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Presidential Documents

Title 3—

The President

Proclamation 5940 of March 2, 1989

National Poison Prevention Week, 1989

By the President of the United States of America

A Proclamation

Since the first National Poison Prevention Week, in 1962, thousands of American children under age five have been saved from accidental poisonings, thanks to the combined efforts of consumers, health professionals, government, and industry. Each year, the distribution of printed materials, activities at State and local levels, and media broadcasting all remind consumers to use child-resistant packaging and to store medicines and household chemicals out of the reach of young children.

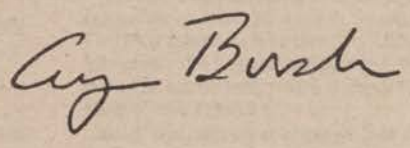
Data compiled annually by the U.S. Consumer Product Safety Commission show that the number of child poisonings has decreased by more than 70 percent since 1972, when the first drugs were required to have child-resistant packaging. Life-saving treatment advice by poison control centers when a poisoning does occur has also been a valuable factor.

Many lives have been saved, but there is more to do. We must continue to instruct new parents and grandparents on the need to use child-resistant packaging and to keep medicines and household chemicals out of the reach of children. Underlying our poison prevention program is the assumption that virtually all childhood poisonings are preventable.

To encourage the American people to learn more about the dangers of accidental poisonings and to take more preventive measures, the Congress, by joint resolution approved September 26, 1961 (75 Stat. 681), has authorized and requested the President to issue a proclamation designating the third week of March of each year as "National Poison Prevention Week."

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the week beginning March 19, 1989, as National Poison Prevention Week. I call upon all Americans to observe this week by participating in appropriate ceremonies and events and by learning how to prevent childhood poisonings.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of March, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.



[FR Doc. 89-5271
Filed 3-3-89; 10:31 am]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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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.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

Grain Standards; Revision of Agency Mission Statement

AGENCY: Federal Grain Inspection Service.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is revising its mission statement for clarity of language, to reflect additional congressional policy declarations as stated in the Grain Quality Improvement Act of 1986, and to incorporate recommendations made by the FGIS Advisory Committee.

EFFECTIVE DATE: April 5, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., RM, USDA, FGIS, Room 0628, South Building, P.O. Box 96454, Washington, DC 20090–6454, telephone (202) 475–3428.

SUPPLEMENTARY INFORMATION: In the Grain Quality Improvement Act of 1986, Congress amended section 2 of the United States Grain Standards Act (Act) (7 U.S.C. 74) to include additional congressional policy declarations concerning the Official United States Standards for Grain. Further, the FGIS Advisory Committee has made recommendations to revise the FGIS mission statement that appears in § 800.1 of the regulations (7 CFR 800.1). This section also references the responsibilities delegated to the Administrator of FGIS under section 3A of the Act. Those responsibilities include activities under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) concerning rice, pulses, and related commodities.

Pursuant to § 553(b)(3)(A) of the Administrative Procedures Act (5 U.S.C. 553(b)(3)(A)) (APA), the requirements of general notice of proposed rulemaking do not apply to interpretive rules, general policy statements, or rules regarding agency organization, procedure, or practice. Since this rule relates to a general policy statement the requirements regarding general notice of rulemaking under the APA do not apply. For the same reasons, the relevant provisions of Departmental Regulation 1512–1, Executive Order 12291, and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are also not applicable and, upon good cause the provisions of section 553(d) of the APA (5 U.S.C. 553(d)) concerning postponing the effective date of a substantive rule 30 days after publication in the Federal Register do not apply to this action.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Export, Grain.

PART 800—GENERAL REGULATIONS

For the reasons set out in the preamble, 7 CFR Part 800 of the regulations is amended as follows:

1. The authority citation for Part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

2. Title 7 CFR Part 800 is amended by revising § 800.1 to read as follows:

§ 800.1 Mission.

The mission of the Federal Grain Inspection Service is to facilitate the marketing of grain, oilseeds, pulses, rice, and related commodities by:

(a) Establishing descriptive standards and terms,

(b) Accurately and consistently certifying quality,

(c) Providing for uniform official inspection and weighing,

(d) Carrying out assigned regulatory and service responsibilities, and

(e) Providing the framework for commodity quality improvement incentives to both domestic and foreign buyers.

Dated: March 1, 1989.

W. Kirk Miller,

Administrator.

[FR Doc. 89–5079 Filed 3–3–89; 8:45 am]
BILLING CODE 3410–EN–M

Farmers Home Administration

7 CFR Part 1930

Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule; correction.

SUMMARY: The Farmers Home Administration (FmHA) corrects a final rule published January 26, 1989 (54 FR 377) in Amendment No. 7. In this rule, several words were omitted from the text of 7 CFR 1930, Subpart C, Exhibit E, paragraph XV B 5 c. The intent of this action is to insert the missing portion.

EFFECTIVE DATE: March 6, 1989.

FOR FURTHER INFORMATION CONTACT: Ernest W. Harris, Loan Officer, Multiple Housing Servicing and Property Management Division, Farmers Home Administration, USDA, Room 5321–S, Washington, DC 20250, Telephone: (202) 382–1613.

PART 1930—[AMENDED]

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

Exhibit E of Subpart C—[Amended]

Exhibit E is correctly amended by adding paragraph XV B 5 c (2), (3) and (4) to read as follows:

XV. Suspending or Transferring Existing Rental Assistance Agreements

B. * * *

5. * * *

c. * * *

(2) The District Director has reviewed the project occupancy list, waiting list, and any other data available and verified that there is no apparent RA needed in the project.

(3) The State Director has notified the borrower at least 30 days in advance of FmHA's intent to transfer the RA units and has given the borrower appropriate appeal rights in accordance with Subpart B of Part 1900 of this Chapter.

(4) If the borrower appeals this decision, the appeal is resolved in accordance with Subpart B of Part 1900 of this Chapter, before any transfer action is taken.

* * * * *

2. Exhibit E is amended by correcting the first sentence of the introductory text of paragraph XV B 5 c by adding the

words "least one to" following the word "at."

Date: February 14, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89-5082 Filed 3-3-89; 8:45 am]

BILLING CODE 3410-07-M

Food Safety and Inspection Service

9 CFR Part 313

[Docket No. 88-027F]

Removal of Obsolete Provision—"Extension of Implementation Date"

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Humane Methods of Slaughter Act of 1978 requires that all meat inspected under the Federal Meat Inspection Act be produced from livestock slaughtered in accordance with humane methods. Section 313.90 of the Federal meat inspection regulations states that an extension may be granted to delay the implementation of this Act, but the delay shall not extend beyond April 11, 1981. Because this date has passed, this section is obsolete and, therefore, is being removed from the regulations.

EFFECTIVE DATE: March 6, 1989.

FOR FURTHER INFORMATION CONTACT: Ralph E. Stafko, Director, Policy Office, Policy and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-8168.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined that this final rule is not a "major rule" within the scope of Executive Order 12291. It would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises or export markets. This action only serves to remove an obsolete provision.

Effect on Small Entities

The Administrator has determined that this action will not have a significant economic impact upon a substantial number of small entities as defined by the Regulatory Flexibility Act, (5 U.S.C. 601 *et seq.*) because it only serves to remove an obsolete provision, which has no effect on domestic producers.

Background

Section 313.90 of the Federal meat inspection regulations (9 CFR 313.90) permits a delay in the application of the humane slaughtering and handling provisions of the Humane Methods of Slaughter Act of 1978 (21 U.S.C. 603). The section details how a person, firm, or corporation may request a delay in the application of the Act and how such a request will be evaluated. The section does not allow the delay of implementation to extend beyond April 11, 1981. The entire section is obsolete and is being removed from the regulations.

Because this amendment removes an obsolete provision and is, therefore, only an administrative action, it is found upon good cause that public participation in this rulemaking procedure is impracticable and unnecessary, and good cause is found for making the amendment effective less than 30 days after publication in the **Federal Register** (5 U.S.C. 553).

Final Rule

For reasons set forth in the preamble, Part 313 of the Federal meat inspection regulations is amended as set forth below.

PART 313—HUMANE SLAUGHTER OF LIVESTOCK

1. The authority citation for Part 313 continues to read as follows:

Authority: 92 Stat. 1069, 72 Stat. 862, 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 91, 438; 21 U.S.C. 71 *et seq.*; 601 *et seq.*; 7 U.S.C. 1906-1966.

§ 313.90 [Removed and reserved]

2. Section 313.90 is removed and reserved. The table of contents is amended accordingly.

Done at Washington, DC, on March 1, 1989.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 89-5068 Filed 3-3-89; 8:45 am]

BILLING CODE 3410-DM-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. 9175]

General Nutrition, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Pittsburgh, Pa. corporation, that manufactures and sells food supplements, to pay a total of $600,000 for research, and prohibits respondent from making false and unsubstantiated claims for products. The order also requires respondent to divide the $600,000 equally among certain organizations for research in nutrition, obesity, or physical fitness.

DATES: Complaint issued March 20, 1984. Order issued February 2, 1989.[1]

FOR FURTHER INFORMATION CONTACT: Robert C. Cheeks, FTC/S-4002, Washington, DC 20580, (202) 326-3045.

SUPPLEMENTARY INFORMATION: On Thursday, March 24, 1988, there was published in the **Federal Register**, 53 FR 9666, *correction*, 53 FR 22022, a proposed consent agreement with analysis In the Matter of General Nutrition, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission made its jurisdictional findings and entered an order to cease and desist in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely Or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.170 Qualities or properties of product or service; § 13.170-52 Medicinal, therapeutic, healthful, etc.; § 13.170-70 Preventive or protective; § 13.190 Results; § 13.205 Scientific or other relevant facts. Subpart—Corrective Actions And/Or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-10 Corrective Advertising; § 13.533-20

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

Disclosures; § 13.533–45 Maintain records; § 13.533–45(a) Advertising substantiation; § 13.533–50 Maintain means of communication; § 13.533–66 Research programs. Subpart—Misrepresenting Oneself And Goods—Goods: § 13.1590–20 Federal Trade Commission Act; § 13.1710 Qualities or properties; § 13.1730 Results; § 13.1740 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Food supplements, Trade practices.

(**Authority:** Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 89–5077 Filed 3–3–89; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 13

[Dkt. C–2929]

Interco Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Set aside order.

SUMMARY: The Federal Trade Commission has set aside a portion of the 1978 consent order with Interco Incorporated by setting aside a sentence in the consent order regarding the preticketing provision.

DATES: Consent Order issued September 26, 1978. Set Aside Order issued April 22, 1988.

FOR FURTHER INFORMATION CONTACT: Gerald T. Gregory, FTC/S–2115, Washington, DC 20580. (202) 326–2687.

SUPPLEMENTARY INFORMATION: In the Matter of Interco Incorporated, et al. Portions of the prohibited trade practices and/or corrective actions, as set forth at 43 FR 48991, are deleted.

List of Subjects in 16 CFR Part 13

Outerwear, Raincoats, Trade practices.

(**Authority:** Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply Sec. 5, 38 Stat. 719, as amended; Sec. 2, 49 Stat. 1526; 15 U.S.C. 45, 13)

Commissioners: Daniel Oliver, Chairman, Patricia P. Bailey, Terry Calvani, Mary L. Azcuenaga, and Andrew J. Strenio, Jr.

In the Matter of Interco Incorporated, a corporation, Londontown Corporation, a corporation, and Queen Casuals, Inc., a corporation.

Order Reopening and Setting Aside a Portion of Order Issued September 26, 1978

On October 26, 1987, respondents Interco Incorporated ("Interco"), Londontown Corporation ("Londontown") and Queen Casuals, Inc. ("Queen Casuals") filed a "Request As Supplemented To Reopen And Set Aside A Portion Of Order" ("Request"), pursuant to section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), and § 2.51 of the Commission's Rules of Practice.

The Request asked that, with respect to raincoats and outerwear sold by Londontown, the Commission reopen the consent order issued on September 26, 1978, and set aside the following sentence in paragraph 4 of Part I of that order:

> A respondent shall not, however, suggest resale prices on any tag, ticket or other marking affixed or to be affixed to any product shipped to a reseller.

On February 23, 1988, the Commission issued its "Order Reopening And Modifying Order Issued September 26, 1978, And Order To Show Cause." The Commission's February 23, 1988, Order modified the order of September 26, 1978, in the manner requested by respondents and, in addition, ordered that respondents show cause within 30 days why the provision in question should not be set aside with respect to all other products covered by the order.

On March 14, 1988, respondents filed their "Answer To Order To Show Cause" with the Commission, requesting that the provision "be deleted in its entirety."

Accordingly, *It is Ordered*, That this matter be and it hereby is reopened and that the last sentence in paragraph 4 of Part I of the Commission's Decision and Order issued on September 26, 1978, shall be set aside as of the effective date of this order.

By the Commission. Commissioner Bailey not participating.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 89–5078 Filed 3–3–89; 8:45 am]

BILLING CODE 6750–01–M

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 410

Amendment of Comprehensive Plan and Water Code of the Delaware River Basin

AGENCY: Delaware River Basin Commission.

ACTION: Final rule.

SUMMARY: At its February 22, 1989 business meeting the Delaware River Basin Commission amended its Comprehensive Plan and Water Code by modifying the provisions of Resolution No. 83–13, relating to diversions, releases and flow objectives during the drought period of 1989.

Resolution No. 83–13, adopted on June 29, 1983 and noticed in the July 21, 1983 issue of the **Federal Register** (48 FR 33253), established a schedule of phased reductions and diversions, releases and flow objectives during periods of drought warning and drought conditions. On January 16, 1989 the Delaware River Basin entered a drought warning, upper half, based upon storage conditions in the Basin's reservoirs. Drought warning, lower half, was triggered on February 5, 1989 as storage conditions worsened. In order to maximize storage in the New York City Delaware Basin reservoirs, the Parties to the U.S. Supreme Court Decree of 1954 unanimously requested that the Commission grant emergency approval to modify Resolution No. 83–13.

On February 8, 1989 the Executive Director, pursuant to Section 2–3.9 of the Commission's Administrative Manual, Part II, Rules of Practice and Procedure, issued an Emergency Certificate temporarily modifying Resolution No. 83–13, pending further review, public hearing and determination by the Commission at its next meeting.

On February 22, 1989, as noticed in the February 15, 1989 issue of the **Federal Register** (54 FR 6942), the Commission held a public hearing to receive comments on a proposed amendment to its Comprehensive Plan and Water Code to temporarily revise streamflow objectives at the Montague, New Jersey, USGS gaging station, and release and diversion requirements from the New York City Delaware Basin reservoirs.

The amendment, adopted in response to continuing declines in storage, lack of snowpack above the reservoirs and a long-range weather forecast predicting below normal precipitation, is expected to achieve considerable savings in storage in an effort to defer the time at which drought emergency could occur.

EFFECTIVE DATE: February 22, 1989.

ADDRESS: Copies of the Commission's Water Code and Resolution Nos. 83–13 and 89–5 are available from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission: Telephone (609) 883–9500.

List of Subjects in 18 CFR Part 410

Water pollution control.

The Commission's Comprehensive Plan and Article 2 of the Water Code of the Delaware River Basin are amended by the following addition:

1. The schedule of phased reductions, diversions, and releases and flow objectives set forth in Resolution No. 83–13, during periods of drought warning, are modified as follows:

a. Diversions from the New York City reservoirs to the City of New York shall be limited to a running average of 560 mgd, minus an amount equivalent to the amount that would normally be released to meet the Montague flow objective set forth in Resolution No. 83–13, above and beyond the basic conservation releases.

b. The obligation of the City of New York to release from the three New York City reservoirs to meet the Montague flow objective shall be suspended during the present period of drought warning but the City of New York shall continue to make basic conservation releases as required.

c. During the present period of drought warning, releases to meet the Trenton flow objective shall be made from down basin reservoirs as required by the Executive Director.

d. The provisions concerning out-of-basin diversions to New Jersey during this period of drought warning shall remain at the present 70 mgd level.

2. Except as modified herein, the provisions of Resolution No. 83–13 shall remain in full force and effect.

3. The modified schedule of diversions, releases and flow objectives set forth in this resolution shall remain in effect during the current period of drought warning and shall terminate at such time as the Basin shall enter a drought condition as defined in Resolution No. 83–13, at the termination of the existing drought warning condition as provided in Resolution No. 83–13 or on April 30, 1989, whichever comes first, or by further order of the Commission.

4. When and if the Basin enters a drought condition, the Parties will meet to review the possibility of continuing a similar savings program. Delaware River Basin Compact, 75 Stat. 688.

Susan M. Weisman,

Secretary.

February 27, 1989.

[FR Doc. 89–5058 Filed 3–3–89; 8:45 am]

BILLING CODE 6360–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 87N–0182]

Confirmation of Effective Date for D&C Red No. 36 Amendment

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of January 27, 1989, for the final rule that amended the color additive regulations to modify a limitation on use in ingested drugs.

EFFECTIVE DATE: Effective date confirmed: January 27, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia J. McLaughlin, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5740.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 27, 1988 (53 FR 52129), FDA amended 21 CFR 74.1336(c) to provide for a higher limit on the amount of color additive that may be consumed in drugs that are taken for less than 1 year.

FDA gave interested persons until January 26, 1989, to file objections or requests for a hearing on this amendment. The agency received no objections or requests for a hearing. Therefore, FDA concludes that the final rule published in the **Federal Register** of December 27, 1988, should be confirmed.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376)), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the December 27, 1988, final rule. Accordingly, the amendment promulgated thereby became effective January 27, 1989.

Dated: February 28, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89–5062 Filed 3–3–89; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Part 7

[T.D. 8243]

Temporary Income Tax Regulations; Requirements Relating to Certain Exchanges Involving a Foreign Corporation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary Income Tax Regulations concerning requirements relating to certain exchanges involving a foreign corporation as required by section 367 (b) of the Internal Revenue Code as enacted by the Tax Reform Act of 1976. These regulations would provide guidance needed to comply with these requirements. The text of the temporary regulations set forth in this document also serves as the text of proposed regulations that are cross-referenced in the proposed rules section of this issue of the **Federal Register**.

DATES: Section 7.367 (b)–2 (d) and (f) are effective on January 1, 1978, and applies to exchanges beginning on or after that date. Sections 7.367 (b)–7 (c) (1) and 7.367 (b)–9 (b) (4) are effective on March 3, 1989 and apply to transactions beginning on or after that date.

FOR FURTHER INFORMATION CONTACT: Richard Chewning 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–988–86) (202–566–6384, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to §§ 7.367 (b)–2 (d) and (f), 7.367 (b)–7 (c) (1) and 7.367 (b)–9 (b) of 26 CFR Part 7. Temporary regulations under those sections with cross-reference notice were originally published on December 20, 1977 (42 FR 65152, 65204).

Need for Temporary Regulations

This Treasury decision with respect to § 7.367 (b)–2 (d) and (f) merely clarifies existing rules in the section 367 (b) temporary regulations. With respect to §§ 7.367 (b)–7 (c) (1) and 7.367 (b)–9 (b) (4), this Treasury decision eliminates unintended opportunities available under the existing section 367 (b) temporary regulations to avoid liability

for income tax. For these reasons, it is found impractical to issue this Treasury decision with notice and public procedure either under section 553 (b) of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section. In addition, in order to prevent avoidance by taxpayers of the changes made to §§ 7.367 (b)–7 (c) (1) and 7.367 (b)–9 (b) (4), it is provided that those changes will be effective on March 3, 1989.

Explanation of Provisions

Section 7.367 (b)–2 (d) defines the term "section 1248 amount" to mean the earnings and profits or deficit in earnings and profits which would have been attributed under section 1248 to the stock of the foreign corporation exchanged if the stock had been sold in a transaction to which section 1248 (a) applied. Section 7.367 (b)–2 (f) defines the term "all earnings and profits amount" to mean the earnings and profits or deficit in earnings and profits for all taxable years which are attributable to the stock of the foreign corporation exchanged under the principles of section 1246 or 1248. This section is amended by these regulations to clarify that for purposes of exchanges of stock in a first-tier foreign corporation described by § 7.367 (b)–7 (c) (1) (i) or distributions by a foreign corporation covered by § 7.367 (b)–10 (i) in which an inclusion determined by reference to the "section 1248 amount" is required, the term "section 1248 amount" means only the net positive earnings and profits attributable to stock. For purposes of asset repatriations covered by §§ 7.367 (b)–5 (b), 7.367 (b)–6 (c), 7.367 (b)–7 (c) (2) and 7.367 (b)–10 (j), the term "all earnings and profits amount" means only the net positive earnings and profits. This amendment applies to exchanges beginning on or after January 1, 1978. For all other purposes, the terms "section 1248 amount" and "all earnings and profits amount" mean earnings and profits or deficits for all taxable years attributable to stock. Section 7.367 (b)–7 (c)(1) is amended by these regulations to provide that the addition procedure of paragraph (c)(1) (ii) will not apply if the stock received is of a domestic corporation which is a member of the affiliated group as defined in section 1504(a) (without application of section 1504(b)(3)) that also includes the exchanging foreign corporation. This amendment applies to exchanges beginning on or after March 3, 1989.

Section 7.367(b)–9 is amended by these regulations to provide that a foreign corporation will not succeed to the earnings and profits or deficit in earnings and profits of another foreign corporation except to the extent provided in section 381(a) and the regulations under that section if the stock of such corporation is received in an exchange subject to section 7.367(b)–9, and a U.S. shareholder described in section 7.367(b)–7(b) or section 7.367(b)–8(c)(1) owns (applying the attribution rules of section 958) more than 50 percent of either the total voting power or the total value of the stock of both the corporation whose stock is received in the exchange and the corporation whose stock is exchanged. This amendment is effective on or after March 3, 1989. Under these regulations, the foreign corporation whose stock is received in the exchange will only succeed to the earnings and profits or deficit in earnings and profits of the acquired corporation and lower-tier subsidiaries of the acquired corporation as provided in section 381(a) and the regulations thereunder.

Post-exchange distributions of earnings and profits and sales of stock may in some circumstances result in double counting of section 1248 earnings. Regulations which will finalize the temporary regulations under section 367(b) will be issued to prevent this double counting of earnings and profits. The regulations with regard to this issue, when finalized, will be retroactive to the effective date of the above amendment.

Special Analyses

These rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Therefore, these rules do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6) and a Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is Richard Chewning 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 these regulations.

