Comment 43: Petitioners argue that the Department should value Aida's related party purchases at the transfer price if they resulted in profitable transactions, or at the fully absorbed cost of production if the transfer price was less than the subsidiary's cost of production.

Aida argues that the parts which were purchased exclusively from its wholly-owned subsidiaries, and produced and sold by its subsidiaries exclusively to Aida should be valued at actual cost because no reference market prices exist. Aida maintains that the wholly-owned subsidiaries function as divisions of Aida, not as separate entities.

DOC Position: For CV, pursuant to section 773(e)(2) of the Act, the Department uses transfer prices between related companies unless such prices do not fairly reflect market prices in the market under consideration."

However, we were unable to test transfer prices against market prices because Aida and the industry are characterized by: (a) Fully integrated producers, and (b) custom-designed products of varying size requiring exact specifications. Although the wholly-owned subsidiaries are separate legal entities, Aida performs all of the administrative functions for these operations. At verification we observed that the subsidiaries produce these parts only pursuant to orders from Aida, and sell exclusively to Aida. Therefore, the market for MTP components was non-existent, and credible market prices could not be obtained.

Therefore, lacking arm's length prices and having observed that certain purchases were made at transfer prices below the cost of production (COP), we used the COP as representative of fair market prices in the market under consideration in determining the cost of materials obtained from related suppliers.

Comment 44: Petitioners argue that the Department should include in CV the scrap costs charged by Aida to an account titled "Loss on Sale of Inventories and Write-down of Inventories." Furthermore, these scrap costs should be allocated based on the COM.

Aida claims that no project-specific costs on the U.S. presses sold to the U.S. were transferred to the "Loss on Sale of Inventories and Write-down of Inventories" account and, therefore, no allocation should be made to these presses.

DOC Position: We agree with petitioners. Aida does not attribute the scrapped parts charged to "Loss on Sale of Inventories and Write-down of Inventories" to any particular press or equipment. However, scrapped parts are a manufacturing cost of doing business. Therefore, we have allocated these costs over all production based upon COM.

Comment 45: Petitioners argue that the Department should not offset Aida's interest expense with interest income because the claim was untimely and the interest income includes interest other than that earned on short-term investments.

DOC Position: We disagree. Aida's interest offset claim was made in its July 26, 1989 submission, and we verified that the offset included only interest income related to production operations. Therefore, we have offset its interest expense with interest income.

Continuation of Suspension of Liquidation

We are directing the U.S. Customs Service to continue to suspend liquidation, under section 733(d) of the Act, of all entries of MTPs from Japan, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register.** The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the subject merchandise from Japan exceeds the United States price as shown below. This suspension of liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/Producer/Exporter	Weighted-average margin percentage
Komatsu Ltd.	15.16
Aida Engineering, Ltd.	7.49
All others	14.51

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, pursuant to section 735(c)(1) of the Act, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business

proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If the ITC determines that material injury, or threat of material injury, does not exist with respect to MTPs, the proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on TPs from Japan entered, or withdrawn from warehouse, for consumption, on or after the effective date of the suspension of liquidation, equal to the amount by which the foreign market value exceeds the U.S. price.

This determination is published pursuant to section 735(d) of the Act (19 USC 1673d(d)).

Dated: December 22, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-88 Filed 1-3-90; 8:45 am]

BILLING CODE 3510-DS-M

[A-437-601]

Preliminary Results of Antidumping Duty Administrative Review; Tapered Roller Bearings from the Republic of Hungary

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In response to requests by both petitioner, The Timken Company, and an importer, Marsuda-Rogers International, the Department of Commerce is conducting an administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished (TRBs), from the Republic of Hungary (Hungary). This review covers one manufacturer/exporter of this merchandise to the United States, and the period from February 6, 1987 through May 31, 1988. We preliminarily determine the dumping margin to be 48.16 percent. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 4, 1990.

FOR FURTHER INFORMATION CONTACT: Kimberly Hardin or Mary S. Clapp, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-8371 or 377-3965, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 19, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 23319) an antidumping duty order on TRBs from Hungary. The petitioner, The Timken Company, and an importer, Marsuda-Rogers International, requested that we conduct an administrative review in accordance with 19 CFR 353.53a(a) (1988). We published a notice of initiation of the antidumping duty administrative review on July 28, 1988 (53 FR 28424). The Department is now conducting the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule ("HTS"), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item numbers.

Imports covered by the review are shipments of TRBs from Hungary, in accordance with the scope determination made in the antidumping duty order (52 FR 23319). During the review period such merchandise was classifiable under items 680.30, 680.39, 681.10, and 692.32 of the Tariff Schedules of the United States. This merchandise is currently classifiable under HTS item numbers 848.22.00, 848.29.10, 848.29.93, 848.32.04, 848.33.04, and 848.39.02. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers one manufacturer/exporter of TRBs and the period from February 6, 1987 through May 31, 1988.

United States Price

In calculating United States price, the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the FOB Hamburg, West Germany port price to unrelated purchasers. We made deductions for foreign inland freight and brokerage and handling charges. We based the inland freight deductions on charges incurred in Portugal, provided by the American Embassy in Lisbon. Portugal has been selected as the surrogate country for the reasons explained below in the Foreign Market Value section of this notice. Deductions for brokerage and handling were based on the charges paid by the Hungarian producer, Magyar Gordulocsapagy Muvek (MGM), where claimed, in freely convertible currency to a West German freight forwarder. Where brokerage and handling were not claimed, as best information available, we used the same rate. As in the original investigation of TRBs from Hungary, we have used market-economy data where provided.

Foreign Market Value

We have concluded that Hungary is a state-controlled-economy country for purposes of this administrative review. Given that this review was initiated prior to the effective date of section 1316 of the Omnibus Trade and Competitiveness Act of 1988 ("1988 Act"), we applied the pre-1988 amendment provisions of section 773(c) of the Act to this administrative review. That provision required the Department to use either the prices or the constructed value of such or similar merchandise sold by a country or countries whose economy is not state-controlled as the basis of foreign market value. Furthermore, given that this review was initiated under the statutory provision in effect prior to the 1988 Act, we applied the regulations that implemented that provision, 19 CFR 353.8 (1988). That provision established a preference for determining foreign market value based upon sales prices in a non-state-controlled-economy country at a stage of economic development comparable to that of the state-controlled-economy country.

Of countries known to produce TRBs, we determined that Portugal, Mexico, Brazil, the Republic of Korea, and Yugoslavia were countries comparable to Hungary in stages of economic development. We did not send a questionnaire to Yugoslavia because of the antidumping duty order currently in effect on TRBs from Yugoslavia. We sent questionnaires to several companies in Brazil and the Republic of Korea, and to one company in Mexico, as was done in the investigation of sales at less than fair value. However, we received no responses. We did receive a response from petitioner's related company in Brazil. We did not use that

response in our analysis because it was determined that the relationship of the TRB producer to the petitioner might raise questions as to the propriety of the information submitted. *See Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings from Hungary,* 52 FR 17428 (1987).

Since we were unable to obtain verifiable prices or constructed value data from the potential surrogate companies in comparable economies, we used the factors of production valued in a comparable economy, as provided for in 19 CFR 353.8(c) (1988), as the basis for determining foreign market value. We calculated constructed value based on the factors of production reported by the Hungarian producer, except as described below. This producer accounts for all Hungarian exports to the United States of the subject merchandise.

Where possible, we valued the factors on the basis of prices paid by MGM to market-economy suppliers. Where market-economy prices were not provided, we obtained information for valuing the factors of production from publicly available sources in Portugal. We chose Portugal as the surrogate for purposes of valuation of the factors of production because, as in the original investigation, we were able to obtain more complete publicly available data from that country as opposed to the other surrogate countries.

The material costs for each component were calculated by multiplying the gross weight of steel by the steel unit price less the scrap value. The scrap factor was adjusted to reflect only that portion considered salable; thus, the portion considered waste is included in the cost of materials. The respondent had not identified waste and additionally miscalculated the cost of materials by adding the scrap value to the net value of steel.

We valued the factors of production as follows:

- Raw materials for certain TRB components were based on Portuguese export or import data, as appropriate. In the absence of market-economy prices to the respondent, we determined that these data were appropriate indications of prices in the surrogate country for purposes of valuing these raw materials.
- We valued steel scrap, skilled and unskilled labor, factory absence of market-economy prices to the respondent, we determined that these data were appropriate indications of prices in the surrogate country for purposes of valuing these raw materials.
- We valued steel scrap, skilled and unskilled labor, factory overhead, and inland freight using information supplied by the American Embassy in Lisbon.The information provided by the Embassy reflected the costs a producer of TRBs would incur in Portugal.
- We valued trained labor using Portuguese labor rate data obtained from the U.S. Bureau of Labor Statistics.The American Embassy in Lisbon was unable to provide us with a value for trained labor; therefore, we determined that the U.S. Bureau of Labor Statistics data was an appropriate value to use for trained labor.
- We used OECD Main Economic Indicators to adjust the values to account for inflation during the period of review. In the absence of data coinciding precisely with the review period, we determined that such adjustments would provide data representative of the period of review.
- Other raw material costs were based on the costs to the Hungarian producer for imports of certain steel products from market economies.The steel was purchased from a supplier in a market economy and paid for in freely convertible currency. As in the original investigation, we used market-economy values where provided.
- We used the statutory minimum of ten percent of the sum of material and fabrication costs for general expenses.
- We used the statutory minimum of eight percent of material and fabrication costs plus general expenses for profit.
- The value for packing was based on market-economy data contained in the public file of Antifriction Bearings and Parts Thereof (Other than Tapered Roller Bearings) from Romania (AFBs). The value for packing was adjusted to the period of review as described above. The packing value used in AFBs was based on the packing costs of an AFB producer located in Portugal.

Preliminary Results of the Review

As a result of our comparison of United States price with foreign market value, we preliminarily determine the margin for MGM to be:

Manufacturer/Exporter Magyar Gordulocsopagy Muvek
Time Period 2/6/87—5/31/88
Margin (Percent) 48.16

The Department will issue appraisement instructions concerning MGM directly to the Customs Service.

Furthermore, the cash deposit rate for MGM, or any other producer or exporter of Hungarian TRBs will be that established in the final results of this administrative review. This deposit requirement will be effective upon publication of our final results of this administrative review for all shipments of Hungarian TRBs entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided by section 751(a)(1) of the Tariff Act. This deposit requirement, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

In accordance with 19 CFR 353.38, case briefs or any other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than February 2, 1990, and rebuttal briefs no later than February 9, 1990. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Such hearing will be held at 10:00 a.m. in room 3708 on February 16, 1990, at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the reasons for attending; (3) a list of the issues to be discussed; and (4) the number of participants. In accordance with 19 CFR 353.38(b), an interested party may make an affirmative oral presentation only on arguments included in its briefs.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22 (1989).

Dated: December 26, 1989.

Francis J. Sailer,

Acting Asistant Secretary for Import Administration.

[FR Doc. 90-89 Filed 1-3-90; 8:45 am]
BILLING CODE 3510-DS-M

[C-469-004]

Stainless Steel Wire Rod From Spain; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On November 3, 1989, the Department of Commerce published the

preliminary results of its administrative review of the countervailing duty order on stainless steel wire rod from Spain. We have now completed that review and determine the net subsidy during the period January 1, 1988 through December 31, 1988 to be *de minimis*.

EFFECTIVE DATE: January 4, 1990.

FOR FURTHER INFORMATION CONTACT: Laurie Goldman or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On November 3, 1989, the Department of Commerce ("the Department") published in the **Federal Register** (54 FR 46442) the preliminary results of its administrative review of the countervailing duty order on stainless steel wire rod from Spain (48 FR 52; January 3, 1983). We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by this review are shipments of Spanish stainless steel wire rod, which includes coiled, semi-finished, hot rolled stainless steel products of approximately round solid cross section, not under 0.20 inch nor over 0.74 inch in diameter, whether or not tempered or treated or partly manufactured. During the review period, such merchandise was classifiable under item numbers 607.2600 and 607.4300 of the *Tariff Schedules of the United States Annotated*. This merchandise is currently classifiable under item numbers 7221.00.0020 and 7221.00.0040 of the *Harmonized Tariff Schedule* ("HTS"). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1988 through December 31, 1988 and five programs: (1) long-term loans; (2) operating capital loans; (3) capital grants; (4) regional incentives program; and (5) prefinancing of exports.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

Final Results of Review

As a result of our review, we determine the net subsidy to be 0.19 percent *ad valorem* for the period January 1, 1988 through December 31, 1988. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis*.

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all unliquidated entries of this merchandise exported on or after January 1, 1988 and on or before December 31, 1988.

The Department will also instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided for by section 751(a)(1) of the Tariff Act, on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: December 26, 1989.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-90 Filed 1-3-90; 8:45am]

BILLING CODE 3510-DS-M

DEPARTMENT OF DEFENSE

Office of the Secretary DoD Advisory Group on Electron Devices;

Advisory Committee Meeting

SUMMARY: Working Group C (Mainly Opto Electronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0830, Tuesday, 23 January 1990 and 0900, Wednesday, 24 January 1990.

ADDRESS: The meeting will be held at Building 305, in the Main Conference Room, Fort Belvoir, Virginia, on 23 January and at Palisades Institute for Research Services, 2011 Crystal Drive, Suite 307, Arlington, Virginia, on 24 January 1990.

FOR FURTHER INFORMATION CONTACT: Gerald Weiss, AGED Secretariat, 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging devices, infrared detectors and lasers. The review will include classified program details throughout.

In accordance with section 10(d) of Public Law No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: December 29, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-200 Filed 1-3-90; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Review of the B-2

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Review of the B-2 will meet in closed session on January 18, 1990 at Edwards Air Force Base, California; and January 19, 1990 at Pico Rivera, California.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will review the B-2 program with emphasis on the flight test program and reductions of program costs.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c) (1) (1982), and that accordingly these meetings will be closed to the public.

Dated: December 29, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90-201 Filed 1-3-90; 8:45 am]

BILLING CODE 3810-01-M

Engineers Corps, Department of the Army

Notice of Intent to Prepare an Environmental Impact Statement (EIS) for Training Activities by the Mississippi National Guard on DeSoto National Forest Lands

AGENCIES: Department of Army (lead agency), U.S. Forest Service (cooperating agency), Mississippi National Guard (cooperating agency.

SUMMARY: The action being considered by the U.S. Forest Service is the issuance of a Special Use permit for the continued occupancy and use of about 116,000 acres of the DeSoto National Forest by the National Guard and other military units. The use is for continued and expanded training activities of those units, including development of a task force tank maneuver area. The action being contemplated by the Department of Army is an exchange of about 16,000 acres of land near Pinon Canyon, Colorado for 32,000 acres of DeSoto National Forest, Mississippi. The exchange of the Pinon Canyon land to the U.S. Forest Service will allow more efficient protection and stewardship of land which contains important natural, archaeological, paleontological, and cultural sites. The Pinon Canyon land would become part of the Comanche National Grasslands. The relationship between the two actions is that the 32,000 acres of national forest lands that are being proposed for exchange are included in the 116,000 acres in the Special Use permit.

Alternatives

A. No Action (denial of the Special Use permit).

B. Issuance of a Special Use permit on 84,000 acres and interchange of about 32,000 acres of the DeSoto National Forest to the Department of Army in exchange for about 16,000 acres of Army lands near Pinon Canyon, Colorado.

C. Issuance of the Special Use permit with no change in current activities.

D. Issuance of the Special Use permit with added activities permitted including development of a tank task force maneuver area.

For the land exchange action, the No Action alternative would be retention and management by the Department of Army of the 16,000 acres of Pinon Canyon land near Fort Carson, Colorado. Another alternative is the exchange of Pinon Canyon lands for National Forest lands at other sites.

SCOPING: The agencies will conduct a scoping process to aid in determination of the significant environmental issues related to the proposed action. Public scoping meetings will be held in the vicinity of Hattiesburg, Mississippi and Fort Carson, Colorado. Specific dates, times, and places for the scoping meetings will be announced at a later date. Notification will be by means of letter, public announcement, and news releases.

Individuals, organizations, or governmental agencies are encouraged to participate in the scoping process. Public participation will be especially important in the environmental analysis by providing assistance in defining the scope of the analysis; identifying significant environmental and social issues to be considered in the analysis; providing useful information, such as published and unpublished data; personal knowledge of relevant issues; and recommendations for mitigation measures to lessen the impacts of the action. Those wishing to provide information or data relevant to the environmental or social impacts that should be addressed in the analysis can furnish it by writing to the points of contact listed below or by attending the scoping meetings.

A Draft Environmental Impact Statement is expected to be filed with the U.S. Environmental Protection Agency and be available for public review by August 1990.

FOR FURTHER INFORMATION:

Thomas M. Craven, Inland Environment Section, Planning Division, U.S. Army Engineer District, Mobile, P.O. Box 2288, Mobile, Alabama 36628–0001, (205) 690–2872

Kenneth Johnson, Forest Supervisor, National Forests in Mississippi, 100 W. Capitol Street, Suite 1141, Jackson, Mississippi 39269.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (IL&E).

[FR Doc. 90–199 Filed 1–3–90; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.003T]

Bilingual Education: Fellowship Program; Notice Inviting applications for new participation for fiscal year (FY) 1990

Purpose of Program: Provides financial assistance through approved institutions of higher education to full-time students pursuing a graduate degree in areas related to programs for limited English proficient persons.

Deadline for Transmittal of Applications: February 26, 1990.

Applications Available: January 5, 1990.

Available Funds: $2 million.

Estimated Range of Awards: $2,000–$15,000.

Estimated Average Size of Awards: $10,000.

Estimated Number of Awards: 200.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 85; and (b) The regulations for this program in 34 CFR parts 500 and 562.

Priority: The Secretary is particularly interested in applications that meet the following invitational priority: programs of study leading to a doctoral degree.

However, under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

For Applications or Information Contact: Ms. Joyce Brown, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., room 5086, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 732–1843.

Authority: 20 U.S.C. 3323.

Dated: December 27, 1989.

Rita Esquivel,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 90–101 Filed 1–3–90; 8:45 am]

BILLING CODE 4000-01-M

Meeting of the National Assessment Governing Board

AGENCY: National Assessment Governing Board, Education.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: January 18, 1990.

LOCATION: U.S. Department of Education, National Assessment Governing Board, Suite 7322, 1100 L

Street NW., Washington, DC, 20005-4013.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, U.S. Department of Education, Suite 7322, 1100 L Street NW. Telephone: (202) 375-6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions (GEPA) as amended by section 3403 of the General Education Provisions Improvement Act (NAEP Improvement Act), title 2111-C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297); (20 U.S.C. 1221e-1).

The Board is established to advise the Commissioner of the National Center for Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons. The Executive Committee of the National Assessment Governing Board will meet via teleconference in Washington, DC on January 18, 1990 from 11:00 a.m. (e.s.t.) until the completion of business. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations. The proposed agenda includes a review of the progress on goal setting and the future of NAEP.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, 1100 L Street NW., Washington, DC from 8:30 a.m. to 5:00 p.m., Monday through Friday.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 90-155 Filed 1-3-90; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award (Unsolicited Application)

AGENCY: Department of Energy (DOE), Albuquerque Operations Office.

ACTION: Notice of intent to award financial assistance based on unsolicited application from New Mexico State University.

SUMMARY: The Department of Energy (DOE), Albuquerque Operations Office, in accordance with 10 CFR 600.14(f), gives notice of its plans to award a cooperative agreement to New Mexico State University (NMSU), Las Cruces, New Mexico, for the development of an education research center devoted to the management of radioactive, hazardous, and solid waste. The research center will be operated by NMSU in cooperation with a consortium of New Mexico universities: NMSU, the University of New Mexico (UNM), New Mexico Institute of Mining and Technologies (NMIMT), and with active participation of Los Alamos National Laboratories (LANL), and Sandia National Laboratories (SNL). Although NMSU has proposed a five-year program, the award will only be for one year with the remaining four years decided upon during the first year.

The determination to make this award is based on the following information:

- A technical evaluation of the proposal was performed pursuant to 10 CFR 600.14 (d) and (e). It was determined that the proposed project was meritorious and that the probability of achieving the anticipated objectives was extremely high. The facilities and capabilities that will be made available are appropriate, and the qualifications of the key personnel are exceptional.
- New Mexico has an infrastructure that can support and provide benefits to the nation from education and research activities (NMSU, UNM, NMIMT, LANL, SNL, and the Waste Isolation Pilot Plant (WIPP) site) related to nuclear, hazardous, and solid waste management. A fiber optic communication network is already in place in New Mexico and a satellite video link is proposed.
- The proposal represents an innovative approach which would not be eligible for financial assistance under a recent, current, or planned solicitation, and, as determined by DOE a competitive solicitation would be inappropriate.

The total estimated cost of the project for this one-year award is $6.6 million, of which the anticipated cost to the Government is $5.4 million. NMSU's cost share is estimated at $1.2 million. The distribution and availability of funds is subject to budget limitations and results of research under the cooperative agreement, and may deviate from the above projection.

FOR FURTHER INFORMATION CONTACT: Susan L. Connor, U.S. Department of Energy, Albuquerque Operations Office, Contracts and Procurement Division, P.O. Box 5400, Albuquerque, NM 87115, Telephone: (505) 845-4345 or FTS 845-4345.

Issued in Albuquerque, NM December 22, 1989.

Ronald D. Hanson,

Acting Assistant Manager for Management and Administration.

[FR Doc. 90-207 Filed 1-3-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 89-74-NG]

Westcoast Resources Inc., Application to Amend and To Extend Blanket Authorization To Import Natural Gas from Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application for extension of blanket authorization to import natural gas from Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on October 26, 1989, of an application filed by Westcoast Resources, Inc. (Westcoast Resources) requesting that the blanket import authorization previously granted in DOE/ERA Opinion and Order 223 (Order 223) issued February 3, 1988 (ERA Docket No. 87-66-NG), for up to 200 Bcf over a two-year period, be extended for two additional years commencing February 5, 1990, and ending February 4, 1992, and be increased to up to 300 Bcf over said period. Order 223 amended Westcoast Resources' original blanket import authorization granted in DOE/ERA Opinion and Order No. 89 (Order 89) issued September 27, 1985 (ERA Docket No. 85-15-NG), by increasing the volume from 100 to up to 20 Bcf of Canadian natural gas and extended the applicant's authority for a two-year term expiring February 4, 1990.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., e.s.t., February 5, 1990.

ADDRESS: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4523

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: Westcoast Resources, a wholly-owned subsidiary of Westcoast Petroleum Ltd., which is in turn a wholly-owned subsidiary of Westcoast Energy Inc., a Canadian corporation, is registered in the State of Delaware. Westcoast Resources requests authority to continue to import Canadian gas either as an agent for U.S. purchasers contracting directly with Canadian gas suppliers or for resale in the U.S. Customers for the gas proposed to be imported include gas distributors, pipelines, electric utilities, and industrial and agricultural end-users.

Westcoast Resources states that the specific terms of each sale will be freely negotiated at arm's length as to price, term, volume, contract adjustment provisions, and other conditions. Westcoast Resources also states that it would continue to file quarterly reports giving details of the individual transactions. Quarterly reports filed with the Office of Fuels Programs under Order 223 indicate that Westcoast Resources has imported over 63 Bcf under the current authorization through September 30, 1989.

In support of its application Westcoast Resources asserts that the proposed extension for two years of the term of its existing blanket import and amending the amount of gas to be imported form 200 to 300 Bcf over the new two-year period is not inconsistent with the public interest. Westcoast Resources maintains that the extension and amendment of its existing blanket authorization will facilitate the continual importation of Canadian gas under competitive market-responsive prices and terms. The applicant also asserts that sales will take place only if the gas is marketable, competitively priced, and needed.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

NEPA Compliance

The DOE has determined that compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, can be accomplished by means of a categorical exclusion. On March 27, 1989, the DOE published in the **Federal Register** (54 FR 12474) a notice of amendments to its guidelines for compliance with NEPA. In that notice, the DOE added to its list of categorical exclusion the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the DOE's action is not a major Federal action under NEPA. Unless the DOE receives comments indicating that the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision of the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notice of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs, at the address listed above. They must be filed no later than 4:30 p.m., e.s.t., February 5, 1990.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice to all parties will be provided. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and response filed by parties pursuant to this notice, in accordance with 10 CFR Sec. 590.316.

A copy of Westcoast Resources' application is available for inspection and copying in the Office of Fuels Programs Docket Room 3F-056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on December 28, 1989.

Constance L. Buckley,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90-208 Filed 1-3-90; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of October 23 through October 27, 1989

During the week of October 23 through October 27, 1989, the decisions and orders summarized below were issued with respect to applications for

relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Petition for Special Redress

Wind Energy Development Corp., 10/25/89, KEG-0005

The DOE issued a Decision and Order denying a Petition for Special Redress filed by Wind Energy Development Corp. (WEDC) of Puerto Rico. WEDC had charged that the Puerto Rico Office of Energy (PROE) mismanaged funds entrusted to it as a result of the Commonwealth Oil & Refining Co. (CORCO) consent order. The CORCO consent order had outlined a plan for the use of $10 million remitted by CORCO to provide restitution to Puerto Rico consumers injured by CORCO's alleged regulatory violations. This plan, which was later modified with the approval of the Economic Regulatory Administration, included a program to provide loan guarantees for wind energy projects. While the original plan was in effect, WEDC submitted an unsolicited proposal to the PROE requesting financial support for a windmill demonstration project. WEDC's request was denied, and WEDC filed a Petition for Special Redress with the OHA, arguing that the PROE had unfairly denied it use of the CORC funds for its project and was generally mismanaging the fund. OHA determined, however, that the PROE had not acted improperly in turning down WEDC's request. OHA also failed to find conclusive evidence of mismanagement by the PROE. Accordingly, WEDC's Petition was denied.

Motion for Discovery

Kern Oil & Refining Company, Larry D. Delpit, 10/25/89, KRD-0520, KRD-0521

Kern Oil & Refining Company and Larry D. Delpit filed Motions for Discovery in connection with their Statements of Objections to a Proposed Remedial Order issued to them by the Economic Regulatory Administration. The Petitioners discovery Motions sought primarily information concerning (i) the ERA's legal contentions, (ii) the manner in which the ERA conducted the audit of Kern, including the source of the ERA's evidence against the firm, (iii) the ERA's contemporaneous construction of the applicable regulations, and (iv) the credibility of J. Buford Langston, whose affidavit the ERA has submitted in support of its case.

The DOE found that information pertaining to Langston's credibility was relevant, in view of an agreement by the ERA to forgive his regulatory violations in exchange for his testimony against other firms. The DOE concluded that the Petitioners should be permitted discovery of information bearing on the credibility of Langston. The DOE found that the remaining discovery requests primarily concerned legal issues for which discovery is usually inappropriate. These discovery requests were denied because they did not seek information that was relevant to any disputed factual issue in the case. Accordingly, the Motions for Discovery were granted in part.

Motion for Protective Order

Economic Regulatory Administration, 10/25/89, LRJ-0001

The DOE's Economic Regulatory Administration (ERA) filed a Motion for Protective Order in an enforcement proceeding involving Salomon Inc. (Salomon) (Case No. KRO-0720). In its Motion, the ERA requested that the DOE approve a Stipulation of Protective Order that was signed by the ERA, Salomon, and the ARCO Pipe Line Company (ARCO). Under the Stipulation, the ERA would provide Salomon with copies of two ARCO ledger sheets, subject to the provisions set forth in the Stipulation. The DOE reviewed the Stipulation and determined that it should be issued as a Protective Order. Accordingly, the ERA's Motion was granted.

Refund Applications

Atlantic Richfield Company/Metropolitan Edison Co., et al., 10/23/89, RF304-7664, et al.

The DOE issued a Decision and Order concerning three Applications for Refund filed in the Atlantic Richfield Company special refund proceeding. Each of the applicants adequately documented the volume of its ARCO purchases. The three applicants were public utilities that have each certified that they will notify the appropriate regulatory commission of the receipt of the refund and have also submitted plans explaining how they plan to pass on to their customers the benefits associated with the refunds. The refunds granted in this decision totalled $149,073, including $111,952 in principal and $37,121 in accrued interest.

Atlantic Richfield Company/Stanley Cook & Sons, Inc., et al., 10/24/89, RF304-7447, et al.

The DOE issued a Decision and Order approving 60 Applications for Refund filed in the Atlantic Richfield Company special refund proceeding. Fifty-seven of the applications were granted under the small claims injury presumption. The three remaining applications were filed by mid-level resellers that elected to limit their refund to 41% of the volumetric amount. The refunds granted in this decision totalled $148,624, including $37,011 in accrued interest.

Atlantic Richfield Company/Thomas E. Doyle ARCO, George M. Key ARCO, Inc., 10/24/89, RF304-7050, RF304-8790

The DOE issued a Decision and Order concerning Applications for Refund filed by Thomas E. Doyle and George M. Key in the Atlantic Richfield Company (ARCO) special refund proceeding. As partners for four months of the consent order period. Key and Doyle were each granted a refund based on 100% of the gallons they purchased as sole owners and 50% of the gallons they purchased as partners. In addition, Key was granted a refund for two other stations he owned during the consent order period. Key's allocable share of the consent order fund exceeded $5,000, but he elected to limit his request under the small claims injury presumption. In this Decision, Key was granted $6,658, including $1,658 in accrued interest and Doyle was granted $3,204, including $798 in interest.

Atlantic Richfield Company/Tony's ARCO Service, et al., 10/23/89, RF304-8421, et al.

The DOE issued a Decision and Order concerning 24 Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants documented the volume of their purchases and were end-users or resellers/retailers requesting refunds of $5,000 or less. Therefore, each applicant was presumed injured. The refunds granted in this decision totalled $51,086, including $12,722 in accrued interest.

Atlantic Richfield Company/United Wholesale Lumber Co., et al., 10/26/89, RF304-5401, et al.

The DOE issued a Decision and Order concerning 81 Applications for Refund in the Atlantic Richfield Company special refund proceeding. Seventy-six applicants were either end-users or resellers/retailers that applied for small claims. Four applicants were reseller/retailers that elected to limit their refunds to $5,000. The remaining applicant was a reseller that chose to limit its refund to 41 percent of its full volumetric share up to $50,000. In addition, each applicant documented the volume of its purchases from ARCO

and, therefore, was presumed to have been injured and entitled to a refund. The DOE concluded that the applicants should receive refunds totalling $147,689, representing $110,913 in principal and $36,776 in accrued interest.

Exxon Corporation/Alejandro Alvarez, et al., 10/27/89, RF307-5033, et al.

The DOE issued a Decision and Order concerning 18 Applications for Refund in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either end-user or a reseller whose allocable share is less than $5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $18,368 ($14,876 principal and $3,492 interest).

Exxon Corporation/Clintwood Exxon et al., 10/24/89, RF307-7603 et al.

The DOE issued a Decision and Order concerning 63 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either an end-user or a reseller whose allocable share is less than $5,000. The DOE determined that each applicant was eleigible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $53,566 ($43,378 principal and $10,188 interest).

Exxon Corporation/Cooper Oil Company, Inc., et al., 10/23/89, RF307-7667 et al.

The DOE issued a Decision and Order concerning five Applications for Refund filed in the Exxon Corporation special refund proceeding. Each firm purchased directly from Exxon and was a reseller of Exxon products. Each firm's allocable share exceeds $5,000. Instead of making an injury showing to receive its full allocable share, each applicant chose to accept the larger of $5,000 or 40 percent of its allocable share. The sum of the refunds granted in this Decision is $43,640 ($35,342 principal and $8,298 interest).

Exxon Corporation/Neal's Tire & Auto Service et al., 10/25/89, RF307-838 et al.

The DOE issued a Decision and Order concerning 11 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants was an indirect purchaser of Exxon products whose supplier, the direct purchaser of Exxon products, had not, or did not intend to, demonstrate injury in this proceeding. Each applicant was a reseller whose allocable share was less than $5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is $4,902 ($3,969 principal and $933 interest).

Exxon Corporation/Richard N. Wachel et al., 10/26/89, RF307-4428 et al.

The DOE issued a Decision and Order concerning 10 Applications for Refund filed in the Exxon Corporation special refund proceeding. The applicants, all of whom were resellers, purchased petroleum products directly from Exxon during the consent order period. The applicants disagreed with the gallonage information recorded in Exxon's records and submitted alternative gallonage figures which they requested that the OHA accept in lieu of Exxon's figures. The OHA agreed to accept the applicants' figures because they were taken from the applicants' actual records from the consent order period. The DOE determined that each applicant should receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision was $9,936, representing $8,047 in principal plus $1,889 in interest.

Gulf Oil Corporation/Banks Oil Company, 10/24/89, RF300-5329

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding. The application was approved using a presumption of injury. The total refund granted in this Decision, including both principal and interest, is $6,442.

Gulf Oil Corporation/E.E. Hensley & Son, Inc., Ray O. Smith, Inc., 10/25/89, RF300-7870, RF300-7876

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. The applicants operated as both resellers and consignees of Gulf refined petroleum products during the consent order period. The applications were approved using the applicable presumptions of injury for resellers and consignees. The sum of the refunds granted in this Decision, which includes principal and interest, is $13,594.

Gulf Oil Corporation/H.A. Mapes, Inc., 10/24/89, RF300-2654

The DOE issued a Decision and Order concerning an application for Refund submitted in the Gulf Oil Corporation special refund proceeding by H.A. Mapes, Inc. (Mapes), a consignee and reseller of Gulf petroleum products. The application was approved under the small claims and consignee presumptions of injury. The refund amount granted to Mapes in this Decision is $6,797.

Gulf Oil Corporation/Kentucky Utilities Company, Roy Widener Motor Lines, 10/23/89, RF300-7812, FR300-8025

The DOE issued a Decision and Order concerning two applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Both applications were approved using a presumption of injury. The sum of the refunds granted in this Decision, which includes principal and interest, is $9,487.

Gulf Oil Corporation/Malone Oil of Arkansas, Sangaree Oil Company, Inc., Petroleum Products, Inc., 10/24/89, RF300-7870, RF300-7876, RF300-7878

The DOE issued a Decision and Order concerning three Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each of the applicants was both a reseller and consignee of Gulf refined petroleum products. The applications were approved using the applicable presumptions of injury for resellers and consignees. The sum of the refunds granted in this Decision, which includes principal and interest, is $12,613.

Gulf Oil Corporation/Roberts Gulf Service, Roberts Gulf Service, 10/25/89, FR300-9557, RF300-9687

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. One was submitted by the current owner of Roberts Gulf Service (RF300-9557). The other was submitted by the owner of Roberts Gulf Service during the consent order period (RF300-9687). The DOE determined that the owner during the consent order period was entitled to a refund for Roberts Gulf Service. The total refund granted in this Decision is $3,761.

Gulf Oil Corporation/South Park Gulf, et al., 10/27/89, RF300-346, et al.

The DOE issued a Decision and Order concerning five applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by indirect purchasers of Gulf products. The applications were approved using a presumption of injury. The sum of the refunds granted is $10,067.

Gulf Oil Corporation/State Line Service, Fredericks Fuel & Heating Service, 10/25/89, RF300-3588, RF300-3589

The DOE issued a Decision and Order concerning two applications for Refund submitted in the Gulf Oil Corporation

special refund proceeding. Because the applicants are under common ownership and control, and because their combined allocable share exceeds $5,000, the DOE determined that it is appropriate to consolidate these applications when applying the presumptions of injury. The total refund granted in this Decision, inclusive of interest, is $6,797.

Gulf Oil Corporation/State of Maine, et al., 10/23/89, RF300-10511, et al.

The DOE issued a Decision and Order concerning four Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, including interest, is $144,796.

Gulf Oil Corporation/10-10 Truck Stop, et al., 10/25/89, RF300-371, et al.

The DOE issued a Decision and Order concerning four Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by indirect purchasers of Gulf products. The applications were approved using a presumption of injury. The sum of the refunds granted is $6,793.

Marathon Petroleum Company/ Research Fuels, Inc., 10/24/89, RF250-2695

The DOE issued a Decision and Order concerning the Application for Refund filed by Research Fuels, Inc. (RFI). In its application, RFI requested a refund based on an alleged allocation violation, i.e., that during the period March 1, 1979 through January 27, 1981, Marathon wrongfully failed to supply RFI with motor gasoline. In considering the application, the DOE found that Marathon and RFI had a supplier/ purchaser relationship during the relevant base period. Nonetheless, the DOE found, Marathon had a number of defenses to any agency action based on the alleged allocation claim, i.e., (1) RFI's default on a note representing its indebtedness to Marathon for deliveries prior to the period of the alleged allocation violation, (ii) agency orders requiring Marathon to directly supply a downstream purchaser of RFI, and (iii) court orders either precluding RFI from accepting Marathon product or requiring Marathon to supply the disputed product to another firm. As a result, the DOE concluded that RFI had not demonstrated that its claim was non-spurious. Accordingly, RFI's application was denied.

Murphy Oil Corporation/Lunar Oil Company et al., 10/24/89, RF309-676 et al.

The DOE issued a Decision and Order granting 11 Applications for Refund filed in the Murphy Oil Corporation special refund proceeding. Each of the applicants purchased directly from Murphy and was either a reseller whose allocable share was less than $5,000 or an end-user of Murphy products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Murphy escrow account. The sum of the refunds granted in the Decision was $10,381 (comprised of $8,560 in principal and $1,821 in interest).

Murphy Oil Corporation/Yancey Oil Co., David Rinzema, 10/25/89, RF309-791, RF309-982

The DOE issued a Decision and Order granting two Applications for Refund filed in the Murphy Oil Corporation special refund proceeding. Each of the applicants purchased directly from Murphy and was either a reseller whose allocable share was less than $5,000 or an end-user of Murphy products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Murphy escrow account. The sum of the refunds granted in the Decision was $3,837 ($3,164 principal plus $673 interest).

Neward Boxboard Co.,10/25/89, RF272-14977

Newark Boxboard Co. requested a refund from crude oil monies available for disbursement by the Office of Hearings and Appeals in connection with a special refund proceeding under 10 C.F.R. Part 205, Subpart V. The volumes of boiler and residual oil involved in this Decision were estimated based upon sound engineering principles and the following formula: boiler firing rate, times hours in a year, times years in the consent order period, times capacity factor, equals fuel consumed by the boilers. The Decision granted a refund of $108,879 from the escrow account to the claimant.

Pendersen Oil, Inc./Irondale Grocer,10/ 24/89, RF318-2

The DOE issued a Decision and Order concerning an Application for Refund filed by Douglas T. Brown on behalf of Irondale Grocery in the Pedersen Oil, Inc., special refund proceeding. The Applicant is a gasoline retailer that applied for a refund of less than $5,000. The applicant is also an ERA-identified potential claimant who agreed to rely upon the information contained in the ERA audit files. Therefore, the claimant was presumed to have been injured and entitled to a refund. The DOE concluded that Mr. Brown should recived a refund of $1,195.90, representing $813.07 in principal and $382.83 in accrued interest.

Robertson County Highway Department, et al., 10/26/89, RF272-21065 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 20 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is $73,613. The applicants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Sauvage Gas Co./NGL Supply, Inc., Liquid Petroleum Corp., Vanguard Petroleum Corp., 10/25/89, RR308-1, RR308-2, RR308-3

The DOE's Office of Hearings and Appeals issued a decision concerning three similar Motions for Reconsideration filed by spot purchasers in the Sauvage Gas Company refund proceeding. The firms challenged the legal validity and consistency of OHA's application of the spot purchaser presumption. The movants argued that the spot purchaser presumption was: (1) arbitrary and capricious; (2) not supported by substantial evidence; (3) inconsistent with the equitable nature of the Subpart V Refund proceeding; (4) impermissibly vague; and, (5) violated the equal protection clause of the United States constitution. OHA considered and rejected these claims, and denied the motions.

Shell Oil Company/Bombaci's Fuel Co., Inc. et al., 10/27/89, RF315-6290 et al.

The DOE issued a Decision and Order granting 185 Applications for Refund filed in the Shell Oil Company special refund proceeding. Each of the applicants purchased directly from Shell and was either a reseller whose allocable share was less than $5,000 or an end-user of Shell products. Accordingly, each applicant was granted a refund equal to its full allocable share plus a proportionate share of the interest that has accrued on the Shell escrow account. The sum of the refunds granted in the Decision was 681,698,267 gallons of refined product and the sum of the refunds granted is

$185,305 ($154,061 principal plus $31,244 interest).

Shell Oil Co./Cappy's Azalea Park Shell, 10/27/89, RF315-7333

The Department of Energy issued a Supplemental Order granting an additional refund of $1,068 (consisting of $894 in principal plus $174 in accrued interest) to Cappy's Azalea Park Shell in the Shell Oil Company special refund proceeding. The applicant's original application contained gallonage listings for two service stations and in a previous determination, dated July 7, 1989, the DOE granted the applicant a refund on the gallonage purchased by one of the two stations. The present determination covers the second station's gallonage.

Shell Oil Co./Safeway Shell Tire/Auto, 10/25/89, RF315-7658

The Department of Energy issued a Supplemental Order rescinding a refund of $752 that had been granted to Safeway Shell Tire/Auto in the Shell Oil Company special refund proceeding on August 24, 1989. In a Supplemental Order dated October 5, 1989, the DOE ordered that the refund not be paid to Safeway. Because the refund check was nevertheless issued to Safeway, the present order directed the firm to return the funds to the DOE.

Total Petroleum/Leo's Petroleum Co., 10/24/89, RF310-136

The DOE issued a Decision and Order concerning an Application for Refund filed by Leo's Petroleum Company, a petroleum products reseller. Leo's sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Total Petroleum, Inc. Since Leo's refund claim was in excess of $5,000, the firm was required to support its refund claim with a demonstration that it was injured by Total's pricing practices during the consent order period. After evaluating the firm's injury documentation, the DOE granted Leo's a refund of $92,883 ($77,229 principal and $15,654 interest).

University of Iowa, et al., 10/27/89, RF272-24118, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to seventeen claimants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant demonstrated the volume of its claim either by consulting actual records or by using a reasonable estimate of its purchases. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. The sum of the refunds granted in this Decision is $120,438.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decision and Order:

Name	Case No.	Date	No. of Applicants	Total Refund
Alberring's Garage, Inc., *et al.*	RF272-51010	10/25/89	29	$73,693

DISMISSALS

[The Following Submissions Were Dismissed]

Name	Case No.
Acme Arco	RF304-7796.
Bert's Esso	RF307-22.
Carr's Shell	RF315-1334.
Charles M. Willis	RF272-28299.
City of San Angelo	RF272-75760.
Colvert Dairy Products Company.	RF272-74895.
Dekalb county Board of Education.	RF272-75756.
Ed & Marty Arco	RF304-8744.
Embody's Arco	RF304-3535.
Ernest Carpico	RF272-29547.
Hall Star Flite #14	RF309-1214.
Hall Starflite #14	RF314-66.
Joe's Winsome Arco	RF304-7793.
John Jezowski, Inc	RF304-10089.
Jonathan Terry	RF272-26866.
Reynolds Oil Company	RF300-6190.
Sangamon Shell	RF315-7399.
Serramonte Arco	RF304-7795.
Silver Arco	RF304-7794.
William Albert Hewgley	LFA-0003.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: December 28, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90-209 Filed 1-3-90; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-44545; FRL 3688-9]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on cumene (CAS No. 98-82-8), and hydroquinone (CAS No. 123-31-9) submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Data were also received on Malononitrile (CAS. No. 109-77-3) submitted pursuant to a testing consent order under TSCA. Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for cumene were submitted by the Chemical Manufacturers Association, on behalf of the test sponsors and pursuant to a test rule at 40 CFR 799.1285, on December 12, 1989. The submissions describe: (1) A 14-week vapor inhalation study in rats with neurotoxicity evaluation, (2) developmental toxicity studies of inhaled cumene vapor in rats and rabbits, (3) the disposition and pharmacokinetics of cumene in rats following oral, intravenous administration or nose-only inhalation, and (4) the biodegradation of cumene in an aquatic ecosystem. The

biodegradation study provided a mass balance and a determination of the mineralization and disappearance rates of cumene in an aquatic ecosystem. These tests are required by this test rule.

Test data for hydorquinone were submitted by the Chemical Manufacturers Association Hydroquinone Panel, pursuant to a test rule at 40 CFR 799.2200, on December 12, 1989. The submission describes a 2-generation reproduction study in rats with hydroquinone. Reproductive effects testing is required by this test rule.

Test data for malononitrile were submitted by Lonza Inc., pursuant to a testing consent order at 40 CFR 799.5000, on December 20, 1989. The submission describes a 90-day oral (gavage) subchronic toxicity study in the rat with a four week treatment free period. Subchronic toxicity testing is required by this consent order.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44545). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: December 28, 1989.

Charles M. Auer,

Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 90-190 Filed 1-3-90; 8:45 am]

BILLING CODE 6560-50-D

FEDERAL COMMUNICATIONS COMMISSION

Radio Advisory Committee To Hold Meeting Wednesday, January 31, 1990

December 27, 1989.

The Advisory Committee on Radio Broadcasting will hold a meeting on Wednesday, January 31, 1990, at 1:30 p.m., in the Vincent Wasilewski Room of the National Assocation of Broadcasters, 1771 N Street, NW., Washington, DC.

At the forthcoming January 31, 1990 session, the Committee will consider:

—Improvements to the AM Band;
—Expansion of the AM Band;
—Adjacent-channel interference standards for AM Stations;
—Cuban radio interference; and
—Other business relating to radio broadcasting.

The meetings of the Committee are public, and are open for participation by all interested persons. The meeting scheduled for January 31, 1990 may, if the participants so decide, be recessed for resumption at such other time and place as they may designate.

For further information, please contact the Committee Chairman, Larry D. Eads, at FCC Headquarters. His telephone number is (202) 632-6485.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 90-169 Filed 1-3-90; 8:45 am]

BILLING CODE 6712-01-M

Applications for Four New FM Stations; Juan Galiano et al

1. The Commission has before it the following mutually exclusive applications for 4 new FM stations:

I.

Applicant	File No.	MM Docket No.
A. Juan Galiano; Hormigueros, PR.	BPH-871028MA	89-541
B. Joseph Bahr; Hormigueros, PR.	BPH-871028MB	
C. Guillermo A. Bonnet; Hormigueros, PR.	BPH-871029MH	
D. Renacer Broadcasters Corporation; Hormigueros, PR.	BPH-871029MK	
E. Occidental Broadcasting Corporation; Hormigueros, PR.	BPH-871029MM	

Issue Heading and Applicants

1. Air Hazard, B
2. Comparative, A-E
3. Ultimate, A-E

II.

Applicant	File No.	MM Docket No.
A. Mid-Coast Radio, Inc.; San Luis Obispo, CA.	BPH-870921MA	89-538
B. U.S. Media Co.; San Luis Obispo, CA.	BPH-870922MB	
C. James and Claudia Harden; San Luis Obispo, CA.	BPH-870922MG	

II.—Continued

Applicant	File No.	MM Docket No.
D. San Luis Wireless, a California limited partnership; San Luis Obispo, CA.	BPH-870922MH	
E. Liss Ann Wayne; San Luis Obispo, CA.	BPH-870922MJ	
F. Clamshell Communications Corp.; San Luis Obispo, CA.	BPH-870922MN	
G. Coast Broadcasting, Inc.; San Luis Obispo, CA.	BPH-870922MO	
H. E. David Lee; San Luis Obispo, CA.	BPH-870922MP	
I. Nathan Broadcasting Corporation; San Luis Obispo, CA.	BPH-870922MQ	
J. Barker Communications, Ltd.; San Luis Obispo, CA.	BPH-870922MU	
K. Patricia J. Jacobsen d/b/a Peacock Broadcasting; San Luis Obispo, CA.	BPH-870922MF (Previously Dismissed)	

Issue Heading and Applicants

1. Environmental Impact, A,F
2. Air Hazard, D
3. Comparative, A-J
4. Ultimate, A-J

III.

Applicant	File No.	MM Docket No.
A. Burnett Broadcasting Ltd.; Mountaintop, PA.	BPH-871202MD	89-537
B. Northeast Pennsylvania Fine Music Broadcasting Company; Mountaintop, PA.	BPH-871202ME	
C. Mountaintop Radio, Inc.; Mountaintop, PA.	BPH-871203MG	
D. Felicia Ann Oliver; Mountaintop, PA.	BPH-871203MK	
E. Crystal Lake FM Limited Partnership; Mountaintop, PA.	BPH-871203NC	
F. Fairview Communications, Inc.; Mountaintop, PA.	BPH-871203NK	
G. Mountaintop FM, Limited; Mountaintop, PA.	BPH-871203NP	

Issue Heading and Applicants

1. See Appendix, E
2. See Appendix, E
3. See Appendix, E
4. Comparative, All

5. Ultimate, All

IV.

Applicant	File No.	MM Docket No.
A. Segue Communications Inc.; Darien, GA.	BPH-871221MD	89-546
B. Sunny Communications, Inc.; Darien, GA.	BPH-871222MA	
C. Andrew J. Guest d/b/a Altamaha Broadcasting; Darien, GA.	BPH-871223MO	
D. Intermart Broadcasting Golden Isles, Inc.; Darien, GA.	BPH-871223MP	
E. Fred Gladstone; Darien, GA.	BPH-871224MD	
F. Stewart Broadcasting, Inc.; Darien, GA.	BPH-871224MG	
G. Resort Communications Limited Partnership; Darien, GA.	BPH-871228MJ	
H. MMC Partnership; Darien, GA.	BPH-871228MK	
I. Darien Associates; Darien, GA.	BPH-871228MO	

Issue Heading Applicants

1. See Appendix, G
2. See Appendix, G
3. See Appendix, G
4. Financial Qualifications, H
5. Air Hazard, A,D
6. Comparative, A-I
7. Ultimate, A-I

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW, Washington, DC 20037. (Telephone (202) 857-3800.)

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix (Mountaintop, PA)

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party-in-interest to the application of E (Crystal Lake).

2. To determine whether E's (Crystal Lake's) organizational structure is a sham.

3. To determine, based on the evidence adduced pursuant to Issues 1 and 2 above, whether E (Crystal Lake) possesses the basic qualifications to be a Commission licensee.

Appendix (Darien, GA)

1. To determine whether Sonrise Management Services, Inc. is an undisclosed party-in-interest to the application of G (Resort).

2. To determine whether G's (Resort's) organizational structure is a sham.

3. To determine, from the evidence adduced pursuant to Issues 1 and 2 above, whether G (Resort) possesses the basic qualifications to be a licensee of the facilities sought herein.

[FR Doc. 90-170 Filed 1-3-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; U.S./South Europe Pool Agreement, et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 212-011234-003

Title: U.S.A./South Europe Pool Agreement.

Parties:

Compania Trasatlantica Espanola, S.A.
Costa Container Line (Contship Containerlines Limited)
Evergreen Marine Corporation (Taiwan) Ltd.
"Italia" di Navigazione, S.p.A.
Lykes Lines (Lykes Bros. Steamship Co., Inc.)
Nedlloyd Lines (Nedlloyd Lijnen B.V.)
Sea-Land Service, Inc.
P & O Containers (TFL) Ltd.
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed modification amends subsection (g) of Article 5.A.2 to provide that the members shall meet prior to the end of the second pool period (i.e., June 30, 1990), to consider whether cargo transported to or via French ports should be included in the pool. In addition, this modification establishes a new subsection (i) to Article 5.A.2, which adds a new exclusion from the pool for certain cargoes moving in refrigerated space.

Agreement No.: 213-011269

Title: Lykes/Afram Sailing Agreement.

Parties:

Lykes Bros. Steamship Co., Inc., Afram Lines (USA), Ltd.

Synopsis: The Agreement authorizes the parties to rationalize sailings in the trade between the U. S. Gulf Coast and the West Coast of Africa from the southern border of Morocco to the southern border of Agola, as well as the Cape Verde Islands and Ascension Island. The parties may consult and agree on the number of sailings for each party, the frequency of sailings, the ports to be served, and the port rotation of such sailings.

By Order of the Federal Maritime Commission.

Dated: December 28, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 90-100 Filed 1-3-90; 8:45 am]

BILLING CODE 6730-01-W

[Docket No. 89-28]

Deppe Linie GMBH & Co. d/b/a Deppe Line V. Total Tank Distribution Inc.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by Deppe Line GmbH & Co. ("Complainant") against Total Tank Distribution Inc. ("Respondent") was served December 28, 1989. Complainant alleges that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. app. 1709(a)(1), by failing to remit ocean freight charges lawfully assessed

pursuant to the applicable tariff notwithstanding demand for payment by Complainant.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by December 28, 1990, and the final decision of the Commission shall be issued by April 29, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 90-139 Filed 1-3-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has 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 notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 18, 1990.

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

1. First State Bank of St. Charles ESOP, T. Charles Bruere, Robert W. Fischer, Jean W. Droste, Wesley E. Hedges, and James M. Fitz, trustees, all of St. Charles, Missouri; to acquire 10.55 percent of the voting shares of First State Bancshares, Inc., St. Charles, Missouri, and thereby indirectly acquire First State Bank of St. Charles, Missouri, St. Charles, Missouri.

Board of Governors of the Federal Reserve System, December 28, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-147 Filed 1-3-90; 8:45 am]

BILLING CODE 6210-01-M

Omega Financial Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

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

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

Unless otherwise noted, comments regarding each of these applications must be received not later than January 26, 1990.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Omega Financial Corporation, State College, Pennsylvania; to acquire 9.9 percent of the voting shares of Mifflinburg Bancorp, Inc., Mifflinburg, Pennsylvania, and thereby indirectly acquire Mifflinburg Bank and Trust Company, Mifflinburg, Pennsylvania.

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

1. First Bancorp Investment Corporation, Ashland, Kentucky; to become a bank holding company by acquiring First American Bank, Ashland, Kentucky.

Board of Governors of the Federal Reserve System, December 28, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90148 Filed 1-3-90; 8: 45 am]

BILLING CODE 6210-01-M

PNC Financial Corp.; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) or (f) of the Board's Regulation Y (12 CFR 225.23(a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

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

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 24, 1990.

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

1. PNC Financial Corp, Pittsburgh, Pennsylvania; to acquire PNC Securities Corp., Pittsburgh, Pennsylvania, and thereby engage, as agent, in the private placement of all types of securities, including the provision of related advisory services, and to purchase and

sell all types of securities on the order of investors as a "riskless principal". *Bankers Trust New York Corporation* 75 Fed. Res. Bull. 829.

Applicant is currently authorized to underwrite and deal in certain securities and to provide investment advisory and securities brokerage services to retail and institutional customers. *PNC Financial Corp,* 73 Fed. Res. Bull. 742 (1987) and 75 Fed. Res. Bull. 396 (1989) (collectively, "*PNC Financial Corp*"), and 12 CFR 225.25(b)(16).

The Board has previously approved the proposed private placement and riskless principal activities. *J.P. Morgan & Company Incorporated,* 75 Fed. Res. Bull. _____ (Order dated November 22, 1989) ("*Morgan*"); *Bankers Trust New York Corporation,* 75 Fed. Res. Bull. 829 ("*Bankers Trust*").

Section 4(c)(8) of the Act provides that a bank holding company may engage in any activity which the Board has determined to be "so closely related to banking or managing or controlling banks as to be a proper incident thereto." A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that bank have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n* v. *Board of Governors,* 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. *Board Statement Regarding Regulation Y,* 49 Federal Register 806 (1984).

Applicant believes that the proposed activities are closely related to banking because banks have traditionally provided the proposed activities and have provided services that are operationally and functionally similar to the proposed activities. The Board has previously determined that the proposed activities are closely related to banking in *Morgan* and *Bankers Trust.*

In determining whether an activity meets the "proper incident to banking" test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices."

Applicant contends that the approval of the application be expected to enhance the ability of Company to meet the financing markets. Applicant also contends that the proposed activities, when consolidated with Company's other securities activities, would result in added convenience to its customers.

Applicant further asserts that Company's conduct of the proposed activities will not result in any significant adverse effects because of its commitment to abide by the limitations imposed in *Morgan* and *Banker Trust,* as well as the existing limitations set forth in *PNC Financial Corp.* In addition, any potential adverse effects are adequately addressed by the disclosure and antifraud provisions of the federal securities laws, the NASD Rules of Fair Practice, the anti-tying provisions of banking and antitrust laws, ERISA, and Sections 23A and 23B of the Federal Reserve Act.

Finally, Applicant contends that the proposed activities do not raise any issues under Section 20 of the Glass-Steagall Act (12 U.S.C. 377) in reliance upon the Board's ruling in *Morgan* and *Bankers Trust.*

Board of Governors of the Federal Reserve System, December 28, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-149 Filed 1-3-90; 8:45 am]

BILLING CODE 6210-01-M

Sanwa Bank, Ltd.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 18, 1990.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Sanwa Bank, Ltd., Tokyo, Japan, and The Long-Term Credit Bank of Japan, Ltd., Tokyo, Japan; to acquire Market Vision Corporation, New York, New York, and thereby engage in providing to others data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation or operating personnel), data bases, or access to such services, facilities, or data bases by any technological means, if (i) the data to be processed or furnished are financial, banking or economic, and the services are provided pursuant to a written agreement so describing and limiting the services; (ii) the facilities are designed, marketed, and operated for the processing and transmission of financial, banking, or economic data; and (iii) the hardware provided in connection therewith is offered only in conjunction with software designed and marketed for the processing and transmission of financial, banking, or economic data, and where the general purpose hardware does not constitute more than 30 percent of the cost of any packaged offering pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 28, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-150 Filed 1-3-90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons completing certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 121189 AND 122289

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Compagnie du Midi, Anglo Group p.l.c., Farmers Group Inc	89-2805	12/11/89
Philip D. Gunn, The Prudential Insurance Co. of America, Footland Corp., c/o FDI Holdings Inc	90-0442	12/11/89
Research Health Services, Lutheran Health Services, Inc., Lutheran Health Services, Inc	90-0449	12/11/89
The Laird Group PLC, Alex Gabay, Ain Plastics, Inc	90-0462	12/11/89
The Laird Group PLC, Norman Drucker, Ain Plastics, Inc	90-0463	12/11/89
Shorewood Packaging Corp., Quincy Packaging Group, L.P., Quincy Packaging Group, L.P	90-0477	12/11/89
Mr. Y.H. Chen, CIGNA Corp., CIGNA Corp	90-0481	12/11/89
Harunori Takahashi, Richard P. Morgenstern, Sheraton Americas Hotel	90-0509	12/11/89
Fleetwood Enterprises, Inc., Ronald O. Perelman, Coleman Recreational Vehicles, Inc	90-0529	12/11/89
Ernest M. Wuliger, The Ohio Mattress Holding Co., The Stearns & Foster Bedding Co	90-0537	12/11/89
Carl C. Brazell, Westinghouse Electric Corp., Radio Stations KODA-FM and KJQY-FM	90-0544	12/11/89
Summer Redstone, Carl C. Brazell, Jr., Regency Broadcasting Co. and KPKE Acquisition Corp	90-0556	12/11/89
Handleman Co., Melvin C. Greenwald, G.E.S.—The Interstate Group Inc	90-0562	12/11/89
Handleman Co., Richard M. Greenwald, G.E.S.—The Interstate Group Inc	90-0563	12/11/89
MNC Financial, Inc., Old Stone Corp., Academic Management Services, Inc	90-0569	12/11/89
Gordon P. Getty, Chiles-Alexander International, Inc., Chiles-Alexander International, Inc	90-0570	12/11/89
Mr. Sumner M. Redstone, Pacific FM Inc., Pacific FM Inc	90-0575	12/11/89
Aon Corp., Washington National Corp., Washington National Insurance Co	90-0584	12/11/89
Japan Leasing Corp., Alan R. Mishkin, Scottsdale Country Club Hotel Limited Partnership	90-0588	12/11/89
Charles F. Sarkis, Westwood Holdings, Inc., Westwood Holdings, Inc	90-0605	12/11/89
The Berkshire Fund, Westinghouse Electric Corp., Electric Materials Division	90-0615	12/11/89
Damson Energy Company, L.P., Barrie M. Damson, Crescent Natural Resources, Inc	90-0616	12/11/89
Barrie M. Damson, Damson Energy Co., L.P., Damson Energy Co., L.P., Damson Energy A, L.P	90-0617	12/11/89
Damson Institutional Energy Limited Partnership, Barrie M. Damson, Crescent Natural Resources, Inc	90-0618	12/11/89
Barrie M. Damson, Damson Institutional Energy Limited Parternship, Damson Institutional Energy Limited Partnership	90-0619	12/11/89
Damson Income Energy Limited Partnership, Barrie M. Damson, Crescent Natural Resources, Inc	90-0620	12/11/89
Barrie M. Damson, Damson Income Energy Limited Partnership, Damson Income Energy Limited Partnership	90-0621	12/11/89
CSK Corp., Silverado Resort, Inc., Silverado Resort, Inc	90-0633	12/11/89
American Telephone and Telegraph Co., Pacificorp, Hyster Credit Limited and PacifiCorp Credit, Inc	90-0637	12/11/89
AMAX Inc., Petrofina S.A., Brayton Land Co.; Grassy Cove Coal Mining Co.; Finacoal I	90-0650	12/11/89
Isao Okawa, Robert Meyer, Meyer Properties, Inc	90-0654	12/11/89
Eurocom S.A., The WCRS Group plc, WCRS Advertising Limited	90-0326	12/12/89
Sudbury, Inc., General Products Delaware Corp. (Joint-Venture), General Products Delaware Corp. (Joint Venture)	90-0350	12/12/89
Orkem S.A., The Black & Decker Corp., Bostik Inc	90-0399	12/12/89
Yasunaga Corp., General Products Delaware Corp. (Joint Venture), General Products Delaware Corp. (Joint Venture)	90-0405	12/12/89
RMB Anchor Media Investors, Ltd., Harold C. Crump, WCSC, Inc	90-0429	12/12/89
RMB Anchor Media Investors, Ltd., David S. Allen, WCSC, Inc	90-0430	12/12/89
International Business Machines Corp., Lockheed Corp., CADAM, Inc	90-0435	12/12/89
The Dun & Bradstreet Corp., Management Science America, Inc., Management Science America, Inc	90-0465	12/12/89
Ampco-Pittsburgh Corp., Midway Airlines, Inc., Midway Airlines, Inc	90-0508	12/12/89
Contel Corp., Telos Corp., Telos Corp	90-0512	12/12/89
ADIA S.A., Hestair plc, Hestair plc	90-0536	12/12/89
Nabors Industries, Inc., Kendavis Holding Co., Loffland Brothers Co	90-0561	12/12/89
The Berkshire Fund, American Electrical Materials Corp., American Electrical Materials Corp	90-0614	12/12/89
Mark A. Singleton, Unisys Corp., Convergent Dealership Group	90-0636	12/12/89
Cultor Ltd., Allens Creek Enterprises Inc., Allens Creek Enterprises Inc	90-0328	12/13/89
Eastman Kodak Co., Allens Creek Enterprises Inc., Allens Creek Enterprises Inc	90-0387	12/13/89
Buhrmann-Tetterode nv., MSG Securities, Inc., M.S. Ginn Co	90-0428	12/13/89
Ito-Yokado Co., Ltd., The Philp Co. Trust, The Southland Corp	90-0503	12/13/89
Hampton Resources, Inc., Mountain Fir Lumber Co., Inc., Mountain Fir Lumber Co., Inc	90-0545	12/13/89
Acadia Partners, L.P., Michaels Stores, Inc., Michaels Stores, Inc	90-0552	12/13/89
Donald H. Gales, Ronald O. Perelman, Coleman Heating and Air Conditioning Products, Inc	90-0558	12/13/89
Atwood Oceanics, Inc., Kaneb Services, Inc., Diamond M. Hunter Co. and Diamond M. Falcon Co	90-0641	12/13/89
James A. Pattison, W.H. Smith Group PLC, W.H. Smith Publishing Inc.	90-0646	12/13/89
Robert M. McKinney, Gannett Co., Inc., The New Mexican, Inc	90-0669	12/13/89
Contrin Holding A.G., TOL Acquisition Corp., TOL Acquisition Corp	90-0369	12/14/89
BBC Brown Boveri Ltd., Combustion Engineering, Inc., Combustion Engineering, Inc	90-0433	12/14/89