List of Subjects in 26 CFR Part 7

Income taxes, Tax Reform Act of 1976.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 7 is amended as follows:

PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976

Paragraph 1. The authority for Part 7 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * * § 7.367(b)–2 (d) and (f) also issued under 26 U.S.C. 367(b)(2). * * * § 7.367(b)–7(c)(1) also issued under 26 U.S.C. 367(b)(2). * * * § 7.367(b)–9(b)(4) also issued under 26 U.S.C. 367(b)(2). * * *

Par. 2. Section 7.367(b)–2 is amended by revising paragraphs (d) and (f) to read as set forth below:

§ 7.367(b)–2 Definitions.

* * * * *

(d) *Section 1248 amount.* In the case of an exchange of stock in a first-tier foreign corporation described in § 7.367(b)–7(c)(1)(i) or a distribution by a foreign corporation described in § 7.367(b)–10(i) in which an inclusion in gross income determined by reference to the "section 1248 amount" is required by those provisions, the term "section 1248 amount" means the net positive earnings and profits which would have been attributable under section 1248 and the regulations under that section to the stock of the foreign corporation exchanged if the stock had been sold in a transaction to which section 1248(a) applied. For all other purposes of this section, in the case of an exchange of stock in a first-tier foreign corporation to which section 367(b) applies, the term "section 1248 amount" means the earnings and profits or deficit in earnings and profits which would have been attributable under section 1248 and the regulations under that section to the stock of the foreign corporation exchanged if the stock had been sold in a transaction to which section 1248(a) applied.

* * * * *

(f) *All earnings and profits amount.* For purposes of asset repatriations covered by §§ 7.367(b)–5(b), 7.367(b)–6(c), 7.367(b)–7(c)(2) and 7.367(b)–10(j), the term "all earnings and profits amount" means the net positive earnings and profits, if any, for all taxable years which are attributable to the stock of the foreign corporation exchanged under the principles of section 1246 or 1248 (whichever is applicable) and the regulations under that section. For all other purposes, the term "all earnings and profits amount" means the earnings and profits or deficit in earnings and profits for all taxable years which are attributable to the stock of the foreign corporation exchanged under the principles of section 1246 or 1248 (whichever is applicable) and the

regulations under that section. The determination shall be made by applying section 1246 or 1248 as modified by §§ 7.367(b)–2 through 7.367(b)–12 as if there were no distinction in those sections between earnings and profits accumulated before or after December 31, 1962.

* * * * *

Par. 3. Section 7.367(b)–7(c)(1) is amended as follows:

1. Subdivision (ii) is amended by adding after the second sentence the following sentence: "Subdivision (iii) of this paragraph, and not this subdivision (ii), applies if the stock received (A) is of a domestic corporation which is a member of an affiliated group (as defined in section 1504(a), without application of section 1504(b)(3)) that also includes the exchanging foreign corporation as a member, and (B) is not received in an exchange pursuant to which the foreign corporation whose stock is exchanged transfers its assets to a domestic corporation."

2. Subdivision (iii) is redesignated as subdivision (iv) and a new subdivision (iii) is added immediately after subdivision (ii) and before subdivision (iv) to read as follows:

§ 7.367 (b)–7 Exchange of stock described in section 354.

* * * * *

(c) *Receipt of other stock*—(1) *General rule.*

* * * * *

(iii) For exchanges beginning after March 3, 1989, if the stock received is described in the last sentence of subdivision (ii), then the foreign corporation whose stock is exchanged will be considered to be a foreign corporation for purposes of section 354 or 356. This subdivision (iii) may be illustrated by the following examples:

Example (1). A U.S. parent corporation (USP) owns all of the stock of a foreign corporation (CFC1), which in turn owns all of the stock of a second foreign corporation (CFC2), which in turn owns all of the stock of a third foreign corporation (CFC3). USP also owns all of the stock of U.S. subsidiary (Subsidiary). CFC2 and CFC3 have accumulated earnings and profits or accumulated deficits in earnings and profits. Subsidiary acquires all of the stock of CFC2 from CFC1 in exchange for stock of Subsidiary in a reorganization described in section 368 (a) (1) (B). CFC1 will not recognize gain on the exchange. Moreover, CFC2's and CFC3's accumulated earnings and profits or accumulated deficits in earnings and profits will remain in CFC2 and CFC3, respectively, and will not be added to the earnings and profits or deficit in earnings and profits account of CFC1.

Example (2). USP owns all of the stock of CFC1, which in turn owns all of the stock of CFC2. USP also owns all of the stock of a U.S. subsidiary (Subsidiary), which in turn owns all of the stock of CFC3. CFC3 acquires the assets of CFC2 in exchange for voting stock of Subsidiary in a reorganization described in section 368 (a) (1) (C). Pursuant to the reorganization, CFC2 distributes the stock of Subsidiary to CFC1. CFC1 will not recognize gain on the exchange. In addition, CFC2's accumulated earnings and profits or accumulated deficit in earnings and profits will be added to CFC3's earnings and profits account under section 381 (c) (2), subject to the limitations contained in section 381 and in the regulations under that section.

Par 4. Section 7.367 (b)–9 is amended by adding a new paragraph (b) (4) immediately after paragraph (b) (3) to read as follows:

§ 7.367 (b)–9 Attribution of earnings and profits on an exchange described in section 351, 354, or 356.

* * * * *

(b) *General rule.* * * *

(4) For exchanges beginning on or after March 3, 1989, paragraph (b) (2) and (3) of this section will not apply if a U.S. shareholder described in § 7.367 (b)–7 (b) or § 7.367 (b)–8 (c) (1) owns (applying the attribution rules of section 958) more than 50 percent of either the total voting power or the total value of the stock of both the corporation whose stock is received in the exchange and the corporation whose stock is exchanged. If this paragraph (b) (4) applies, the rules of section 381 (a) and the regulations under that section will determine the extent to which the corporation whose stock is received in the exchange (or other acquiring corporation) will succeed to the earnings and profits or a deficit in earnings and profits of the corporation whose stock is exchanged and of lower-tier corporations. This paragraph (b) (4) may be illustrated by the following examples:

Example (1). A U.S. parent owns all of the stock of CFC1 and CFC2. CFC1 has accumulated earnings and profits or an accumulated deficit in earnings and profits. CFC2 acquires all of the stock of CFC1 from the U.S. parent in a reorganization described in section 368 (a) (1) (B). CFC2 will not succeed to the earnings and profits or the accumulated defict in earnings and profits of CFC1.

Example (2). A U.S. parent owns all of the stock of CFC1, which in turn owns all of the stock of CFC2. The U.S. parent also owns all of the stock of CFC3. CFC2 has accumulated earnings and profits or an accumulated deficit in earnings and profits. CFC3 acquires all of the assets of CFC1, including the stock of CFC2, in a reorganization described in section 368 (a) (1) (D). CFC3 will not succeed to the earnings and profits or the accumulated deficit in earnings and profits of CFC2.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: January 30, 1989.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 89–4993 Filed 3–3–89; 11:08 am]

BILLING CODE 4830–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD Regulation 6010.8–R, Amdt. No. 20]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); CHAMPUS Peer Review Organization (PRO) Program

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule supplements rules and procedures currently applicable to the CHAMPUS Peer Review Organization program with a number of additions and clarifications. Major provisions are: Establishment of special payment and financial liability rules relating to certain PRO determinations of medically unnecessary care; quality of care reviews of proposed hospital discharges; and clarifications to follow the procedures of the Medicare PRO program.

EFFECTIVE DATE: This final rule is effective for hospital admissions that occur on or after April 8, 1989.

ADDRESS: Office of the Assistant Secretary of Defense (Health Affairs), Health Program Management, The Pentagon, Room 1B657, Washington, DC 20301.

For copies of the **Federal Register** containing this notice, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

The charge for the **Federal Register** is $1.50 for each issue payable by check or money order to the Superintendent of Documents.

FOR FURTHER INFORMATION CONTACT: Nancy Gidley or LCDR A.R. Miller, MSC, USN, Office of the Assistant Secretary of Defense (Health Affairs), telephone (202) 697–8975.

SUPPLEMENTARY INFORMATION

I. Synopsis

On October 1, 1987, CHAMPUS adopted a DRG-based payment system

for inpatient care. Under this system, which Congress had adopted for Medicare several years earlier, payments for the costs of most inpatient hospital services are made on the basis of prospectively determined rates, applied on a per-discharge basis. This payment system created needed incentives for efficiency in hospital services, but also surfaced concerns that a system that pays hospitals a fixed amount per admission, regardless of length of stay, might compromise the delivery of appropriate services or result in premature hospital discharges. When the Medicare prospective payment system was implemented, these concerns prompted Congress to establish Peer Review Organizations (PROs) to assure the continuing provision of adequate and appropriate care to Medicare beneficiaries.

Recognizing the need for a similar mechanism to protect CHAMPUS beneficiaries, the Department of Defense (DoD) and the Department of Health and Human Services, Health Care Financing Administration (HCFA), entered into an Interagency Agreement to include CHAMPUS review in the Medicare PRO contracts. A joint collaborative effort between these two agencies is a sound, fiscally responsible approach to providing peer review of CHAMPUS inpatient care.

This final rule supplements the existing regulation applicable to services covered by the CHAMPUS DRG-based payment system with a series of additions and clarifications that essentially fall into three broad categories. The first is a set of rules, very similar to those applicable to Medicare, allowing payment or limiting financial liability under certain circumstances for services determined by the PRO to be potentially excludable. Those circumstances relate to cases in which the provider and/or beneficiary did not know and could not reasonably have been expected to know that the services were excludable by the PRO.

The second category also addresses the matter of limiting beneficiary responsibility for charges, this time in the context of proposed discharges of patients still hospitalized. In cases in which the patient believes the discharge would be premature, the rule establishes a procedure to assure a reasonable opportunity for PRO review. This is an important quality of care protection for beneficiaries.

The third broad category of provisions included in this final rule is a set of procedures that are necessary and appropriate to augment the existing requirements and facilitate successful implementation of the PRO program. These procedures are generally modeled after those applicable to the Medicare PRO program.

A general theme underlying most of our existing PRO program rule, our proposed rule and this final rule is that successful and smooth implementation of the CHAMPUS PRO program, from the perspectives of beneficiaries, hospitals, the PROs, and the Government, will be facilitated to the extent we follow the path already established by the Medicare program.

DoD believes the PRO program is a vitally important effort in assuring that CHAMPUS beneficiaries receive medically necessary, quality care.

II. Background

We published a proposed rule for public comment on December 28, 1988, 53 FR 52433, *et seq.* Under 10 U.S.C. 1079(j)(2)(A) CHAMPUS is authorized to use a diagnosis-related group (DRG) based payment system, similar to that used for Medicare, for institutional providers. The Comprehensive Omnibus Budget Reconciliation Act of 1985, Pub. L. 99-272, established the "Medicare link" that requires hospitals participating in the Medicare program to also participate in the CHAMPUS program. Consistent with Congressional intent, the CHAMPUS DRG-based payment system, implemented October 1, 1987, is modeled after the Medicare prospective payment system (PPS).

The CHAMPUS peer review program is established as a collateral program to the CHAMPUS DRG-based payment system. As the CHAMPUS DRG-based payment system is modeled after the Medicare PPS, the CHAMPUS PRO program is modeled after the Medicare PRO program. Through an Interagency Agreement between the Department of Defense (DoD) and the Department of Health and Human Services (DHHS), the CHAMPUS PRO program quality assurance and utilization review are being conducted by the same Peer Review Organizations (PROs) that also conduct review for Medicare. The Medicare PRO program is the Federal Government's primary program of medical peer review, operating under the careful oversight of Congress.

Under the CHAMPUS PRO program, the PROs are reviewing care provided in hospitals for which payment is made under the CHAMPUS DRG-based payment system. PROs are conducting both quality assurance and utilization review, specifically focusing on determining if the care met professionally recognized standards of care, if the admission was medically necessary, if the services were appropriate, and if the care was provided in the most appropriate setting. Cases reimbursed under the DRG system are subject to varied reviews, including generic quality screen reviews, admission and discharge reviews, and DRG validation. A major objective of these multiple types of review is to guard against premature discharge or inappropriate admission. The peer review system uses criteria which have been developed on both national and local levels to determine the adequacy and appropriateness of care and are specific to the CHAMPUS population.

While review is currently being conducted only in acute care facilities for services initially covered under the CHAMPUS DRG program, we expect, where appropriate, that other institutions and services later reimbursed under the CHAMPUS DRG-based payment system will be brought under PRO review in the future.

On December 28, 1988, we published for public comment the proposed rule on which this final rule is based. In the preamble to that rule, we explained that the existing CHAMPUS regulation, specifically 32 CFR 199.14(a)(1)(iv), prescribes the basic rules and procedures applicable to what is referred to in the regulation as "quality of care reviews," which we now refer to as the PRO program.

III. General Comments on Proposed Rule

A. Number and Types of Public Comment

We received a total of 13 individual written comments addressing a variety of issues. The types and volume of commenters were as follows:

Hospital Associations	2
Medical Associations	4
Health Care Groups	2
Hospitals	3
Peer Review Organizations	2

In general, we view the public reaction as generally positive. In accordance with our usual procedures, we also obtained the concurrence of the Department of Health and Human Services, Department of Transportation, the military services and several DoD offices. Based on comments, we have made a few clarifying revisions to the rule, which are described below. In addition, by way of discussion in this preamble, we hope to clarify some other issues that arose.

B. General Comments

1. Photocopying costs

One commenter stated that the HCFA reimbursement amount for photocopying medical records is insufficient.

Although the photocopying cost reimbursement amount is not a subject addressed in this rule, DoD's position is that we will follow the Medicare program in so far as it appears reasonable and appropriate to the CHAMPUS PRO Program. We have adopted the Medicare reimbursement amount for copying costs and will follow this policy. We are aware that the issue of photocopy costs is very controversial among hospital associations and is currently the subject of litigation. Although DoD is not presently a party to this litigation, it is our intent to continue to follow the lead of the Medicare program, including any revisions that might be made to Medicare's policy as a result of the litigation. In the meantime, we believe that the Medicare photocopying cost reimbursement amount is reasonable and that any independent recalculation by DoD would be inappropriate.

2. Legal Authority

In the preamble to the proposed rule, we included a note about legal authority, in which we attempted to explain the absence of legislative specificity underlying the CHAMPUS PRO Program to those accustomed to the Medicare model of very detailed Congressional management of many aspects of that program. We indicated that this is the norm for CHAMPUS, which has for years operated with very detailed regulations covering the whole range of program operations, promulgated under the authority of very broad and general statutory provisions. We also pointed out that included in our general legislative authorities are provisions, including 10 U.S.C. 1079(a)(13), prohibiting payment for services not medically necessary.

One commenter took issue with the adequacy of our legal authority absent the same kind of statutory specificity that controls the Medicare PRO program. This commenter called our proposed rule "an illegal circumvention" of the Administrative Procedure Act's requirement, in 5 U.S.C. 553(b), that notices of proposed rulemaking include "reference to the legal authority under which the rule is proposed." The commenter further argued that our references to several statutory provisions we believe clearly authorize our PRO program activities were not sufficient because these provisions merely allow "claims auditing" and "simple review procedures," and do not "authorize DoD to implement a sanctioning mechanism, limit beneficiary liability, or saddle providers with" photocopying costs.

In response to this comment, we have re-reviewed our legal authority for the PRO program and this regulation and have reaffirmed its adequacy. Recognizing that CHAMPUS is different from Medicare in this regard, the fact is that most of some 125 pages of CHAMPUS rules in the *Code of Federal Regulations*, as well as many other program procedures, have been promulgated under the authority of very general statutory provisions, including our basic legislative charge, at 10 U.S.C. 1079(a), that the Secretary of Defense shall establish CHAMPUS "under such insurance, medical service or health plans as he considers appropriate." The Secretary has considered it necessary and appropriate to establish numerous rules and procedures to assure that the medical care provided under the authority of that statute meets reasonable standards of quality and medical necessity. Examples include many provider certification standards, under 32 CFR 199.6, to assure that only qualified providers are allowed to participate and scores of benefit restrictions, under 32 CFR 199.4, many of which are designed to assure that only medically necessary care is provided. The PRO program and this regulation supplement previously operating practices with more refined and efficacious review methods, rights, responsibilities and compliance procedures necessary to help meet those reasonable standards of quality and medical necessity.

Guided by this long-standing construction of the statute, it is our conclusion that our legal authority to administer CHAMPUS is not limited to some narrow definition of "claims auditing" or "simple review procedures." Rather, we believe it supports all provisions of this final rule.

3. Coordination between DoD and the Health Care Financing Administration

One commenter emphasized the need for close coordination of CHAMPUS PRO program policy with the Health Care Financing Administration (HCFA), which administers Medicare. We strongly agree. An Interagency Agreement between the Department of Defense (DoD) and the Department of Health and Human Services (DHHS), delineates a close working relationship between the DoD CHAMPUS PRO Program Office and HCFA. Consistent with this policy, this final rule follows Medicare procedures very closely.

Related to this issue of following Medicare's PRO procedures, some commenters reported that they had difficulty understanding exactly what the proposed rule was proposing due to its numerous incorporations by reference to Medicare regulations, to understand the proposed CHAMPUS rule, one had to have available various parts of Medicare's rules. This point is well taken. All things considered, we see it as an advantage to hospitals and the PROs to incorporate by reference in our regulation whole parts of the Medicare rules with which they are already well familiar. However, we recognize that for other readers, this is not necessarily advantageous. Therefore, it is our intention in the very near future to compile excerpts of the Medicare regulations we are incorporating by reference, and to make those available to any interested parties, along with a reprint of the full CHAMPUS PRO program regulation (as amended by this final rule). This should alleviate the confusion.

4. Relationship to other programs

Some commenters stated that the proposed rule failed to take into account the review process of the existing CHAMPUS Reform Initiative (CRI) and that PRO review would duplicate the monitoring of care already provided to CHAMPUS beneficiaries under CRI. The proposed and final rule do not include any specific provisions regarding CRI. The Government's intent, as specified in the CRI contract, is for an *external* peer review program applicable to all hospitals treating CHAMPUS patients. In the CRI States, the PRO program is an important supplement to any internal review; it will monitor, among other things, the impact of the internal review system on the quality of care. In order to maintain consistency and comparability, the use of the CHAMPUS PRO program within the CRI States is most appropriate.

Regarding the PRO program relationship to another recent CHAMPUS initiative, several comments addressed the timing for implementation of PRO review in children's hospitals and of neonatal services, which will begin to be included in the CHAMPUS DRG payment system effective April 1, 1989. They also expressed a need for sensitivity in the development of review criteria for these areas of review. We agree with these comments. Following the inclusion of children's hospitals and neonatal services into the CHAMPUS DRG-based payment system, we anticipate beginning to phase in PRO review within approximately six

months. We encourage affected providers to participate in the development of PRO criteria in their local areas.

5. Administrative costs

One commenter stated that providers should receive an increase in their DRG-based payment rates to offset the administrative costs of these proposed regulations. In response, the CHAMPUS DRG-based payment rates were derived by applying the Medicare cost-to-charge ratio to CHAMPUS charges. To the extent that Medicare *costs* include the administrative costs to hospitals of Medicare PRO review, the derived CHAMPUS costs would include them as well.

IV. Specific Provisions of Final Rule

A. Payment and Liability for Certain Potentially Excludable Services (§ 199.4(h))

The Conference Report on the Fiscal Year 1989 Department of Defense Appropriations Act, H. Conf. Rept. No. 100–1002, 100th Cong., 2d. Session 34, called for the Department to "issue directives/ regulations governing cases in which the PRO determines that medically unnecessary or inappropriate care has been provided." Specifically, the conferees said "the Department should provide a waiver of liability, especially for beneficiaries, similar to that provided under the Medicare program."

Our proposed rule included a provision to provide relief for both a provider and beneficiary providing or accepting services potentially excludable on the grounds of being not medically necessary or provided at an inappropriate level.

1. Institutional responsibility

We received several comments suggesting that institutional providers could not reasonably be expected to know that services provided could be considered to be not medically necessary, since all services are ordered by a physician, and thus institutional providers should never be held liable. We disagree. Hospitals, through their utilization review and quality assurance committees, continually make decisions about medical necessity and appropriateness. The PRO criteria are developed by area physicians and are disseminated to all hospitals and physicians prior to the start of review. The hospital is, and always has been, held responsible for care provided in its facility. The PRO review is an adjunct to the responsible hospital committees and should help to assure CHAMPUS beneficiaries receive the most appropriate and highest quality of medical care. In addition, hospital liability as defined here, is similar to that under the Medicare program.

2. Presumptive status

Another comment expressed concern regarding our lack of a favorable presumptive status for hospitals under the CHAMPUS limitation of liability provision. Although the Medicare PRO program originally contained a favorable presumptive status for hospitals, Medicare found it to be ineffective and has discontinued it. We will follow the current Medicare policy and make decisions as to whether a beneficiary or provider had reason to know services were excludable by reason of not being medically necessary on a case-by-case basis. Again this consistency with the established and experienced Medicare peer review system results in minimal disruptive impact on providers and peer review organizations.

Consistent with the proposed rule, under the final rule, where both the provider and the beneficiary did not know, and had no reason to know, that the services would be considered to be not medically necessary, CHAMPUS payment would be made. However, in making such a payment the provider and patient will be put on notice that the type of service under those circumstances is excludable. In subsequent cases involving similar situations, no payment will be made.

In cases in which the provider, but not the beneficiary, knew or could reasonably have been expected to know that the services were excludable, CHAMPUS will not pay and the provider may not require the beneficiary to pay either the amount CHAMPUS disallowed or the usual beneficiary cost share amount. In such cases, the provider would be told that the provider could seek reconsideration of the PRO's decision both as to the medical necessity of the services and the provider's knowledge.

3. Criteria for determining knowledge

The final rule is consistent with the proposed rule in adopting a set of criteria for determining whether beneficiaries and providers know or should have known that services were excludable. These criteria are substantially the same as those applicable to Medicare under 42 CFR 405.334 and 405.336, and are intended to establish the same substantive standards as are followed under Medicare.

The limitation of liability only applies to cases in which the hospital services portion is covered by the CHAMPUS DRG-based payment system (although the payment and liability rules apply to both institutional and individual providers involved in care) and in which a determination was made by the PRO that the care rendered was not medically necessary.

B. Limitation on Charges to Beneficiaries for Continued Hospital Stays (§ 199.14 (a)(1)(iv)(B)(4))

Consistent with the proposed rule, the final rule establishes a limitation on charges (other than the normal cost sharing amount) to beneficiaries for continued hospital stays. These provisions are part of a process to assure that patients are not prematurely discharged and that providers are making appropriate discharge decisions.