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 121189 AND 122289—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
ASEA AB, Combustion Engineering, Inc., Combustion Engineering, Inc	90-0434	12/14/89
Tele-Communications, Inc., First AmeriCable Corp., First AmeriCable Corp	90-0459	12/14/89
CHC Obligated Partnership Ltd., Baptist Hospitals and Health Systems Members Board, Phoenix Baptist Hospital and Medical Center, Inc	90-0501	12/14/89
Alan Gerry, The Mutual Life Insurance Co. of New York, Cablevision Industries Limited Partnership	90-0521	12/14/89
Alan Gerry, Alan Gerry, Cablevision Industries Limited Partnership	90-0522	12/14/89
Bessemer Securities Corp., Zapata Gulf Marine Corp., Zapata Gulf Marine Corp	90-0611	12/14/89
Corporate Partners, L.P., Zapata Gulf Marine Corp., Zapata Gulf Marine Corp	90-0612	12/14/89
Taisei Oncho Kogyo Co., Ltd., Derwin K.W. Au, AU's Plumbing & Metal Work, Inc	90-0627	12/14/89
Union Camp Corp., Tate Containers, Inc., Tate Containers, Inc	90-0638	12/14/89
Household International, Inc., The Dime Savings Bank of New York, FSB, The Dime Savings Bank of New York, FSB	90-0651	12/14/89
Welsh, Carson, Anderson & Stowe IV, Motorola, Inc., Motorola, Inc	90-0422	12/15/89
WASA Life Mutual Insurance Co., Jefferson W. Brougher, Brougher Insurance Group, Inc	90-0557	12/15/89
PacifiCorp, North-West Telecommunications, Inc., North-West Telecommunications, Inc	90-0565	12/15/89
Werner K. Rey, Com Systems, Inc., Com Systems, Inc	90-0566	12/15/89
Werner K. Rey, John D. Marsch, TMC Communications, Inc	90-0568	12/15/89
Household International, Inc., CrossLand Savings FSB, CrossLand Savings FSB	90-0577	12/15/89
Broad Inc., Integrated Resources, Inc., Integrated Resources Life Insurance Co	90-0578	12/15/89
John G. Brunner, Weyerhaeuser Co., The Benjamin Ansehl Co	90-0590	12/15/89
Itel Corp., Southeastern Bonded Warehouses, Inc., Southeastern Bonded Warehouses, Inc	90-0592	12/15/89
Itel Corp., Mr. Robert E. Dornbush, The Dornbush Group, Inc., WFI Transport, Inc., Knight	90-0593	12/15/89
Itel Corp., Mr. K. Terry Dornbush, The Dornbush Group, Inc., WFI Transport, Inc., Knight	90-0596	12/15/89
Consolidated International Insurance Group, Inc., Hector L. Gonzalez, Security Assurance Co	90-0628	12/15/89
Baltimore Gas and Electric Co., Pacific Enterprised, Pacific Energy	90-0656	12/15/89
Oryx Energy Co., The British Petroleum Company plc, British Petroleum Co., plc	90-0662	12/15/89
Credit Local de France, CAECL S.A., MBIA, Inc., MBIA, Inc	90-0674	12/15/89
Aoki Corp., Bank of Boston Corp., Boca 104 Corp	90-0681	12/15/89
Compania Boliviana de Energia Electrica, S.A., Leucadia National Corp., American Sign & Indicator Corp	90-0495	12/18/89
Carl C. Icahn, USX Corp., USX Corp	90-0572	12/18/89
Wind Point Partners II, L.P., Arthur L. Gustafson, Alloyd Co., Inc	90-0579	12/18/89
Brierley Investments Limited, Everest & Jennings International Ltd., Everest & Jennings International Ltd	90-0589	12/18/89
Thermo Electron Corp., The Failure Group, Inc., The Failure Group, Inc	90-0639	12/18/89
The News Corporation Limited, William Collins PLC, William Collins PLC	89-0519	12/19/89
Southam, Inc., Bowater Industries plc, R.S. Means Company, Inc	90-0486	12/19/89
Holderbank Financiere Glaris Ltd., Northwestern States Portland Cement Co., Northwestern States Portland Cement Co	90-0490	12/19/89
Jeffrey J. Steiner, c/o Banner Industries, Inc., Maurice Bidermann, Bidermann Industries U.S.A., Inc	90-0496	12/19/89
Rhone-Poulenc S.A., Domtar Inc., Miranol Inc	90-0510	12/19/89
Gordon S. Lang, Crown Cork & Seal Co. Inc., Crown Cork & Seal Co., Inc	90-0576	12/19/89
Reed International P.L.C., Richard V. Carolan, Martindale-Hubbell, Inc	90-0597	12/19/89
Chrysler Capital Income Partners, L.P., Chrysler Corp., Chrysler Rail Transportation Corp	90-0604	12/19/89
Voute Coats Stuart & O'Grady L.P., Avron Fogelman, Prudential-Bache/Fogelman Hilton Head Golf, L.P	90-0644	12/19/89
Alco Standard Corp., Hal A. Kroeger, Distribix, Inc	90-0664	12/19/89
Noble Affiliates, Inc., Main Pass Blocks 305/306 Co-lessees, Main Pass Blocks 305/306 Co-lessees	90-0679	12/19/89
Emerson Electric Co., Vermont American Corp., Vermont American Corp	90-0037	12/20/89
Emerson Electric Co., Vermont American Corp., Vermont American Corp	90-0038	12/20/89
Edison Brothers Stores, Inc., Dylex Limited, Foxmoor Specialty Stores Corp. & Merger Corp	90-0505	12/20/89
Texaco Inc., Amoco Corp., Amoco Petroleum Additives Co	90-0519	12/20/89
Lancaster Colony Corp., General Housewares Corp., General Housewares Corp	90-0524	12/20/89
Kawabe Co., Ltd., Dominis Anderson, an individual, Harbor Lights HUI	90-0533	12/20/89
Kawabe Co., Ltd., Blanco Bay Cruisers, Ltd., Harbor Lights HUI	90-0534	12/20/89
TNT Limited, The News Corp. Limited, Harper & Collins U.S., Inc	90-0613	12/20/89
Leggett & Platt, Inc., Michael Gribetz, Gribetz International, Inc. & Gribco, Inc	90-0673	12/20/89
Kennametal Inc., Irwin L. Elson, J&L America, Inc	90-0642	12/21/89
Kennametal Inc., Joel H. Shapiro, J&L America, Inc	90-0643	12/22/89
Real Estate Operations, Inc., J.C. Penney Co., Inc., Ridgemar Associates	90-0329	12/22/89
Real Estate Operations, Inc., Whitemak Assoc., Whitemak Assoc	90-0330	12/22/89
Merrill Lynch & Co., Inc., MLPI Holdings, Inc. (Joint Venture), MLPI Holdings, Inc. (Joint Venture)	90-0494	12/22/89
Merrill Lynch Capital Appreciation Company Ltd., II, MLPI Holdings, Inc. (Joint Venture), MLPI Holdings, Inc., (Joint Venture)	90-0506	12/22/89
Mitsubishi Corp., Chemtex, Inc., Chemtex International, Inc	90-0653	12/22/89
Yuichiro Inomata, CS First Boston, Inc., Biltmore Partners, c/o The First Boston Corp	90-0666	12/22/89
DEKALB Genetics Corp., DEKALB Genetics Corp., DeKalb-Pfizer Genetics	90-0687	12/22/89
The Chase Manhattan Corp., Investors Financial Corp., Investors Financial Corp	90-0688	12/22/89
M.G. Robertson, The Christian Broadcasting Network, Inc., The Christian Broadcasting Network, Inc	90-0694	12/22/89
The Times Mirror Co., Carolyn S. Chambers, Chambers Communication Corp	90-0699	12/22/89

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Federal Trade Commission, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 90-171 Filed 1-3-90; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. 9190]

Ticor Title Insurance Co., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: This Final Order prohibits, among other things, each respondent from discussing, proposing, setting, or filing any rates for title search and examination services through a rating bureau in New Jersey, Pennsylvania, Connecticut, Wisconsin, Arizona and Montana.

DATES: Complaint issued January 7, 1985. Final Order issued September 19, 1989.[1]

FOR FURTHER INFORMATION CONTACT: Michael E. Antalics, FTC/S-2308, Washington, DC 20580, (202) 326-2682.

(Sec. 6, Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

In the matter of Ticor Title Insurance Company, a corporation; Chicago Title Insurance Company, a corporation; Safeco Title Insurance Company, a corporation; Lawyers Title Insurance Corporation, a corporation; and Stewart Title Guaranty Company, a corporation.

Commissioners: Janet D. Steiger, Chairman, Terry Calvani, Mary L. Azcuenaga, Andrew J. Strenio, Jr., Margot E. Machol.

Final Order

This matter has been heard by the Commission upon the appeals of Respondents and Complaint Counsel from the Initial Decision and upon briefs and oral argument in support of and in opposition to the respective appeals. For the reasons stated in the accompanying Opinion, the Commission has determined to deny the Respondents' appeal (except as to the insertion of a "state action" proviso in the Order) and grant Complaint Counsel's appeal in part. Accordingly,

It is ordered, that the Initial Decision of the Administrative Law Judge be adopted as Findings of Fact and Conclusions of Law except to the extent inconsistent with the accompanying Opinion. Other Findings of Fact and Conclusions of Law of the Commission are contained in the accompanying Opinion.

I.

For purposes of this Order, the following definition shall apply:

a. "Title search and examination services" means all activities which are designed to identify and describe the ownership of a particular parcel of real property as well as any other actual or potential rights to, encumbrances on, or interest in the property.

II.

It is ordered that each respondent, its successors and assigns, and its officers, agents, representatives, and employees, directly or indirectly, through any corporation, subsidiary, division or other device in connection with the sale of title search and examination services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall forthwith cease and desist in New Jersey, Pennsylvania, Connecticut, Wisconsin, Arizona, and Montana, from discussing, proposing, setting, or filing any rates for title search and examination services through a rating bureau.

A. *Provided* that nothing in this Order shall prohibit respondents from collectively setting or adhering to prices for title search and examination services in any state where such collective activity is engaged in pursuant to clearly articulated and affirmatively expressed state policy and where such collective activity is actively supervised by a state regulatory body.

III.

It is further ordered, that each respondent shall within thirty days after service of this Order deliver a copy of this Order to all its present officers, directors, and personnel having any responsibility in determining company prices as well as to the commissioner of insurance in each state listed in Paragraph II. of this Order.

IV.

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

V.

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

By the Commission, Commissioner Calvani and Commissioner Azcuenaga concurring in part and dissenting in part, and Commissioner Machol not participating.[1]

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 90-172 Filed 1-3-90; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint, Initial Decision, Opinion of the Commission, Statements, etc. are available from the Commission's Public Reference Branch, H-130, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

[1] Prior to leaving the Commission, former Chairman Oliver registered his vote in the affirmative for the Final Order and the Opinion of the Commission in this matter. Chairman Steiger did not register a vote in this matter.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). Chapter S2 covers the Office of the Deputy Commissioner, Operations. Notice is hereby given of the following changes affecting portions of Chapter S2 (specifically, 53 FR 38063-38065, published 9/29/88). Sections S2.20, C; S2D.00; S2D.20, E; S2D(1-X).00; S2D(1-X).20,D, 1; S2D(1-X).20,E, 1 and S2D(1-X).20,G, 6 reflect new organizational titles. No reference is made to area directors in S2D(1-X).20,E, 1. Sections S2D(1-X).10, D and S2D(1-X).20, D include a more descriptive position title. Sections S2D(1-X).10, G and S2D(1-X).20, G identify a new position; the latter section specifies the position's location.

The revised portion of Chapter S2 reads as follows:

Chapter S2—Office of the Deputy Commissioner, Operations; S2.00 Mission; S2.10 Organization; S2.20 Functions

Section S2.00 *The Office of the Deputy Commissioner, Operations*—(Mission): The Office of the Deputy Commissioner, Operations directs and manages central office and geographically dispersed operations installations. It oversees regional operating programs and program management activities. It oversees the planning and implementation of studies and actions to improve the operational effectiveness and efficiency of its components. Directs the conduct of systems and operational integration and strategic planning processes, and the implementation of a comprehensive systems configuration management, data base management and data administration program.

Initiates software and hardware acquisition for SSA and oversees software and hardware acquisition procedures, policies and activities. Directs the development of operational and programmatic specifications for new and modified systems, and oversees development, validation and implementation phases.

Section S2.10 *The Office of the Deputy Commissioner, Operations*—(Organization): The Office of the Deputy Commissioner, Operations (ODCO), under the leadership of the Deputy Commissioner, Operations includes:

A. The Deputy Commissioner, Operations (S2).

B. The Assistant Deputy Commissioner, Operations (S2).

C. The Office of Regional Operations (S2D).

D. The Office of Central Processing (S2E).

E. The Office of Systems Support (S2G).

F. The Immediate Office of the Deputy Commissioner, Operations (S2A), which includes: 1. The Office of Planning and Operations Management (S2A-1).

Section S2.20 *The Office of the Deputy Commissioner, Operations*—(Functions):

A. The Deputy Commissioner, Operations (DCO) (S2) is directly responsible to the Commissioner for carrying out ODCO's mission and providing general supervision to the major components of ODCO.

B. The Assistant Deputy Commissioner, Operations (S2) assists the Deputy Commissioner in carrying out his/her responsibilities, and performs other duties as the Deputy Commissioner may prescribe.

C. The Office of Regional Operations (S2D) is responsible for managing and directing a nationwide network of regional offices (RO), field offices (FO), teleservice centers (TSC) and processing centers (PC) responsible for the Retirement, Survivors and Disability Insurance (RSDI) programs, the Black Lung Benefit program and the Supplemental Security Income (SSI) program. Provides administrative support to the Office cited above.

D. The Office of Central Processing (S2E) is responsible for managing and directing SSA's central office processing components. These components establish and maintain basic records supporting Social Security programs; process disability and black lung cases; process RSDI claims filed by persons in foreign countries and manage and coordinate the planning, acquisition, implementation, operation and maintenance of SSA's computer and telecommunications installation, including hardware acquisition. Provides administrative support to central processing components.

E. The Office of Systems Support (S2G) is responsible for managing and directing SSA's systems support components. These components are responsible for requirements development, design, development, testing and validation for all programmatic software, software maintenance, comprehensive systems integration and strategic planning, comprehensive software configuration management and data base management, and software acquisition procedures, policies and activities. Administrative support to systems support components will also be provided.

F. The Immediate Office of the Deputy Commissioner, Operations (S2A) provides the Deputy Commissioner with staff assistance on the full range of his/her responsibilities. It includes: 1. The Office of Planning and Operations Management (S2A-1) provides the Deputy Commissioner with a wide range of support activities affecting all DCO components, including budget review and approval, automated data processing (ADP) plan approval, strategic plan oversight, development of security policies and procedures, development of DCO-wide operating policy, operations analysis review, procurement plan review and approval, management analysis oversight and other related activities.

Subchapter S2D—Office of Regional Operations; S2D.00 Mission; S2D.10 Organization; S2D.20 Functions

Section S2D.00 *The Office of Regional Operations*—(Mission): The Office of Regional Operations is responsible for managing and directing a nationwide network of ROs, FOs, TSCs and PCs responsible for the RSDI programs, the Black Lung Benefits program and the SSI program. The Office is responsible for providing direct service to the public as well as processing the complex and integrated SSA programmatic workloads. The Office directs operational analysis and management support activity that evaluates and develops effective measures to ensure overall regional processes meet SSA program and administrative objectives.

Section S2D.10 *The Office of Regional Operations*—(Organization): The Office of Regional Operations (ORO) under the leadership of the Associate Deputy Commissioner, Regional Operations includes: A. The Associate Deputy Commissioner, Regional Operations (S2D); B. The Assistant to the Associate Deputy Commissioner, Regional Operations (S2D); C. The Immediate Office of the Associate Deputy Commissioner, Regional Operations (S2D); D. The Office of Regional Operations Support (S2DC); E. The Office of the Regional Commissioner (S2D1-S2DX).

Section S2D.20 *The Office of Regional Operations*—(Functions):

A. The Associate Deputy Commissioner, Regional Operations (S2D) is directly responsible to the Deputy Commissioner, Operations, for carrying out ORO's mission and provides general supervision to the major components of ORO.

B. The Assistant to the Associate Deputy Commissioner, Regional Operations (S2D), assists the Associate Deputy Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Deputy Commissioner may prescribe.

C. The Immediate Office of the Associate Deputy Commissioner, Regional Operations (S2D), provides the Associate Deputy Commissioner and the Assistant to the Associate Deputy Commissioner with staff assistance on the full range of his/her responsibilities.

D. The Office of Regional Operations Support (S2DC):

1. Advises the Associate Deputy Commissioner, Regional Operations (S2D) on the full range of issues pertaining to headquarters' support to the SSA regional operations components.

2. Ensures effective ongoing liaison between SSA headquarters and the SSA regional operations components.

3. Ensures that the concerns of, and issues raised by, the regional operations components on proposed legislation, operations policy, procedures, systems matters and management/administrative issues are addressed by the appropriate headquarters' components.

4. Coordinates with regional operations management in the identification of components' systems needs and in the installation and evaluation of systems applications in all SSA programs which affect regional operations operating procedures and practices; develops requirements for security audit trails; analyzes the impact of automation and develops staffing and ADP hardware needs; manages the implementation of office automation projects and provides user input to capacity planning and systems performance issues.

5. Plans and coordinates a continuing program of operational analysis and management analysis throughout regional operations. Designs and implements studies to measure the

overall effectiveness and efficiency of regional operations processes and identifies and resolves operating problems and issues.

6. Formulates, executes and monitors the budget for the regional commissioners (RC); develops policy for regional operations facility placement and change; develops regional operations-wide delivery policy and conducts ongoing visitation program to regional operations components.

E. The Office of the Regional Commissioner (S2D1–S2DX) serves as the principal SSA component at the regional level and assures effective SSA interaction with HHS ROs, other Federal agencies in the regions, State welfare agencies, State Disability Determination Services (DDS) and other regional and local organizations. The Office provides regional program leadership and technical direction for the RSDI programs, the Black Lung Benefits program and the SSI program. It issues regional operating policy and procedures for these programs. It directs a regionwide network of FOs, TSCs and, in the regions where present, PCs.

Section S2D(1–X).00 *The Office of the Regional Commissioner*—(Mission): The Office of the Regional Commissioner (ORC) serves as the principal SSA component at the regional level and assures effective SSA interaction with HHS ROs; other Federal agencies in the regions; State welfare agencies; State DDSs and other regional and local organizations. The Office provides regional program leadership and technical direction for the RSDI programs, the Black Lung Benefits program; and the SSI program. It issues regional operating policy and procedures for these programs and evaluates program effectiveness. It implements national operational and management plans for providing SSA service to the public, and directs a regionwide network of FOs, TSCs and, where present, PCs. The Office manages and coordinates SSA regional operations and provides administrative support to SSA regional components. It establishes regional priorities and issues policy directives consistent with national program objectives, operational requirements and systems; and implements a regional SSA public affairs program. The Office maintains a broad overview of administrative operations of the ROs of SSA's Office of Hearings and Appeals (OHA) and data operation centers (DOC) to assure effective coordination of SSA activities at the regional level.

Section S2D(1–X).10 *The Office of the Regional Commissioner*—(Organization): The Office of the Regional Commissioner, under the leadership of the Regional Commissioner, includes:

A. The Regional Commissioner (S2D1–S2DX).

B. The Deputy Regional Commissioner (S2D1–S2DX).

C. The Immediate Office of the Regional Commissioner (S2D1–S2DX).

D. The Office of the Assistant Regional Commissioner for Program Operations and Systems (S2D1B–S2DXB).

E. The Office of the Assistant Regional Commissioner for Field Operations (S2D14–S2DX4).

F. The Office of the Assistant Regional Commissioner for Management and Budget (S2D17–S2DX7).

G. The Office of the Assistant Regional Commissioner for Processing Center Operations (S2D–F2,3,4,5,7,9).

Section S2D(1–X).20 *The Office of the Regional Commissioner*—(Functions):

A. The Regional Commissioners (S2D1–S2DX) are directly responsible to the Associate Deputy Commissioner, Regional Operations, for carrying out the RC's mission and managing their respective SSA regional organizations.

B. The Deputy Regional Commissioner (S2D1–S2DX) assists the RC in carrying out his/her responsibilities, and performs other duties as the RC may prescribe.

C. The Immediate Office of the Regional Commissioner (S2D1–S2DX) provides the RC with high-level staff assistance on the full range of his/her responsibilities. It also furnishes staff support for the civil rights, equal opportunity and external affairs functions.

D. The Office of the Assistant Regional Commissioner for Program Operations and Systems (S2D1B–S2DXB).

1. Provides program leadership and technical direction for the RSDI, SSI and Black Lung Benefits programs in the region. Issues regional operating policies and procedures necessary to ensure implementation of national policies for these programs. Establishes and maintains a field visit program covering DDSs, FOs, TSCs and PCs to determine the effectiveness of RSDI, SSI and Black Lung Benefits program policies and procedures, and to provide technical assistance in the resolution of operational problems relating to these programs. Evaluates RSDI, SSI and the Black Lung Benefits program effectiveness in the region.

2. Assists State DDS agencies in developing their operating budgets, reviews these budgets with the Assistant Regional Commissioner for Management and Budget and submits recommendations on the acceptability of DDS budgets to the RC. Manages a comprehensive review and analysis program covering State DDS agency operations.

3. Plans, directs and coordinates regional activities concerning Social Security coverage agreements between SSA and State or interstate entities; carries out negotiations with State or interstate authorities on the content of these agreements; makes recommendations to final approval officials regarding the execution of new coverage agreements, modifications in existing agreements, or the termination of agreements and processes requests for further extensions, or extensions for more than 1 year, of time limits for assessments, credits or refunds of amounts due.

4. Negotiates and maintains agreements with States covering the administration of optional State SSI supplementation, mandatory minimum State SSI supplementation and Medicaid eligibility determinations. Evaluates and monitors State budgets necessary to carry out these agreements and maintains ongoing dialogues with States on SSI program issues in such areas as adjustment levels, hold harmless provisions, operational aspects of the Food Stamp program, social service referral practices, etc. Directs the preparation of regional operations instructional material necessary to implement agreements negotiated with the States.

5. Oversees SSA regional ADP systems and automated processing operations, assures their effectiveness and carries out an ongoing regional systems planning program to assure effective integration of regional operating and management systems. Coordinates and monitors regional implementation of major changes to national systems on behalf of SSA's Central Office components dealing with systems activities.

6. Conducts operational analyses and provides support of regional operations management in the resolution of operational, procedural and systems problems. Consolidates, reviews and arranges for the distribution of regional program instructions and systems instructional material developed at the regional level. Coordinates with HHS' Rehabilitation Services Administration and other agencies to attain disability insurance (DI), Black Lung Benefits and SSI program goals. Maintains relationships with professional medical organizations, interacts with outside groups representing program interests or concerns and consults with

representatives of community and private organizations on operational matters.

E. The Office of the Assistant Regional Commissioner for Field Operations (S2D14–S2DX4).

1. Provides leadership, guidance and direction to FOs and TSCs.

2. Ensures the consistency of field operations in the region with national and regional policies and procedures and is accountable for the effectiveness of these operations.

F. The Office of the Assistance Regional Commissioner for Management and Budget (S2D17–S2DX7).

1. Furnishes leadership and support to SSA regional operations components in the areas of financial, manpower and organizational management and other areas of management concern.

2. Develops regional management policies, procedures and guidelines consistent with prevailing Federal, HHS and SSA requirements and objectives. Guides and controls regional administrative management operations and administrative practices. Evaluates component performance and needs in these areas to assure effective and economical use of available resources and takes appropriate action on behalf of the RC to remedy or correct any inefficiencies or undesirable practices uncovered in administrative management operations.

3. Furnishes financial management staff expertise and professional judgments required to compile and recommend effective regional State operating budgets.

4. Coordinates regional operations adminstrative management issues and concerns with the HHS RO, SSA headquarters and other Federal-regional authorities.

5. Carries out the SSA regional security program.

G. The Office of the Assistant Regional Commissioner for Processing Center Operations (S2D–F2, 3, 4, 5, 7, 9) (located in the six regions containing PCs).

1. Review and authorize payment or disallows claims for Retirement and Survivors Insurance (RSI)/DI benefits and health insurance (HI) entitlement; certify RSI/DI benefit amounts to the Treasury Department for payment and maintain RSI/DI benefit and HI records.

2. Determine whether and when eligibility or payments should be terminated, suspended, continued, increased or reduced in amount and reconsider determinations on initial claims and continuing eligibility.

3. Maintain RSI/DI payment rolls; recover or waive recovery of amounts incorrectly paid to RSI/DI beneficiaries; receive, record and deposit Supplemental Medical Insurance premium and overpayment refunds and make representative payee determinations and process related accountability reports.

4. Answer inquiries about individual RSI/DI cases and claims determinations and ensure expeditious processing of actions where inquiries indicate claimant hardship.

5. Receive and coordinate computer programs and exceptions on case processing; maintain accounting controls and assure, by sample audit, that magnetic tape records reflect actual authorized payment actions.

6. Coordinate PC operations with the other components within ORC, other SSA components, the Railroad Retirement Board, the Veterans' Administration, the United States Postal Service and other Federal agencies as required.

Section S2DC.00 *The Office of Regional Operations Support*—(Mission):

1. Advises the Associate Deputy Commissioner, Regional Operations (S2D) on the full range of issues pertaining to headquarters' support to the SSA regional operations components.

2. Ensures effective ongoing liaison between SSA headquarters and the SSA regional operations.

3. Ensures that the concerns of, and issues raised by, the regional operations on proposed legislation, operations, policy, procedures and systems matters are addressed by the appropriate headquarters' components.

4. Coordinates with regional operations management in the identification of field components' systems needs and in the installation and evaluation of systems applications in all SSA programs which affect regional operations operating procedures and practices; develops requirements for security audit trails; analyzes the impact of automation and develops staffing and ADP hardware needs; manages the implementation of office automation projects; provides user input to capacity planning systems and performance issues.

5. Plans and coordinates a continuing program of operational analysis and management analysis throughout regional operations. Designs and implements studies to measure the overall effectiveness and efficiency of regional operations processes and identifies and resolves operating problems and issues.

6. Formulates, executes and monitors the budget for the RCs; develops policy for regional operations facility placement and change; develops regional operations-wide delivery policy and conducts ongoing visitation program to regional operations components.

Dated: December 20, 1989.

Louis W. Sullivan,

Secretary of Health and Human Services.

[FR Doc. 90–87 Filed 1–3–90; 8:45 am]

BILLING CODE 4190–11–M

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services covers the Social Security Administration. Notice is given that Chapter SA is being amended to reflect the abolishment of the Office of Strategic Planning. The changes are as follows:

Chapter SA, Office of the Commissioner

SA.00 Mission

SA.10 Organization

SA.20 Functions

Section SA.10 *The Office of The Commissioner*—(Organization);

Delete: B.2 The Office of Strategic Planning (SAJ).

Section SA.20 *The Office of the Commissioner.*—Functions):

Delete: B.2. The Office of Strategic Planning (SAJ) in its entirety.

Dated: December 20, 1989.

Louis W. Sullivan, M.D.,

Secretary of Health and Human Services.

[FR Doc. 90–86 1–3–90; 8:45 am]

BILLING CODE 4190–11–M

Food and Drug Administration

[Docket No. 89P–0498]

Eggnog Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Norris Creameries, to test market a product designated as "light eggnog" that deviates from the U.S. standard of identity for eggnog (21 CFR 131.170). The purpose of the temporary permit is to

allow the applicant to measure consumer acceptance of the product.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than April 4, 1990.

FOR FURTHER INFORMATION CONTACT: Joanne Travers, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0324.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Norris Creameries, 1930 Wooddale Dr., Woodbury, MN 55125.

The permit covers limited interstate marketing tests of a product that deviates from the U.S. standard of identity for eggnog in 21 CFR 131.170 in that: (1) the fat content of the product is reduced from 6 percent to 3 percent, and (2) sufficient vitamin A palmitate is added to ensure that a 4-fluid-ounce serving of the product contains 6 percent of the U.S. Recommended Daily Allowance for vitamin A. The product meets all requirements of the standard with the exception of these deviations. The purpose of the variation is to offer consumers a product that is nutritionally equivalent but contains fewer calories and less fat.

For the purpose of this permit, the name of the product is "light eggnog." The principal display panel must include the statements "reduced calories" and "reduced fat" following the name. In addition, the label must bear the comparative statements "⅓ fewer calories" and "50 percent less fat than regular eggnog."

The product complies with the reduced calorie labeling requirements in 21 CFR 105.66(d). In accordance with FDA's current views, reduced fat food labeling is acceptable because there is at least a 50-percent reduction in the fat content of the product. The information panel of the label will bear nutrition labeling in accordance with 21 CFR 101.9.

This permit provides for the temporary marketing of 84,000 quarts of the test product. The test product is to be manufactured at Kohler Mix Specialties, 4041 Highway 61, White Bear Lake, MN 55110, and will be distributed in Illinois, Minnesota, and Wisconsin.

Each of the ingredients used in the food must be stated on the label as required by the applicable sections of 21 CFR Part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than April 4, 1990.

Dated: December 28, 1989.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-159 Filed 1-3-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89D-0468]

Drugs for Odor Control in Animals; Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised Compliance Policy Guide (CPG) 7125.11 titled "Drugs for Odor Control in Animals." The CPG describes FDA's regulatory policy concerning products containing chlorophyll, antibiotics, and other drugs that are intended for use to control odor in animals.

ADDRESSES: Submit written requests for single copies of CPG 7125.11 to the Industry Information Staff (HFV-12), Center for Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your requests. CPG 7125.11 is available for public examination in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Darrell E. Baker, Center for Veterinary Medicine (HFV-236), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2830.

SUPPLEMENTARY INFORMATION: FDA has revised CPG 7125.11 "Drugs for Odor Control in Animals" to expand its scope to encompass any active ingredient including chlorophyll, antibiotics, and other drugs (the CPG formerly titled "Chlorophyll for Odor Control in Animals"). FDA is aware of products being marketed for use primarily in companion animals such as dogs and cats, and other small animals for the control of body odors. Labeling representationss generally range from the complete control of breath and body odors to the masking or prevention of estrus odors, and to prevention of mating or conception.

All products that are intended for systemic use in animals to prevent body odors or conception are drugs within the meaning of section 201(g)(1)(C) of the Federal Food, Drug, and Cosmetic Act (the act) 21 U.S.C. 321(g)(1)(C)), and, in the absence of published literature establishing that such articles are generally recognized as safe and effective based on adequate and well-controlled investigations, are new animals drugs within the meaning of section 201(w) of the act. In addition, topically applied products that contain ingredients with known drug properties, such as antibiotics, may be new animal drugs for the same reason, when indicated for control of odor or conception. However, topically applied chlorophyll-based products intended merely to mask or control odors are animal cosmetics (grooming aids) which are not regulated under the act. The CPG establishes regulatory priorities for drugs used for odor control.

This notice is issued under 21 CFR 10.85.

Dated: December 19, 1989.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 90-158 Filed 1-3-90; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. 89-2097

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officers, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d of the Department of Housing Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 27, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Assignment Regulations to Require Approved Mortgagee to Record Assignment, FR-2657.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: The Department of Housing and Urban Development (HUD) regulations require that the mortgagee record the assignment of the mortgage to HUD within 30 days after the date of the Field Office's letter authorizing the assignment.

Form Number: None.

Respondents: Individuals or Households and Businesses or Other For-Profit.

Frequency of Submission: Recordkeeping and On Occasion.

Reporting Burden:

	Number of Respondents	×	Frequency of Response	×	Hours per Response	=	Burden Hours
Recordkeeping	8,258		1.5		.5		6,194

Total Estimated Burden Hours: 6,194.

Status: New.

Contact: Thomas Hitchcock, HUD, (202) 755-6664, John Allison, OMB, (202) 395-6880.

Dated: December 27, 1989.

[FR Doc. 90-104 Filed 1-3-90; 8:45 am]

BILLING CODE 4210-01-M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-89-2096; FR-2721-N-1]

Title I Property Improvement and Manufactured Home Loans; Request for Comments and Suggestions for Possible Changes

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: Under title I, section 2 of the National Housing Act, the Department insures property improvement and manufactured home loans made by approved lending institutions. HUD Secretary Jack Kemp has announced plans for the reform of the Federal Housing Administration. As part of this reform effort, the Department is exploring other changes that would make the title I program more readily available to qualified lenders across the nation. This Notice requests public comments and suggestions for possible changes to the title I program.

DATE: Written comments and suggestions are due not later than February 5, 1990.

ADDRESS: Comments and suggestions should be sent to Robert J. Coyle, Director, Title I Insurance Division, room 9160, 451 Seventh Street SW., Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Robert J. Coyle, Title I Insurance Division, at the above address. Telephone number (202) 755-6880. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On October 3, 1989, HUD Secretary Jack Kemp announced a series of reforms designed to reinvigorate the Federal Housing Administration, strengthen its finances, and recommit the agency to the mission of increased homeownership opportunities for low and moderate-income families and first-time homebuyers.

While reducing the potential for fraud and other program abuses, this reform effort also provides the Department with an opportunity to make the Title I program more readily available to qualified lenders across the nation. At the present time, there are many areas of the country where borrowers do not have access to the program, either because lenders are not aware of the program or because they believe that it is too complex for them to participate.

The Department is requesting public comments on possible changes to the program that would encourage broader participation by lenders while preserving the program's actuarial soundness and avoiding the pitfalls and problems of third-party involvement in the loan origination process. All comments are welcome, whether they are for legislation, regulatory revisions, or changes in administrative procedures.

Authority: Section 2, National Housing Act (12 U.S.C. 1703); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: December 19, 1989.

Peter Monroe

Acting General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 90-105 Filed 1-3-90; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-050-00-2920-10-4255]

Amendment of Federal Register Notice

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcing amendment of Federal Register notice Vol. 54, No. 85 Thursday, May 4, 1989, Page 19244.

SUMMARY: The U.S. Air Force has amended the application for a right-of-way for certain tracts of BLM land to construct ECTC in western Utah. Prior to issuing decisions regarding this application, BLM will consider public input, environmental impacts, and other factors. The ECTC EIS would provide the required NEPA analysis to amend BLM's planning documents.

SUPPLEMENTAL INFORMATION: In addition to the propsed action stated in **Federal Register** of May 4, 1989, the proposed project would also be located in Tooele County. Applicable BLM land use plan is the Pony Express RMP. The Poney Express RMP does not provide for the issuance of the ECTC right-of-way; therefore, a plan amendment is required. For further information, contact Roy Edmonds at (801) 896-8221, or 150 East 900 North, Richfield, Utah 84701.

Dated: December 14, 1989.

Jerry Goodman,

District Manager, Richfield District Office.

[FR Doc. 90-154 Filed 1-3-90; 8:45 am]

BILLING CODE 4310-DQ-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-297]

Certain Cellular Radiotelephones and Subassemblies and Component Parts Thereof; Commission Determination Not to Review Initial Determination Terminating Investigation on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined not to review the presiding administrative law judge's (ALJ) initial detemination (ID) terminating the above-captioned investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1098.

SUPPLEMENTARY INFORMATION: The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in § 210.53(h) of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.53(h)).

On November 13, 1989, all of the private parties in the investigation filed a joint motion to terminate the investigation on the basis of a settlement agreement. On November 27, 1989, the presiding ALJ issued an ID (Order No. 36) terminating the investigation on the basis of the settlement agreement. No petitions for review, or agency or public comments were filed.

Copies of the non-confidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission.

Issued: December 29, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-193 Filed 1-3-90; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-297]

Certain Cellular Radiotelephones and Subassemblies and Component Parts Thereof; Vacating Temporary Limited Exclusion Order and Temporary Cease and Desist Orders and Releasing, Without Forfeiture, Bonds Posted Pursuant to Its Determination and Orders

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined to vacate the temporary limited exclusion order and temporary cease and desist orders issued August 29, 1989, in the above-captioned investigation, and to release, without forfeiture, the bonds posted by parties pursuant to the Commission's determination and orders.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-252-1093.

SUPPLEMENTARY INFORMATION: The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337).

The Commission, having determined not to review the initial determination terminating this investigation on the basis of a settlement agreement, further determined to vacate the temporary relief issued in this investigation, and release, without forfeiture, the bonds posted by the parties pursuant to the the determination and temporary relief orders issued August 29, 1989.

Copies of all nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202-252-1000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

By order of the Commission.

Issued: December 29, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-194 Filed 1-3-90; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-289]

Certain Concealed Cabinet Hinges and Mounting Plates, Commission Decision Terminating the Investigation and Dismissing the Complaint, With Prejudice, for Violation of the Duty of Candor and Interim Rule 210.5

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined, on review of certain portions of two initial determinations issued on September 28, 1989, by the presiding administrative law judge (ALJ) in the above-captioned investigation, to terminate the investigation and dismiss the complant, with prejudice, because of complainant's violation of the Commission's preinstitution duty of candor and interim rule 210.5.

FOR FURTHER INFORMATION CONTACT: Calvin H. Cobb, III, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; telephone 202-252-1103.

Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202-252-1810.

SUPPLEMENTARY INFORMATION: Julius Blum, Inc. (Blum), a U.S. assembler of certain patented concealed hinges and mounting plates, filed a complaint under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) alleging direct, contributory,

and induced infringement of certain claims of three U.S. patents by 14 proposed respondents. The Commission instituted an investigation of Blum's complaint and issued a notice of investigation that was published in the Federal Register on December 28, 1988 (53 FR 52515).

On September 28, 1989, the presiding ALJ issued an ID (Order No. 118) terminating the investigation for abuse of Commission process. On the same day, the ALJ issued a second ID finding no violation of section 337 (the "Violation ID") in the investigation.

Petitions for review of Order No. 118 were filed by complainant Blum, and respondents Agostino Ferrari, S.p.A. (Ferrari) and Liberty Hardware Mfg. Corp. (Liberty). Responses to the petitions for review were filed by Blum, Ferrari, Liberty, respondent IUSA Hardware Mfg. Corp., and the Commission investigative attorney (IA).

Petitions for review of the Violation ID were filed by complainant Blum and respondants Ferrari and Liberty. Responses were filed by Blum, Ferrari, Liberty, and the IA.

On November 14, 1989, the Commission issued a notice of its decision to review Order No. 118 in its entirety, and certain portions of the Violation ID ("Notice"). 54 FR 48324 (Nov. 22, 1989). The Commission solicited briefs on the issues under review and comments on the issues of remedy, the public interest, and bonding.

In response to the Notice, initial and reply submissions were received from Blum, the IA, Liberty, and Ferrari. In addition, Liberty submitted a motion for oral argument, which was denied. No government agency comments were received.

The authority for the Commission's actions is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in Commission interim rule 210.56 (19 CFR 210.56).

ADDITIONAL INFORMATION: Copies of nonconfidential versions of the IDs and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, DC 20436; telephone: 202-252-1000.

By order of the Commission.

Issued: December 28, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-198 Filed 1-3-90; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-432 (Final)]

Drafting Machines and Parts Thereof From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission unanimously determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act), that an industry in the United States is materially injured by reason of imports from Japan of drafting machines and parts thereof, provided for in subheadings 9017.10.00 and 9017.90.00, respectively, of the Harmonized Tariff Schedule of the United States (previously reported under item 710.80 of the former Tariff Schedules of the United States), that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective August 25, 1989, following a preliminary determination by the Department of Commerce that imports of drafting machines and parts thereof from Japan were being, or were likely to be sold at LTFV within the meaning of section 733 of the act (19 U.S.C. 1673b). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of September 20, 1989 (54 FR 38750). The hearing was held in Washington, DC, on November 14, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December 22, 1989. The views of the Commission are contained in USITC Publication 2247 (December 1989), entitled "Drafting Machines and Parts Thereof from Japan: Determination of the Commission in Investigation No. 731-TA-432 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the Commission.

Issued: December 26, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-204 Filed 1-3-90; 8:45 am]

BILLING CODE 4020-02-M

[1] The record is defined in sec. 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

[Investigation No. 337-TA-276]

Certain Erasable Programmable Read Only Memories, Components Thereof, Products Containing Such Memories, and Processes for Making Such Memories; Partial Rescission of Seizure and Forfeiture Order

AGENCY: U.S. International Trade Commission.

ACTION: Partial rescission of a Commission seizure and forfeiture order.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has rescinded in part a seizure and forfeiture order issued by it on September 12, 1989, relating to erasable programmable read only memories (EPROMs) and related products.

FOR FURTHER INFORMATION CONTACT: Rhonda Hughes, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1083. Hearing-impaired individuals may obtain further information on this matter by contacting the Commission's TDD terminal at 202-252-1810.

SUPPLEMENTARY INFORMATION: By several letters written between June 7 and July 20, 1989, the U.S. Customs Service notified the Commission of a number of attempted importations of EPROMs and EPROM-containing products which were subject to the limited exclusion order issued by the Commission at the conclusion of the above-captioned investigation. In these letters Customs also notified the Commission of its denial of entry of these articles and requested that the Commission issue a seizure and forfeiture order as to future shipments by the importers involved, one of which was Atmel Corporation. On September 12, 1989, the Commission issued the requested order. Subsequently, on September 22, 1989, Customs informed the Commission that the Atmel Corporation's protest of Customs's denial of entry of its EPROMs had been granted and requested that the Commission consider withdrawing or modifying its seizure and forfeiture order as it applies to the Atmel EPROMs which were the subject of the protest. The basis for Customs' request was that a statutory prerequisite for issuance of

the order, *viz.*, a previous denial of entry, no longer existed.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). The provisions of 19 CFR 211.57(b) with respect to serving notice on all former parties to Inv. No. 337-TA-276 and allowing a period of 30 days for the filing of answers were waived by the Commission in accordance with 19 CFR 201.4(b).

By order of the Commission.

Issued: December 28, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-197 Filed 1-3-90; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-301 (Preliminary)]

Plastic Tubing Corrugators From Canada

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is no reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of plastic tubing corrugators, provided for in subheadings 8477.30.00 and 8477.40.00 of the Harmonized Tariff Schedule of the United States (formerly provided for in items 678.3535 and 678.3545 of the Tariff Schedules of the United States), that are alleged to be subsidized by the Government of Canada.

Background

On November 7, 1989, a petition was filed with the Commission and the Department of Commerce by Cullom Machine Tool & Die, Inc., Cleveland, TN, alleging that an industry in the United States is materially injured by reason of subsidized imports of plastic tubing corrugators and apparatus therefor from Canada. Accordingly, effective November 7, 1989, the Commission instituted preliminary countervailing duty investigation No. 701-TA-301 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 15, 1989 (54 F.R. 47583). The conference was held in Washington, DC, on November 28, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December 22, 1989. The views of the Commission are contained in USITC publication 2246 (December 1989), entitled "Plastic Tubing Corrugators from Canada: Determination of the Commission in Investigation No. 701-TA-301 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the Commission.

Issued: December 26, 1989.

[FR Doc. 90-203 Filed 1-3-90; 8:45 am]

BILLING CODE 7020-02-M

[332-226]

Monthly Reports on the Status of the Steel Industry

AGENCY: United States International Trade Commission.

ACTION: Continuation of investigation and monthly reports.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Mascola (202-252-1428), Minerals and Metals Division, U.S. International Trade Commission, Washington, DC 20436.

Background

As requested in a letter received on December 6, 1989, from the Chairman, Committee on Ways and Means, U.S. House of Representatives, the Commission will continue investigation No. 332-226, and will furnish to the Committee monthly reports on the status of the steel industry through March 31, 1992. This coincides with the President's program of transitional voluntary restraint agreements (VRAs).

As requested by the Committee, the reports will continue to follow the format of, and contain the same type of information as, the reports which the Commission has heretofore provided. The reports will provide historic and current year-to-date data for the industry as a whole on items such as production, employment, shipments, trade, and financial performance.

With respect to trade, information on imports of major carbon and specialty steel products (such as plate and wire) will be provided on a country-by-country basis or regional basis for each of the countries or regions subject to VRAs, and for other major suppliers. The data will show how imports of semifinished steel and other steel products relate to overall VRA limits.

In addition, information on market penetration in major products will be provided, as will information which will track imports into five major U.S. customs regions. Finally, the report will provide data on the unit values of imported steel.

Notice of institution of the investigation and of the initial series of reports was published in the **Federal Register** on April 23, 1986 (51 FR 15390).

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 252-1810

By order of the Commission.

Issued: December 29, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-195 Filed 1-3-90; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-290]

Certain Wire Electrical Discharge Machining Apparatus and Components Thereof; Commission Decision Not To Review an Initial Determination Terminating Two Respondents on the Basis of a Consent Order; Issuance of Consent Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 8) issued by the presiding administrative law judge (ALJ) granting a joint motion for termination of the investigation with respect to respondents Maruka Machinery Co., Ltd. and Maruka Machinery Corporation of America.

FOR FURTHER INFORMATION CONTACT: Craig L. McKee, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-252-1117. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission TDD terminal on 202-252-1810.

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[1] The record is defined in § 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

[2] Chairman Brunsdale and Vice Chairman Cass dissenting.

SUPPLEMENTARY INFORMATION: On November 22, 1989, the presiding ALJ issued an ID terminating Maruka Machinery Co., Ltd. and Maruka Machinery Corporation of America as respondents. No petitions for review of the ID or government or public comments were received.

These actions are taken under authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.53(h) (19 CFR 210.53(h)).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E. Street SW., Washington, DC 20436, telephone 202-252-1000.

By order of the Commission.

Issued: December 26, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 90-202 Filed 1-3-90; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-33 (Sub-No. 60X)]

Union Pacific Railroad Co.—Abandonment Exemption—In Gooding County, ID

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption and interim trail use.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904, the abandonment by Union Pacific Railroad Company of a 14.3-mile portion of its North Side Branch line between mile post 57.5, near Wendell, and milepost 71.8, near Bliss, in Gooding County, ID, subject to standard labor protective conditions, a salvage consultation condition, and a public use condition. In addition, interim trail use has been approved.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on February 5, 1990. Formal expression of intent to file an offer [1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by January 16, 1990, petitions to stay must be filed by January 19, 1990, and petitions for reconsideration must be filed by January 29, 1990.

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

ADDRESSES: Send pleadings referring to Docket AB-33 (Sub-No. 60X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423;

(2) Petitioner's representative: Joseph D. Anthofer, 1416 Dodge Street, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245, [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 275-1721.]

Decided: December 27, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Lamboley. Phillips, and Emmett.

Noreta R. McGee,

Secretary.

[FR Doc. 90-196 Filed 1-3-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 89-21]

Luis L. Galang; National City, CA; Hearing

Notice is hereby given that on March 22, 1989, the Drug Enforcement Administration, Department of Justice, issued to Luis L. Galang, M.D. an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AG9170490, and deny any pending applications for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Wednesday, January 3, 1990, commencing at 9:30 a.m., at the U.S. Courthouse, 517 East Wisconsin Avenue, Courtroom 254, Milwaukee, Wisconsin.

Dated: December 26, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 90-146 Filed 1-3-90; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATE: Requests for copies must be received in writing on or before February 23, 1990. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover

records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of the Air Force (N1-AFU-89-18). Radiology records.

2. Department of the Air Force (N1-AFU-89-21). Routine records relating to COMSEC accountability.

3. Department of the Air Force (N1-AFU-89-24). Applications for educational programs.

4. Department of the Air Force (N1-AFU-89-25). Foreign travel reports.

5. Department of the Air Force (N1-AFU-89-26). Personnel assessment records.

6. Department of the Air Force (N1-AFU-89-30). Honors checklists.

7. Department of the Air Force (N1-AFU-89-31). Pricing review records.

8. Department of the Air Force (N1-AFU-89-34). Applications for reassignments.

9. Department of the Air Force (N1-AFU-90-1). Routine records relating to equipment maintenance.

10. Department of the Air Force (N1-AFU-90-7). Routine disaster preparedness training records.

11. Department of the Air Force (N1-AFU-90-10). Routine records relating to the disposition of the remains of deceased personnel.

12. Department of the Air Force (N1-AFU-90-11). Routine records relating to the designation of customer account representatives.

13. Department of the Army (N1-AU-89-17). Routine records relating to personnel actions.

14. Defense Intelligence Agency (N1-373-89-8. Routine and facilitative files relating to intelligence operations management.

15. Central Intelligence Agency (N1-263-89-2 and (N1-263-90-1). The CIA schedules are classified in the interests of national security pursuant to Executive Order 12356 and is further exempt from public disclosure pursuant to the National Security Act of 1947, 50 U.S.C. 403(d)(3), and the CIA Act of 1949, 50 U.S.C. 403g.

16. Department of Commerce, Office of the Secretary (N1-40-90-1). Routine or otherwise facilitative records identified among permanent records scheduled for transfer to the National Archives.

17. Department of Commerce, Patent and Trademark Office (N1-241-90-2). Reports (computer printouts) generated to verify entry of files into the Automated Patent Search System.

18. Department of Education, Office of the Commissioner of Education (N1-12-89-5). Sound recordings of speeches and conference sessions, 1961-65.

19. Department of Education, Office of the Inspector General (N1-12-89-6). Reports submitted by non-Federal auditors for review by the Department of Education OIG.

20. Department of Education, Federal Interagency Committee on Education (N1-12-89-7). General subject files, 1964-81.

21. Department of Energy (N1-434-90-5). Newspaper clippings relating to nuclear energy dating from 1947-51 and 1959-64.

22. Department of Health and Human Services, Public Health Service, Health Resources and Services Administration (N1-90-89-7). National Vaccine Injury Compensation Program case files.

23. Department of Justice, Drug Enforcement Administration (N1-170-89-1). Revision of comprehensive records schedule.

24. Nuclear Regulatory Commission (N1-434-89-6). Radiation Exposure Information Reporting System input reports.

25. Department of State, All Foreign Service Posts (N1-84-90-1). Routine and facilitative records relating to refugee matters.

26. Tennessee Valley Authority, Transmission and Customer Services (N1-142-89-22). Energy use and conservation motion pictures purchased by TVA from outside sources.

Dated: December 28, 1989.

Claudine J. Weiher,

Acting Archivist of the United States.

[FR Doc. 90187 Filed 1-3-90; 8:45 am]

BILLING CODE 7515-01-M

NUCLEAR REGULATORY COMMISSION

Application for License To Export Utilization Facility

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following application for an export license. A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, NW., Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S.Nuclear Regulatory Commission; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the application for license to export nuclear-grade graphite as defined in 10 CFR part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning this application follows.

NRC EXPORT LICENSE APPLICATION

Name of Applicant, Date of Appl., Date Received, Application No.	Description of item to be exported	Country of destination
UCAR Carbon Co., Inc. c/o Union Carbide Corp., 11/07/89, 12/14/89, XMAT0341.	152 pieces (26,747 kgs) Nuclear Graphite Blocks Grade P6X for use as permanent side reflectors and flenum blocks in high temperature engineering test reactor.	Japan.

Dated this 21st day of December 1989 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

C.N. (Mike) Smith,

Assistant Director for International Security, Exports and Materials Safety, International Programs, Office of Governmental and Public Affairs.

[FR Doc. 90-142 Filed 1-3-90; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Containment Systems; Postponed Meeting

The ACRS Subcommittee meeting on Containment Systems scheduled for January 10, 1990 has been postponed to February 6, 1990, 1 p.m., Room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The notice of this meeting was previously published in the Federal Register on Tuesday, December 19, 1989 (54 FR 51960).

Dated: December 27, 1989.

Gary R. Quittschreiver,

Chief, Project Review Branch No. 2.

[FR Doc. 90-143 Filed 1-3-90; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Joint Severe Accidents and Probabilistic Risk Assessment; Meeting

The Subcommittees on Severe Accidents and Probabilistic Risk Assessment will hold a joint meeting on January 23 and 24, 1990, at the AMFAC Hotel, 2910 Yale Blvd., SE, Aluquerque, NM.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Tuesday, January 23, 1990—8:30 a.m. until 5 p.m. and Wednesday, January 24, 1990—8:30 a.m. until 12 noon.*

The Subcommittees will continue their review of NUREG-1150, "Severe Accident Risks: An Assessment for Five U.S. Nuclear Power Plants," (Second Draft for Peer Review). Topics tentatively scheduled for discussion at this meeting include: back-end analysis, uncertainties and the expert opinion process.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairmen; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairmen's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Dean Houston (telephone 301/492-9521) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised or any changes in schedule, etc., which may have occurred.

Dated: December 27, 1990.

Gary R. Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 90-144 Filed 1-3-90; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Structural Engineering; Meeting

The ACRS Subcommittee on Structural Engineering will hold a meeting on January 24 and 25, 1990, at the AMFAC Hotel, 2910 Yale Blvd., SE, Albuquerque, NM.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Wednesday, January 24, 1990—1 p.m. until 6:30 p.m. and Thursday, January 25, 1990—8:30 a.m. until 3 p.m.*

The Subcommittee will review structural integrity issues on various containment configurations and Category I structures.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio Igne (telephone 301/492-8192) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: December 27, 1989.

Gary R. Quittschreiber,

Chief Project Review Branch No. 2.

[FR Doc. 90-145 Filed 1-3-90; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Docket No. A90-2]

Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued: December 28, 1989.

Before Commissioners: Henry R. Folsom, Vice-Chairman; John W. Crutcher; W.H. "Trey" LeBlanc III; Patti Birge Tyson.

In the Matter of: Hanover, Arkansas 72541 (Athlene McCallister, Petitioner).

Docket Number: A90-2.

Name of Affected Post Office: Hanover, Arkansas 72541.

Name(s) of Petitioner(s): Athlene McCallister.

Type of Determination: Closing.

Date of Filing of Appeal Papers: December 18, 1989.

Categories of Issues Apparently Raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(C)].

2. Effect on the community [39 U.S.C. 404(b)(2)(A)].

Other legal issues may be disclosed by the record when it is filed; or, coversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C.

404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before January 3, 1990.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

December 18, 1989—Filing of Petition.
December 28, 1989—Notice and Order of Filing of Appeal.
January 16, 1990—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)].
January 22, 1990—Petitioners' Participant Statement or Initial Brief [*see* 39 CFR 3001.115 (a) and (b)].
February 12, 1990—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].
February 27, 1990—Petitioners' Reply Brief should Petitioners choose to file one [*see* CFR 3001.115(d)].
March 6, 1990—Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings [*see* 39 CFR 3001.116].
April 17, 1990—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 90-156 Filed 1-3-90; 8:45 am]

BILLING CODE 7710-FW-M

THE PRESIDENT'S EDUCATION POLICY ADVISORY COMMITTEE

Meeting

AGENCY: The President's Education Policy Advisory Committee.

ACTION: Notice of meeting.

SUMMARY: The President's Education Policy Advisory Committee was formed under Executive Order 12687 and signed by the President of the United States on August 15, 1989.

Tentative agenda items: The tentative agenda for the meeting includes discussion of national education goals and ways to improve literacy.

DATE: The second meeting will be held on January 11, 1990.

ADDRESS: The meeting is currently scheduled from 1:00–4:00 in Room 180 of the Old Executive Office Building.

FOR FURTHER INFORMATION CONTACT: Rae Nelson at the White House Office of Policy Development. The phone number is (202) 456-7777. For clearance purposes, please notify Rae Nelson no less than twenty-four hours before the meeting. Please provide over the phone, your social security number, date of birth, and name as read on your driver's license. When entering the building, you will be required to show picture identification.

Dated: January 2, 1990.

Roger B. Porter,

Assistant to the President for Economic and Domestic Policy.

[FR Doc. 90-305 Filed 1-3-90; 8:45 am]

BILLING CODE 3127-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) *Collection title:* Aged Monitoring Questionnaire.

(2) *Form(s) submitted:* C-19c.

(3) *OMB Number:* New Collection.

(4) *Expiration date of current OMB clearance:* Three years from date of approval.

(5) *Type of request:* Reinstatement of a previously approved collection for which approval has expired.

(6) *Frequency of response:* Annually.

(7) *Respondents:* Individuals or households.

(8) *Estimated annual number of respondents:* 4,000.

(9) *Total annual responses:* 4,000.

(10) *Average time per response:* .0833 hours.

(11) *Total annual reporting hours:* 333.

(12) *Collection description:*

The collection will obtain information about aged beneficiaries over age ninety who may no longer be competent or who are deceased but whose death has not been reported. Under the RRA, the Railroad Retirement Board may pay benefits to someone other than the beneficiary if it is in the beneficiary's interest and terminate payments to a deceased beneficiary whose death is unreported.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents can be obtained from Ronald J. Hodapp, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Justin Kopca (202-395-7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Ronald J. Hodapp,

Director of Information, Resources Management.

[FR Doc. 90-98 Filed 1-3-90; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-27565; File No. SR-AMEX-89-22]

Self-Regulatory Organizations American Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Listing of Index Warrants Based on the Nikkei Stock Average

On September 21, 1989, the American Stock Exchange, Inc. ("AMEX" or "Exchange") submitted to the Securities Exchange Commission pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change to list warrants based on the Nikkei Stock Average ("Nikkei").

The proposed rule change was published for comment in Securities Exchange Act Release No. 27342 (October 6, 1989) 54 FR 42428. No comments were received on the proposed rule change.

The AMEX proposes to list index warrants based on the Nikkei, an internationally recognized, price-weighted index consisting of 225 actively-traded stocks on the Tokyo Stock Exchange ("TSE").[3] The AMEX is

[1] 15 U.S.C. § 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1989).

[3] The Nikkei is calculated and distributed at one-minute intervals throughout the TSE trading day on a real-time basis. The Nikkei is a widely disseminated index that is published daily in, among other places, the *Wall Street Journal.* The Nikkei is calculated and managed by Nihon Keisai Shimbun, Inc. of Japan ("NKS"). To calculate the Nikkei, NKS takes the sum of the prices of the 225 stocks in the average and divides this number by a specified divisor. The divisor is adjusted periodically to reflect certain factors such as stock splits, stock dividends, and rights offerings in order

Continued

submitting its proposal to trade Nikkei warrants pursuant to the requirements of a 1988 Commission approval order ("Index Approval Order") that, among other things, permitted the Exchange to list index warrants based on established market indexes, both foreign and domestic.[4] The current AMEX proposal to trade warrants based on the Nikkei is the first proposal the Exchange has submitted to the Commission to trade warrants based on a stock index.

The AMEX proposes to consider listing Nikkei warrants on a case-by-case basis. Consistent with the Index Approval Order, the AMEX represents that the Nikkei warrant issues will conform to the listing guidelines under section 106 of the AMEX *Company Guide*. Specifically, section 106 provides that: (1) the issuer of index warrants must have assets in excess of $100 million and otherwise substantially exceed the size and earning requirements in section 101(a) of the *Company Guide*; [5] (2) the term of the warrants shall be for a period ranging from one to five years from the date of issuance; and (3) the minimum public distribution of such issues shall be one million warrants together with a minimum of 400 public holders, and have an aggregate market value of $4 million.

The AMEX proposes that the Nikkei warrants will be direct obligations of their issuer subject to cash-settlement during their term. The AMEX intends to list both American style warrants (*i.e.*, exercisable throughout their life) and European style warrants (*i.e.*, exercisable only on their expiration date). Upon exercise of a Nikkei warrant, or at the warrant's expiration date if not exercisable prior to such date, the holder of a warrant resembling a put option would receive payment in U.S. dollars to the extent that the Nikkei has declined below a pre-stated cash settlement value while the holder of a warrant resembling a call option would receive payment in U.S. dollars to the extent that the Nikkei has increased above the pre-stated cash settlement value. Warrants that are out-of-the-money at the end of the stated term will expire worthless.

Consistent with the Index Approval Order, trading in Nikkei warrants will be subject to several safeguards designed to ensure investor protection. Specifically, pursuant to Commentary .02 to AMEX Rule 411, the Exchange has stated to its members that they should sell Nikkei warrants only to options-approved accounts. In addition, the options suitability standards of AMEX Rule 923 will apply to recommended Nikkei warrant transactions.[6] Additionally, a Senior Registered Options Principal or Registered Options Principal is required to approve and initial a discretionary order in Nikkei warrants on the day the order is entered. Moreover, the AMEX, prior to the commencement of trading of Nikkei warrants, will distribute a circular to its membership calling attention to the specific risks associated with warrants on the Nikkei.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[7] More specifically, the Commission believes, as it did when approving the AMEX's framework for index warrants and foreign currency warrants, that index warrants, such as the Nikkei warrants, are innovative financing techniques that provide issuers with increased flexibility in financing. Index warrants such as the proposed Nikkei warrants are designed to allow an issuer to offer debt at a lower rate than in a straight debt offering in return for assuming some foreign currency or market volatility risk. At the same time, the Nikkei warrants will benefit U.S. investors by allowing them to obtain differential rates of return on a capital outlay if the Nikkei moves in a favorable direction within a specified time period.[8]

The Commission believes that the Nikkei warrants are consistent with its generic Index Approval Order. Because the Nikkei is a broad-based index of actively traded, well-capitalized stocks, the trading of cash-settled warrants on the Nikkei on the AMEX does not raise significant regulatory concerns.[9] The Commission notes that the AMEX rules and procedures that address the special concerns attendant to the secondary trading of index warrants will be applicable to the Nikkei warrants. In particular, by imposing the special suitability, disclosure, and compliance requirements noted above, the AMEX has addressed adequately potential public customer problems that could arise from the derivative nature of Nikkei warrants. Moreover, the AMEX plans to distribute a circular to its membership calling attention to the specific risks associated with warrants on the Nikkei and, pursuant to section 106 of the AMEX *Company Guide*, only substantial companies capable of meeting their warrant obligations will be eligible to issue Nikkei warrants.

In light of the fact that the Nikkei is a foreign index, the Commission believes adequate surveillance sharing agreements between the AMEX and the TSE is a necessary prerequisite to deter and detect potential manipulations or other improper or illegal trading involving the warrants. To address this concern, the AMEX amended its surveillance sharing agreement with the TSE to include the sharing of market information related to the trading of Nikkei warrants on the AMEX.[10] This agreement obligates the AMEX and the TSE to compile and transmit market surveillance information and resolve in good faith any disagreements regarding requests for information or responses thereto.[11] Accordingly, the Commission

to provide continuity for the Index's value. The adjustment method used by NKS is the same used in calculating the Dow Jones Industrial Average. For additional information regarding the calculation of the Nikkei, *see* letter from Jonathan G. Katz, Secretary, SEC, to Paula Tosini, Director Division of Economic Analysis, CFTC, dated April 18, 1988 ("Nikkei letter") at 3.

[4] Securities Exchange Act Release No. 26152 (October 3, 1988), 53 FR 39832.

[5] Section 101(a) of the AMEX *Company Guide* requires stockholders' equity of at least $4,000,000 and pre-tax income of at least $750,000 in its last fiscal year, or in two of its last three fiscal years.

[6] AMEX Rule 923 prohibits any member, member organizations, or registered employee thereof from recommending any options transaction to any customer unless such person making the recommendation has reasonable grounds to believe that the entire recommended transaction is not unsuitable for such customer and the person has a reasonable basis for believing that the customer has such knowledge and financial experience to be able to evaluate the transaction's risks.

[7] 15 U.S.C. 78f(b)(5) (1982).

[8] Of course, if the Nikkei moves in the wrong direction or fails to move in the right direction, the warrants will expire worthless and the investors will have lost their entire investment.

[9] The Commission previously has examined the Nikkei in the context of an application by the Chicago Mercantile Exchange ("CME") for designation as a contract market to trade futures contracts on the Nikkei. At that time, the Commission found that the Nikkei Index was not susceptible to manipulation because of the large number of stocks in the Index and the representative nature of the various industry segments included in the Index. *See* Nikkei letter, *supra* note 3.

[10] *See* Agreement between the AMEX and TSE to Share Market Surveillance Information and Amendment No. 1 to such Agreement, dated November 4, 1988 and November 17, 1989, respectively.

[11] Although the Surveillance Sharing Agreement contains several provisions that raise concerns as to the ability of the AMEX to obtain information from the TSE in all cases, the Commission has not objected to similar language in other agreements between the TSE and U.S. futures exchanges. *See* letter from Jonathan G. Katz, Secretary, SEC, to

Continued

believes the Surveillance Sharing Agreement between the AMEX and TSE is adequate to allay Commission concerns regarding potential manipulation or other trading abuse concerns between the markets with respect to the trading of Nikkei warrants.[12]

Finally, the Commission finds that, in light of the surveillance sharing agreement between the AMEX and the TSE, the composition of the Index, and the customer protection provisions applicable to trading in the warrants, trading in the Nikkei warrants will not have an adverse impact on U.S. financial markets. In fact, the Commission believes Nikkei warrants will benefit U.S. markets by providing U.S. issuers more flexibility in raising capital at potentially lower costs and allowing U.S. investors an opportunity to better hedge against stock market fluctuations in Japan.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR-AMEX-89-22) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Dated: December 22, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 90-92 Filed 1-3-90; 8:45 am]

BILLING CODE 8010-01-M

Paula Tosini, Director, Division of Economic Analysis, CFTC, dated September 1, 1988 regarding the application of the Chicago Board of Trade for designation as a contract market to trade futures contracts on the CBT Japanese Stock Index ("TOPIX"). In addition, it is the SEC's view that the Memorandum of Understanding ("MOU") between the SEC and the Japanese Ministry of Finance ("MOF") would provide a sufficient basis for the SEC to acquire the requisite surveillance or investigatory information on the AMEX's behalf. *See* letter from Richard G. Ketchum, Director, Division of Market Regulation, SEC, to Toshimi Konno, Director, Co-Ordination Division, Securities Bureau, MOF, dated September 4, 1987. MOF officials understand clearly the Commission's interpretation of the MOU in this regard and have not indicated that they have a different understanding.

[12] The Commission encourages the development of surveillance sharing agreements between U.S. self-regulatory organizations and foreign self-regulatory organizations, but believes that such agreements should be broad in nature rather than designed to cover one or more particular products. The absence of broad surveillance agreements slows down the introduction of new international products by forcing the relevant exchanges to amend product-specific surveillance sharing agreements every time a new product is introduced. Nevertheless, the Commission recognizes that the presence of a surveillance sharing agreement between the TSE and the AMEX acts as a substantial deterrent to manipulation and other impermissible market activities involving Nikkei warrants, and thus is a positive development.