Under this process, if the hospital determines that a patient no longer needs inpatient hospital care, the hospital will seek the agreement of the patient's attending physician. If the attending physician does not agree, the hospital may request immediate review by the PRO. If the hospital obtains the agreement of either the attending physician or the PRO, the hospital will then give the beneficiary written notice of the hospital's intention to proceed with the discharge and that if the patient prefers to remain in the hospital, the patient will be responsible for the charges for continued care beyond the second day following the date of the notice.

This two-day period is intended to give the beneficiary the opportunity to request immediate PRO review without risk of financial responsibility for those two days of care. If the PRO review determines that continued inpatient services are needed, the beneficiary will not be charged for those additional services. It is only in cases in which the PRO agrees with the hospital determination that the further hospitalization is not necessary that the beneficiary can be charged for the continued services, and then only beginning the third day after the required notice.

One commenter stated that the two-day period would not provide the PRO enough time to complete the review requested by the beneficiary, thus placing the beneficiary at financial risk. In response to this, we have added a provision to the final rule to clarify the hospital's responsibility to facilitate very prompt PRO review in cases in which a beneficiary who is still an inpatient requests a review. If the

patient's request is made prior to noon of the first working day after the date of receipt of the notice, the hospital is required to provide the records necessary for the PRO review by the close of business that day. If the hospital fails to do this, then that day, and any subsequent days in which the hospital continues to fail to provide the records, will not count against the patient's two-day period. This clarification in our final rule is to make our procedures similar to those of the Medicare PRO program, including the requirements of 42 U.S.C. 1320C–3(e).

C. Pro Procedures

Consistent with the proposed rule, the final rule includes a set of procedures for the PRO program and a number of clarifications to our existing regulations. These are summarized below.

1. "Peer Review Organization program" (§ 199.14(a)(1)(iv))

The "Peer Review Organization program" is adopted as the title for the program.

2. Beneficiary information (§ 199.14(a)(1)(iv)(B)(*1*))

This clarifies that Medicare's documentation requirements regarding the PRO program information that hospitals must provide to beneficiaries also applies to CHAMPUS. The information hospitals must give beneficiaries informs them of their rights in connection with the PRO program, including the procedure to seek PRO review of any quality problems.

One commenter suggested that the proposed rule was unclear regarding the hospital's administrative process for the "Important Message from CHAMPUS." In response, we will follow the Medicare requirements related to the hospital's responsibility to assure that each CHAMPUS beneficiary receives the "Message" at or shortly after admission. PROs will review for compliance with this requirement based on Medicare's review procedure.

3. Physician attestation and acknowledgement (§ 199.14(a)(1)(iv)(B)(*2*))

The final rule clarifies that the attestation and acknowledgment statement requirements for Medicare also apply to CHAMPUS and that the same statements may be used. This provision clarifies the reference to these statements in the current CHAMPUS regulation at § 199.14(a)(1)(iv)(C)(*2*)(*iii*).

One commenter suggested that providers must be given ample time to obtain CHAMPUS specific physician attestation and acknowledgement forms. The requirements for attestation and acknowledgement statements were implemented as part of the CHAMPUS DRG-based payment system effective with publication of the final rule September 1, 1987. As a follow-up, we are systematically distributing further instructions to providers regarding this requirement.

4. M.O.U. required (§ 199.14(a)(1)(iv)(B)(*3*))

This clarifies that, as under Medicare, hospitals must execute a memorandum of understanding with the PRO providing appropriate procedures for the PRO program.

5. Authority to deny payment (§ 199.14(a)(1)(iv)(D)(*1*)(*i*))

This clarifies the authority to deny payment for unnecessary services.

6. DRG validation (§ 199.14(a)(1)(iv)(D)(*3*))

This clarifies authority to correct coding errors and make appropriate payment adjustments in connection with DRG validation activities of the PRO.

7. Procedures for initial determinations and reconsiderations (§ 199.14(a)(1)(iv)(E) and (F))

Consistent with the proposed rule, the final rule adopts procedures for initial determinations and reconsiderations by PROs identical to those that apply under Medicare. These procedures provide fair process for both beneficiaries and providers and are most appropriate for the CHAMPUS PRO program. Also following the Medicare example, PRO reconsidered determinations are final for providers but generally appealable for beneficiaries.

One commenter stated that providers should be able to appeal PRO denial determinations to OCHAMPUS.

We believe it more appropriate to follow the model Congress established for Medicare regarding the finality of PRO reconsidered determinations for providers. As under the Medicare PRO program, the procedures give providers ample opportunity to participate in the decisionmaking process and confidence in the accuracy of the fact finding. These procedures include an opportunity to discuss the matter with the PRO physician advisor prior to the initial determination and a full reconsideration.

8. Appeals and hearings (§ 199.14(a)(1)(iv)(G))

This provision clarifies that beneficiary appeals and hearings when a PRO upholds an adverse determination on reconsideration is handled in the same manner beneficiary appeals and hearings are generally handled under existing CHAMPUS procedures, which are at § 199.10 of the CHAMPUS regulation. It further clarifies that PRO reconsiderations will be treated as the procedural equivalent to a formal review determination under the normal CHAMPUS appeals and hearings procedures.

9. Acquisition, protection and disclosure of peer review information (§ 199.14(a)(1)(iv)(H))

Consistent with the proposed rule, the final rule adopts for the CHAMPUS PRO program the same rules and procedures for acquisition, protection and disclosure of peer review information as the PROs are currently following for Medicare. The only exception is the Medicare PRO provision for penalties, which is dependent upon a Medicare specific statutory provision that cannot be adopted for CHAMPUS without a specific statutory basis. We believe in this regard that our existing contractual authority over the PROs provides a sufficient deterrent to abuses.

One commenter felt it would be a "gross error" to adopt Medicare policy on the disclosure to institutional providers of quality problems and potential quality problems involving individual providers. The Medicare procedures for disclosing individual practitioners' quality problems to an institutional provider are based on the general notion that hospitals have a keen responsibility regarding the quality of care provided in their facilities. If an individual practitioner provides inadequate care, the hospital should be aware of that and should take appropriate corrective steps.

10. Additional provisions regarding confidentiality of records and limitations on liability of participants (§ 199.14(a)(1)(iv)(I))

Consistent with the proposed rule, the final rule sets forth our interpretation that 10 U.S.C. 1102 applies to the CHAMPUS PRO program as it does to the external peer review activity that reviews medical care provided in military hospitals. This section of law, enacted as part of the National Defense Authorization Act for Fiscal Year 1987, Pub. L. 99–661, section 705(a), assures the confidentiality of medical quality assurance records created by or for the Department of Defense for the purpose of assessing the quality of medical care and limits the civil liability of participants in quality assurance activities. Although CHAMPUS had not, at the time this provision was enacted,

yet announced plans to implement an external civilian peer review program, the external civilian peer review program for military hospitals was then being developed. It is DoD's interpretation that 10 U.S.C. 1102 applies to both external civilian PRO programs (in addition to its application to internal quality assurance programs of military hospitals).

Some commenters expressed a bit of confusion regarding the interaction of these section 1102 provisions and the confidentiality requirements of 42 CFR Part 476, which we are also adopting. Although the two sets of provisions are extremely similar in purpose, thrust and underlying policy, there are some differences that make a degree of confusion understandable. Therefore, we have revised the final rule to characterize the statement of section 1102 applicability to the CHAMPUS PRO program, as it appeared in the proposed rule, as the "general rule". We then added several "specific applications" we hope will clarify the interaction.

The first specific application focuses on the PRO deliberative process which is the core thesis of both sets of confidentiality protections. It states that PRO deliberations are generally nondisclosable under section 1102. The second specific application clarifies that with respect to administrative determinations by PROs regarding medical necessity, DRG validation, and similar utilization review functions, the section 1102 protections for quality assurance deliberations and related activities do not apply. Thus, providers or beneficiaries seeking reconsideration of these PRO determinations will receive a full statement of reasons for the PRO action; this reconsideration/appeal process is not affected by section 1102. Finally, the third specific application we added to the final rule clarifies that section 1102 is not violated by release of information that is the subject of mandatory PRO disclosure under 42 CFR Part 476. Because the purposes and terms of section 1102 are fully compatable with those of 42 CFR Part 476, it is our interpretation that the normal PRO disclosures, that have been carefully crafted to fit the specific day-to day operations of the PRO program for civilian hospitals, are all authorized by section 1102.

11. Obligations, sanctions and procedures (§ 199.14(a)(1)(iv)(J))

Consistent with the proposed rule, the final rule establishes a process for making sanction recommendations to OCHAMPUS for cases identified under the CHAMPUS PRO program. This sanction process adopts the substantive standards and PRO procedures applicable to Medicare. Thus, the final rule incorporates by reference obligations of providers to provide and document medically necessary, quality care as required under Medicare. Further, it adopts the same substantive grounds for sanctions as Congress has adopted for Medicare. Additionally, PROs will, as they do for Medicare, give providers the opportunity for discussions and make sanctions recommendations. However, whereas under Medicare such recommendations are made to the HHS Inspector General, Sanctions recommendations under CHAMPUS will be made to OCHAMPUS and will be handled in accordance with normally applicable sanction case hearings procedures under the CHAMPUS program. In considering our sanction process, we are mindful of the much more limited size of our PRO program, the likely low number of sanctions cases and the current expansive role of HHS in identifying providers that should be excluded from Federal reimbursement programs. We expect to confer with HHS, as appropriate, to avoid duplication of effort in connection with potentially sanctionable matters of interest to both Medicare and CHAMPUS.

D. Effective Date

We included in the proposed rule a special provision regarding the effective date of the final rule. We said we intended for the final rule to take effect April 1, 1989, insofar as it established any new requirements on providers, beneficiaries or the public. We noted, however, that because the PRO program was already operational (under our September 1, 1987 final rule), we should reassure all interested parties that insofar as the proposed rule set forth practices of the Department or our PROs, these practices were in effect since the program became operational.

Some commenters indicated confusion about the effective date of the final rule and requested clarification. For example, the proposed rule confused some commenters on whether the rules on limiting liability for certain potentially excludable services were to apply to care provided prior to April 1 if the PRO review takes place after April 1.

The suggestions for clarification are well taken. We are revising the final rule to establish a simple effective date: The final rule becomes effective for hospital admissions that occur on or after April 8, 1989. To clarify the application of this effective date, PROs will not make any formal initial determinations that services provided prior to April 8 were not medically necessary. Regarding such services provided prior to April 8, PROs will issue notices that are purely advisory. These advisory notices will alert hospitals that the services provided in that case, were they provided after April 8, would be subject to exclusion. In addition, PRO sanctions will not be based on services provided prior to April 8.

It should be understood, however, that pre-existing PRO procedures are not affected by the new rule's effective date. For example, although this rule includes provisions protecting the confidentiality of records, PROs will protect the confidentiality of records regarding all reviews, including those which took place prior to April 8. This is because the PROs were obliged under their contractual relationship (prior to April 8) with DoD to assure confidentiality. As another example, PRO authorities, such as performing DRG validations, that were established by the final rule of September 1, 1987, continue in effect. Thus, the April 8 effective date is only with respect to new authorities and requirements.

We think this should clear up the confusion regarding the effective date of this final rule. To recap, the requirements of this rule apply only to activities that occur after April 8. Activities that occurred prior to April 8, 1989, are governed by the rules, procedures and authorities which were in effect prior to April 8.

One final clarification regarding this issue is necessary. We indicated in the proposed rule that, pending a final rule that would limit beneficiaries' liability when they did not know or have reason to know that a service would be found by the PROs to be not medically necessary, we wanted to assure that beneficiaries not be held liable for any services determined by the PRO prior to April 1 to have been not medically necessary. In order to have this assurance, we proposed to deem all such services as qualifying for payment during an interim period. We stated that "this is similar to the approach initially taken by PROs under Medicare." This statement was not correct. In fact, under the Medicare program, PROs were able to apply the Medicare limitation of liability provisions at the start of the program. Therefore, Medicare beneficiaries and providers were protected if they did not know or have reason to know that services would be found to be not medically necessary.

V. Regulatory Procedures

A. Paperwork Reduction Act

This notice does not impose new information collection requirements. Therefore, it does not need to be reviewed pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511).

B. E.O. 12291 and the Regulation Flexibility Act

This final rule is not a major rule for the purposes of Executive Order 12291. As required by the Regulatory Flexibility Act, it is hereby certified that this final rule will not have a significant impact on small business entities.

In the proposed rule, we indicated that this rule will not have a significant impact on small business entities since it does not establish new coverage rules or payment methods, but merely establishes procedures for effectuating basic requirements of quality care and medical necessity. Further, the procedures are very similar to procedures providers are currently following under Medicare. We, therefore concluded that the rule does not involve significant impact on providers.

One commenter suggested that for some small hospitals, the disallowance of a single hospital claim can produce a major impact, and thus our Regulatory Flexibility Act conclusions should be revised. In response, the Regulatory Flexibility Act does not address itself to every regulatory effect on every small entity. In any event, because these requirements already apply to the Medicare program, which is much larger than CHAMPUS, and because these reasonable requirements establish no significant burdens, we continue to believe we are imposing no substantial impacts.

In an effort to roughly quantify the potential impact on providers of our PRO program, of which this proposed rule is a part, we took note of the Medicare experience regarding the number of cases for which the PROs denied payment. On the basis of these denial rates and the projected percentage of CHAMPUS claims the PROs will review, we anticipate a CHAMPUS revenue impact arising from the PRO program to be well under $10 million per year. Thus, we conclude that this final rule does not involve significant impacts on providers.

VI. Conclusions

This final rule, refined as a result of a number of valuable comments, establishes what we believe are reasonable and appropriate requirements and procedures for assuring the quality and appropriateness of health care services under CHAMPUS. These requirements and procedures, modeled closely after those applicable to Medicare, supplement the established rules for the CHAMPUS PRO program, promulgated in 1987. By "piggy-backing" on Medicare, we believe we are maximizing effectiveness and minimizing disruption and burden on hospitals. The CHAMPUS PRO program, as invigorated by this final rule, is a critically important component of DoD's strong commitment to improve CHAMPUS.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

PART 199—[AMENDED]

Accordingly, 32 CFR Part 199 is amended as follows:

The authority citation continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 1102, 5 U.S.C. 301.

1. Section 199.4 is amended by removing paragraph (f)(6) and adding a new paragraph (h), as follows:

§ 199.4 Basic program benefits.

* * * * *

(h) *Payment and liability for certain potentially excludable services under the Peer Review Organization program*—(1) *Applicability.* This subsection provides special rules that apply only to services retrospectively determined under the Peer Review Organization (PRO) program (see § 199.14 (a)(1)(iv)) to be potentially excludable (in whole or in part) from the basic program under paragraph (g) of this section. Services may be excluded by reason of being not medically necessary (paragraph (g)(1) of this section), at an inappropriate level (paragraph (g)(3) of this section), custodial care (paragraph (g)(7) of this section) or other reason relative to reasonableness, necessity or appropriateness (which services shall throughout the remainder of this subsection, be referred to as "not medically necessary"). (Also throughout the remainder of the subsection, "services" includes items and "provider" includes supplier).

(2) *Payment for certain potentially excludable expenses.* Services determined under the PRO program to be potentially excludable by reason of the exclusions in paragraph (g) of this section for not medically necessary services will not be determined to be excludable if neither the beneficiary to whom the services were provided nor the provider (institutional or individual) who furnished the services knew, or could reasonably have been expected to know, that the services were subject to those exclusions. Payment may be made for such services as if the exclusions did not apply.

(3) *Liability for certain excludable services.* In any case in which items or services are determined excludable by the PRO program by reason of being not medically necessary and payment may not be made under paragraph (h)(2) of this section because the requirements of paragraph (h)(2) of this section are not met, the beneficiary may not be held liable (and shall be entitled to a full refund from the provider of the amount excluded and any cost share amount already paid) if:

(i) The beneficiary did not know and could not reasonably have been expected to know that the services were excludable by reason of being not medically necessary; and

(ii) The provider knew or could reasonably have been expected to know that the items or services were excludable by reason of being not medically necessary.

(4) *Criteria for determining that beneficiary knew or could reasonably have been expected to have known that services were excludable.* A beneficiary who receives services excludable by reason of being not medically necessary will be found to have known that the services were excludable if the beneficiary has been given written notice that the services were excludable or that similar or comparable services provided on a previous occasion were excludable and that notice was given by the OCHAMPUS, CHAMPUS PRO or fiscal intermediary, a group or committee responsible for utilization review for the provider, or the provider who provided the services.

(5) *Criteria for determining that provider knew or could reasonably have been expected to have known that services were excludable.* An institutional or individual provider will be found to have known or been reasonably expected to have known that services were excludable under this subsection under any one of the following circumstances:

(i) The PRO or fiscal intermediary had informed the provider that the services provided were excludable or that similar or reasonably comparable services were excludable.

(ii) The utilization review group or committee for an institutional provider or the beneficiary's attending physician had informed the provider that the services provided were excludable.

(iii) The provider had informed the beneficiary that the services were excludable.

(iv) The provider had received written materials, including notices, manual issuances, bulletins, guides, directives or other materials, providing notification of PRO screening criteria specific to the condition of the beneficiary. Attending physicians who are members of the medical staff of an institutional provider will be found to have also received written materials provided to the institutional provider.

(v) The services that are at issue are the subject of what are generally considered acceptable standards of practice by the local medical community.

2. Section 199.14 is amended by revising paragraph (a)(1)(iv), by adding new paragraphs (a)(1)(iv)(B) (*1*), (*2*), (*3*), and (*4*), by revising paragraph (a)(1)(iv)(D)(*1*)(*i*), by adding new paragraph (a)(1)(iv)(D)(*3*), and by adding new paragraphs (a)(1)(iv) (E) through (J), as follows:

§ 199.14 Provider reimbursement methods.

(a) * * *

(1) * * *

(iv) *Peer Review Organization program.* This paragraph establishes rules and procedures applicable to the CHAMPUS Peer Review Organization (PRO) program for utilization and quality review of services provided in hospitals for which the hospital care is covered by the CHAMPUS DRG-based payment system.

(A) * * *

(B) *Hospital cooperation.* * * *

(*1*) Documentation that the beneficiary has received the required information about the CHAMPUS PRO program must be maintained in the same manner as is the notice required for the Medicare program by 42 CFR 466.78(c).

(*2*) The physician attestation and physician acknowledgment required for Medicare under 42 CFR 412.40 and 412.46 is also required for CHAMPUS as a condition for payment and may be satisfied by the same statements as required for Medicare, with substitution or addition of "CHAMPUS" when the word "Medicare" is used.

(*3*) Participating hospitals must execute a memorandum of understanding with the PRO providing appropriate procedures for implementation of the PRO program.

(*4*) Participating hospitals may not charge a CHAMPUS beneficiary for inpatient hospital services excluded on the basis of §§ 199.4(g)(1) (not medically necessary), 199.4(g)(3) (inappropriate level), or § 199.4(g)(7) (custodial care) unless all of the conditions established by 42 CFR 412.42(c) with respect to Medicare beneficiaries have been met with respect to the CHAMPUS beneficiary. In such cases in which the patient requests a PRO review while the patient is still an inpatient in the hospital, the hospital shall provide to the PRO the records required for the review by the close of business of the day the patient requests review, if such request was made before noon. If the hospital fails to provide the records by the close of business, that day and any subsequent working day during which the hospital continues to fail to provide the records shall not be counted for purposes of the two day period of 42 CFR 412.42(c)(3)(ii). * * *

(D) *Actions as a result of review—(1) Findings related to individual claims.* * * *

(*i*) Deny payment for or recoup (in whole or in part) any amount claimed or paid for the inpatient hospital and professional services related to such determination.

* * * * *

(*3*) *Revision of coding relating to DRG validation.* The following provisions apply in connection with the DRG validation process set forth in paragraph (a)(1)(iv)(C)(*2*) of this section.

(*i*) If the diagnostic and procedural information attested to by the attending physician is found to be inconsistent with the hospital's coding or DRG assignment, the hospital's coding on the CHAMPUS claim will be appropriately changed and payments recalculated on the basis of the appropriate DRG assignment.

(*ii*) If the information attested to by the physician as stipulated under paragraph (a)(1)(iv)(B)(*2*) of this section is found not to be correct, the PRO will change the coding and assign the appropriate DRG on the basis of the changed coding.

(E) *Procedures regarding initial determinations.* The CHAMPUS PROs shall establish and follow procedures for initial determinations that are substantively the same or comparable to the procedures applicable to Medicare under 42 CFR 466.83 to 466.104. In addition, these procedures shall provide that a PRO's determination that an admission is medically necessary is not a guarantee of payment by CHAMPUS; normal CHAMPUS benefit and procedural coverage requirements must also be applied.

(F) *Procedures regarding reconsiderations.* The CHAMPUS PROs shall establish and follow procedures for reconsiderations that are substantively the same or comparable to the procedures applicable to reconsiderations under Medicare pursuant to 42 CFR 473.15 to 473.34, except that the time limit for requesting reconsideration (see 42 CFR 473.20(a)(1)) shall be 90 days. A PRO reconsidered determination is final and binding upon all parties to the reconsideration except to the extent of any further appeal for beneficiaries pursuant to paragraph (a)(1)(iv)(G) of this section. A PRO reconsidered determination may not be further appealed by a provider.

(G) *Appeals and hearings.* Beneficiaries may appeal a PRO reconsideration determination to OCHAMPUS and obtain a hearing on such appeal to the extent allowed and under the procedures set forth in § 199.10(d). For purposes of the hearing process, a PRO reconsidered determination shall be considered as the procedural equivalent of a formal review determination under § 199.10. The provisions of § 199.10(e) concerning final action shall apply to hearings cases.

(H) *Acquisition, protection and disclosure of peer review information.* The provisions of 42 CFR Part 476, except § 476.108, shall be applicable to the CHAMPUS PRO program as they are to the Medicare PRO program.

(I) *Additional provision regarding confidentiality of records and limitation on liability of participants— (1) General rule.* The provisions of 10 U.S.C. 1102 regarding the confidentiality of medical quality assurance records and the qualified immunity for participants shall apply to the activities of the CHAMPUS PRO program as they do to the activities of the external civilian PRO program that reviews medical care provided in military hospitals.

(*2*) *Specific applications.* (*i*) Records concerning PRO deliberations are generally nondisclosable quality assurance records under 10 U.S.C. 1102.

(*ii*) Initial denial determinations by PROs pursuant to paragraph (a)(1)(iv)(E) (concerning medical necessity determinations, DRG validation actions, etc.) and subsequent decisions regarding those determinations are not nondisclosable quality assurance records under 10 U.S.C. 1102.

(*iii*) Information the subject of mandatory PRO disclosure under 42 CFR Part 476 is not a nondisclosure quality assurance record under 10 U.S.C. 1102.

(J) *Obligations, sanctions and procedures. (1)* The obligations of health care practitioners and providers set forth in section 1156(a) of the Social Security Act (42 U.S.C. 1320C–5(a)) shall apply to providers of care that is the

subject of review under the CHAMPUS PRO program.

(2) It shall be a basis for suspension or exclusion from CHAMPUS if a provider has failed in a substantial number of cases substantially to comply with any obligation arising from paragraph (a)(1)(iv)(J)(1) of this section or has grossly and flagrantly violated any such obligation in one or more instances, and it is determined that the provider has demonstrated an unwillingness or lack of ability substantially to comply with such obligations.

(3) In any case in which the PRO determines, after having provided reasonable notice and opportunity for discussion, that a provider should be subject to a sanction under paragraph (a)(1)(iv)(J)(2) of this section, the PRO shall forward to the Director, OCHAMPUS (or designee) a recommendation to that effect, supported by information and documentation pertinent to the matter.

(4) The Director of CHAMPUS shall determine whether to impose a sanction pursuant to paragraph (a)(1)(iv)(J)(2) of this section. Providers may appeal adverse sanctions decisions under the procedures set forth in § 199.10(d).

* * * * *

P.H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

February 28, 1989.

[FR Doc. 89-5017 Filed 3-3-89; 8:45 am]

BILLING CODE 3810-01-M

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service hereby describes the numerous miscellaneous revisions consolidated in the Transmittal Letter for issue 30 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations, see 39 CFR 111.1.

Most of the revisions are minor, editorial, or clarifying. Substantive changes, such as the revised regulations on mailing of supplements and third-class enclosures with second-class publications, the new Manifest Mailing System program, and the revised regulations requiring all single-piece third-class mail to be endorsed *Third Class*, have previously been published in the **Federal Register.**

EFFECTIVE DATE: March 19, 1989.

FOR FURTHER INFORMATION CONTACT: Paul J. Kemp, (202) 268-2960.

SUPPLEMENTARY INFORMATION: The Domestic Mail Manual has been amended by the publication of a transmittal letter for issue 30, dated March 19,1989. The text of all published changes is filed with the Director of the Federal Register. Subscribers to the Domestic Mail Manual receive these amendments automatically from the Government Printing Office.

The following excerpt from the Summary of Changes section of the transmittal letter for issue 30 covers the minor changes not previously described in interim or final rules published in the **Federal Register.**

Summary of Changes

In Chapter 1, Domestic Mail Services, the following Exhibits in 122.63 are updated:

122.63c, Sectional Center Facilities Serving a Single Three-Digit ZIP Code Area;

122.63d, Sectional Center Facilities Serving More Than One Three-Digit ZIP Code Prefix Area;

122.63e, Optional Area Distribution Center (ADC) Labeling List for Use with Presort First-Class Mailings Only;

122.63f, Optional State Distribution Center (SDC) Labeling List for Mailer Prepared Second-Class Publications;

122.63g, Optional State Distribution Center (SDC) Labeling List for Mailer Prepared Third- and Fourth-Class Letter and Flat-Size Mail;

122.63h, Optional State Distribution Center (SDC) Labeling List for Mailer Prepared Third- and Fourth-Class Irregular Parcels;

122.63i, State Labeling List for Mailer Prepared Second-Class Publications;

122.63j, State Labeling List for Mailer-Prepared Third- and Fourth-Class Letter and Flat-Size Mail;

122.63k, State Labeling List for Mailer Prepared Third- and Fourth-Class Irregular Parcels;

122.63l, Bulk Mail Center (BMC) Labeling List for Mailer-Prepared Bulk Rate Third- and Fourth-Class Machinable Parcel Mailings;

122.63m, 3-Digit Labeling List for Optional Combined ZIP + 4 and Presorted First-Class Mail;

122.63n, Sectional Center Facility (SCF) Labeling List for Optional Combined ZIP + 4 and Presorted First-Class Mail;

122.63o, Area Distribution Center (ADC) Labeling List for Optional Combined ZIP + 4 and Presorted First-Class Mail;

122.63p, Originating Mixed States Labeling List for Mailer Prepared Second-Class Publications;

122.63q, Originating Mixed States Labeling List for Mailer Prepared Third-Class Letter and Third- and Fourth-Class Flat Size Mail;

122.63r, Originating Mixed States Labeling List for Mailer Prepared Third-Class and Fourth-Class Irregular Parcels (References: Postal Bulletins (PB) 21702, 12-8-88, and 21705, 12-29-88).

Section 122.422, *Exceptional Address Format,* is revised to make use of the word. CURRENT, optional for mailers using this format. Mailers who may use the exceptional address format on all classes of mail except Express Mail must include these delivery instructions within or immediately above the address block (PB 21711, 2-9-89).

Section 122.7, *Postal Zones,* is revised to define a local zone more precisely. Specifically, 122.71a is revised to make it easier for mailers to determine the local zone for any post office (PB 21703, 12-15-88).

Section 123.42, *Lottery Matter,* is revised by the addition of subsection 123.425 to comply with the Indian Gaming Regulatory Act, Public Law 100-497, 102 Stat. 2467 (1988) (codified at 25 U.S.C. section 2701-2721). Section 21 of this Act provides that Title 18, U.S. Code Section 1302—the criminal lottery statute whose prohibitions are reflected in DMM 123.422—does not apply to any gaming conducted by an Indian tribe pursuant to the Act (PB 21702, 12-8-88).

Section 136, *Mixed Classes of Mail,* is revised to comply with revisions regarding the mailing of supplements and third-class enclosures with second-class publications. See revisions to sections 425, 452, and 453.

In section 141, *Endorsements on Stamped Envelopes,* subsections 141.254 (a) through (e) concerning permissible printed endorsements on stamped envelopes are revised to comply with recent changes in the authorized endorsements for the forwarding and return of mail contained in DMM Exhibits 159.151 (a) through (f), (PB 21707, 1-12-89).

Part 143, *Precanceled Stamps,* is reformatted. Some new text appears in addition to other changes to enhance clarity. Although no substantive changes have been made, some of the more notable changes are:

a. Precanceled stamps affixed on single-piece rate mail will be canceled or postmarked at mail processing units in accordance with the *Postal Operations Manual* 423.2, 423.31, and 423.32.

b. Uses of stamps precanceled with the rate designation have been clarified.

c. Text has been added in 143.31, *Nonpermit Holders*, specifying for clarity that precanceled postage bought for philatelic purposes includes collecting and the exchange of collection items.

d. Since stamp collectors may also be permit holders, the prohibition in former DMM 143.22, constraining permit holders from selling unused precanceled stamps obtained under their permit, has been determined to be unnecessary. It has been deleted.

e. DMM 122.15c has been revised to reflect the return address requirements in former 143.421, new 143.177 (PB 21706, 1–5–89).

Section 144.394, *Drop Shipment Mailing Procedures*, is revised regarding drop shipment meters to (1) require printing of the state, in addition to the city, of the entry post office in the ad plate area, and (2) delete the requirement that mailers use private containers to ship matter to the entry post office for drop shipment (PB 21702, 12–8–88).

* * * * *

In section 154, *Plant-Load Operations*, 154.734, *Liability*, is revised and new section 154.738, *Refunds*, is incorporated. The changes specify that although mailers do not have a right to a refund under the plant-verified drop shipment regulations or agreements, they may apply for refunds of postage under 147.2, *Refunds* (PB 21705, 12–29–88).

In section 159, *Undeliverable Mail*, sections 159.44 and 159.48 are revised to (1) emphasize that dead foreign letters are to be sent to foreign exchange offices, and (2) clarify that unpaid mail, unmailable letters, and undeliverable mail must be in separate bundles when sent to dead mail branches (PB 21711, 2–9–89).

Section 164.8, *Philatelic Cover Services and Dealers*, is revised to clarify that cover servicers and dealers must submit 50 or more envelopes or other items for identical cancellations, whether presented in one or more packages, and request return in bulk.

In Chapter 2, *Express Mail*, section 281.1, *Meter Relay Express Mail*, is revised to allow mailers to use meter stamps to prepay reply postage on Express Mail service shipments of up to 70 pounds because Express Mail rates are now unzoned.

In Chapter 3, *First-Class Mail*, sections 324, *ZIP + 4 First-Class Mail*, and 324.7, *Prebarcoded Mail at ZIP + 4 Rates*, are revised. Specifically, sections 324.2 and 324.71 are revised to clarify that for the purpose of meeting the requirements for the First-Class ZIP + 4 Presort rates and the Nonpresorted ZIP + 4 rates, a ZIP + 4 barcode is equivalent to a numeric ZIP + 4 code, and may be used in its place. (PB 21705, 12–29–88); Special Postal Bulletin 21746, 1–18–89).

Sections 324, *ZIP + 4 First-Class Mail*, 325, *ZIP + 4 Barcoded Rate*, 364, *ZIP + 4 Barcoded First-Class Mail*, are revised to enable more mailers to prepare ZIP + 4 barcoded mailings by removing the prohibitions against pieces prepared with 5-digit barcoded and bank barcode windows within First-Class ZIP + 4 Barcoded rate mailings. The prohibitions against these types of pieces are also eliminated for ZIP + 4 Presort, Basic ZIP + 4, and 5-Digit ZIP + 4 rate mailings that mailers choose to prepare with barcodes. Additional language is also provided describing applicable rate eligibility and documentation requirements (Special Bulletin 21746, 1–18–89).

Chapter 4 *Second-Class Mail*, is completely revised. See cross reference table at the end of this summary of changes. Please note that revised Chapter 4 reflects that as of January 1, 1989, the 10 percent allowance for nonsubscriber/nonrequester copies is based on the total number of copies mailed to subscribers/requesters during the calendar year (PB 21711, 2–9–89).

* * * * *

In Chapter 6, *Third-Class Mail*, and 7, *Fourth-Class Mail*, a number of sections are revised to standardize requirements for the preparation of sack labels and to clarify existing regulations concerning the location of the top or destination line on sack labels that must be completely visible and legible. The revised regulations also include a Postal Service recommendation that mailers print the top line so that it is no less than ⅛ inch below the top of the label after the label has been cut and is ready for use. Specific sections are 667.13; 667.224; 667.3; 667.4; 667.7; 764.2; 764.3; 767.2; 767.3; 767.23; 767.33, and 767.8.

In Chapter 6, *Third-Class Mail*, section 622, *Third-Class Bulk Mail*, is revised to enable more mailers to prepare ZIP + 4 barcoded mailings by removing the prohibitions against pieces prepared with 5-digit barcodes within third-class ZIP + 4 Barcoded rate mailings. The regulations also remove the prohibition against use of blank barcode windows for nonqualifying pieces in such mailings. The prohibitions against these types of pieces are also eliminated for ZIP + 4 Presort, Basic ZIP + 4, and 5-Digit ZIP + 4 rate mailings that mailers choose to prepare with barcodes. Additional language is also provided describing applicable rate eligibility and documentation requirements (Special Bulletin 21746, 1–18–89).

* * * * *

In section 667.13, *Sacking Requirements*, section 667.132d is revised to allow mailers to prepare optional sectional center facility (SCF) sacks containing less than 125 pieces or 15 pounds of mail. The minimum is removed to alleviate service problems mailers have experienced and to reduce postal handlings (PB 21707, 1–12–89).

In 667.91, *Exemptions From Packaging Requirements*, section 667.911 is amended to restore the last sentence to language similar to that used in DMM Issue 28, requiring each separate mailing of irregular parcels to meet the minimum volume requirements for mailing at the bulk third-class rates.

Section 681.23, *Single-Piece Weight*, is revised to specify that the mailer must enter the appropriate number of pieces and/or pounds, and the corresponding postage amount(s), in the "Postage Computation" section of Form 3602. *Statement of Mailing with Permit Imprints*, or Form 3602–PC, *Statement of Mailing Bulk Rates* (PB 21709, 1–26–89).

In Chapter 7, *Fourth-Class Mail*, section 767, *Preparation of Bound Printed Matter*, is revised to facilitate mailer use of pallets for bound printed matter or machinable parcel mailings. The Postal Service now allows mailers to commingle fourth-class bound printed matter mail for different zones on sectional center facility (SCF) and optional bulk mail center (BMC) pallets and fourth-class machinable parcels for different zones on destination and origin BMC pallets, *provided* the mailer produces documentation necessary to enable the Postal Service to properly verify piece counts and postage payment. The change also makes the preparation of origin BMC pallets for machinable mailings optional. (PB 21705, 12–29–89).

Exhibit 772.1, *Within BMC (Intra-BMC/ASF) rate ZIP Code Service Areas*, is revised to show the following change: Jacksonville....299, 313–316, 320–342, 346–347, 349 (PB 21704, 12–22–88).

In Chapter 9, *Special Services*, section 945, *Mailing List Services*, is revised to clarify requirements and standardize format and terminology. Section 945.5, *Furnishing Address Changes to Election Boards and Voter Registration Commissions*, is revised to specify that when agencies request change-of-address information on Form 3575, they must submit requests to the management sectional center (MSC)/

division office where the Address Information Systems Office coordinates list correction activities. The Manager, Address Information Systems, or the Manager, Address Programs Support, at the MSC/division must provide instructions to post offices and manage the implementation of this service (PB 21705, 12–29–88).

In part 940, *Money Orders*, section 941.62 is updated (PB 21704. 12–22–88).

Minor, nonsubstantive changes include: 324.3; 352.22; 353.1; 622.144; 651.22; 652.1; 722.1, 912.45, and 912.6.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. In consideration of the foregoing, the table at the end of § 111.3(e) is amended by adding at the end thereof the following:

§ 111.3 Amendments to the Domestic Mail Manual.

* * * * *

Transmittal letter for issue	Dated	"Federal Register" publication
30	Mar. 19, 1989	54 FR * * *

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 89–4949 Filed 3–3–89; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–1–FRL–3523–5]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Amendments to Air Pollution Control Regulations Regarding Testing Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the Commonwealth of Massachusetts on September 20, 1988. These revisions involve amendments to the SIP regulations for volatile organic compound (VOC) emitting sources. The revisions require the use of EPA-approved test methods when compliance testing is performed for non-Control Technique Guideline (CTG) VOC sources subject to reasonably available control technology (RACT). The Massachusetts' SIP has a non-CTG regulation imposing RACT on all VOC sources with emissions greater than 100 tons per year not otherwise subject to RACT under a regulation developed pursuant to a CTG. The intended effect of this action is to approve this regulation adopted by Massachusetts in accordance with commitments made in its federally-approved ozone attainment plan. This action is being taken under Section 110 of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on April 5, 1989.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Room 2313, Boston, MA 02203; the Department of Environmental Quality Engineering, Division of Air Quality Control, One Winter Street, 8th Floor, Boston, MA 02108; and Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Lorenzo Thantu (617) 565–3250; FTS 835–3250.

SUPPLEMENTARY INFORMATION: On December 10, 1987 (52 FR 46786), EPA published a Notice of Proposed Rulemaking (NPR) for the Commonwealth of Massachusetts. The NPR proposed to approve revisions to SIP regulation 310 CMR 7.18 for VOC emitting sources. The proposed amendments to Regulation 310 CMR 7.18, Volatile Organic Compounds, are described below:

(1) Subsection 310 CMR 7.18(2) which sets forth the testing requirements for VOC emitting sources is being amended by expanding the source testing requirements to include non-CTG sources subject to RACT under subsection 310 CMR 7.18(17) and by requiring that the use of any alternative test method to EPA methods 24 and 25 be EPA approved.

(2) Subsection 310 CMR 7.18(17) which sets forth procedures for issuance of plan approvals imposing RACT on non-CTG sources is being amended by including language which references SIP Regulation 310 CMR 7.02(2). Subsection 310 CMR 7.18(17)(d) references 310 CMR 7.02(2) to clarify certain procedures related to plan approvals. Subsection 310 7.02(2) requires that sources operate in conformance with plan approvals issued by the DEQE.

(3) Subection 310 CMR 7.18(17)(d) is also being amended to include language stating that non-CTG VOC sources subject to RACT under plan approvals issued pursuant to 310 CMR 7.18(17) would be subject to enforcement action by both the DEQE and EPA should they violate provisions of those plan approvals.

A more detailed description of these revisions and EPA's rationale for approving them were provided in the NPR and will not be restated here. No public comments were received on the NPR.

Final Action

EPA is approving revisions to the Massachusetts SIP which amended Regulation 310 CMR 7.18 as outlined in this notice.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 5, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Note: Incorporation by reference of the State Implementation Plan for the Commonwealth of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

Date: February 10, 1989.

Jack Moore,

Acting Administrator.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart W—Massachusetts

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1120 is amended by adding paragraph (c)(76) to read as follows:

§ 52.1120 Identification of Plan.

* * * * *

(c) * * *

(76) Revisions involving regulations 310 CMR 7.18(2)(e) and 7.18(17) submitted by the Department of Environmental Quality Engineering on September 20, 1988.

(i) Incorporation by Reference.

(A) Amendment to Regulation 310 CMR 7.18(2)(e)—effective July 22, 1988.

(B) Amendments to Regulation 310 CMR 7.18(17)(d)—effective July 22, 1988.

(C) A Regulation Filing and Publication document from the Commonwealth of Massachusetts Department of Environmental Quality Engineering dated July 5, 1988 which states that the effective date of the regulatory amendments to 310 CMR 7.18(2)(e) and 310 CMR 7.18(17)(d), incorporated above, is July 22, 1988.

(ii) Additional Materials

(A) Nonregulatory portions of the state submittal.

§ 52.1167 [Amended]

3. In § 52.1167, Table 52.1167 is amended by adding the following entries in numerical order to read as follows:

TABLE 52.1167—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/Subject	Date submitted by State	Date approved by EPA	FEDERAL REGISTER citation	Section 52.1120 (c)	Comments/Unapproved sections
•	•	•	•	•	•	•
310 CMR 7.18 (2)(e).	Compliance with emission limitations.		March 6, 1989	5 FR		Testing requirements for plan approvals issued under 310 CMR 7.18 (17).
•	•	•	•	•	•	•
310 CMR 7.18(17)...	RACT		March 6, 1989	54 FR		Enforceability of plan approvals issued under 310 CMR 7.18 (17).
•	•	•	•	•	•	•

[FR Doc. 89-3991 Filed 3-3-89; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-6

[FPMR Temp. Reg. A-27, Rev. 1, Supp. 1]

Civilian Executive Agency Aircraft Information System (AIS)

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: This supplement extends the expiration date of FPMR Temporary Regulation A-27, Revision 1, to January 31, 1991. This extension is necessary to allow additional time to adequately coordinate the reporting system with affected agencies before the policy is codified in the Code of Federal Regulations.

DATES: *Effective date:* March 6, 1989. *Expiration date:* January 31, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence Godwin, Transportation Systems Staff (202-566-1013).

SUPPLEMENTARY INFORMATION: GSA has determined that this is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101-6

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter A to read as follows:

Federal Property Management Regulations Temporary Regulation A-27 Revision 1, Supplement 1

To: Heads of Federal agencies

Subject: Civilian Executive Agency Aircraft Information System (AIS)

1. *Purpose.* This supplement extends the expiration date of FPMR Temporary Regulation A-27, Revision 1.

2. *Effective date.* This supplement is effective upon publication in the Federal Register.

3. *Expiration date.* This supplement expires on January 31, 1991, unless sooner superseded or canceled.

4. *Background.*

a. The Aircraft Information System (AIS) went into effect on January 11, 1985, with the promulgation of FPMR Temporary Regulation A-27 by the Administrator of General Services. In addition to providing the AIS policy, the regulation provided guidelines for preparation, definitions, and instructions for completion of the required reports.

b. The Administrator promulgated FPMR Temporary Regulation A-27, Revision 1, on February 24, 1987, which, among other things, provided for improvements in the reporting system by establishing the use of preprinted forms rather than report formats.

c. The complexities involved in the development and refinement of a major reporting system such as the AIS, will require additional time for GSA to adequately coordinate with the affected agencies and ensure that the system being developed is sufficiently refined before the policy is codified in the Code of Federal Regulations.

5. *Explanation of change.* The expiration date in par. 3 of FPMR Temporary Regulation A-27, Revision 1, is revised to January 31, 1991.

Richard G. Austin,

Acting Administrator of General Services.

[FR Doc. 89-5098 Filed 3-3-89; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6710

[CA-940-09-4214-10; CACA 17091]

Modification of Public Land Order No. 2693; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order modifies a public land order insofar as it affects 160 acres of public land withdrawn for the Otay National Cooperative Land and Wildlife Management Area. This action will open 160 acres to allow an exchange of public and private lands that will benefit the Otay National Cooperative Land and Wildlife Management Area, but the land

will remain closed to all other forms of surface entry under the public land laws. All of the land has been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: April 5, 1989.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825, 916–978–4815.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 2963 is hereby modified as stated in paragraph 2 of this order, as to the following described land:

San Bernardino Meridian

T. 18 S., R. 1 E.,

Sec. 29, NW¼

The area described contains 160 acres in San Diego County.

2. At 10 a.m. on (insert date 30 days after date of publication), the land will be opened to disposition under the authority of section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. The land remains closed to all other forms of surface entry under the public land laws, but remains open to the mining and mineral leasing laws.

Earl Gjelde,

Under Secretary of the Interior.

February 22, 1989.

[FR Doc. 89–5096 Filed 3–3–89; 8:45 am]

BILLING CODE 4310–40–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–231; RM–6131]

Radio Broadcasting Services; Mecca, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 249A to Mecca, California, as that community's first local broadcast service, in response to a petition for rule making filed by Craig L. Fox. Coordinates utilized for Channel 249A at Mecca are the city reference point at 33–34–18 and 116–05–06. With this action, the proceeding is terminated.

DATES: Effective March 31, 1989. The window period for filing applications on Channel 249A at Mecca, California, will open on April 3, 1989, and close on May 3, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–231, adopted January 30, 1989, and released March 1, 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.