[13] 15 U.S.C. 78s(b) (1982).

[14] 17 CFR 200.30-3(a)(12) (1989).

(Release No. 34-27567; File No. SR-NASD-89-49)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Board of Governors' Review of Disciplinary Actions

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 31, 1989, the National Association of Securities Dealers, Inc. ("NASD") 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 following is the full text of the proposed rule change. Proposed new language is italicized; deleted language is in brackets.

NASD Code of Procedure Article II

Sec. 1-Sec. 6—No change.

Evidence and Procedure in Committee Hearings

Sec. 7. (a) The Committee staff, or the complainant, if other than a Committee, shall upon request make available to respondents and their counsel any documentary evidence and the names of any witnesses the staff intends to present at the hearing no later than five (5) business days prior to [within a reasonable time before] the hearing.

(b) Respondents shall submit to the Committee staff or the complainant, any documentary evidence and the names of any witnesses respondents intend to present at the hearing no later than five (5) business days prior to [within a reasonable time before] the hearing.

(c) If a hearing is held, both the complainant and the respondent shall be entitled to be heard in person and by counsel. Formal rules of evidence shall not be applicable. Notwithstanding paragraphs (a) or (b), the parties may submit any additional documentary evidence at the hearing as the hearing panel, in its discretion, determines may be relevant and necessary for a complete record. A record of the hearing shall be kept in all cases.

Sec. 8-Sec. 13—No change.

Article III

Review of Disciplinary Actions and [Hearings] Proceedings Before The Board of Governors

Sec. 1—No change.

[Hearings] Proceedings Before the Board

Sec. 2. (a) In the case of an appeal or call for review, the [complainant, if other than the Committee, or the respondent] party seeking review may request a hearing. If the party desires a hearing, it should be requested in his application for review. A party subject to a call for review may request a hearing within fifteen (15) calendar days of notification of the call for review. [may request a hearing before a hearing panel of the Board of Governors.] If a request is made, a hearing shall be granted, subject to the limitations of section 2(f) below. In the absence of a request for a hearing, the Board of Governors may have any matter set down for a hearing.

(b) If a hearing is held, a [A] notice stating the date, time and place of the hearing shall be mailed to the complainant [, if other than the Committee] and respondent at least ten (10) calendar days before the hearing. The notice period may be waived in writing by the respondent or a shorter notice given where extraordinary circumstances require.

(c) If a hearing is not held, the matter shall be considered on the basis of the record before the Committee, and written briefs, as applicable. For purposes of this section, the record before the Committee shall include the complaint, respondent's answer, the transcript of the Committee hearing, any exhibits reviewed by the Committee, and the Committee decision.

[(c)] (d) Unless otherwise consented to by the parties, all hearings shall be held before a hearing panel, and all on-the-record reviews shall be conducted by a review panel, appointed by the National Business Conduct Committee consisting of two or more persons, all of whom are associated with members of the Corporation, at least one of whom shall also be a current member of the Board of Governors.

(e) [If a hearing is held, the hearing panel shall consider the record before the Committee and any new material submitted by the complainant and the respondent. If respondent has waived a hearing and the Board does not order a hearing on its own motion, the panel shall consider the matter on the record, which may include new evidence as long as all parties have previously been tendered the new evidence.]

(e) A hearing on review by the board shall consist of oral arguments limited to a total period of thirty (30) minutes each for argument and response by respondent and for argument and response by a complainant, unless extended by the hearing panel in its discretion for good cause shown. The Board's review shall be limited to consideration of oral arguments, written briefs, as applicable, and the record before the Committee. A record of the hearing shall be kept in all cases.

(f) Any application for review of a matter in which the party seeking review did not participate in the proceedings before the Committee but shows good cause for the failure to participate, shall normally be dismissed by the Board and remanded to the Committee for further proceedings. If the party seeking review did not participate in the proceedings before the Committee and does not show good cause for the failure to participate, the matter shall be considered by the Board on the basis of the record before the Committee, including written briefs submitted to the Board, as applicable. For purposes of this paragraph, failure to participate shall mean failure to file an answer or otherwise respond to a complaint or failure to appear at a hearing which has been scheduled and shall not include failure to request a hearing pursuant to article II, section 4 of this Code. A party seeking review who failed to request a hearing before a Committee pursuant to article II, section 4 of this Code, shall be permitted to have a hearing on review as provided in this section.

(g) Any application for review as to which the party seeking review fails to advise the Board of the basis for seeking review, or otherwise fails to provide information or submit a written brief in response to a request, may be dismissed as abandoned and the decision of the Committee shall become final Association action.

(h) Upon consideration of the length of expected testimony, the volume and complexity of documentary evidence before the Committee [and], or other factors it may deem material, and subject to the provisions of Section 2(a) through (g) above, the National Business Conduct Committee may determine that a matter shall be set for an Extended [Hearing] Proceeding. Notice of an Extended [Hearing] Proceeding shall be given as provided in section [2(a)] 2(b).

(i) All Extended [Hearings] Proceedings shall be held before an Extended [Hearing] Proceeding Committee appointed by the National Business Conduct Committee consisting of two or more persons, all of whom previously shall have served as members of the Board of Governors; provided, however, that the Chairman of the National Business Conduct Committee shall have the discretion to appoint to an Extended [Hearing] Proceeding Committee one or more current members of the Board Governors and to compensate any or all members of the Extended [Hearing] Proceeding Committee at the rate then in effect for arbitrators appointed under the Code of Arbitration Procedure.

[(f)] (l) The hearing or on-the-record review panel shall present its recommended findings and sanctions to the National Business Conduct Committee. The National Business Conduct Committee shall make its recommended findings and sanctions to the Board of Governors which shall make the final determination.

Evidence [and Procedure] in Board [Hearings] Proceedings

Sec. 3. [(a) Upon request, the Corporation staff or the complainant, if other than a Committee, shall make available to respondents and their counsel any documentary evidence which was not part of the record before the Committee, within a reasonable time before the hearing.]

(a) A party to the Board's review may apply to the Board for leave to adduce additional evidence. If the party provides notice of the intention to introduce such evidence no later than ten (10) business days prior to the date of the hearing, identifies and describes the evidence, and satisfies the burden of demonstrating that there was good cause for failing to adduce it before the Committee and that the evidence is material to the proceeding, the Board may, in its discretion, permit the evidence to be introduced into the record on review or may remand the case to the Committee for further proceedings in whatever manner and subject to whatever conditions the Board considers appropriate. On its own motion, the Board may direct that the record on review be supplemented with such additional evidence as it may deem relevant.

[(b) Respondents shall also make available to the Corporation staff or the complainant, any documentary evidence, which was not part of the record before the Committee, within a resonable time before the hearing.]

(b) Where leave to adduce additional evidence is granted, the Corporation staff or the complainant, if other than a Committee, and the respondent shall make available to the Board hearing or review panel and to the parties all documentary evidence which was not part of the record before the Committee no later than five (5) business days before the hearing.

(c) [If a hearing is held, both the complainant and respondent shall be entitled to be heard in person and by counsel.] Formal rules of evidence shall not be applicable. [Notwithstanding paragraphs (a) or (b), the parties may submit any additional documentary evidence at the hearing as the hearing panel, in its discretion, determines may be relevant and necessary for a complete record. A record of the hearing shall be kept in all cases.]

Sec. 4—Sec. 7—No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under Article II of the Code of Procedure ("Code"), upon request, the staff of a District Business Conduct Committee, the Market Surveillance Committee, or an Extended Hearing Committee ("Committee"), must make available to respondents and their counsel any documentary evidence the staff intends to present at a hearing within a reasonable time before the hearing. Respondents are required to submit to the Committee staff any documentary evidence they intend to present at the hearing within a reasonable time before the hearing.

The proposed rule change to Article II of the Code would require the respondents and, upon request, the Committee staff or complainant if other than a Committee, to submit documentary evidence and the names of witnesses to each other no later than five business days prior to the hearing. This change would eliminate any question as to whether the parties were given sufficient notice of additional documentary evidence or witnesses in advance of the hearing.

Under article III of the Code, respondents in disciplinary actions taken by a Committee may appeal those actions to the NASD Board of Governors ("Board"), or the Board may, on its own motion, call a matter for review. In either case, current Code provisions permit the respondents to elect to attend or waive a hearing before a hearing panel of the Board. Under the present provisions of Article III, respondents may also submit new evidence, provided that (i) the evidence has been made available to the NASD within a reasonable time before the hearing or

on-the-record review or (ii) if a hearing is held, the hearing panel determines to permit the presentation of evidence submitted for the first time at the hearing.

As a result of its review of the review procedures under Article III of the Code, the Board determined that:

(1) A significant amount of additional evidence, both testimonial and documentary, is presented at the Board level that should properly have been considered first by a Committee;

(2) A number of appeals have been received from persons who did not participate in the proceedings before a Committee; and

(3) An increasing number of appellants fail to respond to staff inquiries or otherwise pursue their appeals to the Board beyond filing of the initial notice of appeal.

Under article II of the Code, The NASD provides respondents with a full opportunity to participate in and produce evidence in proceedings before a Committee, and provides Committees with the opportunity to conduct a full review of each matter. The proposed rule change to Article III of the Code would convert Board reviews into more appellate-type proceedings and codify practices as to matters reviewed by the Board on the basis of the written record.

The proposed rule change would limit Board hearings to thirty-minute oral arguments by the parties, unless extended by the hearing panel for good cause shown. The proposed rule change would also prohibit the introduction of additional evidence except in exceptional circumstances and upon a demonstration of good cause for failure to introduce the evidence before a Committee. A party to the review would be required to apply to the Board for leave to adduce additional evidence no later than ten business days before the date of the hearing. The proposed rule change would also permit the Board to direct that the record be supplemented with such additional evidence as it may deem relevant.

The proposed rule change would also address those situations in which the appealing party did not participate in the proceedings before a Committee. The proposed rule change would permit the Board to remand to a Committee matters in which the appealing party did not participate in the proceedings before a Committee, but showed good cause for the failure to participate. If the appealing party failed to show good cause for his failure to participate in the proceedings before a Committee, the matter would be considered by the Board on the basis of the written record developed by the Committee, including a written brief submitted to the Board, as applicable. A party who failed to request a hearing before a Committee pursuant to Article II, Section 4 of the Code would be permiteed to request a hearing. The proposed rule change would permit such parties to request leave to adduce additional evidence. Such parties would be required to demonstrate good cause for failure to introduce the evidence before a Committee. The proposed rule change would also permit the Board to dismiss as abandoned any application for review in which the appealing party failed to advise the Board of the basis for seeking review, or failed to provide responses to requests for information in a timely manner.

Article III of the Code will continue to permit the National Business Conduct Committee to designate a matter as an extended proceeding.

The NASD believes that the proposed rule change to articles II and III of the Code is consistent with the provisions of section 15A(b)(2) and (8) of the Act, in that it will enable the NASD more effectively to enforce compliance by its members and persons associated with its members with its rules and the applicable federal laws and regulations, provide fair procedures for the disciplining of members and persons associated with its members, and maintain the integrity of the Board review process. The proposed rule change to article II of the Code is consistent with these provisions of the Act in that it will establish specific guidelines for the timely submission of documentary evidence and the names of witnesses to a Committee prior to a hearing. The proposed rule change to Article III of the Code is consistent with the provisions of Sections 15A(b)(2) and (8) of the Act in that it will convert Board appeals to appellate-type proceedings, establish procedures for hearings in connection with such reviews, and codify practices as to matters reviewed on the basis of the written record.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The proposed rule change was published for comment in NASD Notice to Members No. 89-33, dated April 1989. As a result of this Notice, the NASD received three comment letters.

One of the commenters was generally supportive of the proposed rule change. The other two commentators rasied issues that they saw as defects in the proposed rule change. Specifically, these commentators questioned whether the proposed fifteen minute limitation on oral argument was sufficient to meet the minimum statutory standard of providing a fair procedure, and one commentator questioned whether hearing panels made up of industry persons who normally are not lawyers would have difficulty in applying the discretionary "good cause" standard for extending the length of oral argument.

One commentator also objected to the limitation on the introduction of new evidence, contending that this limitation, given the absence of comprehensive discovery, evidentiary and procedural safeguards at the Committee level, would not provide a fair procedure. This commentator agreed, however, that persons who did not participate in the proceedings below should not be allowed to appeal without good cause shown, and that appeals should be dismissed for non-prosecution, but was concerned that the proposed rule change did not provide definite and objective standards for such dismissals.

The NASD considered the issue of whether the proposed fifteen minute time limitation on oral argument would provide respondents with a fair hearing, and determined to extend the time limitation on oral argument from 15 to 30 minutes. The securities professionals who comprise the hearing panels spend a significant amount of their time on matters relating to the enforcement of the federal securities laws and regulations and the NASD's By-Laws and Rules of Fair Practice. The NASD believes that these hearing panels, which consider and decide complex issues regarding compliance with federal and NASD rules and regulations, are capable of determining whether a party has shown good cause for extending the length of oral argument. Nonetheless, the NASD was persuaded that respondents should be allowed 30 minutes to present oral argument to the hearing panel.

The NASD does not agree that due process demands that appellants must have complete freedom to present to the Board any evidence. The NASD is of the view that appellants have every opportunity to present testimonial and documentary evidence at a Committee hearing. If, at the time of the Board hearing, appellants can show that material evidence was unavailable or

not reasonably discoverable at the time of the Committee proceedings, the Board Committee would be authorized to admit such evidence. This standard is similar to the standard applied in Rule 19d-39(e), which governs the admissibility of new evidence in Commission review of NASD disciplinary actions.

With respect to one commentator's view that the proposed rule change does not provide objective standards for the dismissal of an appeal for non-prosecution, the NASD believes that the language of the proposed rule change provides sufficient guidance regarding those failures to act by the party seeking review that may cause the Board to consider the appeal to be abandoned. In the NASD's experience, respondent's abandonment of an appeal is generally evident in that respondent has failed to take any action after the initial notice of appeal. Under the proposed rule change, the Board would allow the respondent a reasonable period of time in which to respond and would consider a matter abandoned where respondent has been given every opportunity to respond but has failed to do so within a reasonable period of time.

As a result of further review of the proposed rule change, the NASD also determined to add a provision to Article III, section 2(g) explicitly stating that, when an appeal is dismissed as abandoned, the decision of the Committee shall become final NASD action. The NASD also added to Article III, section 2(f) clarifying language that, while remands to a Committee will normally occur in cases in which the party seeking review failed to participate in a hearing before a Committee, remands will not be required in all such cases.

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 publihes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by January 25, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: December 26, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 90-96 Filed 1-3-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27570; File No. SR-PSE-89-30]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to Equity Transaction Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 18, 1989, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE, pursuant to Rule 19b-4 of the Act, submitted a proposed rule change to modify its equity transaction fee schedule. The revised rates will be implemented beginning with the January 1990 billing cycle.

The Exchange proposes several modifications to its equity transaction rates applying to monthly trade values. First, the charge for the initial $10 million of trade value a month is reduced to $0.13 per $1,000 of trade value. In addition, the PSE is offering discounts of the current price of $0.10 per $1,000 of trade value for trade values above $150 million per month. As a result, where the amount of monthly trade value is between $150 million and $350 million, the discount of the current schedule is 20 percent; where the amount of monthly trade value is between $350 million and $500 million, the discount of the current schedule is 40 percent; where the amount of monthly trade value is between $500 million and $650 million, the discount is 60 percent; and where the amount of monthly trade value exceeds $650 million, the discount off the current schedule is 80 percent.

Finally, the PSE proposes an additional set of discounts off the above fee schedule for (automated) SCOREX trades applicable to orders of 100 to 900 shares. As a result of this proposal, the first $150 million of monthly trade value receives a discount of 50 percent for trades of 100 to 300 shares, 40 percent for trades of 301 to 500 shares, and 30 percent for trades of 501 to 900 shares. If the amount of monthly trade value falls between $150 million and $350 million, the discount is 40 percent for trades of 100 to 300 shares, 30 percent for trades of 301 to 500 shares, and 20 percent for trades of 501 to 900 shares. If the amount of monthly trade value falls between $350 million and $500 million, the discount is 20 percent for trades of 100 to 300 shares, 10 percent for trades of 301 to 500 shares, and 5 percent for trades of 501 to 900 shares.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in 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

The PSE established the Equity Concepts and Issues Committee to review equity transaction rates. This Committee, which consisted of three (3) Equity Governors and Exchange staff,

began their study of transaction rates in late 1988. The Committee reviewed the PSE schedule of equity rates and fees and analyzed various changes that could be made to serve its members in a better and more cost effective manner. The Committee reached agreement on recommended changes, and the PSE Board of Governors approved the recommendations at its meeting on September 28, 1989.

The proposal is consistent with section 6(b)(4) of the Act in that it provides for an equitable allocation of fees, dues, and other charges among PSE members. In addition, the proposal is consistent with section 6(b)(5) of the Act in that it will enable the PSE to enhance its ability to facilitate transactions.

B. Self-Regulatory Organization's Statement of Burden on Competition

PSE does not believe that the proposed rule changes impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Proposed rule filing is the result of recommendations of the Equity Concepts and Issues Committee, composed of three Equity Governors and Exchange staff, specially formed to review PSE's schedule of rates and fees and to analyze proposed changes. The proposed changes were discussed with floor members at a meeting on October 2, 1989.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the PSE, it has become effective pursuant to section 19(b)(3) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. 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 purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission and all written communications relating to the proposed rule changes between the Commission and any persons, 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 Publicc Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-89-30 and should be submitted by January 25, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 27, 1989.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 90-95 Filed 1-3-90; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-17281; File No. 811-3100]

Voyager Variable Annuity Account C

December 22, 1989

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("the 1940 Act").

Applicant: Voyager Variable Annuity Account C ("VVAC" or "Applicant").

Relevant 1940 Act Sections: Order requested under section 8(f).

Summary of Application: Applicant seeks an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Date: The application was filed on December 22, 1988 and amended on July 24, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on January 16, 1990. Request a hearing in writing, giving the nature of your interest, the reason for your request, and the issues you contest. Serve the Applicant, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, P.O. Box 388, Dallas, Texas 75221, Attention: Art Hall.

FOR FURTHER INFORMATION CONTACT: Michael V. Wible, Staff Attorney, at (202) 272-2026 or Clifford E. Kirsch, Assistant Director, at (202) 272-2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is registered under the 1940 Act as a diversified, open-end management company.

2. On August 4, 1980, Applicant, a separate account established by Voyager Life Insurance Company ("Voyager"), a Florida life insurance company, filed a notice of registration on Form N-8A, a registration statement under the 1940 Act on Form N-1 and a registration statement under the Securities Act of 1933 on Form N-1. Both registration statements became effective November 28, 1980. The initial public offering commenced in April, 1981.

3. Applicant served as a funding vehicle for qualified and non-qualified group and individual variable annuity contracts issued by Voyager.

4. On December 20, 1985 and January 3, 1986, Applicant's Board of Managers recommended that the annuity contract owners approve various transactions necessary for Great American Reserve Insurance Company ("GARCO"), a Texas life insurance company, to acquire the assets of VVAC from Voyager. Proxy materials regarding the proposed transaction were distributed to Applicant's contract owners and filed with the Commission. At a special meeting of contract owners of VVAC, held on March 12, 1986, the contract owners approved various transactions which were necessary to GARCO's acquisition of the assets of VVAC from Voyager.

5. On May 15, 1986, GARCO purchased the annuity business, including the variable annuity contracts and separate account assets, of Voyager and VVAC ceased to be a separate

account under the Florida Insurance Code. Contract owners received assumption certificates from GARCO, and GARCO became principally liable to the contract holders for all debts and obligations incurred by Voyager under the annuity contracts. However, Voyager remained contingently liable under the contracts that it had issued, and VVAC and Voyager remained liable under the Securities Act of 1933 with respect to statements, and amendments thereto, used prior to the transfer of the assets and liabilities of VVAC to GARCO.

6. On September 17, 1985 (supplemented on November 6, 1985 and December 3, 1985), Voyager requested a no action letter from the Commission with respect to the proposed transfer by Voyager of its registered variable annuity separate account to GARCO. Such no action letter was issued on December 11, 1985.

7. Applicant will amend the application to note that despite the no action assurance that Voyager received, GARCO in August, 1986 registered the separate account under the 1940 Act.

8. The portfolio securities and other assets and liabilities which comprised VVAC remained intact, physically and legally segregated from any other account or business of GARCO. The annuity policies remained unchanged, except for the assumption of liabilities by GARCO, and continued to be funded by the assets of the separate account. The substantive rights of the contracts were not impaired or altered by the transaction. All expenses in connection with the merger were borne by Voyager and GARCO, and neither VVAC nor the contract holders were charged with any of the expenses of this transaction.

9. On April 30, 1986, Applicant had total assets of $8,570,376.58. Applicant has retained no assets, has no debts or other liabilities outstanding, and is not to its knowledge a party to any litigation or administrative proceedings. Applicant has no security holders and is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs. Applicant has ceased to function as a diversified open-end management investment company.

For the Commission, by the Division of Investment Management, pusuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 90-93 Filed 1-3-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-17282; File No. 811-1327]

Voyager Variable Annuity Fund

December 22, 1989.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Voyager Variable Annuity Fund ("VVAF" or "Applicant").

Relevant 1940 Act Sections: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing date: The application was filed on December 22, 1988 and amended on July 24, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on January 16, 1990. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, P.O. Box 388, Dallas, Texas 75221, Attention: Art Hall.

FOR FURTHER INFORMATION CONTACT: Michael V. Wible, Staff Attorney, at (202) 272-2026 or Clifford E. Kirsch, Assistant Director, at (202) 275-2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is registered under the 1940 Act as a diversified, open-end management company.

2. On August 6, 1965, Applicant, a separate account established by Voyager Life Insurance Company ("Voyager"), a Florida life insurance company, filed a notice of registration on Form N-8A, a registration statement under the 1940 Act on Form N-8B-1 and a registration statement under the Securities Act of 1933 on Form S-5. The 1940 Act registration statement became effective on September 6, 1965, and the 1933 Act registration statement was declared effective on September 20, 1965. The initial public offering commenced in September, 1965.

3. Applicant served as a funding vehicle for qualified and non-qualified group and individual variable annuity contracts issued by Voyager.

4. On December 20, 1985 and January 3, 1986, Applicant's Board of Managers recommended that the annuity contract owners approve various transactions necessary for Great American Reserve Insurance Company ("GARCO"), a Texas life insurance company, to acquire the assets of VVAF from Voyager. Proxy materials regarding the proposed transaction were distributed to Applicant's contract owners and filed with the Commission. At a special meeting of contract owners of VVAF, held on March 12, 1986, the contract owners approved various transactions which were necessary for GARCO's acquisition of the assets of VVAF from Voyager.

5. On May 15, 1986, GARCO purchased the annuity business of Voyager. Contract owners received assumptions certificates from GARCO and GARCO became principally liable to the contract holders for all debts and obligations incurred by Voyager under the annuity contracts. However, Voyager remained contingently liable under the contracts that it had issued and VVAF and Voyager remained liable under the Securities Act of 1933 with respect to statements made in the registration statements, and amendments thereto, used prior to the transfer of the assets and liabilities of VVAF to GARCO.

6. On September 17, 1985 (supplemented on November 6, 1985 and December 3, 1985), Voyager requested a no action letter from the Commission with respect to the proposed transfer by Voyager of its registered variable annuity separate account to GARCO. Such no action letter was issued on December 11, 1985.

7. Applicant will amend the application to note that despite the no action assurance that Voyager received, GARCO in August, 1986 registered the separate account under the 1940 Act.

8. The portfolio securities and other assets and liabilities which comprised VVAF remained intact, physically and legally segregated from any other account or business of GARCO. The

annuity policies remained unchanged, except for the assumption of liabilities by GARCO, and continued to be funded by the assets of the separate account. The substantive rights of the contracts were not impaired or altered by the transaction. All expenses in connection with the marger were borne by Voyager and GARCO, and neither VVAF nor the contract holders were charged with any expenses of this transaction.

9. On April 30, 1986, Applicant had total assets of $23,038,534.60. Applicant has retained no assets, has no debts or other liabilities outstanding, and is not to its knowledge a party to any litigation or administrative proceedings. Applicant has no security holders and is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs. Applicant has ceased to function as a diversified open-end management investment company.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 90-94 Filed 1-3-90; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-7665]

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; Lydall, Inc., Common Stock, $3.33⅓ Par Value

December 28, 1989.

Lydall, Inc. ("Company"), has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("AMEX").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company's common stock recently was listed on the New York Stock Exchange ("NYSE"). Trading in the Company's stock on the NYSE commenced on December 13, 1989. In making the decision to withdraw its common stock from listing on the AMEX, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and the AMEX. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before January 22, 1990, submit by letter to the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 90-192 Filed 1-3-90; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

Torrington Communications, Inc. and Pension Architects, Inc.; Order of Trading Suspension

December 29, 1989.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information relating to the securities of Torrington Communications, Inc. ("Torrington") and Pension Architects, Inc. ("Pension Architects"), and that questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things, market activity and transactions in the securities of the subject companies and, more specifically, the identity of the beneficial owners and controlling interest in the companies. The Commission is of the opinion that the public interest and the protection of investors require a summary suspension of trading in the securities of Torrington and Pension Architects.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that the over-the-counter trading in the securities of Torrington and Pension Architects is suspended for a ten-day period commencing at 9:30 a.m. (EST) on December 29, 1989, and terminating at midnight (EST) on January 7, 1990.

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 90-191 Filed 1-3-90; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Advisory Committee on Veterans Business Affairs, Public Meeting

The U.S. Small Business Administration, Advisory Committee on Veterans Business Affairs will hold a public meeting at 10:00 a.m., on Thursday, January 18, 1990, at the U.S. Small Business Administration Headquarters, 1441 L Street, NW., Room 214, Second Floor Conference room, Washington, DC to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Leon J. Bechet, Director, Office of Veterans Affairs, U.S. Small Business Administration, 1441 L Street, NW., Room 414, Washington, DC 20416, (202) 653-8220.

Dated: December 21, 1989.

Jean M. Nowak,

Director, Office of Advisory Councils.

[FR Doc. 90-189 Filed 1-3-90; 8:45 am]

BILLING CODE 8025-01-W

OFFICE OF SPECIAL COUNSEL

Enforcement of Nondiscrimination on the basis of Handicap in Programs or Activities Conducted by the Office of Special Counsel

AGENCY: Office of Special Counsel.

ACTION: Notice of self-evaluation; request for comments.

SUMMARY: Notice is hereby given that the Office of Special Counsel (OSC) is evaluating its current policies and practices to determine if discrimination against handicapped persons is present in its programs and activities. This notice also requests public comments from interested parties on the OSC policies and practices with respect to handicapped persons. The effect of this notice is to comply with the OSC regulation on Enforcement of Nondiscrimination on the Basis of Handicap Programs or Activities Conducted By the Office of Special Counsel, 5 CFR part 1850 (Formerly 5 CFR part 1262) which requires OSC to conduct this self-evaluation and to permit interested parties to participate in this project.

DATES: Comments must be received by February 5, 1990.

ADDRESSES: Written comments should be addressed to the Director for Management, Office of Special Counsel, 1120 Vermont Avenue, NW., Suite 1100, Washington, DC, 20005. Comments will

be available for public inspection in the OSC Management Division between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: William E. Caldwell, Director for Management, Office of Special Counsel, 1120 Vermont Avenue, NW., Washington, DC (202) 653-7144 or John Marshall Meisburg, Jr., General Attorney, (202) 653-7307. These are not toll free numbers.

SUPPLEMENTARY INFORMATION: The regulation of the Office of Special Counsel on Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted By OSC, which was issued pursuant to 29 CFR 794, prohibits discrimination on the basis of handicap in its programs and activities.

That regulation, at 5 CFR 1850.10(a) requires OSC to evaluate its current policies and practices and the effects thereof in order to determine if they result in discrimination against handicapped persons in employment, program accessibility, communication, or otherwise. Section 1850.10(b) of the regulation requires OSC to "provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps to participate in the self-evaluation process by submitting comments (both oral and written)."

Comments on OSC's programs and policies as they affect handicapped persons or on the OSC self-evaluation, a summary of which is set forth above, are invited. Please send written comments to the Director for Management, at the address listed above. Oral comments can be made to the Director for Management at (202) 653-7144.

Upon completion of this self-evaluation and comment period, OSC will carefully review all comments and will take appropriate steps to correct deficiencies in its programs and activities. In addition, OSC will maintain on file areas examined, any problems identified and any modifications made. This file will be maintained for a period of three years following the completion of this self-evaluation and will be made available for public inspection upon request.

Issued in Washington, DC, this 20th day of December 1989.

Mary F. Wieseman,

Special Counsel.

[FR Doc. 90-205 Filed 1-3-90; 8:45 am]

BILLING CODE 7400-02-M

DEPARTMENT OF STATE

[Public Notice 1147]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511.

SUMMARY: Entry to the Department of State main building and its annexes is controlled by a Security Access Control System. Visitors who need access to the buildings on official business may apply for a Department of State Building Pass. The following summarizes the information collection proposal submitted to OMB:

Type of request—Reinstatement.

Originating office—Bureau of Diplomatic Security.

Title of information collection—Application for Department of State Building Pass.

Form number—DSP-97.

Frequency—On occasion.

Respondents—*Press corps, maintenance personnel, visitors, and others.*

Estimated number of respondents—8,000.

Average hours per response—5 minutes.

Total estimated burden hours—667.

Section 3504(h) of Public Law 96-511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed form and supporting documents may be obtained from Gail J. Cook (202) 647-3538. Comments and questions should be directed to (OMB) Don Arbuckle (202) 395-7340.

Dated: December 14, 1989.

Sheldon J. Krys,

Assistant Secretary for Diplomatic Security.

[FR Doc. 90-180 Filed 1-3-90; 8:45 am]

BILLING CODE 4710-08-M

[Public Notice 1146]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511.

SUMMARY: For persons born abroad of an American parent or parents, a claim to United States citizenship must be pursued through the "law of blood." When such a claim is recognized as valid, a Consular Report of Birth of a Citizen of the United States of America may be issued by a consular officer. The Report of Birth is issued based on information provided in the Application for a Consular Report of Birth and supporting documents. The following summarizes the information collection proposal submitted to OMB:

Type of request—Reinstatement.

Originating office—Bureau of Consular Affairs.

Title of information collection—Application for a Consular Report of Birth Abroad of a Citizen of the United States of America.

Form number—FS-579 (Previously FS-240).

Frequency—On occasion.

Respondents—Parents or Guardians of U.S. Citizens Born Abroad.

Estimated number of respondents—40,000.

Average hours per response—20 minutes.

Total estimated burden hours—13,333.

Revised regulations (22 CFR 50.5, 7, 8) have been published in the Federal Register (54FR 41459).

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed form and supporting documents may be obtained from Gail J. Cook (202) 647-3538. Comments and questions should be directed to (OMB) Don Arbuckle (202) 395-7340.

Dated: November 20, 1989.

Sheldon J. Krys,

Assistant Secretary for Diplomatic Security.

[FR Doc. 90-182 Filed 1-3-90; 8:45 am]

BILLING CODE 4710-06-M

[Public Notice CM-8/1339]

Study Group 5 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 5 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet at 9:00 a.m., January 5, 1990, in Room CR 1-42 of the Engineering Center, University of Colorado at Boulder. The requirement for 15-day advance notice is not met because of

delays within the Department of State in receiving meeting information.

Study Group 5 deals with the propagation of radio waves (including radio noise) at the earth's surface, through the non-ionized regions of the atmosphere, and in space where the effect of ionization is negligible. The purpose of the meeting is to review results of the recent Final Study Group 5 Meeting and to identify priorities for the next study period.

Members of the geneal public may attend and participate in the meeting, subject to available seating and the instructions of the Chairman. Requests for further information should be directed to the Chairman: Dr. John Cavanaugh, U.S. Navy/NSWC, Dahlgren, Va. 22448; telephone (703) 663-7911.

Dated: December 26, 1989.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 90-108 Filed 1-3-90; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1340]

Chairman's Special Ad Hoc Subcommittee of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that the Chairman's Special Ad Hoc Subcommittee of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet all day beginning at 9:30 a.m. on January 9, 1990, in Room 1107, Department of State, 2201 C Street NW., Washington, DC. The requirement for 15-day advance notice is not met because of difficulties in establishing the agenda and meeting location.

The Chairman's Special Ad Hoc Subcommittee studies issues assigned to it by the U.S. CCIR National Committee. The purposes of this meeting are (1) to draft U.S. positions for the XVIIth Plenary Assembly of the CCIR, May 1990 and (2) to coordinate U.S. CCIR preparations for the 1992 World Administrative Radio Conference (WARC-92) on allocations (to begin after 1:30 p.m.).