PART 73—[AMENDED]

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 under California, by adding Mecca, Channel 249A.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–5127 Filed 3–3–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–316; RM–6269]

Radio Broadcasting Services; Lanai City, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission at the request of Timothy D. Martz allots Channel 284A to Lanai City, Hawaii, as that community's first local FM service. Channel 284A can be allotted to Lanai City, Hawaii in compliance with the Commission's minimum distance separation requirements with a site restriction. The coordinates for this allotment are 20–49–06 and 156–54–22. With this action, this proceeding is terminated.

DATES: Effective March 31, 1989. The window period for filing applications will open on April 3, 1989, and close on May 3, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88–316, adopted January 30, 1989, and released March 1, 1989. The full test 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.

PART 73—[AMENDED]

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 under Hawaii by adding Lanai City, Channel 284A.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–5126 Filed 3–3–89; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 88–322; RM–6267]

Radio Broadcasting Services; Hali'imaile, Hawaii

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 288A to Hali'imaile, Hawaii, at the request of Timothy D. Martz, as the community's first local FM service. Channel 288A can be allotted to Hali'imaile in compliance with the Commission's minimum distance separation requirements. The coordinates for this allotment are 20–52–16 and 156–20–38. With this action, this proceeding is terminated.

DATES: Effective March 31, 1989. The window period for filing applications will open on April 3, 1989, and close on May 3, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order MM Docket No. 88–322, adopted January 30, 1989, and released March 1, 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:

PART 73—[AMENDED]

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Hawaii is amended by adding Hali'imaile, Channel 288A.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89–5130 Filed 3–3–89; 8:45 am]

BILLING CODE 6712–01–M

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1532 and 1552

[FRL–3533–1]

Acquisition Regulation Concerning the Prompt Payment Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document amends the EPA Acquisition Regulation (EPAAR) to revise EPAAR coverage on the Prompt Payment Act. The EPAAR coverage has been superseded by an amendment to the Federal Acquisition Regulation (FAR). The intended effect of this action is to delete EPAAR coverage on the Prompt Payment Act that is duplicate of the FAR.

EFFECTIVE DATE: March 6, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph Nemargut, Jr. at (202) 475–9790 (FTS 475–9790), Environmental Protection Agency, Procurement and Contracts Management Division (PM 214F), 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

A. Background

When the Office of Management and Budget (OMB) issued Circular A–125, "Prompt Payment," the Environmental Protection Agency (EPA) provided implementing instructions through its procurement regulations.

Federal Acquisition Circular 84–33 was published on February 8, 1988, amending the FAR by adding Subpart 32.9 and a contract clause to implement OMB Circular A–125. The new FAR coverage supersedes most of the coverage on prompt payment currently contained in the EPAAR.

This rule deletes from the EPAAR regulatory material and contract clauses superseded by FAC 84–33. The rule retains only unique EPA invoice submission requirements. These requirements have been incorporated in a new EPAAR subpart for consistency with the FAR structure.

On October 17, 1988, the President signed Public Law 100–496, amending the Prompt Payment Act. This rule does not implement any provisions of that law.

B. Executive Order 12291

OMB Bulletin No. 85–7, dated December 14, 1984, establishes the requirements for Office of Management and Budget (OMB) review of agency procurement regulations. This regulation does not fall within any of the categories cited in this Bulletin requiring OMB review.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not propose any information collection requirements, which would require the approval of OMB under 44 U.S.C. 3501, et seq.

D. Regulatory Flexibility Act

The EPA certifies this rule does not exert a significant economic impact on a substantial number of small entities. The rule essentially deletes existing material from the EPAAR that is duplicative of FAR coverage on the Prompt Payment Act.

E. Public Comments.

The EPA has not solicited public comments on this final rule since it does not have a significant cost or administrative impact on contractors or offerors. The rule essentially deletes existing material from the EPAAR that is duplicative of FAR coverage on the Prompt Payment Act.

List of Subjects in 48 CFR Parts 1532 and 1552

Government procurement, Contract financing, Solicitation provisions, Contract clauses.

For the reasons set out in the preamble, Chapter 15 of Title 48 Code of Federal Regulations is amended as set forth below:

PART 1532—[AMENDED]

1. The authority citation for Part 1532 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

2. Subpart 1532.9 is added to read as follows:

Subpart 1532.9—Prompt Payment

1532.908 Contract clauses.

The clause at 1552.232–70 shall be included in all solicitations and contracts.

Subpart 1532.70—[Removed]

3. Subpart 1532.70 is removed.

PART 1552—[AMENDED]

4. The authority citation for Part 1552 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

5. Section 1552.232–70 is revised to read as follows:

1552.232–70 Submission of invoices.

As prescribed in 1532.908, insert the following clause:

SUBMISSION OF INVOICES (MAR 1988)

In order to be considered properly submitted, an invoice or request for contract financing payment must meet the following requirements in addition to the requirements of FAR 52.232–25:

(a) The invoice or request for contract financing payment shall be prepared and submitted in quadruplicate (one copy shall be marked "original"), unless otherwise specified, to the accounting operations office designated in this contract.

(b) If this is a cost-reimbursement contract, the contractor shall prepare the invoice or request for contract financing payment in accordance with EPA Form 1900–34, "Guide for the Preparation of Contractor's Claim for Reimbursement of Costs and Fees Under Cost Reimbursement Type Contacts" or EPA Form 1900–34A, "Guide for the Preparation of Contractor's Claims for Reimbursement of Costs and Fees Under Cost-Plus-Award-Fee (CPAF) Type Contracts." If the contract is a cost-reimbursement term-form contract under which contract work is authorized by individual work assignments, the invoice or request for contract financing payment shall include a summary of amounts claimed against each work assignment.

(c) If this is an indefinite delivery/indefinite quantity contract, the invoice or request for contract financing payment shall include a summary of amounts claimed against each delivery order, unless otherwise specified. (End of clause)

1552.232-71 [Removed and Reserved]

6. Section 1552.232-71 is removed and reserved.

1552.232-72 [Removed and Reserved]

7. Section 1552.232-72 is removed and reserved.

Date: February 22, 1989.

John C. Chamberlin,

Director, Office of Administration.

[FR Doc. 89-5087 Filed 3-3-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 81131-9019]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of prohibition of receipt of groundfish.

SUMMARY: NOAA announces prohibition of receipt by foreign processors in the exclusive economic zone (EEZ) of yellowfin sole taken in directed fisheries for yellowfin sole in the Bering Sea and Aleutian Islands Management Area (BSAI). This action, taken under provisions of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP), limits joint venture processing (JVP) to the amount of yellowfin sole specified for JVP, assures optimum use of groundfish, and promotes orderly conduct of the groundfish fisheries.

DATES: Effective March 1, 1989. Comments will be accepted through March 16, 1989.

ADDRESS: Comments should be mailed to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802, or be delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Pat Peacock, Fishery Management Specialist, NMFS, 907-586-7654.

SUPPLEMENTARY INFORMATION: The FMP, which governs the groundfish fishery in the EEZ of the BSAI under the Magnuson Fishery Conservation and Management Act, is implemented by rules appearing at 50 CFR 611.93 and Part 675. For other actions in 1989 concerning JVP yellowfin sole in the BSAI, see 54 FR 3605, January 25, 1989.

Notice of Closure to Directed Fishing

Under § 675.20(a)(7), the Regional Director has determined that 6,000 metric tons (mt) of the total 110,000 mt of yellowfin sole allocated to JVP will be needed after the closure of the directed fishery for bycatch in the JVP fishery for "other flatfish." To preserve this bycatch amount, foreign processors must cease receiving yellowfin sole caught by U.S. fishermen in directed fisheries for yellowfin sole, effective 2100 g.m.t., March 1, 1989. Directed fishing is defined at § 675.2.

Classification

This action is taken under the authority of 50 CFR 675.20(a)(7) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provide prior notice and opportunity for comment. Immediate effectiveness of this notice is necessary to prevent the harvest of yellowfin sole from exceeding the JVP amount.

Interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

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

Dated: February 28, 1989.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-5091 Filed 3-1-89; 12:37 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 54, No. 42
Monday, March 6, 1989

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

Farmers Home Administration

7 CFR Part 1951

Loan and Grant Programs; Servicing and Collections

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its Community Facilities loan and grant servicing regulations. This action is being taken to clarify various sections of the regulation. The intended effect is to provide more comprehensive and straightforward guidance to FmHA staff and recipients of assistance relating to the servicing of the affected loans and grants.

DATE: Comments must be received on or before April 5, 1989.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address. 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. Submit comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Richard Kelly, Loan Specialist, Water and Waste Disposal Division, Farmers Home Administration, USDA, South Agriculture Building, Room 6334, Washington, DC 20250, telephone: (202) 382–9589 or Bonnie Justice, Loan Specialist, Community Facilities Division, Farmers Home Administration, USDA, South Agriculture Building, Room 6314, Washington, DC 20250, telephone: (202) 382–1490.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and their will be no significant increase in cost or prices for consumers; individual industries; Federal, State, or Local government agencies; or geographic regions.

In compliance with the Regulatory Flexibility Act, the Administrator has determined that this action will not have a significant economic impact on a substantial number of small entities because it contains normal business recordkeeping requirements and minimal reporting requirements. Furthermore, there will be no 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.

This action is not expected to substantially affect budget outlay or to affect more than one agency or to be controversial. The net result is expected to provide better service to rural communities. These programs/activities are listed in the Catalog of Federal Domestic Assistance under Nos. 10.418, Water and Waste Disposal Systems for Rural Communities, and 10.423, Community Facilities Loans, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and Local officials. (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983, and 7 CFR Part 1940, Subpart J, "Intergovernmental Review of Farmers Home Administration Programs and Activities").

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Programs." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 92–190, and Environmental Impact Statement is not required.

Background

This package is primarily to incorporate a number of minor changes to the regulations, and to clarify a number of matters which are frequent sources of confusion to field personnel and others. The alternatives are to do nothing or to proceed with revision of the regulation. FmHA believes that rewriting the regulation while incorporating the various changes will result in the most efficient conduct of internal Agency administrative activities and provisions of service to the public.

The primary changes include the following:

1. Two new programs, grants under the National Nonprofit Corporations and Technical Assistance and Training programs, are added to those covered, and Loans to Timber Development Organizations is deleted because the program is no longer funded and no loans were ever made under the program.

2. A more detailed explanation of activities covered by the regulation is provided.

3. Definitions for the CONACT and nonprogram loans are added.

4. Clarification is provided that requests for actions involving parity position are considered to be subordinations.

5. Provisions is made for use of a rescheduling agreement for certain reamortizations.

6. Clarification is provided that deferment of principal and/or interest is not allowable in connection with a reamortization.

7. Clarification is provided that a separate new instrument is required for each loan being reamortized when new instruments are required.

8. All third-party agreements are covered in one section and clarification is provided to describe conditions that must exist before third-party agreements will be permitted by FmHA.

9. The State Director is given authority to determine the amount of royalty payments to be assigned to the government from mineral leases.

10. A section is added to clearly indicate that environmental review in accordance with FmHA Instruction 1940–G is required for most servicing activities.

11. A provision is included which allows the release of liability in certain circumstances when the FmHA debt is not paid in full but all security property has been disposed of, and clarifies circumstances when the release of liability must be approved by the Administrator.

12. A requirement for an appraisal when the full amount of the FmHA debt is not assumed is added.

13. Provision is made for use of a new form appropriate for Community Programs for certain assumptions.

14. Clarification is provided that a loan made in conjunction with a transfer and assumption must be treated as a separate loan.

15. Clarification is provided that loans transferred to ineligibles will be classified as nonprogram loans.

16. A requirement is added that a letter of conditions be issued to and agreed to by prospective transferees.

17. It is clarified that transferees must agree to abide by the covenants of an FmHA grant if one was made in conjunction with the loan being transferred.

18. A section is added to emphasize that defeasance of FmHA loans is not permissible.

19. A requirement for National Office approval of variations from the provisions of the regulation for servicing public bodies is added.

20. A summary of policies for the servicing of nonprogram loans is added.

21. Clarification of servicing actions for borrowers changing legal organizational structure is provided.

22. A provision is added to allow protective advances to be amortized in certain cases.

23. A provision is added to allow the FmHA servicing office to retain certain original debt instruments and provide copies to the Finance Office.

24. Language is added clarifying the applicability of 7 CFR Part 3015 to grants covered by the subsection.

List of Subjects in 7 CFR Part 1951

Account servicing; Grant programs-Housing and community development; Loan programs-Housing and community development; Reporting requirements; Rural areas.

Therefore, as proposed, Chapter XVIII, Title 7, Code of Federal Regulations, is amended as follows:

PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for Part 1951 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

2. Subpart E of Part 1951 is revised to read as follows:

Subpart E—Servicing of Community and Insured Business Programs Loans and Grants

Sec.

1951.201 Purpose.
1951.202 Objectives.
1951.203 Definitions.
1951.204 Nondiscrimination.
1951.205 Present market value determination.
1951.206 Redelegation of authority.
1951.207 General servicing actions.
1951.208 Liquidation of security.
1951.209 Sale or exchange of security property.
1951.210 Transfer of security and assumption of loans.
1951.211 Special provisions applicable to Economic Opportunity (EO) Cooperative loans.
1951.212 Water and waste disposal systems which have become part of an urban area.
1951.213 Care, management, and disposal of acquired property.
1951.214 Grants.
1951.215 State Director's additional authorizations and guidance.
1951.216 Payment in full.
1951.217 State supplements.
1951.218 Forms.
1951.219 Public bodies.
1951.220 Special provision for interest rate change.
1955.221 Servicing of nonprogram (NP) loans.
1951.222–1951.249 [Reserved].
1951.250 OMB control number.

Subpart E—Servicing of Community and Insured Business Programs Loans and Grants

§ 1951.201 Purpose.

This Subpart prescribes the Farmers Home Administration's (FmHA) policies, authorizations and procedures for servicing Water and Waste Disposal System loans and grants; Community Facility loans; Industrial Development grants; loans for Grazing and other shift-in-land-use projects; Association Recreation loans; Association Irrigation and Drainage loans; Watershed loans and advances; Resource Conservation and Development loans; Insured Business loans; Economic Opportunity Cooperative loans; loans to Indian Tribes and Tribal Corporations; Rural Renewal loans; Energy Impacted Area Development Assistance Program grants; National Nonprofit Corporation grants; and Water and Waste Disposal Technical Assistance and Training grants. Loans sold without insurance by FmHA to the private sector will be serviced in the private sector and will not be serviced under this subpart. The provisions of this subpart are not applicable to such loans. Future changes to this subpart will not be made applicable to such loans.

§ 1951.202 Objectives.

The purpose of loan and grant servicing functions is to assist recipients to meet the objectives of loans and grants, repay loans on schedule, comply with agreements, and protect FmHA's financial interest. Supervision by FmHA includes, but is not limited to, review of budgets, management reports, audits and financial statements; performing security inspections and providing, arranging for, or recommending technical assistance; evaluating environmental impacts of proposed actions by the borrower; and performing civil rights compliance reviews, in accordance with the requirements of Subpart A of Part 1942, Subpart G of Part 1940, and Subpart E of Part 1901 of this chapter.

§ 1951.203 Definitions.

(a) *Approval official.* An official who has been delegated loan and/or grant approval authorities within applicable programs, subject to the dollar limitations of Exhibits A, B, and C of Subpart A of Part 1901 of this chapter (available in any FmHA office).

(b) *Assumption of debt.* The agreement by one party to legally bind itself to pay the debt incurred by another.

(c) *CONACT.* The Consolidated Farm and Rural Development Act, as amended.

(d) *Eligible applicant.* An entity that would be legally qualified for financial assistance under the loan or grant program involved in the servicing action.

(e) *Ineligible applicant.* An entity or individual that would not be considered eligible for financial assistance under the loan or grant program involved in the servicing action.

(f) *Nonprogram (NP) Loan.* An NP loan exists when credit is extended to an ineligible applicant and/or transferee in connection with loan assumptions or sale of inventory property; any recipient in cases of unauthorized assistance; or a recipient whose legal organization has changed as set forth in § 1951.207(i) of this subpart resulting in the borrower being ineligible for program benefits.

(g) *Servicing office.* The State, District, or County Office responsible for immediate servicing functions for the borrower or grantee.

(h) *Transfer fee.* A one-time nonrefundable application fee, charged to ineligible applicants for FmHA services rendered in the processing of a transfer and assumption.

§ 1951.204 Nondiscrimination.

Each instrument of conveyance required for a transfer, assumption, or other servicing action under this subpart will contain the following covenant:

The property described herein was obtained or improved through Federal financial assistance. This property is subject to the provisions of title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, as amended, and the regulations issued pursuant thereto for so long as the property continues to be used for the same or similar purposes for which the Federal financial assistance was extended.

§ 1951.205 Present market value determination.

For purpose of this subpart, the value of security is determined by the approval official as follows:

(a) *Security representing a relatively small portion of the total value of the security property.* The approval official will determine that the real estate and chattels are disposed of at a reasonable price. A current appraisal report may be required.

(b) *Security representing a relatively large portion of the total value of the security property.* The approval official will require a current appraisal report, and the sale prices of the real estate and chattels disposed of will at least equal the present market value as determined by this appraisal.

(c) *Appraisal report.* If required, a current appraisal report will be completed in accordance with § 1942.3 of Subpart A of Part 1942 of this chapter. The appraisal will be completed by a qualified FmHA employee or an independent appraiser as determined appropriate by the approval official.

§ 1951.206 Redelegation of authority.

Servicing functions under this subpart which are specifically assigned to the State Director may be redelegated in writing to an appropriate sufficiently trained designee.

§ 1951.207 General servicing actions.

(a) *Collections, payments and refunds.* Collections are processed in accordance with Subpart B of Part 1951. Payments and refunds are handled in accordance with the following:

(1) Field offices can obtain data on principal installments due for Community Programs loans with unamortized installments using the borrower status screen option in the Automated Discrepancy Processing System (ADPS).

(2) Grazing Association Loans, Irrigation, Drainage and other Soil and Water Conservation Loans, and Indian Tribes and Tribal Corporation Loans.

(i) Regular payments for such loans are defined in § 1951.8(a) of Subpart A of this Part 1951, and are distributed according to § 1951.9(a) of that subpart unless otherwise established by the note or bond.

(ii) Extra payments are defined in § 1951.8(b) of Subpart A of this Part 1951, and are distributed according to § 1951.9(b) of that subpart.

(3) *Community and Insured Business Programs.*

(i) Regular payments for Community and Insured Business Programs borrowers are all payments other than extra payments and refunds. Such payments are usually derived from facility revenues, and do not include proceeds from the sale of security. They also include payments derived from sources which do not decrease the value of FmHA's security.

(A) Distribution of such payments is made as follows:

(*1*) First, to the FmHA loan(s) in proportion to the delinquency existing on each. Any excess will be distributed in accordance with paragraphs (a)(3)(i)(A)(*2*) and (*3*) of this section.

(*2*) Second, to the FmHA loan or loans in proportion to the approximate amounts due on each. Any excess will be distributed according to paragraph (a)(3)(i)(A)(*3*) of this section.

(*3*) Third, as advance payments on FmHA loans. In making such distributions, consider the principal balance outstanding on each loan, the security position of the liens securing each loan, the borrower's request, and related circumstances.

(B) Unless otherwise established by the debt instrument, regular payments for amorized loans will be applied first to interest accrued as of the date of receipt of the payment, with any excess being applied to principal. For debt instruments with installments of principal plus interest, regular payments will be applied first to the interest due through the date of the next scheduled installment of principal and interest and then to principal due, with any balance applied to the next scheduled principal installment.

(ii) Extra payments are derived from sale of basic chattel or real estate security; refund of unused loan funds; cash proceeds of property insurance as provided in § 1806.5(b) of Subpart A of Part 1806 (paragraph V B of FmHA Instruction 426.1); and similar actions which reduce the value of basic security. At the option of the borrower, regular facility revenue may also be used as extra payments when regular payments are current. Unless otherwise established in the note or bond, extra payments will be applied as follows:

(A) First to the account secured by the lowest priority of lien on the property from which the extra payment was obtained. Any balance will be applied to other FmHA loans in ascending order of priority.

(B) For amortized loans, extra payments will be applied first to interest accrued to the date payment is received, and then to principal. For debt instruments with installments of principal plus interest, such payments will be applied to the final unpaid principal installment.

(b) *Loan summary statements.* Upon request of a borrower, FmHA will issue a loan summary statement showing account activity for each loan made or insured under the CONACT. Field offices will post a notice informing borrowers of the availability of loan summary statements. See Exhibit A of Subpart A of this part for a sample of the required notice.

(1) The loan summary statement period is from January 1 through December 31. The Finance Office forwards annual statements to field offices for all loans made or insured under the CONACT. The forms are to be retained in borrower files as a permanent record of account activity.

(2) Quarterly loan summary statements are retained in the Finance Office on microfiche. These statements reflect cumulative data from the beginning of the current year through the end of the most recent quarter. Servicing offices may request copies of these quarterly or annual statements by sending FmHA 1951–57, "Request for Loan Summary Statement," to the Finance Office.

(3) The servicing office will provide a copy of the applicable loan summary statement to the borrower on request. If requested, the servicing office will also provide an explanation of the application of payments.

(4) When a copy of the form is requested, borrowers will be provided with copies of the applicable form(s). A printout obtained through ADPS reflecting all future installments owed will be attached. These two documents will constitute the loan summary statement to be provided to the borrower.

(c) *Insurance.* FmHA borrowers shall maintain insurance coverage as follows:

(1) Community and Insured Business Programs borrowers shall continuously maintain adequate insurance coverage as required by the loan agreement and § 1942.17(j)(3) of Subpart A of Part 1942 of this chapter. Insurance coverage must be monitored in accordance with the above-referenced section to determine

that adequate policies and bonds are in force.

(2) For all other types of loans covered by this subpart, property insurance will be serviced according to Subpart A of Part 1806 of this chapter (FmHA Instruction 426.1) in real estate mortgage cases, and according to the loan agreement in other cases.

(d) *Property taxes.* Real property taxes are serviced accordingly to Part 1863 of this chapter. (FmHA Instruction 425.1). If State statutes permit a personal property tax lien to have priority over FmHA's lien, such taxes are serviced according to § 1863.3 and § 1863.4 (paragraphs III and IV) of that instruction.

(e) *Protective advances.* (1) The State Director is authorized to approve, without regard to any loan or total indebtedness limitations, vouchers to pay costs, including insurance and real estate taxes, to preserve and protect the security, the lien, or the priority of the lien securing the debt owed to or insured by FmHA if the debt instrument provides that FmHA may voucher the account to protect its lien or security. The State Director must determine that authorizing a protective advance is in the best interest of the government. For insurance, factors such as the amount of advance, occupancy of the structure, vulnerability to damage and present value of the structure and contents will be considered.

(2) Protective advances are considered due and payable when advanced. Advances bear interest at the rate specified in the most recent debt instrument authorizing such an advance.

(3) Protective advances are not to be used as a substitute for a loan.

(4) Vouchers are prepared in accordance with applicable procedures set forth in FmHA Instructions 2024–A and 2024–P (available in any FmHA office).

(f) *Subordination of security.* When a borrower requests FmHA to subordinate a security instrument so that another creditor or lender can refinance, extend, reamortize, or increase the amount of a prior lien; be on parity with; or place a lien ahead of the FmHA lien, it will submit a written request to the servicing office as provided below. For purposes of this subpart, subordination is defined to include cases where a parity security position is being considered.

(1) *General.* The following requirements must normally be met:

(i) The request must be for subordination of a specific amount of the FmHA indebtedness, and the amount must be within the approval official's authority as set forth in Exhibits A, B, and C of Subpart A of Part 1901 of this chapter (available in any FmHA office).

(ii) It must be determined that the borrower cannot refinance its FmHA debt in accordance with Subpart F of Part 1951 of this chapter.

(iii) The transaction will further the purposes for which the FmHA loan was made, not adversely affect the borrower's debt-paying ability, and result in the FmHA debt being adequately secured.

(iv) The terms and conditions of the prior lien will be such that the borrower can reasonably be expected to meet them as well as the requirements of all other debts.

(v) Any proposed development work will be planned and performed according to § 1942.18 of Subpart A of Part 1942 of this chapter or in a manner directed by the creditor which reasonably attains the objectives of that section.

(vi) All contracts, pay estimates, and change orders will be reviewed and concurred in by the State Director.

(vii) In cases involving land purchase, the FmHA will obtain a mortgage on the purchased land.

(viii) When the transaction involves more than $10,000 or the approval official considers it necessary, a present market value appraisal report will be obtained. However, a new report need not be obtained if there is an appraisal report not over one year old which permits a proper determination of the present market value of the total property after the transaction.

(ix) The proposed action must not change the nature of the borrower's activities so as to make it ineligible for FmHA loan assistance.

(x) Necessary consent and subordination of all other outstanding security interests must be obtained.

(xi) For Indian Tribes and Tribal Corporations, loan funds will not be used for any purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity as further explained in Exhibit M of Subpart G of Part 1940 of this chapter. This requirement will be monitored throughout the term of the loan.

(2) *Authorities.* Proposals not meeting one or more of the above requirements will be submitted to the Administrator, Attention (appropriate program division) for prior concurrence. All other proposals may be approved by the official with loan approval authority under Subpart A of Part 1901 of this chapter.

(3) *Processing.* The case file is to include:

(i) The borrower's written request on Form FmHA 465–1, "Application for Partial Release, Subordination or Consent," if appropriate, or in other acceptable format. The request must contain the purpose of the subordination; exact amount of money or property involved; description of security property involved; type of security instrument; name, address, line of business and other general information pertaining to the party in favor of which the request is made; and other pertinent information to evaluate the need for the request;

(ii) Current balance sheet;

(iii) If development work is involved, an operating budget on Form FmHA 442–7, "Operating Budget," or similar form which projects income and expenses through the first full year of operation following completion of planned improvements; or if no development work is involved, an income statement and budget on Form FmHA 442–2, "Statement of Budget, Income, and Equity," schedules 1 and 2, or similar form;

(iv) Copy of proposed security instrument;

(v) Appraisal report, when applicable;

(vi) OGC opinion on the request;

(vii) Exhibit A of this subpart (available in any FmHA office), appropriately completed;

(viii) Appropriate environmental review; and

(ix) Any other necessary supporting information.

(4) *Closing.* All requests for subordination will be closed according to instructions from the Office of the General Counsel (OGC) except those which affect only chattel liens other than pledges of revenue. FmHA's consent on Form FmHA 465–1 will be signed concurrently with Form FmHA 460–2, "Subordination by the Government," when applicable.

(g) *Reamortization*—(1) *State Director Authorization.* The State Director is authorized to approve reamortization of deliquent loans which cannot be brought current within one year while maintaining a reasonable reserve when all of the following conditions exist:

(i) The debt to be reamortized does not exceed the State Director's loan approval authorization;

(ii) The borrower has demonstrated for at least one year by actual performance or has presented a budget which clearly indicates that it is able to meet the proposed payment schedule; and

(iii) There is no extension of the final maturity date.

(2) *Requests Requiring National Office Approval.* Reamortization requests not meeting the above requirements may be reamortized with prior approval of the National Office. Requests forwarded to the National Office will contain the case file, including:

(i) Current budget and cash flow prepared on Form FmHA 442–2, schedules 1 and 2, or similar form;

(ii) Current balance sheet;

(iii) Current income statement;

(iv) Exhibit A of this subpart, appropriately completed;

(v) form FmHA 1951–33, "Reamortization Request," completed in accordance with § 1951.207(g)(3)(i) of this subpart, when applicable; and

(vi) Any other necessary supporting information.

(3) *Processing.* (i) Reamortization of loans secured by notes and mortgages will be accomplished through the use of a new evidence of debt unless OGC recommends that the terms of the existing document be modified through the use of Form FmHA 1951–33, if legally adequate, or otherwise through the use of another appropriate form. Ordinarily the entire note, including principal and interest, is reamortized. Accrued interest will be at the original rate.

(ii) Loans secured by bonds or notes with other than real or chattel security pledged to FmHA may be reamortized using procedures which are acceptable to the State Director and legally permissible under State statutes in the opinion of the borrower's counsel and the OGC. The procedure may include a new debt instrument or agreement for the total FmHA indebtedness including the delinquency, or a new debt instrument or agreement whereby the borrower agrees to repay the delinquency plus interest at the original bond rate over an established period. When reamortization of a delinquent or problem loan secured by a bond cannot be perfected by issuing a new debt instrument due to State statutes, or the cost of preparation and closing is prohibitive, a rescheduling agreement, Exhibit H of this subpart (available in any FmHA office), may be used. When legally permissible and administratively acceptable, the total outstanding principal and interest balances should be reamortized rather than only the delinquent amount.

(iii) When a new debt instrument or agreement for only the delinquency is used, a copy will be sent to the Finance Office after execution. In cases where serial bonds are used as evidence of security, the original serial bond(s) will be submitted to the Finance Office. A new loan number will be assigned to the amortized delinquent amount. The borrower will be required to pay the amount due on the amortized delinquent amount plus regular scheduled installments on the loan. Section 1942.19 of subpart A of Part 1942 of this chapter applies to any new bonds issued unless precluded by State statutes or an exception is approved by the National Office. The agreement will contain:

(A) The amount delinquent, which must equal the total delinquency on the account, the unpaid principal on any advance, and the accrued interest on any advance through the date of reamortization, less interest payments credited on the advance account;

(B) The effective date of the reamortization;

(C) The number of years over which the delinquency will be amortized;

(D) The repayment schedule; and

(E) The interest rate.

(iv) When a new instrument or endorsement is executed, an amortized payment or principal and interest payment closely approximating equal installments of principal and interest will be due on the next scheduled due date. Deferment of interest and/or principal payments is not authorized. New instruments or endorsements are handled as follows:

(A) *Notes and endorsements.* The original of a new note, or any endorsement required by OGC, is to be attached to the existing note, filed in the servicing office, and retained by FmHA until the account is paid in full or otherwise satisfied. A copy will be forwarded to the Finance Office.

(B) *Bonds.* Since State statutes vary regarding reamortization of bonds, each State Office will work closely with OGC when bonds are involved. If State statutes do not require the release of existing bonds, they will be retained with the new bond instrument or agreement in the FmHA office authorized to store such documents. If State statutes require release of existing bonds, the exchange will be accomplished by the District Director, and the new bond and/or agreement will be retained in the appropriate office.

(v) When a new debt instrument or agreement is required, a separate new instrument will be required for each loan being reamortized.

(vi) Reamortizations will be perfected in accordance with OGC closing instructions.

(vii) When debt instruments are being modified or new debt instruments executed, bond counsel or local counsel, as appropriate, must provide an opinion indicating any effect on FmHA's security position. The FmHA approval official must determine that the government's interest will remain adequately protected if the security position will be affected.

(h) *Third party agreements.* The State Director may authorize all or part of a facility to be operated, maintained or managed by a third party under a contract, management agreement, written lease, or other third party agreement as follows:

(1) *Leases*—(i) *Lease of all or part of a facility (except when liquidation action is pending).* The State Director may consent to the leasing of all or a portion of security property when the loan is not a problem loan and when:

(A) Leasing is the only feasible way to provide the service and is the customary practice as required under § 1942.17(b)(3) of Subpart A of Part 1942 of this chapter.

(B) The borrower retains ultimate responsibility for operating, maintaining, and managing the facility and for its continued availability and use at reasonable rates and terms as required under § 1942.17(b)(3) of Subpart A of Part 1942 of this chapter. The lease agreement must clearly reflect sufficient control by the borrower over the operation, maintenance, and management of the facility to assure that the borrower maintains this responsibility;

(C) The lease agreement should contain provisions prohibiting any amendments to the lease or any subleasing arrangements without prior written approval from FmHA;

(D) Nondiscrimination requirements must be contained in the lease document as set forth in § 1951.204 of this subpart; and

(E) The lease should contain a provision which recognizes FmHA as lienholder on the subject facility and as such the lease is subordinate to the rights and claims of FmHA as lienholder.

(F) Lease/purchase arrangements are not permissible except as set forth in § 1951.212 of this subpart.

(ii) *Lease of all or part of a facility (pending liquidation action).* The State Director may consent to the leasing of all or a portion of security property when:

(A) The lease will not adversely affect the repayment of the loan or the Government's rights under the security or other instruments;

(B) The State Director has determined that liquidation will likely be necessary and the lease is necessary until liquidation can be accomplished;

(C) Leasing is not an alternative to, or means of delaying, liquidation action;

(D) The lease and use of any proceeds from the lease will further the objective of the loan;

(E) Rental income is assigned to FmHA in an amount sufficient to make regular payments on the loan and operate and maintain the facility unless such payments are otherwise adequately secured; and

(F) The lease is advantageous to the borrower and is not disadvantageous to the Government.

(G) If foreclosure action has been approved and the case has been submitted to OGC, consent to lease and use of proceeds will be granted only with OGC's concurrence.

(H) The lease shall not exceed a one-year period. The property may not be under lease more than two consecutive years without authorization from the National Office. Long-term leases may be approved, with prior authorization from the National Office, if necessary to ensure the continuation of services for which the loan was made and if other servicing options contained in this subpart have been determined inappropriate for servicing the loan.

(iii) *Mineral leases.* Unless liquidation is pending, the State Director is authorized to approve mineral leases when:

(A) The lessee agrees, or is liable without any agreement, to pay adequate compensation for any damage to the real estate surface and improvements. Damage compensation will be assigned to FmHA or the prior lienholder by the use of Form FmHA 443–16, "Assignment of Income from Real Estate Security," or other appropriate instrument;

(B) Royalty payments are adequate and are assigned to FmHA on Form FmHA 443–16 in an amount determined by the State Director to be adequate to protect the government's interest;

(C) All or a portion of delay rentals and bonus payments may be assigned on Form FmHA 443–16 if needed for protection of the Government's interest;

(D) The lease, subordination, or consent form is acceptable to OGC; and

(E) The lease will not interfere with the purpose for which the loan or grant was made.

(F) When FmHA consent is required, the borrower will complete and submit Form FmHA 465–1. The form will include the terms of the proposed agreement and specify the use of all proceeds, including any to be released to the borrower.

(2) *Management Agreements.* Management agreements should contain the minimum suggested contents contained in Guide 24 of Part 1942, Subpart A of this chapter (available in any FmHA office).

(3) *Affiliation Agreements.* An affiliation agreement between the borrower and a third party may be approved by the State Director, with OGC concurrence, if it provides for shared services between the parties and does not result in changes to the borrower's legal organizational structure which would result in its loss of control over its assets and/or over the operation, management, and maintenance of the facility to the extent that it cannot carry out its responsibilities as set forth in § 1942.17(b)(3) of Subpart A of Part 1942 of this chapter. However, affiliation agreements which result in a loss of borrower control may be approved with prior concurrence of the Administrator if the loan is reclassified as a nonprogram loan and the borrower is notified that it is no longer eligible for any program benefit. Requests forwarded to the Administrator will contain the case file, the proposed affiliation agreement, and necessary supporting information.

(4) *Processing.* The consent of other lienholders will be obtained when required. When National Office approval is required, or if the State Director wishes to have a transaction reviewed prior to approval, the case file will be forwarded to the National Office and will include:

(i) A copy of the proposed agreement;

(ii) Exhibit A of this subpart (available in any FmHA office), appropriately completed.

(iii) Any other necessary supporting information.

(i) *Changes in Borrower's Legal Organization.* (1) The State Director may approve, with OGC's concurrence, changes in a recipient's legal organization, including revisions of articles of incorporation or charter and bylaws, when:

(i) The change does not provide for a sole member type of organization;

(ii) The borrower retains control over its assets and over the operation, management, and maintenance of the facility, and continues to carry out its responsibilities as set forth in § 1942.17(b)(3) of Subpart A of Part 1942 of this chapter; and

(iii) The borrower retains significant local ties with the rural community.

(2) The State Director may approve, with prior concurrence of the Administrator, changes in a recipient's legal organization which result in a sole member type of organization, or any other change which results in a recipient's loss of control over its assets and/or the operation, management and maintenance of the facility, provided all of the following have been or will be met:

(i) The change is in the best interest of the Government;

(ii) The State Director determines and documents that other servicing options under this subpart, such as sale or transfer and assumption, have been explored and are not feasible;

(iii) The loan is classified as a nonprogram loan;

(iv) The borrower is notified that it is no longer eligible for any program benefits, but will remain responsible under the loan agreement; and

(v) Prior concurrence of the Administrator is obtained. Requests will be forwarded to the Administrator: Attention (appropriate program division), and will include the case file; Exhibit A of this subpart (available in any FmHA office), appropriately completed; the proposed changes; OGC comments; and any other necessary supporting information.

(j) *Membership liability.* As a loan approval requirement, some borrowers may have special agreements with members for the purchase of shares of stock or for payment of a pro rata share of the loan in the event of default, or they may have authority in their corporate instruments to make special assessments in that event. Such agreements may be referred to as individual liability agreements and may be assigned to and held by FmHA as additional security. In other cases the borrower's note may be endorsed by individuals. The liability instruments will be serviced in a manner indicated by their contents and the advice of OGC to adequately protect FmHA's interest. Servicing actions necessary due to such provisions will be noted on Form FmHA 1905–10, "Management System Card—Association."

(k) *Other security.* Other security such as collateral assignments, water stock certificates, notices of lienholder interest (Bureau of Land Management grazing permits) and waivers of grazing privileges (Forest Service grazing permits) will be serviced to protect the interest of FmHA, and in compliance with any special servicing actions developed by the State Director with OGC assistance. Evidence of the security will be filed in the servicing office case file. Necessary servicing actions will be noted on Form FmHA 1905–10.

(l) *Correcting errors in security instruments.* Land, buildings, or chattels included in a mortgage through mutual mistake may be released from the mortgage by the State Director when substantiated by the factual situation. The release is contingent on the State Director determining, with OGC advice,

that the property was included due to mutual error.

(m) *Environmental requirements.* Servicing activities such as transfers, assumptions, subordinations, sale or exchange of security property, and leasing of security will be reviewed for compliance with Subpart G of Part 1940 of this chapter. The appropriate environmental review will be completed prior to approval of the servicing action. When National Office approval is required, the completed environmental review will be included with other information submitted.

(n) *Refinancing requirements.* In accordance with the CONACT, FmHA requires that if at any time it shall appear to the Government that a borrower is able to refinance the amount of the indebtedness then outstanding, in whole or in part, by obtaining a loan for such purposes from responsible cooperative or private credit sources, at reasonable rates and terms for loans for similar purposes and periods of time, the borrower will, upon request of the Government, apply for and accept such loan in sufficient amount to repay the Government and will take all such actions as may be required in connection with such loan. Applicable requirements are set forth in Subpart F of this Part 1951.

(o) *Unauthorized financial assistance.* Subpart O of Part 1951 of this chapter prescribes policies for servicing the loans and grants covered under this subpart when it is determined that a borrower or grantee was not eligible for all or part of the financial assistance received in the form of a loan, grant, subsidy, or any other direct financial assistance.

§ 1951.208 Liquidation of security.

When the District Director believes that continued servicing will not accomplish the objectives of the loan, he or she will complete Exhibit A of this subpart, and submit it with the District Office file to the State Office. If the State Director determines the account should be liquidated, he or she will encourage the borrower to dispose of the FmHA security voluntarily through a sale or transfer and assumption, and establish a specified period, not to exceed 180 days, to accomplish the action. If a transfer or voluntary sale is not carried out, the loan will be liquidated according to Subpart A of Part 1955 of this chapter.

§ 1951.209 Sale or exchange of security property.

A cash sale of all or a portion of a borrower's assets or an exchange of security property may be approved subject to the conditions set forth below.

(a) *Authorities.* (1) The District Director is authorized to approve actions under this section involving only chattels.

(2) The State Director is authorized to approve real estate transactions except as noted in the following paragraph.

(3) Approval of the Administrator must be obtained when a substantial loss to the Government will result from a sale, one or more members of the borrower's organization proposes to purchase the property, it is proposed to sell the property for less than the appraised value, or the buyer refuses to assume all the terms of the Grant Agreement. It is not FmHA policy to sell security property to one or more members of the borrower's organization at a price which will result in a loss to the Government.

(b) *General.* Approval may be given when the approval official determines and documents that:

(1) The consideration is adequate;

(2) The release will not prevent carrying out the purpose of the loan;

(3) The remaining property is adequate security for the loan or the transaction will not adversely affect FmHA's security position;

(4) If the property to be sold or exchanged is to be used for the same or similar purposes for which the loan or grant was made, the purchaser will:

(i) Execute Form FmHA 400–4, "Assurance Agreement." The covenants involved will remain in effect as long as the property continues to be used for the same or similar purposes for which the loan or grant was made. The instrument of conveyance will contain the covenant referenced in § 1951.204 of this subpart; and

(ii) Provide to FmHA a written agreement assuming all rights and obligations of the original grantee. See § 1951.214 below for additional guidance on grant agreements.

(5) The proceeds remaining after paying any reasonable and necessary selling expenses are used for one or more of the following purposes:

(i) To pay on FmHA debts according to § 1951.207(a) of this subpart; on debts secured by a prior lien; and on debts secured by a subsequent lien if it is to FmHA's advantage.

(ii) To purchase or to acquire through exchange property more suitable to the borrower's needs, if the FmHA-secured debt will be as well secured after the transaction as before.

(iii) To develop or enlarge the facility if necessary to improve the borrower's debt-paying ability; place the operation on a sounder basis; or otherwise further the loan objectives and purposes.

(6) Disposition of property acquired in whole or part with FmHA grant funds will be handled in accordance with the grant agreement.

(c) *Processing.* (1) The case file will contain the following:

(i) Exhibit A of this subpart, appropriately completed, except for actions approved by the District Director;

(ii) The appraisal report, if appropriate;

(iii) Name of purchaser, anticipated sales price, and proposed terms and conditions;

(iv) Form FmHA 1965–8, "Release from Personal Liability," including the County Committee memorandum and the State Director's recommendation, when a loss to the Government will result and the Administrator must approve the release from liability as provided for in § 1951.209(d)(3) of this subpart. If the request is favorably considered, Form FmHA 1965–8 will be retained in the National Office until the sale is closed. When the State Director notifies the National Office that the sale has been completed, the form will be executed and returned to the State Director for further distribution in accordance with the Forms Manual Insert.

(v) An executed Form FmHA 400–4, if applicable;

(vi) An executed Form FmHA 465–1, if applicable; and

(vii) Form FmHA 460–4, "Satisfaction," if a debt has been paid in full or satisfied by debt settlement action. For cases involving real estate, a similar form may be used if approved by OGC.

(2) Releasing security:

(i) The District Director is authorized to satisfy or terminate chattel security instruments when § 1951.209(b) of this subpart and §§ 1962.17 and 1962.27 of Subpart A of Part 1962 of this chapter have been complied with. Partial release may be made by using Form FmHA 460–1, "Partial Release," or Form FmHA 462–12, "Statements of Continuation, Partial Release, Assignment, etc.

(ii) Subject to § 1951.209(b) of this subpart, the State Director is authorized to release part or all of an interest in real estate security by approving Form FmHA 465–1. Partial release of real estate security may be made by use of Form FmHA 460–1 or other form approved by OGC.

(3) FmHA liens will not be released until the appropriate sale proceeds are received for application on the Government's claim. In states where it is

necessary to obtain the insured note from the lender to present to the recorder before releasing a portion of the land from the mortgage, the borrower must pay any cost for postage and insurance of the note while in transit. The District Director will advise the borrower when it requests a partial release that it must pay these costs. If the borrower is unable to pay the costs from its own funds, they may be deducted from the sale proceeds. The amount of the charge will be based on the statement of actual costs furnished by the insured lender.

(d) *Release from liability.* (1) When an FmHA debt is paid in full from the proceeds of a sale, the borrower will be released from liability by use of Form FmHA 1965–8.

(2) When sale proceeds are not sufficient to pay the FmHA debt in full and all security property has been disposed of, the borrower may be released from liability, except for nonprogram and Economic Opportunity Cooperative loans, by use of Form FmHA 1965–8 if the State Director determines that the borrower does not have reasonable debt-paying ability considering its assets and income at the time of the sale, and the County Committee recommends release from liability by executing a memorandum containing the following statement:

_____ in our opinion does not have reasonable debt-paying ability to pay the balance of the debt after considering its assets and income at the time of the sale. The borrower has cooperated in good faith, used due diligence to maintain the security against loss, and otherwise fulfilled the covenants incident to the loan to the best of its ability. Therefore, we recommend that the borrower be released from liability upon the completion of the sale.

(3) Subject to the policies, procedures, and limitations set forth in § 1951.209(d)(2) of this subpart, the release from liability may be approved:

(i) By the State Director when the balance of the indebtedness not paid, including principal, interest, and other charges, is less than $50,000, and when the indebtedness is paid in full.

(ii) By the Administrator when the balance of the indebtedness not paid, including principal, interest and other charges, is $50,000 or more.