Members of the general public may attend and participate in the meeting, subject to available seating and the instructions of the Chairman. Requests for further information should be directed to the Chairman: Mr. Warren G. Richards, Department of State, Washington, DC, 20520; phone (202) 467-0049; fax (202) 647-5957.

Dated: December 26, 1989.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 90-109 Filed 1-3-90; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1341]

National Committee of the U.S. Organization for the International Radio Consultative Committee; Meeting

The Department of State announces that the National Committee of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet at 9:30 a.m., January 10, 1990 in Room 1105 of the Department of State, 2201 C Street, NW., Washington, DC. Meeting will continue in the afternoon, if necessary. It is essential that participants indicate their desire to attend in advance. An escort will be at the main entrance to the building (22nd and C Streets) from 9:15 a.m. to assist. The requirement for 15-day advance notice is not met because of difficulties in establishing the agenda and meeting location.

The purpose of the United States Organization is to assist and advise the Department on matters concerning participation in the international CCIR activities. It is charged with promoting the best interests of the United States, providing advice on matters of policy and positions in preparation for Study Group meetings, and recommending the disposition of proposed U.S. contributions to the international CCIR which are submitted to the Committee for consideration. The National Committee constitutes a steering body, and as such has purview of the work of the national study groups and other activities.

The main purposes of the meeting will be to consider:

1. High-Level Committee to Review ITU Structure and Functions, which meets January 22 in Geneva; in particular, to discuss the possible use of consultants for appropriate tasks and interest within the United States;
2. Preparations for the upcoming CCIR Pelnary Assembly scheduled for May 21-June 1, 1990, in Dusseldorf;
3. Preparation for other CCIR meetings;
4. Other business.

U.S. consultants interested in bidding on portions of the ITU Review are encouraged to attend. Members of the general public may attend the meeting and join in discussions subject to instructions of the Chairman and to available seating. All persons wishing to attend the meeting must contact the office of Richard Shrum, Department of State, Washington, DC; phone (202) 647-2592, telefax (202) 647-5957, in order to pre-register and arrange for entry into the State Department. Entrance to the building is controlled and attendees must use the C Street entrance.

Dated: December 26, 1989.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 90-110 Filed 1-3-90; 8:45 am]

BILLING CODE 4710-07-M

[CM-6/1338]

The U.S. Organization for the International Telegraph and Telephone Consultative Committee CCITT Study Group B; Meeting

The Department of State announces that Study Group B of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on February 9, 1990 at 8:00 a.m. at the North Raleigh Hilton and Convention Center, Raleigh, NC.

The agenda for the meeting will be:

1. Approval of Minutes of November 15 U.S. Study Group B meeting.
2. Reports:

(a) T1 AG meeting, December 12-13, 1989, Sacramento, CA

(b) CCITT Study Group XI/4 and 7, December 4-15, 1989, Geneva

(c) CCITT Study Group XVIII ISDN Experts, January 8-19, 1990

(d) ISO JTC1 SC6, January 22-26, 1990, Paris

3. U.S. Study Group B approval of Documents for CCITT Study Group XI meeting.
4. Other business relevant to Study Group B.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. Entry will be facilitated if arrangements are made in advance of the meeting. Persons who plan to attend should telephone Marcie Geissinger, 303 497 5216.

Dated: December 15, 1989.

Earl S. Barbely,

Director Office of Telecommunications and Information Standards; Chairman, U.S. CCITT National Committee.

[FR Doc. 90-179 Filed 1-3-90; 8:45 am]

BILLING CODE 4710-07-M

Determination Under FAA Section 620(q)

Subject: Assistance to Cameroon.

Pursuant to the authority vested in me by section 620(q) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163, and the Department of State Delegation of Authority No. 145, I hereby determine that the furnishing of assistance under the Act to Cameroon is in the national interest of the United States.

This determination shall be reported to the Congress as required by law.

This determination shall be published in the **Federal Register**.

Dated: December 16, 1989.

Lawrence Eagleburger,

Acting Secretary of State.

[FR Doc. 90-181 Filed 1-3-90; 8:45 am]

BILLING CODE 4710-08-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week ended December 22, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 46682.

Date filed: December 21, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 18, 1990.

Description: Joint Application of Continental Airlines, Inc. and Eastern Air Lines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, to renew certificate authority of public convenience and necessity for Route 487 (Miami-London).

Docket Number: 46684.

Date filed: December 21, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 18, 1990.

Description: Application of Air Holland N.V., pursuant to Section 402 of the Act and subpart Q of the Regulations requests an initial foreign air carrier permit authorizing it to engage in foreign charter air transportation of persons and property between points in the Netherlands and points in the United States.

Docket Number: 46391.

Dated filed: December 18, 1989.

Due Date For Answers, Conforming Applications, or Motion to Modify Scope: January 16, 1990.

Description: Amendment No. 1 to the Application of Trans-Jamaican Airlines, Ltd. for a foreign air carrier permit. TJA amends its application by striking numbered paragraph 5 and substituting therefor a new paragraph 5 reading as follows:

(a) From Jamaica via intermediate points in Haiti and the Dominican Republic to San Juan, Puerto Rico.

(b) From Jamaica to Fort Lauderdale, Florida.

(c) Such off-route charter authority as may be permitted under part 212 of the Department's Economic Regulations."

Docket Number: 46564.

Date filed: December 20, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 17, 1990.

Description: Amended Application of Ryan International Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations requests amendment of its Section 418 and 401 certificate authority to permit Ryan to provide domestic subservice for Air Train and Orion and direct service for Emery and to find Ryan fit to provide foreign all-cargo charter operations throughout North America for Emery to commence such operations by January 2, 1990.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 90-70 Filed 1-3-90; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Special Committee 167-Digital Avionics Software; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463; 5 U.S.C. App. I), notice is hereby given for the second meeting of RTCA Special Committee 167 on Digital Avionics Software to be held January 31-February 2, 1990, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) approval of the first meeting's minutes, RTCA Paper No. 417-89/SC167-6; (3) review and discuss EUROCAE WG-12 activities; (4) review and approve modified terms of reference; (5) review of new issues identified by the Chairman; (6) Working Group reports on WG-1, Documentation Integration and Production; WG-2, Systems Issues; WG-3, Software Development; WG-4, Software Verification; WG-5, Configuration Management and Quality Assurance; (7) Working Group sessions; (8) in plenary Working Group progress and task assignment; (9) other business; and (10) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 22, 1989.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 90-137 Filed 1-3-90; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Executive Committee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the Executive Committee meeting to be held January 26, 1990, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's remarks and introductions; (2) approval of December 4 Executive Committee meeting minutes, RTCA Paper No. 440-89/EC-1044; (3) Executive Director's report; (4) Special Committee Activities Report for November-December 1989, RTCA Paper No. 441-89/RE-720; (5) report of the Fiscal and Management Subcommittee; (6) report of the RTCA Awards Committee; (7) consideration of proposals to establish new special committees on proposed revision of SC-167 Terms of Reference, RTCA Paper

409-89/RE-715, and Optical Technology Laboratories' request for a Special Committee to Develop Minimum Operational Performance Standards for a Passive Optical Traffic Alert System, RTCA Paper No. 418-89/RE-717; (8) other business; and (9) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 22, 1989.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 90-140 Filed 1-3-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: December 28, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0178.

Form Number: ATF F 4483 (5300.5).

Type of Review: Extension.

Title: Report of Firearms Transactions.

Description: This form is used to evaluate firearms transactions by licensees when the Regional Director (Compliance) determines the need to do so. It is prepared from existing records and submitted to the official.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 250.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 250 hours.

OMB Number: 1512-0203.

Form Number: ATF REC 5110/06.

Type of Review: Extension.

Title: Distilled Spirits Plants—Excise Taxes.

Description: Data is necessary to account for and verify taxable removals. It is used to audit tax payments.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Recordkeepers: 270.

Estimated Burden Hours Per Recordkeeper: 1 hour.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 1 hour.

OMB Number: 1512-0496.

Form Number: None.

Type of Review: Extension.

Title: Use of the Word "Light" (Lite) in the Labeling and Advertising of Wine, Distilled Spirits, and Malt Beverages.

Description: Use of the words "light" and "lite" have been used to connote products that are low or reduced in calories. Consumers who are conscious of their caloric intake, in particular, will be able to purchase alcoholic beverages in accordance with their needs, and will be able to compare the calories in the "light" (lite) product with that of the producer's or competitor's regular product.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 303.

Estimated Burden Hours Per Recordkeeper: 1 hour.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 1 hour.

Clearance Officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 9084 Filed 1-3-90; 8:45 am]

BILLING CODE 4810-31-M

Public Information Collection Requirements Submitted to OMB for Review

DATE: December 28, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Interal Revenue Service

OMB Number: 1545-0806.

Form Number: None.

Type of Review: Extension.

Title: Nonbank Trustees of Pension and Profit-Sharing Trusts Benefiting Owner-Employees.

Description: Internal Revenue Code section 401(d)(1) permits a person other than a bank to be the trustee of a plan benefiting owner-employees. To do so, an application needs to be filed and various qualifications need to be met. IRS uses the information to determine whether a person qualifies to be a nonbank trustee.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Responses: 340.

Estimated Burden Hours Per Respondent: 46 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 260 hours.

OMB Number: 1545-0817.

Form Number: None.

Type of Review: Extension.

Title: Public Inspection of Information Required to Exempt Organizations and Trusts.

Description: Internal Revenue Code section 6104 requires applications for tax exempt status, annual reports of private foundations, and certain portions of returns to be open for inspection. Some information may be withheld from disclosure. IRS needs information to comply with requests for public inspection of the above-named documents.

Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.

Estimated Number of Respondents: 51,070.

Estimated Burden Hours Per Response: 14 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 12,018 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90-85 Filed 1-3-90; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Date: December 28, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0195.

Form Number: ATF F 5110.25.

Type of Review: Extension.

Title: Application for Operating Permit Under 26 U.S.C. 5171(d).

Description: ATF F 5110.25 is completed by proprietors of distilled spirits plants who engage in certain specified types of activities. ATF regional office personnel use the information on the form to identify the applicant, the location of the business and the types of activities to be conducted.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 80.

Estimated Burden Hours Per Response: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 25 hours.

OMB Number: 1512-0386.

Form Number: ATF REC 7570/1.

Type of Review: Extension.

Title: Records of Acquisition and Disposition—Registered Importers—of Arms, Ammunition, and Implements of War on U.S. Munitions Import List.

Description: These records of items that are listed on the U.S. Munitions List are used to account for the items by the Registered Import and this Bureau in investigations to insure compliance with the Federal Law.

Respondents: Businesses or other for-profit.

Estimated Number of Recordkeepers: 50.

Estimated Burden Hours Per Recordkeeper: 5 hours

Frequency of Response: Other.

Estimated Total Recordkeeping Burden: 250 hours.

Clearance Officer: Robert Masarsky, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90-160 Filed 1-3-90; 8:45 am]

BILLING CODE 4810-31-M

Public Information Collection Requirements Submitted to OMB for Review

Date: December 28, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0042.

Form Number: IRS Form 970.

Type of Review: Revision.

Title: Application to Use LIFO Inventory Method.

Description: Form 970 is filed by individuals, partnerships, trusts, estates, or corporations to either elect the LIFO inventory method or to extend LIFO inventory to different types of inventory not originally elected. IRS uses Form 970 to determine if the filer is entitled to use the LIFO inventory.

Respondents: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Responses/Recordkeepers: 3,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	8 hrs., 22 min.
Learning about the law or the form.	1 hr., 12 min.
Preparing and sending the form to IRS.	1 hr., 23 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 32,820 hours.

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Department Reports Management Officer.

[FR Doc. 90-161 Filed 1-3-90; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 3
Thursday, January 4, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Thursday, December 21, 1989, 1:00 p.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Enforcement Matter OS# 4666

The staff will brief the commission on enforcement matter OS#4666.

The Commission decided by unanimous vote that agency business required holding this meeting without the usual seven day notice.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207, 301-492-6800.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 90-265 Filed 1-2-90; 11:04 am]

BILLING CODE 6355-01-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, January 9, 1990, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Thursday, January 11, 1990, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Correction and Approval of Minutes.
Draft Advisory Opinion 1989-31: Don Edwards Congressional Campaign Fund.
Final Repayment Determination for Lenora B. Fulani's Committee for Fair Elections.
Administrative Matters.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone: (202) 376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 90-294 1-2-90; 2:41 pm]

BILLING CODE 6715-01-M

federal register

Thursday
January 4, 1990

Part II

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Advisory Committee Meeting; Notice

Recombinant DNA Research: Proposed Actions Under Guidelines; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee at the National Institutes of Health (NIH), Building 31C, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20892, on February 5, 1990, from approximately 9 a.m. to adjournment at approximately 5 p.m. This meeting will be open to the public to discuss:

Proposed major actions;
Amendment of NIH Guidelines;

Proposal that the Recombinant DNA Advisory Committee seek views from the scientific community regarding changes in recombinant DNA technology and molecular genetics research and the effects of such changes on the scope of Committee activities;

Interim report on the first experiments involving transfer of recombinant DNA into human subjects; and

Other matters to be considered by the Committee.

Attendance by the public will be limited to space available. Members of the public wishing to speak at the meeting may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, telephone (301) 496-9838, will provide materials to be discussed at the meeting, rosters of committee members, and substantive program information. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: December 22, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-10 Filed 1-3-90; 8:45 am]

BILLING CODE 4140-01-M

Recombinant DNA Research: Proposed Actions Under Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of Proposed Action Under the NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth proposed action to be taken under the National Institutes of Health (NIH) Guidelines for Research Involving Recombinant DNA Molecules. Interested parties are invited to submit comments concerning this proposal. This proposal will be considered by the Recombinant DNA Advisory Committee (RAC) at its meeting on February 5, 1990. After consideration of this proposal and comments by the RAC, the Director of the National Institutes of Health will issue a decision in accordance with the NIH Guidelines.

DATES: Comments received by January 29, 1990, will be reproduced and distributed to the RAC for consideration at its February 5, 1990, meeting.

ADDRESSES: Written comments and recommendations should be submitted to Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, Building 31, room 4B11, National Institutes of Health, Bethesda, Maryland 20892, or send by fax to 301-496-9839. All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities, Building 31, room 4B11, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-9838.

SUPPLEMENTARY INFORMATION: The NIH will consider the following action under the NIH Guidelines for Research Involving Recombinant DNA Molecules:

I. Amendment of Appendix F-IV-L of the NIH Guidelines

In a letter dated November 1, 1989, Dr. John R. Lowe, Chairman of the Institutional Biosafety Committee at the U.S. Army Medical Research Institute of Infectious Diseases (USAMRIID), requests that certain experiments involving products of a yellow fever virus originating from a 17-D yellow fever clone, but containing some sequences from the virulent Asibi strain of yellow fever virus, be carried out in animals at the BL-3 containment level.

Further, it is requested that there be a change in biocontainment for certain experiments involving vaccine studies of Venezuelan equine encephalitis virus; if this request should be approved, the animal studies in mice and hamsters then could be done at the Biosafety Level (BL) 3 containment level. It should be noted that the laboratory facilities proposed for these experiments operate at a BL-3 + level of containment, which means that they possess some specific features characteristic of BL-4 containment.

There are two investigator-initiated requests accompanying Dr. Lowe's letter and excerpted text from these documents is included below.

Dr. Jonathan Smith states:

> The USAMRIID IBC has submitted a request to the NIH RAC to change the biocontainment for our Venezuelan equine encephalitis virus (VEE) vaccine studies from BL-4 to BL-3 (with hepa-filtered laboratory exhaust and immunization of all individuals entering the laboratory).
>
> USAMRIID has worked with VEE virus at the upgraded BL3 biocontainment level for many years, and this is, in fact, the level of biocontainment recommended by the NIH/CDC as detailed in "Biosafety in Microbiological and Biomedical Laboratories." However, the RAC guidelines suggest BL4 for animal inoculation or transmission studies with VEE virus.
>
> Our registration documents describe a program which will produce an improved vaccine for VEE through the identification of attenuating mutations and insertion of these mutations into a full-length VEE clone. A live-attenuated VEE vaccine candidate will then be obtained by transfection of cells with RNA transcribed from an appropriately mutagenized DNA clone.
>
> As was expected, the existing VEE vaccine (TC-83) currently used to protect laboratory workers at USAMRIID and elsewhere, provided complete protection in rodents against challenge with the virus produced from the wild-type, full-length clone. In addition, we have shown recently that three different point mutations that were identified

by sequence analysis of attenuated mutants, resulted in attenuation of the viruses produced from mutagenized clones containing these mutations.

In summary, we have shown that TC-83 provides protection against the virus produced from the unaltered clone, and that the viruses obtained from the mutagenized clones are avirulent as tested in rodent models. We therefore request that we be allowed to carry out further animal inoculation and transmission studies with VEE viruses arising from these full-length clones at the upgraded BL3 level as described in paragraph one above. Viruses obtained from future constructs will be similarly safety tested at the BL4 level prior to any studies at the BL3 level.

It should be noted also that there are existing agreements between USAMRIID and the Department of Agriculture to test the efficacy of these strains as equine vaccines at the Plum Island facility. Plum Island has facilities which comply with the CDC/NIH biocontainment guidelines, but no BL4 facilities. Therefore, unless the CDC/NIH guidelines are deemed appropriate, these studies cannot be carried out.

In his request, Dr. Joel Dalrymple states:

We request to examine the products of an infectious yellow fever clone at P3 (BL-3) containment. We have interpreted a previous committee decision to mean that we are able to work in animals with infectious clone RNA transcripts of the 17-D vaccine strain of yellow fever virus at the BL-3 level. This is in full compliance with the NIH-RAC guidelines. The pending request concerns the level required for work in animals using virus originating from a 17-D yellow fever clone containing some sequences from the virulent Asibi strain. The NIH-RAC guidelines suggest that animal work with virulent yellow fever clones be performed at the BL-4 containment level, which is in excess of the BL-3 containment level required for work with fully virulent Asibi yellow fever virus.

Additional documentation supporting these requests will be distributed at the meeting. This material also is available upon request from the Office of Recombinant DNA Activities.

II. Other Matters to be Considered.

Time permitting, the following agenda items will be presented and discussed:

A. There will be a presentation by Dr. Donald S. Fredrickson on the future role of the Recombinant DNA Advisory Committee (RAC). This will reflect the changes which have occurred in molecular genetics research, including the newer technologies for introducing DNA into cells. Clearly the need to review any experimentation that results in the stable integration of DNA into a genome could significantly expand the scope of RAC activities. Conversely, if the new categories of experiments do not present additional hazards, then the influence on the RAC may be negligible.

B. There will be an interim report on the first set of studies involving the transfer of recombinant DNA into human subjects. Tumor-infiltrating lymphocytes marked with the gene for neomycin resistance have been given to a small group of patients who have metastatic neoplasms.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Jay Moskowitz,

Associate Director, Office of Science Policy and Legislation, National Institutes of Health.

[FR Doc. 90-11 Filed 1-3-90; 8:45 am]

BILLING CODE 4140-01-M

federal register

Thursday
January 4, 1990

Part III

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 50, et al

Procedures for Implementation of Executive Orders 11988 and 11990; Revision of Minimum Property Standards for One and Two Family Dwellings; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 50, 55, 58 and 200

[Docket No. R-89-1463; FR-865-P-01]

RIN 2501-AA23

Procedures for the Implementation of Executive Orders 11988 and 11990; Revision of Minimum Property Standards for One and Two Family Dwellings

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: HUD proposes procedures to implement Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands. These procedures would provide direction for compliance for all HUD programs (except those explicitly excluded) with the Executive Orders by HUD or by certain State and local grant recipients before their respective decisions to approve a proposed action that (1) involves HUD financial assistance and (2) would affect a floodplain or wetland. In addition to the proposed implementation procedures, HUD proposes that 24 CFR 200.926d(c)(4) of the Department's Minimum Property Standards for One and Two Family Dwellings be revised to accord with Executive Order 11988, WRC Guidelines, FEMA regulations for the National Flood Insurance Program, and current HUD mortgage underwriting practices. HUD environmental review regulations at 24 CFR parts 50 and 58 would also be revised to refer to the decisionmaking process under this rule.

DATES: *Comment Due Date:* March 5, 1990.

ADDRESS: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410. Communications should refer to the above docket number and title, and give reasons for any recommendations. A copy of each communication will be available for public inspection at the above address from 8:45 a.m. to 5:15 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Concerning 24 CFR parts 50, 55, and 58, Richard H. Broun, Director, Office of Environment and Energy, Room 7154, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. For telephone communications, contact Truman Goins, Water Resources Coordinator, Office of Environment and Energy, at (202) 755-7894. (This is not a toll-free number.) With respect to 24 CFR part 200, contact John E. Bonkoski, Office of Housing, at (202) 755-6740. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced with publication of the final rule in the **Federal Register**. Public reporting burden for the collection of information requirements contained in this rule is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, "Other Matters". Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Background

Executive Orders 11988 and 11990

Executive Orders 11988 and 11990, published in the **Federal Register** of May 25, 1977 (42 FR 26951, 26961), establish Federal policy to assure that Federal programs avoid adverse impact on wetlands and floodplains; minimize destruction, loss or degradation of wetlands; preserve and enhance the natural and beneficial values of wetlands; reduce risk of flood loss; minimize the impact of floods on human safety, health, and welfare; and to the extent possible, restore the natural and beneficial values served by floodplains. Federal agencies are required to exercise leadership to assure that the intent of these Executive Orders is understood and incorporated whenever possible into Federal, State, or local programs affecting floodplains and wetlands.

Under Executive Order 11988, Federal agencies should avoid directly or indirectly supporting floodplain development or otherwise adversely affecting floodplain areas unless it can be demonstrated that there are no practicable alternatives to such actions. Federal agencies are required to implement Executive Order 11988 with respect to acquiring, managing and disposing of Federal property; providing Federally undertaken, financed, or assisted construction and improvements; and conducting Federal activities and programs affecting land use. Section 3(d) of this Executive Order provides certain requirements for the proposed disposition of properties owned by Federal agencies and the creation of leases, easements, and rights-of-way on Federally owned properties.

Executive Order 11990 sets as Federal policy the avoidance of Federal assistance for new construction in wetlands. In particular, this Executive Order states that Federal agencies should avoid, to the extent possible, the long- and short-term adverse impacts associated with the destruction or modification of wetlands and the direct or indirect support of new construction in wetlands wherever there is a practicable alternative. The basic determinations under Executive Order 11990 are similar to those under Executive Order 11988, *i.e.*, that Federal agencies determine: (1) That there is no practicable alternative to the proposed action for new construction in wetlands, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. (The two terms unique to Executive Order 11990 ("new construction" and "wetlands") are defined in section 7 of that Order.) Section 4 of this Executive Order provides certain requirements for the proposed disposition of properties owned by Federal agencies and the creation of leases, easements, and rights-of-way on Federally owned properties.

The Role of FEMA Regulations in the Implementation of the Executive Orders

Executive Order 11988 requires the Department to prepare these procedures in consultation with three agencies: (1) FEMA, which administers the National Flood Insurance Program (NFIP); (2) the Council on Environmental Quality (CEQ); and (3) the Water Resources Council (WRC) which issued the interagency Floodplain Management Guidelines for Implementing Executive

Order 11988 (43 FR 6030, February 10, 1978).

The Department's Previous Activities to Implement the Executive Orders and Related Federal Review

Pending promulgation of the final rule, the Department has taken the following steps to implement Executive Orders 11988 and 11990:

(1) The issuance of a proposed rule (44 FR 47006; August 9, 1979);

(2) The publication of a general statement of departmental policy (44 FR 47623; August 14, 1979) implementing the Executive Orders pending promulgation of a final rule; and

(3) The implementation of the Executive Orders within the Department's environmental review procedures at 24 CFR part 50 (see § 50.4(b)) and the environmental review procedures for certain grant recipients at 24 CFR part 58 (see § 58.5(b)).

Since the issuance of the 1979 proposed regulations and the general statement of departmental policy, the Department's attempts to pursue this rulemaking have been delayed by two Federal governmental actions:

(1) Executive Order 12127, effective on April 1, 1979, which: (a) Established FEMA, (b) transferred to FEMA the functions of the Federal Insurance Administration (FIA) which had been part of HUD, and (c) redesignated relevant regulations of FIA, including the National Flood Insurance Program (NFIP) regulations, from Title 24 of the Code of Federal Regulations to Title 44. FEMA was assigned the responsibility to oversee the consistent Federal implementation of Executive Order 11988 and to develop appropriate floodplain management criteria under the NFIP. (See 44 FR 31176, May 31, 1979.) Although Executive Order 12127 was effective before the promulgation of HUD's earlier proposed regulations and policy statement on this matter, the shifting of primary responsibility for the administration of the NFIP from HUD to FEMA resulted in lengthy policy discussions within HUD and a significant delay in the publication of this proposed rule. (Included among the topics considered by the Department after the publication of the 1979 proposed regulations was the relationship between the NFIP regulatory standards and HUD's promulgation of its floodplain engineering standards in the final rule on FHA Minimum Property Standards for One and Two Family Dwellings, which was published in the **Federal Register** of September 27, 1985 (50 FR 39586, 39595). The Department has determined that this matter should be addressed in conjunction with rulemaking to implement Executive Orders 11988 and 11990.)

(2) The review and affirmation by FEMA and the Office of Management and Budget (OMB) of the 100-year floodplain as the minimum level of protection for Federal actions that develop or improve structures and facilities in floodplains. In a letter of August 26, 1982, OMB directed FEMA to conduct a review of Executive Order 11988 and the 100-year base flood standard in the Executive Order, WRC Guidelines, and NFIP regulations. Subsequently, FEMA issued a report, "The 100-year Base Flood Standard and the Floodplain Management Executive Order: A Review Prepared for the Office of Management and Budget by the Federal Emergency Management Agency" (September 1983). In a letter of January 6, 1984 from the OMB Administrator of Information and Regulatory Affairs to the Director of FEMA, OMB affirmed the 100-year base flood standard as the minimum standard for all Federal actions under the Executive Order.

II. 1979 Proposed Regulations

Generally, the Department's 1979 proposed regulations provided: (1) A linking of the HUD floodplain and wetland requirements to the Department's environmental review procedures under 24 CFR parts 50 and 58; (2) adoption of the Federal 100-year base flood standard; (3) a restatement of the eight-step departmental review and decisionmaking process provided in the WRC Guidelines; (4) definitions of key terms used in the Executive Orders and the WRC Guidelines including "critical action", "base flood", and "functionally-dependent use"; (5) assignment of oversight responsibilities in the Department; and (6) a description of exemptions and categorical exclusions for certain HUD program authorities in accordance with the Department's environmental review regulations at 24 CFR parts 50 and 58.

Following discussions with FEMA, CEQ, and WRC on the legal status of the 1979 proposed rule, HUD has prepared this proposed rule to revise the 1979 proposal. The revisions include:

(1) This rule would clarify the applicability of part 55 to various HUD program activities with a table in § 55.11 that delineates by location and type of action the regulatory coverage of the rule. In addition, the "categorical exclusions" of the 1979 proposed regulations would be replaced with a set of excepted HUD program categories in § 55.12, which have been determined to: (i) Involve direct or indirect developmental impacts on floodplains or wetlands, but are protected from flood hazards under FEMA's NFIP regulations, (ii) not involve direct or indirect developmental impacts on floodplains or wetlands, or (iii) involve *de minimis* direct or indirect development impacts on floodplains or wetlands.

(2) This rule would provide specific floodplain management criteria for "critical actions", *i.e.*, in the 1979 proposal, there was no reference to the 500-year floodplain standard for "critical actions" as cited in the WRC Guidelines. This proposed rule would designate certain types of projects as "critical actions".

(3) This rule would include regulatory provisions for "functionally-dependent uses", *i.e.*, uses that cannot be conducted to perform their intended purposes unless the uses are located or carried out in close proximity to water (e.g., marinas, bridges, and piers).

(4) This proposed rule would include a definition of "substantial improvement" which accords with FEMA's regulations for the National Flood Insurance Program (NFIP) at 44 CFR 59.1, but which also considers density increases in accordance with current HUD environmental review procedures in 24 CFR 50.20(c)(1).

(5) The 1979 proposed regulations did not explicitly revise the HUD Minimum Property Standards for One and Two Family Dwellings to be consistent with the 100-year base flood standard for properties covered by the NFIP. In a final rule that was published in the **Federal Register** of September 27, 1985 (50 FR 39586) (replacing HUD Handbook 4900.1), the Department has permitted "minimum grades at buildings and at openings into basements * * * at elevations which prevent adverse effect by water or water entering basements from flood levels equivalent to a 50-year return frequency after full development" (§ 200.926d(c)(4)(i)). This proposed rule would revise that rule to conform with the Federal 100-year base flood standard for new construction and substantial improvement of residential structures with basements under the NFIP regulations, including the variance and exception procedures under 44 CFR 60.6, and would set out standards for residential structures that are without basements, are located in coastal high hazard areas, or contain critical actions.

III. Proposed Rule

This proposed rule reflects certain HUD policy developments for the implementation of Executive Orders 11988 and 11990 and related program developments by FEMA in its administration of the NFIP. The proposed rule contains three subparts

concerning the following matters: (1) Key terms used in the Executive Orders, WRC Guidelines, and FEMA's NFIP regulations, and the assignment of responsibilities for various functions in the implementation of the Executive Orders; (2) the applicability of the requirements in Subpart C of this proposed rule to certain types of HUD program activities and locations; and (3) the decisionmaking process in Subpart C for compliance with the Executive Orders.

As explained in § 55.10, the Department's review of affected proposed actions under 24 CFR part 55 would be conducted in conjunction with its other environmental review responsibilities under 24 CFR part 50, which implements the National Environmental Policy Act of 1969 (NEPA). (Similarly, grantees subject to 24 CFR part 58 would conduct their review of proposed actions under 24 CFR part 55 in conjunction with the review procedures under 24 CFR part 58.) The Department's designation of certain proposed actions as "categorical exclusions" under 24 CFR parts 50 and 58 would not exclude proposed actions from compliance with this part. Parallel to those types of HUD activities with "decision points" described in 24 CFR 50.17(a)–(h), compliance with this rule would be completed for any other type of activity before the Department's initial approval of proposed actions in a floodplain or wetland.

The key sections in this proposed rule are: (1) Sections 55.11 and 55.12, which provide the references to the types of HUD program activities that would be affected by this rule and the kinds of locations that would be covered by this rule; and (2) § 55.20, which provides the principal decisionmaking process for compliance with this rule.

Concerning affected HUD program regulations, this proposed rule would revise § 200.926d(c)(4) to accord with the minimum 100-year floodplain standard for all Federal actions under Executive Order 11988, WRC Guidelines, and FEMA regulations (see 44 CFR 60.3 and 60.6).

Applicability of Proposed Rule to Certain HUD Program Activities and Locations

Subpart B of this proposed rule contains references to the HUD program activities and locations that would be affected by this rule. To facilitate departmental implementation, § 55.11 of this rule is presented in a table that indicates the compliance requirements for certain types of proposed actions to be located in specific floodplain and wetland locations. The table contains the following headings:

(1) The vertical column displays types of proposed HUD program activities affected by this rule; and

(2) The horizontal column headings refer to four types of floodplain or wetland locations in which certain proposed HUD actions may be allowed.

In the vertical column, types of HUD program activities are grouped under two categories with different regulatory requirements under this rule: (1) "Critical actions", defined in proposed § 55.2(b)(2) to accord with the WRC Guidelines and FEMA regulations at 44 CFR 9.4; and (2) proposed HUD actions other than "critical actions" and not excluded under § 55.12 (b) or (c). In addition, proposed HUD actions that necessitate close proximity to water ("functionally-dependent uses" under § 55.2(b)(5)) would be reviewed for their effect on "floodways" (§ 55.22(b)(4)) or "coastal high hazard areas" (§ 55.2(b)(1)). The table in § 55.11 refers to the decisionmaking process in § 55.20 that would be applicable to HUD program activities covered by this rule.

In proposed § 55.2(b)(2), "critical action" is defined to include hospitals, nursing homes, convalescent homes, intermediate care facilities, board and care facilities, and retirement service centers. Housing for independent living for the elderly is not included as a "critical action". Under § 55.2(b)(4), "critical actions" are covered by the 500-year floodplain standard. Proposed HUD actions involving housing for the elderly that do not meet the definition of "critical action" are subject to the 100-year floodplain standard.

Subpart C Decisionmaking Process

Where applicable under proposed § 55.11, the procedures of § 55.20 would provide the standard for decisionmaking under the Executive Orders. In sum, § 55.20 implements the requirement of the Executive Orders that, before conducting, supporting, or allowing any action in a floodplain or providing assistance for new construction in a wetland, the Department must: (1) Determine that the floodplain or wetland site is the only practicable location for such action and (2) if the floodplain or wetland site is the only practicable location for the proposed action, design or modify the action to minimize harm to, or within, the floodplain or wetland where practicable.

Under § 55.20 of this proposed rule, which directly corresponds to the format in the WRC Guidelines, the Department must conduct an eight-step decisionmaking process before conducting, supporting, or allowing certain types of actions in a floodplain or wetland.

Sections 55.21 (notification of floodplain hazard), 55.22 (conveyance restrictions for the disposition of real property), and 55.23 (notification of fund availability) include special procedures to meet requirements in the Executive Orders and HUD program concerns for public notice of floodplain or wetland hazards and requirements.

Sections 55.24 (aggregation) and 55.25 (areawide compliance) would provide opportunity for HUD, a local government, or a set of contiguous local governments to minimize duplicative documentation for similar HUD actions in a community-wide or areawide context and to enhance floodplain and wetland planning and management.

Section 55.26 (adoption of another agency's review under the Executive Orders) would minimize the regulatory burden on HUD or on grant receipts subject to 24 CFR part 58 by avoiding the duplication of evaluation efforts made by another Federal agency or a grant recipient for the implementation of the Executive Orders.

Section 55.27 clarifies the minimum documentation requirements for HUD Field Offices or grant recipients for compliance under §§ 55.20, 55.24, 55.25, or 55.26.

Inapplicability of the Subpart C Decision Making Process to Certain Categories of Proposed Actions

HUD construes the language of Executive Orders 11988 and 11990 to allow for a reasonable interpretation of the scope of these Executive Orders to specific HUD programs. The following discussion states HUD's interpretation of the scope of these Executive Orders. HUD has determined that since the issuance of these Executive Orders, various Federal authorities (including OMB and FEMA) have indicated their approval of Federal agency initiatives for modifying requirements in these Executive Orders to reflect the comparative risks arising from various Federal programs and projects. In addition, HUD has determined that: (1) The WRC Guidelines were designed to provide a broad framework for the application of the Executive Orders; (2) the WRC's interpretation of the various sections of Executive Order 11988 is not binding on Federal agencies, but was designed as broad policy guidance; and (3) Federal agencies may rely on such regulatory mechanisms as FEMA's NFIP regulations to substitute for certain requirements in the Executive Orders.

Certain HUD program activities described in § 55.12 would not need to

comply with the subpart C decision making process in this rule, because no functional purpose would be served by HUD's carrying out of the subpart C procedures. HUD has determined that these program activities: (1) Are controlled sufficiently under FEMA's NFIP regulatory structure to justify excluding those program activities from Part 55, (2) do not have direct or indirect development impact on floodplains or wetlands (and involve no locational decision involving a floodplain or wetland), or (3) have *de minimis* development impact on floodplains or wetlands. Concerning the criteria of Executive Order 11988, HUD has determined that for those program activities, (1) there is no practicable alternative outside of the FEMA-designated floodplain to the action and (2) there exists no practicable means of further minimizing the impact of the action.

The following discussion presents HUD's rationale for its determinations concerning the applicability of the Executive Orders to HUD programs.

1. *HUD financial assistance for existing single family properties.* The primary rationales for excluding HUD's mortgage insurance actions on existing one- to four-family properties in FEMA-designated floodplain zones are: (1) FHA financing decisions for such properties (purchasing, mortgaging or refinancing) involve no practicable locational alternative for the owner or prospective owner who seeks to purchase, mortgage or refinance property located in FEMA-designated zones; (2) this type of HUD financial assistance has *de minimis* direct or indirect development impacts; and (3) HUD's formal procedural compliance with the requirement in Executive Order 11988 that floodplain locations are to be avoided would serve no functional purpose. In addition, where a community is in good standing under the Regular Program of the NFIP (and therefore in compliance with 44 CFR 60.3), any later substantial improvement of existing structures located in a FEMA-designated floodplain in that community must comply with the hazard minimization requirements in § 60.3.

2. *Disposition of HUD-acquired properties.* HUD's disposition program for both acquired one- to four-family properties and acquired multifamily properties in 100-year floodplains or wetlands (or 500-year floodplains for "critical actions") would be subject to the documentation and notification requirements in proposed § 55.22. However, HUD proposes to exclude the disposition of one- to four-family properties in floodplains from the Subpart C decisionmaking process because compliance with the avoidance requirement of the Executive Orders is impossible—there are no practicable alternatives for the location of the HUD-acquired property. In addition, any "substantial improvement" of those properties would be subject to the hazard minimization requirements in FEMA's NFIP regulations. This exclusion only would apply to properties in communities in good standing with the NFIP Program. HUD requests comments on its proposal to exclude one- to four-family property disposition from the Subpart C decisionmaking process.

HUD also has decided that two other property disposition activities are structured in such a manner that three of the eight Agency review requirements under proposed § 55.20 would not serve a functional purpose. These activities are (1) the disposition of HUD-acquired, multifamily housing projects; and (2) "bulk sales" of HUD-acquired, one- to four-family properties (sales involving more than one HUD-acquired, one- to four-family property).

3. *Mortgage insurance under section 223(f) of the National Housing Act for the purchase or refinancing of existing multifamily housing projects (12 U.S.C. 1715n(f)).* HUD proposes to exempt the section 223(f) program from three requirements in the Executive Orders (see proposed § 55.20(b), (c), and (g)). HUD has determined that it would be impractical in implementing the section 223(f) mortgage insurance/coinsurance program to require HUD field offices to identify and evaluate practicable alternatives to insuring an existing structure in a 100-year floodplain (or a 500-year floodplain for a "critical action") or to publish public notices under proposed § 55.20(b), (c), and (g). HUD has established a procedure, described in four steps (Identification of Floodplain Location, Impact Determination, Mitigation Considerations, and Decision), to be followed in the section 223(f) program. This four-step procedure meets the intent and addresses the practical implementation aspects of Executive Order 11988 and will result in compliance with the five remaining applicable steps under the proposed regulation. (HUD regulations at 24 CFR part 255 state the requirements for the section 223(f) coinsurance program for the purchase or refinancing of existing multifamily housing projects.) Under HUD regulations for the section 223(f) program, any rehabilitation financed under the section 223(f) program must be less than the thresholds for "substantial rehabilitation" under 24 CFR 225.3(1) and 255.201.

4. *HUD program activities that do not have direct or indirect development impacts on floodplains or wetlands.* Since the following actions do not have direct or indirect development impacts (and involve no locational decision concerning HUD approval of proposed financial assistance), HUD has determined that formal compliance with part 55 (including the avoidance and hazard minimization criteria of the Executive Orders) would serve no functional purpose: (i) HUD-assisted exempt activities described in 24 CFR 58.34; (ii) policy level actions described in 24 CFR 50.16 that do not involve site-based decisions; (iii) HUD's implementation of the full disclosure and related registration requirements of the Interstate Land Sales Disclosure Act (15 U.S.C. 1701–1720); and (iv) secondary mortgage operations of the Government National Mortgage Association (GNMA).

5. *HUD program activities that have de minimis direct or indirect development impacts.* The following actions involve such insignificant development impacts on floodplains or wetlands that formal compliance with subpart C of part 55 (including the avoidance and hazard minimization requirements of the Executive Orders), and in the case of items (ii) through (iv), part 55 as a whole, would serve no functional purpose:

(i) Financial assistance for minor repairs or improvements on one- to four-family properties that do not meet the thresholds for "substantial * * *."

(ii) A minor amendment to a previously approved action with no additional adverse impact on a floodplain or wetland;

(iii) Approval of a project site, an incidental portion of which is situated in a wetland or floodplain, but only if (A) the proposed construction and landscaping activities (except for minor grubbing, clearing of debris, pruning, sodding, seeding, etc.) do not occupy or modify the wetland, the 100-year floodplain, or the 500-year floodplain (for "critical actions"), (B) appropriate provision is made for site drainage, and (C) a covenant or comparable restriction is placed on the property's continued use to preserve the floodplain or wetland;

(iv) Issuance or use of Housing Vouchers, Certificates under the Section 8 Existing Housing Program, or other forms of rental subsidy where HUD, the awarding community, or the public housing agency that administers the

contract awards rental subsidies that are not project-based, but rather are unit-based.

6. *Other HUD program activities for which formal compliance with part 55 (including the avoidance and hazard minimization requirements of the Executive Orders) would serve no functional purpose.* (i) HUD actions involving a repossession, receivership, foreclosure, or similar acquisition of property to protect or enforce HUD's financial interests under previously approved loans, grants, mortgage insurance or other HUD financial assistance. (These HUD actions implement obligations under the National Housing Act and other statutory authority.)

(ii) Interim assistance or emergency activities involving imminent threats to health and safety, and limited to necessary protection, repair, or restoration activities to control the imminent risk of damage. (These actions involve emergency situations, which by definition involve proposed actions in floodplains or wetlands that cannot be avoided or minimized.)

(iii) HUD's approval of financial assistance for a project on any nonwetland site in a floodplain for which FEMA has issued (1) a final Letter of Map Amendment (LOMA) that removed the property from a FEMA-designated floodplain location, or (2) a conditional LOMA if the HUD approval is subject to the requirements and conditions of the conditional LOMA. While in the case of a conditional LOMA, the property would be in the floodplain at the time of HUD approval of the financial assistance, FEMA is the lead agency for any required compliance with the Executive Order since FEMA will in each case have issued the conditional LOMA prior to HUD approval of the assistance.

(iv) HUD's acceptance of a housing subdivision approval action by the Department of Veterans Affairs (VA), or by the Farmers Home Administration in accordance with section 535 of the Housing Act of 1949. (Under this situation, HUD may rely on compliance by VA or the Farmers Home Administration with the avoidance or the hazard minimization requirements of the Executive Orders.)

(v) An action that was, on the effective date of the final rule, already approved and is ongoing or undergoing implementation, unless approval is requested for a new reviewable action. In this situation, there is no proposed HUD action, but rather the continuation of a previously approved action. (However, any hazard minimization measures required by HUD (or a grant recipient subject to 24 CFR part 58) under its implementation of Executive Orders 11988 and 11990 prior to the effective date of this rule must be completed.)

Revision of § 200.926d(c)(4) of the HUD MPS Regulations

As described earlier in this preamble, § 200.926d(c)(4)(i) of the HUD MPS regulations, with its 50-year base flood standard for basements, would be revised by this proposed rule. The primary rationale for this change is to resolve the inconsistency between that standard and FEMA's NFIP regulations for the minimum 100-year floodplain standard. This proposed revision implements HUD's statutory authority under the National Housing Act (12 U.S.C. 1701–1749) to prescribe standards for determining the acceptability of one- and two-family residential structures for purposes of FHA mortgage insurance. The Department has determined that its potential exposure to losses affecting the general insurance fund will be significantly minimized by HUD Field Office compliance with the 100-year floodplain standard, rather than the current 50-year standard.

The Department has also determined that revision of the HUD MPS regulations is necessary for consistency with the Flood Disaster Protection Act of 1973, 42 U.S.C. 4001–4128. Under section 202(a) of the Act, 42 U.S.C. 4106(a), HUD may not provide financial assistance (including mortgage insurance) for acquisition or construction purposes in any "area having special flood hazards" (a FEMA-designated flood zone) in a community that does not participate in the NFIP, *i.e.*, that does not maintain the 100-year base flood level in their land use controls for new construction or substantial improvement of residential structures. Under the Act, the current § 200.926d(c)(4)(i) in the HUD MPS regulations, with its 50-year base flood standard for basements, may not be implemented in participating local jurisdictions (approximately 17,000) with the 100-year base flood standard under the NFIP. This proposed revision would conform the HUD MPS regulations with the base flood standard currently implemented in approximately 17,000 participating local jurisdictions for new construction and substantial improvement of residential structures in FEMA-designated flood-hazard areas.

Although proposed § 200.926d(c)(4)(i)–(v) would replace the 50-year base flood level for residential structures, FEMA's NFIP regulations at 44 CFR 60.3 and 60.6 allow for variances and exceptions from the 100-year base flood level. Under 44 CFR 60.3(c)(2), all new construction and substantial improvement of residences in certain FEMA floodplain zones must have the lowest floor (including the basement) elevated to or above the base flood level, unless an exception is granted in accordance with § 60.6(c) or a variance is granted under § 60.6(a). Proposed § 200.926d(c)(4)(i) would recognize these variance and exception procedures under FEMA regulations.

Request for Comment on Other HUD MPS Revisions to Broaden the Coverage of § 200.926d(c)(4) to Supplement FEMA Regulations

In particular, HUD requests comment on other proposed revisions to § 200.926d(c)(4) for purposes of: (1) Clarifying the applications of FEMA's NFIP regulations to HUD's proposed actions involving single family FHA mortgage insurance and (2) supplementing FEMA floodplain regulations to cover proposed HUD actions involving "critical actions", residential structures without basements, or in areas designated as "coastal high hazard areas".

HUD is interested in comments from Federal, State, and local agencies with expertise in floodplain management, and from the housing industry, building standards organizations, and other interested parties on the following proposed standards:

1. *Standards for proposed HUD actions involving residential structures with basements located in FEMA-designated areas of special flood hazard.* The elevation of the lowest floor (basement) in structures with basements would be at or above the runoff and base flood level (100-year flood level) required for new construction or substantial improvement of residential structures under FEMA regulations for the National Flood Insurance Program (NFIP). Variance and exception procedures under the NFIP would be incorporated by reference for purposes of compliance with this provision.

2. *Standards for proposed HUD actions involving residential structures without basements in FEMA-designated areas of special flood hazard.* First floors of structures without basements would be at or above the FEMA-designated base flood elevation (100-year recurrence flood elevation).

3. *Standards for non-"critical actions" in FEMA-designated "coastal high hazard areas".* For proposed HUD actions not meeting the definition of "critical action" under this rule, but to be located in FEMA-designated "coastal high hazard areas", basements or any permanent enclosure of space below the

lowest floor of a structure would be prohibited, and the underside of the lowest floor of a structure and its horizontal supports would be at or above the FEMA-designated base flood level.

HUD has determined that these standards for HUD-insured housing development in FEMA-designated "coastal high hazard areas" would provide a necessary margin of safety against potential catastrophic losses to human life and property. These areas include floodplains that may be inundated by tidal floods and subject to high velocity waters. Unlike inland floodplain areas, "coastal high hazard areas" generally involve wave action and/or saltwater flooding, which causes a rapid deterioration of concrete used in structures and the steel reinforcements of structures.

4. *Alternate standards for proposed HUD actions involving residential structures without basements and for proposed non-"critical actions" in "coastal high hazard areas".* The Department also specifically invites comment on an alternative standard, not set out in the proposed rule, that would require that (1) the elevation of the lowest floor in one- and two-family residential structures without basements in special flood hazard areas be at or above one foot above the FEMA-designated base flood elevation and (2) the underside of the lowest floor of one- and two-family residential structures in "coastal high hazard areas" and their horizontal supports be at least one foot above the base flood level where FEMA has determined that level without establishing stillwater elevations.

This standard would exceed the FEMA-required elevation of these types of structures by one foot. As reflected in lower National Flood Insurance premiums for the higher elevation, discussed below, this standard would reduce the chances that a home located in a special flood hazard area or "coastal high hazard area" would be flooded and would also reduce property damage to the structure and danger to the residents where elevation of a particular flood somewhat exceeds the base flood level, but would increase the cost of constructing homes. The Department would specifically like comments on two aspects of this proposal: (1) The public's knowledge of empirical studies or analyses which demonstrate that consumers and homebuilders do not adequately balance the tradeoffs between lower flood insurance premiums and increased construction cost (so that a need for a federally-mandated increase in the elevation level might exist) and (2) the cost-benefit calculation presented below for increasing the elevation of the lowest floor of a home by one foot. The Department is particularly interested in learning whether the provision of "fill" material (including the labor cost of spreading and compacting) represents the only cost of increasing the elevation of the lowest floor by one foot or whether other costs are involved—such as the cost of welded wire fabric (to protect against the cracking of the concrete slab floor caused by differential settling of the fill material) and additional concrete and labor needed to raise the elevation of the lowest floor.

The Department believes that while this alternate standard would require a slight increase in construction cost due to the necessity for one additional foot of fill in the case of slab construction, lower flood insurance premiums over the period of homeownership would generally result in net savings for the homeowner. For example, a multistory house with a 24 foot by 40 foot slab would require 35.6 cubic yards of additional compacted fill at approximately $7.00 per cubic yard (including labor costs), for a total cost of $249.20, to raise the lowest floor one additional foot. Assuming that the homeowner obtains a 30 year, 9.5% fixed rate mortgage, the total finance charge for the fill would be 202.71%, for a total cost of $754.35 over the life of the mortgage, or an annual payment for the fill of $25.15 ($754.35/30 years). The annual premium rate for flood insurance for a multistory residence with no basement and the elevation of the lowest floor at the base flood level is $.26 per $100 of insurance under the regular National Flood Insurance Program, while the annual rate for flood insurance with the lowest floor elevated one foot above the base flood level is only $.13 per $100 of insurance. Thus, the owner of the higher structure would realize an annual savings of $.13 per $100 of flood insurance. Assuming that the homeowner maintains flood insurance in the amount of $72,000 (the approximate average structural value of a single family house), the homeowner would realize an annual savings of $93.60 in flood insurance premiums due to the elevation of the lowest floor to one foot above the base flood level. Subtracting the $25.15 in annual mortgage payments for the additional foot of fill, the homeowner would realize a net annual savings of $68.45, or a savings of $2,053.50 over the life of the 30-year mortgage.

The decreased chance of flooding and property damage under the alternate standard would also result in a reduction in risks of loss to the FHA insurance funds from such damage for houses that are acquired by HUD following defaults by mortgagors, since HUD self-insures against flood and other losses during the period it holds such properties.

5. *Standards for proposed "critical actions".* For proposed HUD actions meeting the definition of "critical action" in proposed § 55.2(b)(2), the lowest floor of a structure, including basements and all mechanical, electrical, and service equipment, would be at or above the FEMA-designated 500-year frequency flood elevation. However, "critical actions" would be prohibited in FEMA-designated "floodways" (see § 55.2(b)(4)) and "coastal high hazard areas" (see § 55.2(b)(1)).

HUD's standards for proposed "critical actions" reflect FEMA's regulatory treatment of such proposed actions and the Department's recognition that the special flood hazards arising from such actions would be particularly significant. Typical "critical actions" include hospitals, nursing homes, convalescent homes, intermediate care facilities, board and care facilities, and retirement service centers. All critical actions must be designed or modified to include (1) preparation of and participation in an early warning system; (2) an emergency evacuation and relocation plan; (3) identification of evacuation route(s) out of the 500-year floodplain; and (4) identification marks of past or estimated flood levels on all structures.

IV. Other Matters

The General Counsel, as the Designated Official under Executive Order 12606, "The Family," has determined that this notice will not have a potential significant impact on the formation, maintenance, and general well-being of families.

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, "Federalism," that some of the policies contained in the notice have federalism implications. The regulation implements an eight-step decisionmaking process under Executive Orders 11988 and 11990 for considering locational alternatives and design modifications to lessen risk and impact for HUD-assisted actions proposed for floodplains and wetlands, and for choosing sites outside the floodplain or wetland where practicable. While HUD

carries out this process for most HUD programs, the regulation will require States and units of general local government to carry out the eight-step process and other requirements of the rule if they are applicants that assume environmental review responsibilities pursuant to section 104(g) of the Housing and Community Development Act of 1974 (HCD Act of 1974) and HUD's implementing regulations in part 58. However, review under Executive Order 12612 is not necessary because HUD has little or no discretion in requiring States and units of general local government to carry out the requirements of the rule where they assume other responsibilities under section 104(g). Section 9 of E.O. 11988 and section 10 of E.O. 11990 provide that the responsibilities under the Orders may be assumed by applicants that assume environmental review responsibilities under the National Environmental Policy Act of 1969 (NEPA), for projects covered by section 104(h) (now 104(g)) of the HCD of 1974. The Executive Orders thus contemplate State and local assumption of responsibilities under the Orders whenever responsibilities under NEPA (and, under later amendment to section 104, responsibilities under other provisions of law to be specified by the Secretary) are assumed; as a practical matter, bifurcation of NEPA and Executive Order 11988/11990 responsibilities would be infeasible. Review under Executive Order 12612 is also unnecessary because HUD's regulations at 24 CFR part 58, implementing section 104(g) of the HCD Act of 1974, have long provided for State and local governmental assumption of NEPA, Executive Order, and other environmental review responsibilities. State and local governments have thus already been assuming and carrying out these responsibilities for many years. Part 55 merely describes and codifies more specifically the implementing policies and procedures under Executive Orders 11988 and 11990.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The regulatory impacts of this rule (including the 100-year base flood standard) would implement the current requirements of Executive Orders 11988 and 11990 and FEMA's NFIP regulations. (This proposed rule would reflect HUD's interpretation of the applicability of those Executive Orders to various HUD programs.) Where appropriate, this rule (24 CFR part 55) would provide certain cost-effective alternatives (e.g., aggregation and areawide compliance) for HUD and grantee implementation of the Executive Orders.

The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Section 55.27 of this proposed rule has been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN PROPOSED RULE—HUD PROCEDURES FOR THE IMPLEMENTATION OF EXECUTIVE ORDERS 11988 AND 11990

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondents	Total annual responses	Hours per response	Total hours
Documentation of compliance with 24 CFR part 55 by grant recipients subject to 24 CFR part 58	55.27	3,200	1	3,200	.4	1280
Total Annual Burden						1280

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule would not prohibit HUD support of activities in floodplains and wetlands (except for certain activities in floodways and coastal high hazard areas), but rather would create a consistent departmental policy governing such support. The proposed revision of § 200.926d(c)(4) of the HUD MPS regulations merely would maintain the current Federal standard under Executive Order 11988 and FEMA's NFIP regulations, in addition to incorporating current HUD mortgage underwriting standards and Field Office floodplain engineering standards.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50 which implement Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

This rule is listed as item number 999 in the Department's Semiannual Agenda of Regulations published on October 30, 1989 (54 FR 44702, 44709) under Executive Order 12291 and the Regulatory Agenda.

The programs affected by this rule are listed in the Catalog of Federal Domestic Assistance under program numbers 14.103 through 14.852.

List of Subjects

24 CFR Part 50

Environmental impact statements.

24 CFR Part 55

Floodplain management and the protection of wetlands.

24 CFR Part 58

Community development block grants, Environmental impact statements, Grant programs: housing and community development, Housing development grants, Rental rehabilitation grants.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Loan programs: housing and community development, Minimum

Property Standards, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Incorporation by reference.

Accordingly, the Department proposes to amend Title 24 of the Code of Federal Regulations to read as follows:

PART 50—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

1. The authority citation for part 50 would be revised to read as follows:

Authority: Section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332); Executive Order 11514, 35 FR 4247 (March 5, 1970); Executive Order 11991, 42 FR 26967 (May 24, 1977); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 50.4, paragraph (b)(3) would be removed, and paragraph (b) (1) and (2) would be revised to read as follows:

§ 50.4 Other environmental statutes, Executive Orders and HUD standards.

* * * * *

(b) *Floodplain Management and Wetland Protection.* (1) Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128).

(2) Executive Order 11988 (Floodplain Management), 42 FR 26951 (May 25, 1977) and Executive Order 11990 (Protection of Wetlands), 42 FR 26961 (May 25, 1977), as interpreted in HUD regulations at 24 CFR Part 55. (For an explanation of the relationship between the decision making process in 24 CFR part 55 and this part, see § 55.10 of this chapter.)

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3. A new part 55 would be added to title 24, to read as follows:

PART 55—FLOODPLAIN MANAGEMENT AND PROTECTION OF WETLANDS.

Subpart A—General

Sec.
55.1 Purpose and basic responsibility.
55.2 Terminology.
55.3 Assignment of responsibilities.

Subpart B—Application of Executive Orders on Floodplain Management and Protection of Wetlands

Sec.
55.10 Environmental review procedures under 24 CFR parts 50 and 58.
55.11 Applicability of subpart C decision making process.
55.12 Inapplicability of 24 CFR part 55 to certain categories of proposed actions.

Subpart C—Procedures for Making Determinations on Actions Located in Floodplains and Wetlands

Sec.
55.20 Decision making process.
55.21 Notification of floodplain hazard.
55.22 Conveyance restrictions for the disposition of real property.
55.23 Notification of fund availability.
55.24 Aggregation.
55.25 Areawide compliance.
55.26 Adoption of another agency's review under the Executive Orders:
55.27 Documentation.

Authority: Flood Disaster Protection Act of 1973, 42 U.S.C. 4001–4128; Executive Order 11988 (Floodplain Management), 42 FR 26951 (May 25, 1977); Executive Order 11990 (Protection of Wetlands), 42 FR 26961 (May 25, 1977); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General

§ 55.1 Purpose and basic responsibility.

(a) This regulation implements the requirements of Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands, and employs the principles of the Unified National Program for Floodplain Management. It covers the proposed acquisition, construction, improvement, disposition, financing and use of properties located in a floodplain or wetland for which approval is required either from HUD under any applicable HUD program or from a grant recipient subject to 24 CFR part 58. This part does not prohibit approval of such actions (except for certain actions in high hazard areas), but provides a consistent means for implementing the Department's interpretation of the Executive Orders in the project approval decisionmaking processes of HUD and of grant recipients subject to 24 CFR part 58. The implementation of Executive Orders 11988 and 11990 under this part shall be conducted by HUD, for Department-administered programs subject to environmental review under 24 CFR part 50, and by authorized recipients of HUD financial assistance subject to environmental review under 24 CFR part 58.

(b) Under section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), proposed HUD financial assistance (including mortgage insurance) for acquisition or construction purposes in any "area having special flood hazards" (a flood zone designated by the Federal Emergency Management Agency (FEMA)) shall not be approved in communities identified by FEMA as eligible for flood insurance but wich are not participating in the National Flood Insurance Program. This prohibition only applies to proposed HUD financial assistance in a FEMA-designated area of special flood hazard one year after the community has been formally notified by FEMA of the designation of the affected area. This prohibition is not applicable to HUD financial assistance under the State-administered CDBG Program (24 CFR part 570, subpart I) or the State-administered Rental Rehabilitation Program (24 CFR 511.51), or to Emergency Shelter Grant amounts allocated to States (24 CFR parts 575 and 576).

(c) Except with respect to actions listed in § 55.12(c), no HUD financial assistance (including mortgage insurance) may be approved after [Insert effective date of rule] with respect to:

(1) Any action, other than a functionally dependent use, located in a floodway;

(2) Any critical action located in a coastal high hazard area; or

(3) Any non-critical action located in a coastal high hazard area, unless the action is designed for location in a coastal high hazard area or is a functionally dependent use. An action will be considered to be designed for location in a coastal high hazard area if:

(i) In the case of new construction or substantial rehabilitation, the work meets the current standards for V zones in FEMA regulations (44 CFR 60.3(e)) and, if applicable, the Minimum Property Standards for such construction in 24 CFR 200.926d(c)(4)(iii); or

(ii) In the case of existing construction (including any minor improvements), (A) the work met FEMA elevation and construction standards for a coastal high hazard area (or if such a zone or such standards were not designated, the 100-year floodplain) applicable at the time the original improvements were constructed or (B) if the original improvements were constructed before FEMA standards for the 100-year floodplain became effective or before FEMA designated the location of the action as within the 100-year floodplain, the work would meet at least the earliest FEMA standards for construction in the 100-year floodplain.

§ 55.2 Terminology.

(a) With the exception of those terms defined in paragraph (b) of this section, this part incorporates by reference basic terms as defined in section 6 of Executive Order 11988, in section 7 of Executive Order 11990, and in the Floodplain Management Guidelines for Implementing Executive Order 11988 (43 FR 6030, February 10, 1978) issued by the

Water Resources Council; and the terms "criteria" and "Regular Program", as defined in FEMA regulations at 44 CFR 59.1.

(b) The definitions of the following terms in Executive Order 11988, Executive Order 11990 and related documents affecting this part are modified for purposes of this part:

(1) *Coastal high hazard area* means the area subject to high velocity waters, includng but not limited to hurricane wave wash or tsunamis. The area is designated on a Flood Insurance Rate Map (FIRM) under FEMA regulations as Zone V1–30, VE, or V. (FIRMs as well as Flood Hazard Boundary Maps (FHBM) shall also be relied on for the delineation of "100-year floodplains" (§ 55.2(b)(8)), "500-year floodplains" (§ 55.2(b)(3)), and "floodways" (§ 55.2(b)(4)) under this part.)

(2) *Critical action* means any activity for which even a slight chance of flooding would be too great, because such flooding might result in loss of life, injury to persons, or damage to property. Critical actions include activities that create, maintain or extend the useful life of those structures or facilities that:

(i) Produce, use or store highly volatile, flammable, explosive, toxic or water-reactive materials;

(ii) Provide essential and irreplacable records or utility or emergency services that may become lost or inoperative during flood and storm events (e.g., data storage centers, generating plants, principal utility lines, emergency operations centers including fire and police stations, and roadways providing sole egress from flood-prone areas); or

(iii) Are likely to contain occupants who may not be sufficiently mobile to avoid loss of life or injury during flood or storm events, e.g., persons who reside in hospitals, nursing homes, convalescent homes, intermediate care facilities, board and care facilities, and retirement service centers.

Housing for independent living for the elderly is not considered a critical action. Critical actions shall not be approved in floodways or coastal high hazard areas.

(3) *500-year floodplain* means the minimum floodplain of concern for Critical Actions and is the area subject to inundation from a flood having a 0.2 percent chance of occurring in any given year. (See § 55.2(b)(1) for appropriate data sources.)

(4) *Floodway* means that portion of the floodplain which is effective in carrying flow, where the flood hazard is generally the greatest, and where water depths and velocities are the highest. The term "floodway" as used here is consistent with "regulatory floodways" as identified by FEMA. (See § 55.2(b)(1) for appropriate data sources.)

(5) *Functionally dependent use* means a land use that must necessarily be conducted in close proximity to water (e.g., a dam, marina, port facility, waterfront park, and many types of bridges).

(6) *High hazard area* means a floodway or a coastal high hazard area.

(7) *New construction*, as used in connection with activities in wetlands, means draining, dredging, channelizing, filling, diking, impounding, and related project construction activities affecting wetlands.

(8) *100-year floodplain* means the floodplain of concern for this part and is the area subject to a one percent or greater chance of flooding in any given year. (See § 55.2(b)(1) for appropriate data sources.)

(9)(i) *Substantial improvement* means either:

(A) Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

(*1*) Before the improvement or repair is started, or

(*2*) If the structure has been damaged, and is being restored, before the damage occurred; or

(B) Any repair, reconstruction, or improvement of a structure that results in an increase of more than twenty percent in the number of dwelling units in a residential project or in the average peak number of customers and employees likely to be on-site at any one time for a commercial or industrial project.

(ii) *Substantial improvement* may not be defined to include either:

(A) Any project for improvement of a structure to comply with existing State or local health, sanitary or safety code specifications that is solely necessary to assure safe living conditions or

(B) Any alteration of a structure listed on the National Register of Historical Places or on a State Inventory of Historic Places.

(iii) Structural repairs, reconstruction, or improvements not meeting this definition are considered "minor improvements".

(10) *Wetlands* means those areas that are inundated by surface or ground water with a frequency sufficient to support, and under normal circumstances do or would support, a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include, but are not limited to swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds. Only those wetlands identified by or delineated on maps issued by the Fish and Wildlife Service of the U.S. Department of the Interior or the U.S. Army Corps of Engineers shall be subject to coverage under this part.

§ 55.3 Assignment of responsibilities.

(a) *The Assistant Secretary for Community Planning and Development* (CPD) shall oversee:

(1) The Department's implementation of the Orders and this part in all HUD programs and

(2) The implementation activities of HUD program managers and grant recipients for HUD financial assistance subject to 24 CFR part 58.

In performing these responsibilities, the Assistant Secretary for CPD shall make pertinent policy determinations in cooperation with appropriate program offices and provide necessary assistance, training, publications, and procedural guidance.

(b) *Other HUD Assistant Secretaries, the General Counsel, and the President of the Government National Mortgage Association (GNMA)* shall:

(1) Ensure compliance with this part for all actions under their jurisdiction that are proposed to be conducted, supported, or permitted in a floodplain or wetland;

(2) Ensure that the offices under their jurisdiction have the technical resources to implement the requirements of this part; and

(3) Incorporate in departmental regulations, handbooks, and project and site standards those criteria, standards, and procedures necessary to comply with the requirements of this part.