§ 1951.210 Transfer of security and assumption of loans.

(a) *General.* It is FmHA policy to approve transfers and assumptions to transferees which will continue the original purpose of the loan in accordance with the following and specific requirements relating to eligible and ineligible borrowers set forth below:

(1) The present borrower is unable or unwilling to accomplish the objectives of the loan.

(2) The transfer will not be disadvantageous to the Government or adversely affect either FmHA's security position or the FmHA program in the area.

(3) Transfers to eligible applicants will receive preference over transfers to ineligible applicants if recovery to FmHA is not less than it would be if the transfer were to an ineligible applicant.

(4) If the FmHA debt(s) exceed the present market value of the security as determined by the State Director, the transferee will assume an amount at least equal to the present market value.

(5) If the transfer and assumption is to one or more members of the borrower's organization, there must not be a loss to the government.

(6) FmHA concurs in plans for disposition of funds in the transferor's debt service, reserve, operation and maintenance, and any other project account, including supervised bank accounts.

(7) When the property to be transferred is to be used for the same or similar purposes for which the loan was made, the transferee will execute Form FmHA 400–4 to continue nondiscrimination covenants and provide to FmHA a written certification assuming all terms of the Grant Agreement executed by the transferor. All instruments of conveyance will contain the covenant referenced in § 1951.204 of this subpart.

(8) This subpart does not preclude the transferor from receiving equity payments when the full amount of the FmHA debt is assumed. However, equity payments will not be made on more favorable terms than those on which the balance of the FmHA debt will be paid.

(9) Transferees must have the ability to pay the FmHA debt as provided in the assumption agreement and the legal capacity to enter into the contract. The applicant will submit a current balance sheet using Form FmHA 442–3, "Balance Sheet," and budget and cash flow information using Form FmHA 442–2, "Statement of Budget, Income, and Equity," or similar forms. For ineligible applicants, such information may be supplemented by a credit report from an independent source or verified by an independent certified public accountant.

(10) For purposes of this subpart, transfers to eligible applicants will include mergers and consolidations. Mergers occur when two or more corporations combine in such a manner that only one remains in existence. In a consolidation, two or more corporations combine to form a new, consolidated corporation, with all of the original corporations ceasing to exist. In both mergers and consolidations, the surviving or emerging corporation takes the assets and assumes the liabilities of the corporation(s) which ceased to exist. Such transactions must be distinguished from transfers and assumptions, in which a transferor will not necessarily go out of existence and the transferee will not always take all assets or assume all liabilities of the transferor.

(11) A current appraisal report to establish the present market value of the security will be completed in accordance with § 1951.205(c) of this subpart when the full debt is not being assumed.

(12) There must be no lien, judgement, or similar claims of other parties against the FmHA security being transferred unless the transferee is willing to accept such claims and the FmHA approval official determines that they will not prevent the transferee from repaying the FmHA debt, meeting all operating and maintenance costs, and maintaining required reserves. The written consent of any other lienholder will be obtained where required.

(b) *Authorities.* The State Director is authorized to approve transfers and assumptions of FmHA loans in accordance with the provisions of paragraphs (c) and (d) of this section, except for the following, which require prior approval of the Administrator:

(1) Proposals which will involve a loss to the Government;

(2) Proposals involving a transfer to one or more members of the present borrower's organization;

(3) Proposals involving rates and terms which are more liberal than those set forth in §1951.210(c) of this subpart;

(4) Proposals involving a cash payment to the present borrower which exceeds the actual sales expenses;

(5) The transferee refuses to assume all terms of the Grant Agreement for a project financed in part by FmHA grant funds;

(6) Proposed transfers to ineligible applicants when there is no significant downpayment and/or the repayment period is to exceed 25 years.

(7) For Indian Tribes and Tribal Corporations, the requirements found in Exhibit M of Subpart G of Part 1940 of this chapter are not met.

(c) *Eligible applicants.* Except as noted in § 1951.210(b) of this subpart, the State Director is authorized to approve transfers of security property to and assumptions of FmHA debts by transferees who would be eligible for financial assistance under the loan

program involved for the type of loan being transferred. The State Director must determine and document that eligibility requirements have been satisified.

(1) If a loan is evidenced and secured by a note and lien on real or chattel property, Form FmHA 1951–15, "Community Programs Assumption Agreement," will be executed by the transferee. When the terms of the loan are changed, the new repayment period may not exceed the lesser of the repayment period for a new loan of the type involved or the expected life of the facility. The interest rate will be the rate specified in the note(s) being assumed.

(2) If the loan is evidenced and secured by a bond, procedures will be followed which are acceptable to the State Department and legally permissible under State law in the opinion of the borrower's counsel and OGC. The interest rate will be the rate specified in the outstanding bond(s). Any new repayment period provided may not exceed the lesser of the repayment period for a new loan of the type involved or the expected life of the facility.

(3) Loans being transferred and assumed may be conbined when a new debt instrument will be issued and the loans have the same interest rate and are for the same purpose.

(4) A loan may be made in connection with a transfer if the transferee meets all eligibility and other requirements for the kind of loan being made. Such a loan will be considered as a separate loan, and must be evidenced by a separate debt instrument. However, it is permissible to have one authorizing loan resolution or ordinance if permitted by State statutes.

(5) Any depelopment funds remaining is a supervised bank account which are not to be refunded to FmHA will be transferred to a supervised bank account for the transferee simultaneously with the closing of the transfer for use in completing planned development.

(d) *Ineligible applicants.* Except as noted in § 1951.210(b) of this subpart, the State Director is authorized to approve transfer and assumption to transferees who would not be eligible for financial assistance under the loan program involved for the type of loan being transferred. Such transfers are considered only when an eligible transferee is not available or when the recovery to FmHA from a transfer to an available eligible transferee would be less. Transfers are not to be considered as a means by which members of the transferor's governing body can obtain an equity or as a method of providng a source of easy credit for pruchasers.

(1) Ineligible applicants must pay a one-time non-refundable transfer fee when they submit an application or proposal.

(i) The National Office will issue a directive annually advising the field of the amount of the fee. Any cost for appraisals performed by nonFmHA personnel will be handled in accordance with FmHA Instruction 2024–P (available in any FmHA office), and will be added to the basic fee.

(ii) Transfer fees will be deposited in accordance with current instructions governing the handling of collections. The fees will be identified as transfer fees of Form FmHA 451–2, "Schedule of Remittances," and will be included on the Daily Activity Report. The amount will be credited to the Rural Development Insurance Fund.

(iii) If the State Director determines waiver of the transfer fee is in the best interest of the government, he or she will request prior approval by submitting the transfer case file established in accordance with processing requirements set forth below to the National Office, Attention (appropriate program division).

(2) Any funds remaining in a supervised bank account will be refunded to FmHA and applied to the debt as a condition of transfer.

(3) The interest rate will be the greater of the rate specified in the transferor's note or the market rate for Community Programs as of the transfer closing date.

(4) The transferred loan will be identified as a nonprogram (NP) loan and serviced in accordance with § 1951.221 of this subpart.

(5) Form FmHA 465–5, "Transfer of Real Estate Security," will be used, and will be modified as appropriate before execution.

(6) Consideration will be given to obtaining individual liability agreements from members of the transferee organization.

(e) *Release from liability.* Except when nonprogram loans or Economic Opportunity Cooperative loans are involved, transferors may be released from liability in accordance with the following:

(1) If the full amount of the debt is assumed, the State Director may approve the release from liability.

(2) If less than the full amount of the debt is assumed, release from liability may be approved by the State Director if the balance unpaid, including principal, interest, and all other charges, is less than $50,000, and by the Administrator when the balance is $50,000 or more, provided:

(i) The FmHA approval official determines that the transferor does not have reasonable debt-paying ability considering its assets and income at the time of the transfer;

(ii) The County Committee executes a memorandum containing the following statement:

——— in our opinion does not have reasonable debt-paying ability to pay the balance of the debt after considering its assets and income at the time of the sale. The borrower has cooperated in good faith, used due diligence to maintain the security against loss, and otherwise fulfilled the covenants incident to the loan to the best of its ability. Therefore, we recommend that the borrower be released from liability upon the completion of the sale.

(3) When the Administrator's approval is required, Form FmHA 1965–8 will be forwarded to the Administrator, Attention: (appropriate program division), prior to closing. When notified of the closing, the Administrator will execute the form and forward it to the State Director for distribution in accordance with the Forms Manual Insert.

(f) *Processing.* Transfers and assumptions will be processed in accordance with the following:

(1) A transfer case file organized in accordance with FmHA Instruction 2033–A (available in any FmHA office) will be established, and will contain all documents and correspondence relating to the transfer. The forms utilized for transfers and assumptions are listed in Exhibit D (available in any FmHA office). All forms listed must be completed and included in the case file unless inappropriate for the particular situation.

(2) A letter of conditions establishing requirements to be met in connection with the transfer and assumption will be issued, and the transferee will be required to execute Form FmHA 442–46, "Letter of Intent to Meet Conditions," prior to the closing of the transfer.

(3) Both the transferee and transferor are responsible for obtaining the legal services necessary to accomplish the transfer.

(4) Transfers will be closed in accordance with instructions provided by OGC.

(5) When the transferee is a public body and Form FmHA 1951–15 is not suitable, the transferee's attorney will prepare the documents necessary to effect the transfer and assumption and submit them for approval by FmHA and OGC.

(6) Accrued interest to be entered in either Table 1 of Form FmHA 1951–15 or other appropriate assumption agreement

is to be obtained using the status screen option in ADPS.

(7) The following forms, if utilized, will be sent immediately to the Finance Office:

(i) Form FmHA 1951–15 or other appropriate assumption agreement;

(ii) A conformed copy of Form FmHA 1965–8. When the Administrator must execute the form in accordance with § 1951.210(e)(3), a conformed copy will be sent to the Finance Office upon receipt by the State Director.

(8) If an FmHA grant was made in conjunction with the loan being transferred, the transferee must provide to FmHA a written agreement assuming all rights and obligations of the original grantee. See § 1951.214 below for additional guidance on grant agreements.

(9) The transferee will obtain insurance according to requirements for the loan(s) being transferred unless the approval official requires additional insurance. When the entire FmHA debt is being assumed and an amount has been advanced for insurance premiums or any other purposes, the transfer will not be completed until the Finance Office has charged the advance to the transferor's account.

(10) Rates and terms. (i) If the transfer will be closed at the same rates and terms, the transferee will be informed of the amount needed to be on schedule by the next installment due date.

(ii) If the transfer will be closed at new rates and terms, the transferee will be informed of the amount of principal and interest owed based on information obtained using the ADPS status screen option.

(11) The effective date of a transfer is the actual date the transfer is closed, which is the same date Form FmHA 1951–15 or other appropriate assumption agreement is signed.

(12) Title to all assets will be conveyed from the transferor to the transferee unless other arrangements are agreed upon by all parties concerned, including FmHA. All instruments of conveyance will contain the covenant referenced in § 1951.204 of this subpart.

(13) If an insured loan being held by an investor is involved, the Finance Office will have to repurchase the note prior to processing the assumption agreement.

(14) When National Office approval is required, the transfer case file will be submitted to the Administrator, Attention: (appropriate program division), with Exhibit A (available in any FmHA office), appropriately completed, and a cover memorandum which denotes any unusual circumstances.

§ 1951.211 Special provisions applicable to Economic Opportunity (EO) Cooperative loans.

(a) *Withdrawal of member and transfer to and assumption by new members of Unincorporated Cooperatives.* (1) Withdrawal of a member who is no longer utilizing the services of an association and transfer of withdrawing member interest in the association to a new member who will assume the entire unpaid balance of the indebtedness of the withdrawing member may be permitted, if the remaining members agree to accept the new member and the transfer will not adversely affect collection of the loan. The servicing office will submit to the State Office the borrower case file and the following:

(i) Form FmHA 1951–15 executed by the proposed new member;

(ii) Statement of the current amount of the indebtedness involved;

(iii) A description and statement of the value of the security property;

(iv) A memorandum to justify the transaction;

(v) Form FmHA 440–2, "County Committee Certification or Recommendation";

(vi) Exhibit B of this subpart, "Agreement for New Member (With or Without Withdrawing Member)," (available in any FmHA Office) executed by the remaining members of the association, the proposed new member, and the withdrawing member; and

(vii) Form FmHA 450–12, "Bill of Sale (Transfer by Withdrawing Member)," executed by the withdrawing member.

(2) If the State Director determines after review of the above information that the proposed new member is eligible and the transfer is justified, the State Director may approve the transfer and assumption by executing Form FmHA 1951–15.

(3) Upon completion of the above actions, the State Director may release the outgoing member from personal liability using Form FmHA 1965–8.

(4) If Finance Office records must be changed due to changes in borrower name, address and/or case number, necessary documents, including Form FmHA 1951–15 and, if applicable, Form FmHA 1965–8, will be forwarded to the Finance Office immediately with a memorandum indicating that the purpose of the submission is only to establish liability for a new member and release an old member from liability.

(b) *Withdrawal of members from Unincorporated Cooperatives when new member not available.* Withdrawal of a member who no longer utilizes the services of an association may be permitted even though a new member is not available, provided:

(1) The State Director determines that the remaining members have sufficient need for the property, and that the withdrawal of the member will not adversely affect collection of the loan.

(2) The remaining members obtain from the outgoing member an agreement conveying his or her interest in the cooperative property to them. They may also wish to agree to protect the outgoing member against liability on the debt owed to FmHA as well as any other debts. Exhibit C of this subpart, "Agreement for Withdrawal of Member (Without New Member)," (available in any FmHA office) may be used by the cooperative. FmHA will not be a party to the agreement.

(c) *Addition of new members (no withdrawing member or transfer involved) for both Incorporated and Unincorporated Cooperatives.* (1) A new member may be admitted to the association even though there is no withdrawing member, if:

(i) The members of the association agree to accept the proposed new member, and

(ii) The State Director determines that the association owns adequate facilities to provide service to the new member.

(2) The servicing office will submit to the State Office the case file and items in § 1951.211(a)(1) (i) through (vi).

(3) If the State Director determines after the review of the above information that the proposed new member is eligible and the transaction is justified, the State Director may approve the transaction by executing Form FmHA 1952–15.

(4) Form FmHA 1951–15 will be forwarded immediately to the Finance Office and the Finance Office advised by memorandum that the form is intended only to establish liability for a new member.

(d) *Deceased members of Unincorporated Cooperatives.* Form FmHA 442–24, "Operating Agreement," (now obsolete) was executed by recipients of these loans. Paragraph 10 of that form provides that in case of the death of any member, the heirs or personal representative of the deceased member shall take the deceased member's place in the association. This provision also covers sale of the decedent's interest in the association if the sale is necessary to pay debts of the estate.

(1) If the heirs or personal representative do not wish to continue

membership in the association, the remaining members may be permitted to continue to operate the property if FmHA's financial interest will not be jeopardized. The remaining members should obtain from the deceased member's estate an agreement conveying the estate's interest in the cooperative property to them. The remaining members may wish to agree to protect the estate against liability on the debt to FmHA as well as any other debts of the cooperative.

(2) The requirement of § 1962.46(h) of Subpart A of Part 1962 of this chapter will also be followed:

(e) *Action which affects individual members of Unincorporated EO Cooperative security.* The borrower will be expected to protect its own interest in condemnation, trespass, quiet title, and other cases affecting the security. The servicing office will immediately furnish the complete facts concerning any action taken against individual members of Unincorporated Cooperatives to the State Director together with the case file.

(f) *Transfers of Incorporated Economic Opportunity Cooperative loans to ineligible applicants.* The State Director is authorized to approve all transfers of incorporated Economic Opportunity Cooperative loans to ineligible applicants without regard to the requirements set forth in § 1951.210 above.

(g) *Debt Settlement.* Debt settlement actions for Economic Opportunity Cooperative loans must be handled under the Federal Claims Collection Act; proposals will be submitted to the National Office for review and approval.

§ 1951.212 Water and waste disposal systems which have become part of an urban area.

A water and/or waste disposal system serving an area which was formerly a rural area as defined in § 1942.17(b) of Subpart A of Part 1942 of this Chapter, but which has become in its entirety part of an urban area, will be serviced in accordance with this section.

(a) *Curtailment or limitation of service.* Service may not be curtailed or limited by the inclusion of a system within an urban area.

(b) *Sale or transfer and assumption.* (1) The urban community or another entity may purchase the facility involved and immediately pay the FmHA debt in full; or

(2) The urban community or another entity may accept a transfer of the FmHA debt on an ineligible applicant basis.

(3) When a grant is involved, the entity will provide to FmHA a written agreement assuming all rights and obligations of the original grantee. See § 1951.214 below for additional guidance on grant agreements.

(c) *Lease-purchase arrangement.* If paragraphs (b) (1) and (2) of this section are not practicable, the urban community may, with prior approval of the National Office, operate and maintain the system under a lease-purchase arrangement which provides that:

(1) The urban community will:

(i) Assume responsibility for operation and maintenance of the facility, subject to nondiscrimination and all other requirements which are applicable to the borrower, which are to be specified in the agreement between the parties; and

(ii) Pay the association annually an amount sufficient to enable it to meet all its obligations, including reserve account requirements.

(2) The FmHA borrower will:

(i) Meet its debt service and reserve account requirements to FmHA;

(ii) Retain its corporate existence until FmHA has been paid in full; and

(iii) If agreed upon by both parties, convey title to the facility to the urban community when the FmHA debt has been paid in full;

(d) *Processing.* (1) Sale of a borrower's assets will be handled in accordance with § 1951.209 of this subpart.

(2) Transfer and assumption of a borrower's assets and indebtedness will be handled in accordance with § 1951.210.

(3) lease-option-to-purchase arrangements are not permitted.

(4) When a lease-purchase arrangement is proposed, the State Director will obtain a proposed agreement drafted by either the borrower or the urban community. The following will be forwarded to the Administrator, Attention: Water and Waste Disposal Division, for review and approval authorization:

(i) A copy of the proposed agreement;

(ii) Exhibit A (available in any FmHA office), appropriately completed;

(iii) OGC comments;

(iv) The case file, including all documentation appropriate for the type of servicing action involved.

§ 1951.213 Care, management, and disposal of acquired property.

Property acquired by FmHA will be handled according to Subparts B and C of Part 1955 of this chapter.

§ 1951.214 Grants.

No monitoring action by FmHA is required after grant closeout. Grant closeout is when all required work is completed, administrative actions relating to the completion of work and expenditure of funds have been accomplished, and FmHA accepts final expenditure information. However, grantees remain responsible in accordance with the terms of the grant for property acquired with grant funds.

(a) *Applicability of requirements.* Servicing actions relating to FmHA grants are governed by the terms of the Grant Agreement and this subpart. The provisions of 7 CFR Part 3015 first became effective on November 10, 1981.

Grants made on or after November 10, 1981, are subject to the provisions of 7 CFR Part 3015 except to the extent of the express provisions of the Grant Agreement.

(b) *Authorities.* (1) For Water and Waste Disposal grants, the State Director is authorized to approve any servicing actions needed in accordance with the above, except that prior approval of the Administrator is required when property acquired with grant funds is disposed of in accordance with §§ 1951.209, 1951.210, or § 1951.212 of this subpart and the buyer or transferee refuses to assume all terms of the grant agreement.

(2) All other grants will be serviced in accordance with the Grant Agreement and this subpart. Prior approval of the Administrator is required except for actions covered in the preceding paragraph.

§ 1951.215 State Director's additional authorizations and guidance.

(a) *Promote financing purposes and improve or maintain collectibility.* The State Director is authorized to perform the following functions when the action is determined likely to promote the loan or grant purposes without jeopardizing collectibility of the loan or impairing the adequacy of the security; will strengthen the security; or will facilitate, improve, or maintain the orderly collection of the loan:

(1) Approve requests for permission to modify bylaws, articles of incorporation, or other rules and regulations of recipients, including changes in rate or fee schedules. Changes affecting the recipient's legal organizational structure must be approved by OGC.

(2) Consent to requests by the recipient to incur additional indebtedness, subject to applicable FmHA instructions and covenants in the loan or grant agreement.

(3) Renew existing security instruments.

(4) Approve the extension or expansion of facilities and services.

(5) Require additional security when:

(i) Existing security is inadequate and the loan or security instruments obligate the borrower to give additional security; or

(ii) The loan is in default and additional security is acceptable in lieu of other servicing actions.

(b) *Referrals to National Office.* All proposed servicing actions which the State Director is not authorized by this subpart to approve will be referred to the National Office.

(c) *Defeasance of FmHA Indebtedness.* Defeasance is the use of invested proceeds from a new bond issue to repay outstanding bonds in accordance with the repayment schedule of the outstanding bonds. The new issue supersedes the contractual agreements the borrower agreed to in the prior issue. Defeasance, or amending outstanding loan instruments and agreements to permit defeasance, of FmHA debt instruments is not authorized, since defeasance limits, or eliminates entirely, the borrower's ability to comply with statutory refinancing requirements implemented by Subpart F of this Part 1951.

§ 1951.216 Payment in full.

Payment in full of a loan is handled according to Part 1866 of this Chapter (FmHA Instruction 451.4). When a loan is paid in full, the servicing official will:

(a) Notify the company providing fidelity bond coverage in writing that the Government no longer has an interest in the fidelity bond.

(b) Release FmHA's interest in insurance policies according to applicable provisions of Subpart A of Part 1806 (FmHA Instruction 426.1).

(c) Release FmHA's interest in any other security as appropriate, consulting with OGC if necessary.

§ 1951.217 State supplements.

Any State supplements developed to carry out the provisions of this subpart will be prepared in accordance with Subpart B of Part 2006 of this chapter (available in any FmHA office) and applicable State laws and regulations. State supplements are to be used only when required by National Instructions or necessary to clarify the impact of State laws or regulations; they are not to be used to restate the provisions of National Instructions. OGC advice and guidance will be obtained as needed.

§ 1951.218 Forms.

Forms utilized for actions under this subpart are to be modified appropriately where necessary to adapt the forms for use by corporate recipients rather than individuals.

§ 1951.219 Public bodies.

Servicing actions involving public bodies will be carried out to the extent feasible according to the provisions of this subpart. With prior National Office approval, the State Director is authorized to vary from such provisions if necessary and approved by OGC, provided such variation will not violate other regulatory or statutory provisions. To request approval, the case file, including copies of applicable documents, recommendations, and OGC comments, will be forwarded to the Administrator, Attention: (appropriate program division).

§ 1951.220 Special provision for interest rate change.