(c) *Regional Administrators-Regional Housing Commissioners and Field Office Managers* shall:

(1) Ensure that this part is fully implemented in decisions and approvals for which they are responsible; and

(2) Monitor actions approved by HUD or grant recipients and ensure that any prescribed mitigation is implemented.

(d) *Recipient Certifying Officer.* In accordance with section 9 of Executive Order 11988 and section 10 of Executive Order 11990, Certifying Officers of grant recipients administering activities subject to 24 CFR part 58 shall:

(1) Comply with this part in carrying out HUD-assisted programs, and

(2) Monitor approved actions and ensure that any prescribed mitigation is implemented.

Subpart B—Application of Executive Orders on Floodplain Management and Protection of Wetlands

§ 55.10 Environmental review procedures under 24 CFR parts 50 and 58.

(a) Where an environmental review is required under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332, and 24 CFR part 50 or part 58, compliance with this part shall be completed before the completion of an environmental assessment (EA) including a finding of no significant environmental impact (FONSI), or an environmental impact statement (EIS), in accordance with the decision points listed in 24 CFR 50.17(a)–(h), or before the preparation of an EA under 24 CFR 58.40 or an EIS under 24 CFR 58.36. For types of proposed actions that are categorically excluded from National Environmental Policy Act (NEPA) requirements under 24 CFR part 50 (or part 58), compliance with this part shall be completed before the Department's initial (SAMA, conditional, etc.) approval (or the conditional commitment or approval by a grant recipient subject to 24 CFR part 58) of proposed actions in a floodplain or wetland.

(b) The categorical exclusion of certain proposed actions from environmental review requirements under NEPA and 24 CFR parts 50 and 58 (see 24 CFR 50.20 and 58.35) does not exclude those actions from compliance with this part.

§ 55.11 Applicability of subpart C decision making process.

(a) Before reaching the decision points described in § 55.10(a), HUD (for Department-administered programs) or the grant recipient (for HUD financial assistance subject to 24 CFR part 58) shall determine whether Executive Orders 11988 and 11990 and this part apply to the proposed action.

(b) If Executive Order 11988 or 11990 applies, the approval of a proposed action or initial commitment shall be made in accordance with this part. The primary purpose of Executive Order 11988 is to "avoid direct or indirect support of floodplain development." Under Executive Order 11990, the decision making process in § 55.20 only applies to Federal assistance for new construction in wetland locations.

(c) The following table indicates the applicability, by location and type of action, of the decision making process for implementing Executive Orders 11988 and 11990 under subpart C of the part.

TABLE 1.—TYPE OF PROPOSED LOCATION

Critical Actions as defined in § 55.2(b)(2)	Critical actions not allowed		Allowed if the proposed Critical Action is processed under § 55.20 [2]	
Type of Proposed Action (New Reviewable Action or an Amendment) [1]	Floodways	Coastal High Hazard Areas	Wetland or 100-Year Floodplain Outside High Hazard Area	Non-Wetland Area between 100- & 500-Year Floodplain
Non-Critical Actions not excluded under § 55.12(b) or (c).	Allowed only if the proposed action is a functionally dependent use and processed under § 55.20.[2]	Allowed only if the proposed action (1) is either (a) designed for location in a coastal high hazard area or (b) a functionally dependent use; and (2) is processed under § 55.20.[2]	Allowed if the proposed action is processed under § 55.20.[2]	Any non-critical action is allowed without processing under this part.

[1] Under Executive Order 11990, the decisionmaking process in § 55.20 only applies to Federal assistance for new construction in wetland locations.
[2] Or those paragraphs of § 50.20 that are applicable to an action listed in § 55.12(a).

§ 55.12 Inapplicability of 24 CFR part 55 to certain categories of proposed actions.

(a) The decision making steps in § 55.20(b), (c) and (g) (Steps 2, 3 and 7) shall not apply to the following categories of proposed actions:

(1) HUD actions involving the disposition of HUD-acquired multifamily housing projects or "bulk sales" of HUD-acquired one- to four-family properties in communities that are in the Regular Program of the National Flood Insurance Program (NFIP) and in good standing (*i.e.*, not suspended from program eligibility or placed on probation under 44 CFR 59.24).

(2) HUD's actions under section 223(f) of the National Housing Act for the purchase or refinancing of existing multifamily housing projects in communities that are in good standing under the NFIP.

(b) The decision making process in § 55.20 shall not apply to the following categories of proposed actions:

(1) HUD's mortgage insurance actions for the purchasing, mortgaging or refinancing of existing one- to four-family properties in communities that are in the Regular Program of the National Flood Insurance Program (NFIP) and in good standing (*i.e.*, not suspended from program eligibility or placed on probation under 44 CFR 59.24), where the action is not a critical action and the property is not located in a floodway or coastal high hazard area;

(2) Financial assistance for minor repairs or improvements on one- to four-family properties that do not meet the thresholds for "substantial improvement" under § 55.2(b)(9);

(3) HUD actions involving the disposition of individual HUD-acquired, one- to four-family properties in communities that are in good standing under the NFIP.

(c) This part shall not apply to the following categories of proposed HUD actions:

(1) HUD-assisted exempt activities described in 24 CFR 58.34;

(2) Policy level actions described at 24 CFR 50.16 that do not involve site-based decisions;

(3) HUD's implementation of the full disclosure and other registration requirements of the Interstate Land Sales Disclosure Act (15 U.S.C. 1701–1720);

(4) An action involving a repossession, receivership, foreclosure, or similar acquisition of property to protect or enforce HUD's financial interests under previously approved loans, grants, mortgage insurance, or other HUD assistance;

(5) A minor amendment to a previously approved action with no additional adverse impact on or from a floodplain or wetland;

(6) HUD's approval of a project site, an incidental portion of which is situated in an adjacent floodplain or wetland, but only if:

(i) The proposed construction and landscaping activities (except for minor grubbing, clearing of debris, pruning, sodding, seeding, etc.) do not occupy or

modify the wetland, the 100-year floodplain, or the 500-year floodplain (for Critical Actions),

(ii) Appropriate provision is made for site drainage, and

(iii) A covenant or comparable restriction is placed on the property's continued use to preserve the floodplain or wetland;

(7) an action for interim assistance or emergency activities involving imminent threats to health and safety, and limited to necessary protection, repair or restoration activities to control the imminent risk or damage;

(8) HUD's approval of financial assistance for a project on any non-wetland site in a floodplain for which FEMA has issued:

(i) A final Letter of Map Amendment (LOMA) or final Letter of Map Revision (LOMR) that removed the property from a FEMA-designated floodplain location, or

(ii) A conditional LOMA or conditional LOMR if the HUD approval is subject to the requirements and conditions of the conditional LOMA or conditional LOMR;

(9) HUD's acceptance of a housing subdivision approval action by the Department of Veterans Affairs or Farmers Home Administration in accordance with section 535 of the Housing Act of 1949 (42 U.S.C. 1490o);

(10) An action that was, on the effective date of this part, already approved by HUD (or a grant recipient subject to 24 CFR part 58) and is being implemented (unless approval is requested for a new reviewable action), provided that §§ 55.21 and 55.22 apply where the covered transactions under those sections have not yet occurred, and that any hazard minimization measures required by HUD (or a grant recipient subject to 24 CFR part 58) under its implementation of Executive Orders 11988 and 11990 prior to [*Insert Effective Date of This Rule*] shall be completed;

(11) Issuance or use of Housing Vouchers, Certificates under the Section 8 Existing Housing Program, or other forms of rental subsidy where HUD, the awarding community, or the public housing agency that administers the contract awards rental subsidies that are not project-based (*i.e.*, do not involve site-specific subsidies); and

(12) Secondary mortgage operations of the Government National Mortgage Association (GNMA).

Subpart C—Procedures for Making Determinations on Actions Located in Floodplains and Wetlands

§ 55.20 Decision making process.

The decision making process for compliance with this part contains eight steps, including public notices and an examination of practicable alternatives. The steps to be followed in the decision making process are:

(a) *Step 1.* Determine whether the proposed action is located in a wetland or in a 100-year floodplain (or a 500-year floodplain for a Critical Action). If the proposed action would not be conducted in one of those locations, then no further compliance with this part is required.

(b) *Step 2.* Notify the public at the earliest possible time of a proposal to consider an action in a floodplain or wetland (or in the 500-year floodplain for a Critical Action), and involve the affected and interested public in the decision making process.

(1) The public notices required by paragraphs (b) and (g) of this section may be combined with other project notices wherever appropriate. Notices required under this part must be bilingual if the affected public is largely non-English speaking. In addition, all notices must be published in an appropriate local printed news medium, and must be sent to Federal, State, and local public agencies, organizations, and, where not otherwise covered, individuals known to be interested in the proposed action.

(2) A minimum of 15 calendar days shall be allowed for comment on the public notice.

(3) A notice under this paragraph shall state: the name, proposed location and description of the activity; the total number of acres of floodplain or wetland involved; and the HUD official and phone number to contact for information. The notice shall indicate the hours and the HUD office at which a full description of the proposed action may be reviewed.

(c) *Step 3.* Identify and evaluate practicable alternatives to locating the proposed action in a floodplain or wetland (or the 500-year floodplain for a Critical Action).

(1) The consideration of practicable alternatives to the proposed site or method may include:

(i) Locations outside the floodplain or wetland (or 500-year floodplain for a Critical Action),

(ii) Alternative methods to serve the identical project objective; and

(iii) A determination not to approve any action.

(2) In reviewing practicable alternatives, the Department or a grant recipient subject to 24 CFR part 58 shall consider feasible technological alternatives, hazard reduction methods and related mitigation costs, and environmental impacts.

(d) *Step 4.* Identify the potential direct and indirect impacts associated with the occupancy or modification of the floodplain or wetland (or 500-year floodplain for a Critical Action).

(e) *Step 5.* Where practicable, design or modify the proposed action to minimize the potential adverse impacts within the floodplain or wetland (including the 500-year floodplain for a Critical Action) and to restore and preserve its natural and beneficial values. All critical actions in the 500-year floodplain shall be designed or modified to include:

(1) Preparation of and participation in an early warning system;

(2) An emergency evacuation and relocation plan;

(3) Identification of evacuation route(s) out of the 500-year floodplain; and

(4) Identification marks of past or estimated flood levels on all structures.

(f) *Step 6.* Reevaluate the proposed action to determine:

(1) Whether it is still practicable in light of its exposure to flood hazards in the floodplain or of its possible adverse impact on the wetland, the extent to which it will aggravate the current hazards to other floodplains or wetlands, and its potential to disrupt floodplain or wetland values; and

(2) Whether alternatives preliminarily rejected at Step 3 (paragraph (c)) of this section are practicable in light of the information gained in Steps 4 and 5 (paragraphs (d) and (e)) of this section.

(g) *Step 7.* If the reevaluation results in a determination that there is no practicable alternative to locating the proposal in the floodplain or wetland (or the 500-year floodplain for a Critical Action), publish a final notice that includes:

(1) The reasons why the proposal must be located in the floodplain or wetland;

(2) A list of the alternatives considered; and

(3) All mitigation measures to be taken to minimize adverse impacts and to restore and preserve natural and beneficial values.

In addition, the public notice procedures of § 55.20(b)(1) shall be followed, and a minimum of 7 calendar days for public comment prior to approval of the proposed action shall be provided.

(h) *Step 8.* Upon completion of the decision making process in Steps 1 through 7, implement the proposed

action. There is a continuing responsibility to ensure that the mitigating measures identified in Step 7 are implemented.

§ 55.21 Notification of floodplain hazard.

For HUD programs under which a financial transaction for a property located in a floodplain (a 500-year floodplain for a Critical Action) is guaranteed, approved, regulated or insured, any private party participating in the transaction and any current or prospective tenant shall be informed by HUD (or by HUD's designee, e.g., a mortgagor) or a grant recipient subject to 24 CFR part 58 of the hazards of the floodplain location before the execution of documents completing the transaction.

§ 55.22 Coveyance restrictions for the disposition of real property.

(a) In the disposition (including leasing) of properties acquired by HUD that are located in a floodplain (a 500-year floodplain for a Critical Action) or a wetland, the documents used for the conveyance must:

(1) Refer to those uses that are restricted under identified Federal, State, or local floodplain or wetland regulations; and

(2) Include any land use restrictions limiting the use of the property by a grantee or purchaser and any successors under State or local laws.

(b) For disposition of properties acquired by HUD that are located in a 500-year floodplain and contain Critical Actions, HUD shall, as a condition of approval of the disposition, require by convenant or comparable restriction on the property's use that the property owner and successive owners provide written notification to each current and prospective tenant concerning:

(1) The hazards to life and to property for those persons who reside or work in a structure located within the 500-year floodplain, and

(2) The availability of flood insurance on the contents of their dwelling unit or business.

The notice shall also be posted in the building so that it will be legible at all times and easily visible to all persons entering or using the building.

§ 55.23 Notification of fund availability.

In any HUD document that notifies the public of the availability of funds for a program (including a description of eligible development organizations, eligible development activities, application requirements for the funds, and selection criteria for the award of funds), the HUD issuing official shall indicate in that document that all proposed sites in a floodplain or wetland are subject to compliance with this part. Grant recipients subject to 24 CFR part 58 shall also comply with this section.

§ 55.24 Aggregation.

Where two or more actions have been proposed, require compliance with subpart C, affect the same floodplain or wetland, and are currently under review by the Department (or by a grant recipient subject to 24 CFR part 58), individual or aggregated approvals may be issued. A single compliance review and approval under this section is subject to compliance with the decision making process in § 55.20.

§ 55.25 Areawide compliance.

(a) A HUD-approved areawide compliance process may be substituted for individual compliance or aggregated compliance under § 55.24 where a series of individual actions is proposed or contemplated in a pertinent area for HUD's examination of floodplain hazards or the protection of wetlands. In areawide compliances, the area for examination may include a sector of, or the entire, floodplain or wetland—as relevant to the proposed or anticipated actions. The areawide compliance process shall be in accord with the decision making process under § 55.20.

(b) The areawide compliance process shall address the relevant Executive Orders and shall consider local land use planning and development controls (e.g., those enforced by the community for purposes of floodplain management under the National Flood Insurance Program (NFIP)) and applicable State programs for floodplain management and wetland protection. The process shall include the development and publication of a strategy that identifies the range of development and mitigation measures under which the proposed HUD assistance may be approved and that indicates the types of actions that will not be approved in the floodplain or wetland.

(c) Individual actions that fit within the types of proposed HUD actions specifically addressed under the areawide compliance do not require further compliance with § 55.20 except that a determination by the Department or a grant recipient subject to 24 CFR part 58 shall be made concerning whether the individual action accords with the areawide strategy. Where the individual action does not accord with the areawide strategy, specific development and mitigation measures shall be prescribed as a condition of HUD's approval of the individual action.

(d) Areawide compliance under the procedures of this section is subject to the following provisions:

(1) It shall be initiated by HUD through a formal agreement of understanding with affected local governments concerning mutual responsibilities governing the preparation, issuance, implementation, and enforcement of the areawide strategy;

(2) It may be performed jointly with one or more Federal departments or agencies, or grant recipients subject to 24 CFR part 58 that serve as the responsible Federal official;

(3) It shall establish mechanisms to ensure that:

(i) The terms of approval of individual actions (e.g., concerning structures and facilities) will be consistent with the areawide strategy;

(ii) The controls set forth in the areawide strategy are implemented and enforced in a timely manner; and

(iii) Where necessary, mitigation for individual actions will be established as a condition of approval.

(4) An open scoping process (in accordance with 40 CFR 1501.7) shall be used for determining the scope of issues to be addressed and for identifying significant issues related to housing and community development for the floodplain or wetland;

(5) Federal, State and local agencies with expertise in floodplain management, wetland protection, flood evacuation preparedness, land use planning and building regulation, or soil and natural resource conservation shall be invited to participate in the scoping process and to provide advice and comments; and

(6) Eligibility for participation in and the use of the areawide compliance must be limited to communities that are in the Regular Program of the National Flood Insurance Program and in good standing (*i.e.*, not suspended from program eligibility or placed on probation under 44 CFR 59.24), thereby demonstrating a capacity for and commitment to floodplain management standards sufficient to perform responsibilities under this part.

(7) An expiration date (not to exceed ten years from the date of the formal adoption by the local governments) for HUD approval of areawide compliance under this part must be stated in the agreement between the local governments and HUD. In conjunction with the setting of an expiration date, a mechanism for HUD's reevaluation of the appropriateness of areawide compliance must be provided in the agreement.

§ 55.26 Adoption of another agency's review under the Executive Orders.

If a proposed action covered under this part is already covered in a prior review performed under the Executive Orders by another agency, that review may be adopted by HUD or by a grant recipient authorized under 24 CFR part 58, provided that:

(a) There is no pending litigation relating to the other agency's review for floodplain management and wetlands protection;

(b) The adopting agency makes a finding that:

(1) The type of action currently proposed is comparable to the type of action previously reviewed by the other agency, and

(2) There has been no material change in circumstances since the previous review was conducted; and

(c) As a condition of approval, mitigation measures similar to those prescribed in the previous review shall be required of the current proposed action.

§ 55.27 Documentation.

(a) For purposes of compliance with § 55.20, the responsible HUD official who would approve the proposed action (or the Certifying Officer for a grant recipient subject to 24 CFR part 58) shall require that the following actions be documented:

(1) Under § 55.20(c), practicable alternative sites have been considered outside the floodplain or wetland, but within the local housing market area, the local public utility service area, or the jurisdictional boundaries of a recipient unit of general local government (as defined in 24 CFR 570.3), whichever geographic area is more appropriate to the proposed HUD action. Actual sites under review must be identified and the reasons for the non-selection of those sites as practicable alternatives must be described; and

(2) Under § 55.20(e), measures to minimize the potential adverse impacts of the proposed action on the affected floodplain or wetland as identified in § 55.20(d) have been applied to the design for the proposed action.

(b) For purposes of compliance with § 55.24, § 55.25, or § 55.26 (as appropriate), the responsible HUD official (or the Certifying Officer for a grant recipient subject to 24 CFR part 58) who would approve the proposed action shall require documentation of compliance with the required conditions.

(c) Documentation of compliance with this part (including copies of public notices) must be attached to the environmental assessment, the environmental impact statement or the compliance record and be maintained as a part of the project file. In addition, for environmental impact statements, documentation of compliance with this part must be included as a part of the record of decision (or environmental review record for grant recipients subject to 24 CFR part 58).

PART 58—ENVIRONMENTAL REVIEW PROCEDURES FOR THE COMMUNITY DEVELOPMENT BLOCK GRANT, RENTAL REHABILITATION AND HOUSING DEVELOPMENT GRANT PROGRAMS

4. The authority citation for part 58 would continue to read as follows:

Authority: Sec. 7(d) of the Department of HUD Act (421 U.S.C. 3535(d)); sec. 104(g) of title I, Housing and Community Development Act of 1974 (42 U.S.C. 5304(g)) as amended; sec. 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) as amended; secs. 17(i) (1) and (2) of the United States Housing Act of 1937 (42 U.S.C. 1437o(i) (1) and (2)); Executive Order 11514, Protection and Enhancement of Environmental Quality, March 5, 1970, as amended by Executive Order 11991, May 24, 1977.

5. In § 58.5, paragraph (b) would be revised to read as follows:

§ 58.5 Federal laws and authorities.

* * * * *

(b) *Floodplain Management and Wetland Protection.* (1) Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128).

(2) Executive Order 11988 (Floodplain Management), 42 FR 26951 (May 25, 1977) and Executive Order 11990 (Protection of Wetlands), 42 FR 26961 (May 25, 1977), as interpreted in HUD regulations at 24 CFR part 55. (For an explanation of the relationship between the decision making process in 24 CFR part 55 and this part, see § 55.10.)

* * * * *

PART 200—INTRODUCTION

6. The authority citation for part 200 would continue to read as follows:

Authority: Titles I and II, National Housing Act (12 U.S.C. 1701–1715Z–18); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart S—Minimum Property Standards

7. In § 200.926d, paragraph (c)(4) would be revised to read as follows:

§ 200.926d Construction requirements.

* * * * *

(c) *Site design.* * * *

(4) *Drainage and flood hazard exposure.*—(i) *Residential structures with basements located in FEMA-designated areas of special flood hazard.* The elevation of the lowest floor in structures with basements shall be at or above the base flood level (100-year flood level) required for new construction or substantial improvement of residential structures under regulations for the National Flood Insurance Program (NFIP) (see 44 CFR 60.3–60.6), except where variances from this standard are granted by communities under the procedures of the Federal Emergency Management Agency (FEMA) at 44 CFR 60.6(a) or exceptions from this NFIP standard for basements are approved by FEMA in accordance with procedures at 44 CFR 60.6(c).

(ii) *Residential structures without basements located in FEMA-designated areas of special flood hazard.* The elevation of the lowest floor in structures without basements shall be at or above the FEMA-designated base flood elevation (100-year flood level).

(iii) *Residential structures located in FEMA-designated "coastal high hazard areas".* (A) Basements or any permanent enclosure of space below the lowest floor of a structure are prohibited.

(B) Where FEMA has determined the base flood level without establishing stillwater elevations, the underside of the lowest floor of the structure and its horizontal supports shall be at or above the base flood level.

(iv) *"Critical Actions" as defined in 24 CFR 55.2(b)(2).* The lowest floor of a structure (including the basement and all mechanical, electrical, and service equipment) shall be at or above the FEMA-designated 500-year frequency flood elevation. "Critical Actions" located in FEMA-designated "floodways" (as defined in § 55.2(b)(4))

and "coastal high hazard areas" (as defined in § 55.2(b)(1) are prohibited.

(v) *Streets.* Streets must be usable during runoff equivalent to a 10 year return frequency. Where drainage outfall is inadequate to prevent runoff equivalent to a 10 year return frequency from ponding over 6 inches deep, streets must be made passable for commonly used emergency vehicles during runoff equivalent to a 25 year return frequency, except where an alternative access street not subject to such ponding is available.

(vi) *Crawl spaces.* Crawl spaces must not pond water or be subject to prolonged dampness.

* * * * *

Date: June 2, 1989.

Jack Kemp,

Secretary.

Editorial Note: This document was received by the Office of the Federal Register on December 28, 1989.

[FR Doc. 90-103 Filed 1-3-90; 8:45 am]

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federal register

Thursday
January 4, 1990

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Terminal Control Area (TCA) Classification and TCA Pilot and Navigational Equipment Requirements; Final Rule; Delay of Effective Date

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 25304; Amdt. No. 91-214]

RIN 2120-AC35

Terminal Control Area (TCA) Classification and TCA Pilot and Navigational Equipment Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: On October 6, 1988, the FAA issued Amendment Nos. 61-80, 71-11, and 91-205, Terminal Control Area (TCA) Classification and TCA Pilot and Navigational Equipment Requirements. These amendments require, in part, all aircraft operating in a TCA to be equipped with very high frequency omnidirectional range (VOR) or tactical air navigation (TACAN) equipment. By separate action, the FAA proposed, in part, to eliminate the navigational equipment requirements associated with aircraft operations in a TCA. Specifically, the notice proposed to eliminate the navigational equipment requirement for any aircraft conducting operations in a TCA under visual flight rules (VFR). This action, which delays the current effective date of the previous equipment requirement exclusion applicable to helicopters from January 1, 1990, to October 1, 1990, will allow affected operators to delay the purchase of equipment should that proposal be adopted and will provide the FAA with the necessary time to consider comments and reach a decision regarding the proposal in Notice No. 89-17.

EFFECTIVE DATE: This amendment is effective December 29, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. A. Wayne Pierce, Air Traffic Rules Branch, ATO-230, Airspace-Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-6783. Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-200, 800 Independence Avenue, SW., Washington, DC 20591; or by calling (202) 267-3484. Communications must identify the amendment number of the document.

SUPPLEMENTARY INFORMATION:

Background

On October 6, 1988, the FAA issued Amendment Nos. 61-80, 71-11, and 91-205 requiring all aircraft operating in a TCA to be equipped with VOR or TACAN equipment, eliminating the previous equipment requirement exclusion applicable to helicopters effective July 1, 1989 (Docket No. 25304; Terminal Control Area (TCA) Classification and TCA Pilot and Navigational Equipment Requirements; Amendments Nos. 61-80, 71-11, 91-205, 53 FR 40318).

Since that time, the FAA has received requests for exceptions to the helicopter equipment requirement, along with petitions from various organizations to allow the use of certain area navigational equipment within a TCA. Specifically, the Experimental Aircraft Association (EAA), in a letter dated January 5, 1989, advised the FAA that it had conducted an investigation concerning the TCA navigation equipment requirement. The EAA concluded that LORAN-C produces more satisfactory results for many users and is much more useful for helicopter operations than VOR equipment. The National Association of State Aviation Officials, in a letter of January 14, 1989, stated that many new generation helicopters are operating with LORAN-C as a primary navigation system and that LORAN-C equipment provides better position information than VOR equipment.

On April 3, 1989, the Helicopter Association International (HAI) petitioned the FAA for an exception to the navigational equipment requirement for helicopters conducting operations under VFR and special VFR in a TCA. On June 6, 1989, pending a final disposition of the HAI petition, and in contemplation of a related rulemaking proposal, the FAA amended the TCA Classification and TCA Pilot and Navigational Equipment Requirements final rule to delay the effective date of the equipment requirement applicable to helicopters until January 1, 1990 (Terminal Control Area (TCA) (Classification and TCA Pilot and Navigational Equipment Requirements; Docket No. 25303; Amdt. No. 91-209; 54 FR 24882).

In response to the HAI petition and after review of the need for the navigational equipment requirement, the FAA, on June 26, 1989, proposed to eliminate the navigation equipment requirement for aircraft conducting operations under VFR in a TCA (Navigational Equipment Requirement in a Terminal Control Area (TCA), Visual Flight Rules, (VFR) Operations; Docket No. 25943; Notice No. 89-17; 54 FR 26782). While the comment period on Notice No. 89-17 closed on July 26, 1989, the FAA has not yet reached a decision on the proposal. Furthermore a decision will not be reached until after January 1, 1990, the current date on which the equipment requirement applicable to helicopters becomes effective.

Accordingly, the FAA has determined that a further delay in the effective date of the navigational equipment requirement applicable to helicopters is necessary to avoid a needless expenditure by affected operators for equipment that may not be required depending on the outcome of proceedings associated with Notice No. 89-17. Therefore, the FAA is amending the TCA Classification and TCA Pilot and Navigational Equipment Requirements final rule by delaying the effective date of the navigational equipment requirement applicable to helicopter operations in a TCA from January 1, 1990, to October 1, 1990.

Federalism Determination

The requirements 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.

Conclusion

For the reasons discussed in the preamble, the FAA has determined that this action is not a "major rule" under Executive Order 12291. However, it is a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A full regulatory evaluation was prepared for the final rule [Amendment No. 91-205; 53 FR 40318] that established the navigational equipment requirements in a TCA and placed in Docket No. 25304. This action to delay the effective date of one part of that rule does not have any significant effect on the information and conclusions contained in that evaluation. Accordingly, the existing regulatory evaluation remains valid and no further evaluation is required. Also, for the reasons contained in the regulatory evaluation in the docket, I certify that this action will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 91

Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 91 of the Federal Aviation Regulations (14 CFR part 91) as follows:

PART 91—[AMENDED]

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

§ 91.90 [Amended]

2. Section 91.90(c)(1) is amended by replacing the words "January 1, 1990," with the words "October 1, 1990."

* * * * *

Issued in Washington, DC on December 29, 1989.

James B. Busey,

Administrator.

[FR Doc. 89–30399 Filed 12–29–90; 3:05 pm]

BILLING CODE 4910-13-M

federal register

Thursday
January 4, 1990

Part V

General Services Administration

Department of Defense

National Aeronautics and Space Administration

48 CFR Parts 9 and 48

Federal Acquisition Regulation; Debarment, Suspension, and Ineligibility and Allowability of Value Engineering Costs; Proposed Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 9

Federal Acquisition Regulation (FAR); Debarment, Suspension, and Ineligibility

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are proposing to revise the Federal Acquisition Regulation (FAR) in 9.405 and 9.405-1 to clarify the extent to which procurement orders placed under indefinite delivery-type contractual arrangements, basic agreements, and basic ordering agreements constitute a contract for purposes of debarment/suspension.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before March 5, 1990, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4041, Washington, DC 20405.

Please cite FAR case 89-89 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755. Please cite FAR Case 89-89.

SUPPLEMENTARY INFORMATION:

A. Background

The General Accounting Office, in a February 1987 report on debarment and suspension, identified a number of improvements to debarment and suspension procedures that were warranted. One of those recommendations was that the FAR be revised to define to what extent procurement orders under optional contractual arrangements, such as nonmandatory multiple award schedules and basic ordering agreements are contracts for purposes of debarment and suspension. The FAR is presently unclear as to whether basic agreements, basic ordering agreements, and delivery orders against indefinite delivery-type contracts constitute a contract for purposes of debarment and suspension. This lack of clarity results in confusion between agencies as to the proper procedures to follow when utilizing these arrangements.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the proposed change does not impose any new requirements on contractors, large or small, and serves only to clarify existing regulatory coverage. An Initial Regulatory Flexibility Act Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 89-610 (FAR Case 89-89) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping informtion collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et. seq.

List of Subjects in 48 CFR Part 9

Government procurement.

Dated: December 26, 1989.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 9 be amended as set forth below:

PART 9—CONTRACTOR QUALIFICATIONS

1. The authority citation for 48 CFR part 9 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

2. Section 9.405 is amended by revising paragraph (a) to read as follows:

9.405 Effect of listing.

(a) Contractors who are debarred, suspended, or proposed for debarment are excluded from conducting business with the Government as prime contractors, subcontractors, or as agents or representatives of other contractors. Unless the acquiring agency's head or designee determines in writing that there is a compelling reason to do so (see 9.405-2, 9.406-1(c), 9.407-1(d), and 23.506(e)), agencies shall not take any of the following actions with these parties:

(1) Solicit offers.

(2) Award contracts.

(3) Consent to subcontracts.

(4) Enter into, or place orders against, basic agreements, basic ordering agreements, or any other similar agreement.

(5) Place orders exceeding the guaranteed minimum under indefinite quantity contracts.

(6) When the Agency is an optional user, place orders against schedule contracts.

(7) Place orders under any other agreement that does not legally bind the Government to acquire supplies or services.

* * * * *

3. Section 9.405-1 is revised to read as follows:

9.405-1 Continuation of current contracts.

(a) Notwithstanding the debarment, suspension, or proposed debarment of a contractor, performance may continue under contracts, subcontracts, or other agreements in existence at the time the contractor was debarred, suspended, or proposed for debarment unless the head of the agency (or designee) which entered into the contract or agreement directs otherwise (but see 9.405(a)). A decision as to the type of termination action, if any, to be taken should be made only after review by agency contracting and technical personnel and by counsel to ensure the propriety of the proposed action.

(b) Agencies shall not exercise options, renew, or otherwise extend the duration of current contracts or agreements, with contractors debarred, suspended, or proposed for debarment, unless the acquiring agency's head or designee states in writing the compelling reasons to do so.

[FR Doc. 90-152 Filed 1-3-90; 8:45 am]

BILLING CODE 6820-JC-M

48 CFR Part 48

Federal Acquisition Regulation (FAR); Allowability of Value Engineering Costs

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are proposing to revise the Federal Acquisition Regulation (FAR) in 48.101(b) to clarify the allowability of costs for unaccepted value engineering change proposals. The allowability of the costs will be determined in accordance with part 31.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before March 5, 1990, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4041, Washington, DC 20405.

Please cite FAR Case 89-88 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405 (202) 523-4755. Please cite FAR Case 89-88.

SUPPLEMENTARY INFORMATION:

A. Background

It appears that FAR 48.101(b) is being incorrectly interpreted to mean that contractor costs associated with work on an unaccepted value engineering change proposal is unallowable. Part of the confusion appears to stem from the phrases "the contractor uses his own resources to develop and submit any VECP" and "This voluntary approach should not in itself increase costs to the Government."

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because it does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98-57, and publication for comment is not required. However, comments from small entities concerning the affected FAR subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 89-610 (FAR Case 89-88) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 48

Government procurement.

Dated: December 26, 1989.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 48 be amended as set forth below:

1. The authority citation for 48 CFR part 48 continues to read as follows:

PART 48—VALUE ENGINEERING

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

2. Section 48.101 is amended by revising paragraphs (b) introductory text and (b)(1) to read as follows:

48.101 General.

* * * * *

(b) There are two value engineering approaches, as follows:

(1) The first is an incentive approach in which contractor participation is voluntary and the contractor uses its own resources to develop and submit any value engineering change proposals (VECPs). This approach provides for sharing of savings when a VECP is accepted. The allowability of contractors' development and implementation costs will be determined in accordance with part 31.

* * * * *

[FR Doc. 90-153 Filed 1-3-90; 8:45 am]

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