(a) *General.* Effective October 1, 1981, and thereafter, upon request of the borrower, the interest rate charged by FmHA to water and waste disposal and community facility borrowers shall be the lower of the rates in effect at either the time of loan approval or loan closing. Pub. L. 99–88 provides that any FmHA grant funds associated with such loans shall be set in the amount based on the interest rate in effect at the time of loan approval. Loans closed October 1, 1981, through October 25, 1985, were closed at the interest rate in effect at the time of loan approval and that interest rate is reflected in the borrower's debt instrument. For community facility and water and waste disposal loans closed on or after October 1, 1981, and for which the interest rate in effect at the time of loan closing is lower than the interest rate in effect at the time of loan approval, the borrower may request to be charged the lower interest rate. The loan closing interest rate will be determined by FmHA based upon requirements in effect at the date of loan closing. Exhibit E of this subpart (available in any FmHA office) contains a summary of interest rate requirements for specific time periods. Exhibit C of Subpart 0 of this Part (available in any FmHA office) will be used to determine the interest rate and effective dates by category of poverty, intermediate, and market rates. Exhibit F of this subpart (available in any FmHA office) contains the instructions on how to process a change of interest rate. Loans meeting the criteria of this section that have been paid in full are eligible for the borrower to request the lower interest rate. For loan(s) that involved multiple advances of FmHA funds using temporary debt instruments, wherein the borrower requests the interest rate in effect at loan closing, the interest rate charged shall be the rate in effect on the date when the first temporary debt instrument was issued.

(b) *Notification to borrower and borrower selection of interest rate.* (1) FmHA servicing officials will notify each borrower meeting the provisions of this section of the availability of a choice of interest rate. The notification will be made in writing at the earliest possible date, utilizing Exhibit G of this subpart (available in any FmHA office), and sent by certified mail, return receipt requested. Borrowers will be advised at the time of notification that is a change of interest rate is requested, the change will be accomplished administratively by FmHA. The effect of the change on the loan account will also be fully explained to the borrower.

(2) Borrowers must notify FmHA within 90 calendar days of the date of FmHA notification indicating their election to retain the rate in effect at loan approval or to change the rate to the rate in effect at the time of loan closing. If the borrower does not respond within the 90-day period, FmHA will not consider a future request for a lower interest rate under the provisions of this subpart.

(3) The borrower is responsible to assure that the borrower official executing the letter requesting the change of interest rate is duly authorized and any action(s) necessary for this authorization have been taken as required. Any costs associated with a change of interest rate will be the responsibility of the borrower

(c) *Processing loan interest rate change.* The State Director is authorized to approve loan interest rate changes which meet the requirements of this section. Loan interest rate changes will be accomplished as follows:

(1) All loan payments already applied to the account(s) will be reversed and reapplied by FmHA utilizing the changed interest rate. The balance remaining after the completion of the reversal and reapplication procedures will be applied first to any delinquency on the account and then to principal.

(2) For paid-in-full accounts which meet the criteria of § 1951.220(a) of this subpart, the balance of loan payments after completion of the reversal and reapplication procedures will be returned to the borrower as a refund unless the borrower is delinquent on another FmHA loan of the same type, in which case the refund will be applied first to the delinquent account and any balance refunded to the borrower.

(3) The Finance Office will administratively change the interest rate on a borrower's account in accordance with notification from the servicing official. The installment schedule set forth in each borrower's debt instrument will not change. The original principal schedule for principal-plus-interest accounts where principal *only* is stipulated will continue to be used for payment calculation by the Finance Office. Amortized accounts will adhere to the original payment schedule and amount. The last scheduled principal installment will be reduced by the amount of the balance previously generated by the reversal and reapplication of payments.

(4) When FmHA has processed a change of interest rate for an amortized loan and a reduction in installment amounts is needed to provide for a sound operation, the borrower may request reamortization in accordance with § 1951.207(g) of this subpart.

(5) The borrower will be notified in writing of the new interest rate as changed.

§ 1951.221 Servicing of nonprogram (NP) loans.

Borrowers with NP loans are not eligible for any program benefits, including appeal rights. However, FmHA may use any servicing tool under this subpart necessary to protect the Government's security interest, including reamortization or rescheduling. The refinancing requirements of Subpart F of this Part 1951 do not apply to NP loans. Debt settlement actions relating to NP loans must be handled under the Federal Claims Collection Act; proposals will be submitted to the National Office for review and approval. Any exception to the servicing requirements of NP loans under this subpart must have prior concurrence of the National Office.

§ 1951.222–1951.249 [Reserved]

§ 1951.250 OMB control number.

Collection of information requirements contained in this subpart have been approved by the Office of Management and Budget and have been assigned OMB Control Number 0575–0066.

Dated: January 27, 1989.

Neal Sox Johnson,

Acting Administrator, Farmers Home Administration.

[FR Doc. 89–5081 Filed 3–3–89; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Acceptance of Products Purchased for Use in Nuclear Power Plant Structures, Systems and Components

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Nuclear Regulatory Commission (Commission) is proposing to develop regulations requiring enhanced acceptance procedures including, but not limited to, receipt inspection and testing of products purchased for use in nuclear power plant structures, systems and components. This Advance Notice of Proposed Rulemaking (ANPR) is intended to solicit comments on the need for additional regulatory requirements and to obtain an improved understanding of alternatives to regulatory requirements that could provide assurance that structures, systems and components procured for use in nuclear power plants will perform as expected to protect public health and safety.

DATE: The comment period expires July 5, 1989. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

ADDRESSES: Mail comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. Federal workdays.

Examine copies of comments received at: The NRC Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Max J. Clausen, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–0969.

SUPPLEMENTARY INFORMATION:

Background

Appendix B to 10 CFR Part 50 of the Commission's regulations adopted in 1970 (35 FR 10498) establishes the quality assurance criteria for safety-related structures, systems and components for nuclear power plants. The purpose of the quality assurance criteria in Appendix B is to provide requirements for the design, procurement, receipt inspection and testing, construction and operation of nuclear power plant structures, systems and components. The criteria are generally structured to confirm the quality of products designed, purchased, inspected, tested and installed for use in nuclear power plant structures, systems and components. The criteria apply to all activities conducted during the design, construction and operating phases of nuclear power plants that affect the safety-related functions of structures, systems and components. Procedures and actions by licensees and their representatives conforming to these criteria are expected to detect substandard and poor quality products but may not necessarily detect counterfeit or fraudulently marketed products. Recent cases involving apparently substandard, counterfeit and fraudulently marketed products for nuclear power plant structures, systems and components have prompted the Commission to reconsider the adequacy of current regulations for detecting substandard, counterfeit and fraudulently marketed products and for assuring that such products are not used in nuclear power plant structures, systems and components.

Criteria III, IV, VII, VIII, and XV of Appendix B to 10 CFR Part 50 provide the criteria for the control of purchased structures, systems and components for nuclear power plants. Historically, licensees and their representatives have purchased products with certifications attesting to the quality of the products and have depended to varying degrees on the certifications as one basis for accepting the products. However, recent discoveries of substandard, counterfeit and fraudulently marketed products furnished to nuclear power plants by contractors and subcontractors demonstrate that current product acceptance practices, particularly those based heavily on certifications and stated catalog specifications, have not been sufficient in all cases. Additional details of apparently substandard, counterfeit, and fraudulently marketed products are contained in NRC Compliance Bulletin No. 87–02 and Supplements 1 and 2, NRC Bulletin No. 88–05 and Supplements 1 and 2, NRC Bulletin No. 88–10, NRC Information Notice No. 88–19, NRC Information Notice No. 88–35, NRC Information Notice No. 88–46 and Supplement 1, NRC Information Notice No. 88–48, and NRC Information Notice No. 88–97.[1]

[1] These documents are available for inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC.

In many cases, as in part discussed in the referenced bulletins and information notices, product acceptance practices have failed to detect such substandard, counterfeit or fraudulently marked products. Therefore, the Commission is considering the need for additional regulations or other methods to provide additional assurance that products purchased for use in nuclear power plant structures, systems and components satisfy requirements and specifications that are imposed to provide confidence that these items will perform as required to protect the public health and safety.

The Commissions's regulations provide two alternative approaches to assure that structures, systems and components satisfy requirements for safety-related applications. A licensee may procure products to the requirements of the applicable code or standard for the safety-related structure, system or component. Alternatively, the licensee may purchase a commercial grade product and then, using the appropriate procedures and satisfying the Commission's requirements, dedicate the commercial grade product for the safety-related application. The experiences that have been discussed in the bulletins and information notices previously referenced apply to products that were obtained using both of these approaches.

The Commission has concluded that significant engineering involvement is required during the procurement process for products used in nuclear power plants and during any testing of these products. It is the Commission's view that, in the past, inadequate engineering involvement has been a common weakness in licensees' procurement programs, particularly when commercial grade procurements were involved. It is the Commission's position that involvement of a licensee's engineering staff in the procurement process should include (1) selection of products to be used in the plant, (2) determination of the critical characteristics of the selected products that are to be verified during product acceptance, (3) determination of specific testing requirements applicable to the selected products, and (4) evaluation of test results. This involvement should be applicable to products initially procured as safety-related as well as commercial grade products procured for dedication and upgrading for use in safety-related applications. The extent of this engineering involvement will be highly dependent on the nature and use of the products involved.

The Commission is concerned about the quality of commercial grade products that are used throughout the nuclear plant, including applications in the "balance of plant" structures, sytems and components. This concern stems from a recognition that structures, sytems and components utilizing substandard products may not function as designed and may challenge safety-related systems unnecessarily or complicate the response to off-normal events. Commenters are requested to consider the issues and questions of this ANPR as they may relate to the need or desirability for either more prescriptive regulations or, alternatively, a performance-based requirement. Comments are also requested on the desirability of any such requirement for safety-related applications, as well as for applications throughout the plant.

A broad spectrum of issues needs to be considered before the Commission decides on the scope and content of any proposed new regulatory requirements addressing the concerns raised by the experience of licensees placing essentially complete reliance on certificates, such as Certificates of Compliance, and the evidence that some contractors are misrepresenting products. This experience is discussed in the referenced bulletins and information notices. The following questions are posed to raise the issues that the Commission has identified and are not to be considered complete nor are they intended to bound the scope of public comment on this ANPR. The questions are structured in two categories: (1) Products Procured for Use in Safety-Related Structure, System and Component Applications, and (2) Dedication of Commercial Grade Products for Use in Safety-Related Structure, System and Component Applications.

Public comments are invited on each of these questions. The comment resolution process will be improved if each comment is identified to the question to which it responds. Commenters may submit, in addition to the original paper copy, a copy of the letter in an electronic format on IBM PC-DOS compatible 3.5 or 5.25 inch double sided double density (DS/DD) diskettes. Data files should be provided in ASCII code or, if formatted text is required, data files should be provided in IBM Revisable-Form Text Document Content Architecture (RFT/DCA) format.

1. Products Procured for Use in Safety-Related Structure, System and Component Applications.

The questions in this section are categorized in four subsections: General, Metallic Products, Nonmetallic Products, and Components.

1.1 General

1.1.1a In view of the problems that have been detected with substandard, counterfeit, or fraudulently marketed products, do the Commission's current regulations provide adequate criteria for ensuring the acceptability of purchased products?

1.1.1b If the current regulations are considered to provide adequate criteria, how should they be applied to ensure that substandard, counterfeit, and fraudulently marketed products are detected and precluded from use in nuclear power plants?

1.1.1c If the current regulations do not provide adequate criteria, should the Commission establish specific requirements or performance-based requirements to ensure that products purchased for use in nuclear power plant structures, systems and components satisfy the operational requirements necessary to protect public health safety?

1.1.2a What traceability requirements should be imposed for all products to be used in safety-related structures, systems and components?

1.1.2b Should material traceability through all intermediary contractors, subcontractors and processors be required?

1.1.2c Should all critical characteristics, for example, materials, operations, functions, etc., be traceable?

1.1.2d Should there be any exceptions to the traceability requirements?

1.1.2e What should the identification requirements be for traceability, for example, uniquely marking each part whenever possible, bagging, records, etc.?

1.1.3 Should product acceptances be restricted to inspections and tests or should product acceptances include, on a sample basis, destructive inspections and tests to verify chemical and physical characteristics?

1.1.4 What types of inspections and tests (appropriate for the various types of products) should be required?

1.1.5 Should licensees, contractors and subcontractors be encouraged to perform joint testing?

1.1.6 If destructive inspections and tests are determined necessary, what should be the sampling basis (per vendor, per purchase order, per shipment, per lot, per container, etc.)?

1.1.7 Should sample plan testing be permitted for testing or should such testing be on a 100 percent basis?

1.1.8 What sort of statistical sampling during product inspection is adequate to provide confidence that the product has the requisite assurance of quality?

1.1.9 What criteria should be used for allowing sample plan testing during product acceptance?

1.1.10 Should the shelf life of appropriate types of structures, systems and components be inspected and verified as acceptable during product acceptances?

1.1.11 To what extent will an effective vendor audit program and maintenance of a qualified vendor list reduce the likelihood of questionable products being used in nuclear power plants?

1.1.12 What are the essential elements, for example, team composition, depth of audits, and approach, that must be included in an effective vendor audit program?

1.1.13 What reinspection or reaudit frequency is appropriate to maintain confidence in those vendors on a qualified vendor list?

1.1.14 How do licensees ensure that Code Certificate holders and "N" stamp vendors are current?

1.1.15 Is there an auditable method to demonstrate that licensees actually purchased the product from a qualified vendor, for example, the holder of an ASME Code stamp holder certification?

1.1.16a Should negative inspection, testing and audit results be shared with other parties?

1.1.16b Is a Federal requirement necessary to permit this sharing of information?

1.1.16c Should procurement contracts be required to include a provision for public release of the results of audits of the vendor?

1.1.16d Are there restraint of trade, antitrust concerns or liabilities associated with these actions?

1.1.17 Should licensees, contractors and subcontractors be encouraged to make joint procurements and to share inspection/audit results of joint procurements to enhance the effectiveness of inspections/audits?

1.1.18 If joint procurements and inspections/audits are encouraged, should controls be imposed and, if so, what and how should these controls be imposed?

1.1.19 What audit and testing documentation should be required to provide traceability and give confidence to all participants in joint product acceptances?

1.1.20a Should the NRC establish and publish a list of approved vendors for various products?

1.1.20b If a list of approved vendors is established, how should vendors be selected?

1.1.20c If a list of approved vendors is established, who should be responsible for maintaining this list?

1.1.20d Should licensees be restricted to making procurements from this list of approved vendors?

1.1.21 Should the use of a certificate, such as a Certificate of Conformance, in the procurement process be prohibited or, if allowed, be restricted to issue by the original equipment manufacturer for items that have remained under his direct control?

1.1.22 Should the furnishing of the original manufacturer's certificate, such as a Certified Material Test Report, be made mandatory for procurement of materials from intermediate vendors?

1.1.23 Should the transcribing of an original manufacturer's test data by intermediate vendors onto the vendor's certification, for example, Certified Material Test Report, be forbidden?

1.1.24 To what extent should licensees or their representatives be required to inspect the implementation of contractor product acceptance programs?

1.1.25 Should licensees be required to audit implementation of 10 CFR Part 21 by suppliers and vendors?

1.1.26 In addition to the requirements of 10 CFR Part 21, should licensees be required to notify manufacturers, suppliers and vendors of licensee-identified problems with vendor-provided nonconforming products or programs?

1.1.27 Should licensee participation in a national data system for reporting equipment/component failures by manufacturer and application be required?

1.1.28 Is there specific data that should be included in a national data system that would significantly enhance its usefulness in establishing equipment performance history?

1.1.29 What are the implications of any new Commission requirements on the Commission's endorsement of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code in 10 CFR 50.55a?

1.1.30 What is the best way to coordinate any new requirements with the ASME Boiler and Pressure Vessel Code?

1.1.31 Should the new requirements that relate to areas covered by the ASME Boiler and Pressure Vessel Code (e.g., SA material specifications) be handled through the code committee system?

1.1.32 To what extent should items 1.1.1a through 1.1.31 be required for other than safety-related components?

1.2 Metallic Products (e.g., fasteners, piping, pipe fittings, weld rod, castings, forgings, bar stock, plate material, stampings, wire, cable, etc.).

1.2.1a Should chemical analyses of the products be required as part of product acceptances?

1.2.1b Should these analyses of the products be performed by destructive or by nondestructive means?

1.2.2a Should tests of mechanical properties (e.g., hardness, tensile strength, impact, etc.) of the products be required as part of product acceptances?

1.2.2b Should tests of mechanical properties of the products be performed by destructive or by nondestructive means?

1.2.3 When destructive tests are required, are test coupons (when applicable) an acceptable source of test materials for the tests of chemical and mechanical properties or should material samples be removed from actual products?

1.3 Nonmetallic Products (e.g., lubricants, tape, elastomers, seals, paints, filters, etc.)

1.3.1a Should chemical analyses be required for lubricants, tape, elastomers, etc., during product acceptances?

1.3.1b Should these analyses be performed by destructive or by nondestructive means?

1.3.2 Should physical property tests (e.g., viscosity for lubricants, hardness for elastomers, efficiency for filters, etc.) be required during product acceptances?

1.4 Components (e.g., pumps, valves, circuit breakers, controllers and electronic parts/assemblies and their replacement parts)

1.4.1 Should components be subjected to functional tests during product acceptance?

1.4.2a Should components be disassembled, if necessary during product acceptance, to verify dimensional characteristics?

1.4.2b If the components are not disassembled, what methods should be utilized to verify critical characteristics?

1.4.3a Should the chemical and physical properties of component materials be analyzed during product acceptance inspections?

1.4.3b If the chemical and physical properties of component materials are to be analyzed during product acceptance inspections, what means should be utilized?

2. Dedication of Commercial Grade Products for Use in Safety-Related

Structure, System and component Applications.

The questions in this section are categorized in five subsections: General, Metallic Products, Nonmetallic Products, Components, and Others Questions.

2.1 General

2.1.1 Should the Commission establish specific requirements or performance-based requirements to ensure that commercial grade products being dedicated for use in safety-related nuclear power plant structures, systems and components satisfy the operational requirements necessary to protect public health and safety?

2.1.2 Should NRC regulations be revised to endorse and incorporate by reference, the industry codes, standards, or guidance documents for dedication programs of commercial grade products for use in safety-related structure, system and component applications?

2.1.3a What should the traceability requirements be for all commercial products being upgraded for use in safety-related structures, systems and components?

2.1.3b If upgrading traceability provisions are necessary, what should these provisions include?

2.1.3c Should material traceability through all intermediary contracts, subcontractors and processors be required?

2.1.3d If item traceability is necessary, should there be any provisions for upgrading products whose traceability cannot be established?

2.1.3e Should the upgrading traceability provisions be any different if the products are heat/lot identified or not?

2.1.3f What should the identification requirements be for traceability, for example, marking, bagging and records?

2.1.4 How should products intended for use in applications in which products are normally required to meet specific standards be inspected to verify that all critical characteristics are satisfied?

2.1.5 Should the shelf life of appropriate types of products be inspected and verified as acceptance as part of the upgrade inspection process?

2.1.6 What types of shelf life controls should be imposed on products that are being upgraded for use in safety-related structures, systems and components?

2.1.7 Should all upgrade inspections be restricted to inspections and tests or should they include, on a sample basis, destructive inspections and tests to verify chemical and physical characteristics?

2.1.8 What types of inspections and tests (appropriate for the various types of products) should be required?

2.1.9 How should inspections verify all critical characteristics (for example, chemistry, physical properties, dimensions, special processes, etc.)?

2.1.10a If destructive inspections and tests are determined to be necessary, how should samples be selected if products are heat/lot identified?

2.1.10b How should samples be selected if products are not heat/lot identified?

2.1.11 Should sample plan testing be permitted for nondestructive testing or should such testing be on a 100 percent basis?

2.1.12 What criteria are appropriate for allowing sample plan testing during upgrade inspections?

2.2 Metallic Products

2.2.1a Are chemical analyses of the products appropriate as part of upgrade inspections?

2.2.1b Should these analyses be performed by destructive or by nondestructive means?

2.2.2a Are tests of mechanical properties (e.g., hardness, tensile strength, impact etc.) appropriate as part of upgrade inspections?

2.2.2b Should these tests be performed by destructive or by non-destructive means?

2.2.3 If the product is heat/lot traceable, is sample inspection (destructive and nondestructive) adequate for confirmation of critical characteristics?

2.2.4 If the product is not heat/lot traceable, is it necessary to either sample or 100 percent test, for example, hardness, to establish uniformity and then destructively analyze them (for example, chemical analyses, tensile tested, impact tested, etc.) to determine acceptability?

2.2.5 Should requirements in addition to those included in industry standards (e.g., additional samples, etc.) be required?

2.2.6 When destructive tests are required, are test coupons (when available) an acceptable source of test materials for chemical and mechanical properties tests or should material samples be removed from actual products?

2.3 Nonmetallic Products

2.3.1a Are chemical analyses necessary to establish critical characteristics for lubricants, tape, elastomers, etc., proposed for upgrading for use in safety-related systems?

2.3.1b Should these analyses be performed by destructive or by non-destructive means?

2.3.2 Are physical property tests (e.g., viscosity for lubricants, hardness for elastomers, efficiency for filters, etc.) necessary for upgrading these products?

2.3.3 May critical characteristics be inspected by samples or is 100 percent inspection necessary to verify these characteristics?

2.4 Components

2.4.1 Must each critical characteristic be inspected before the component is acceptable for use in safety-related systems?

2.4.2 How should the chemical and physical properties of component materials be analyzed during upgrade inspections?

2.4.3 If critical characteristics cannot be inspected on each component piece, should it be acceptable to establish heat/lot traceability, establish uniformity of lot by sample inspection and thereby accept the lot?

2.4.4a Must components be 100 percent functionally tested or may they be subjected to functional tests on a sampling basis?

2.4.4b Inspected by sample, what is the basis for performing only sample inspection?

2.4.5a Should disassembly of components be required to verify critical characteristics?

2.4.5b May verification of critical characteristics be done on a sampling basis or are 100 percent inspections necessary?

2.4.5c What is the basis for performing only sample inspections?

2.4.5d If components are not disassembled to verify dimensions, what methods can be utilized to verify dimensions?

2.5 Other Questions

2.5.1a Are there any other agency/organization standards or programs that should be adopted for use in upgrading commercial grade products for use in safety-related systems?

2.5.1b Should these standards or programs be endorsed by NRC regulations?

2.5.2 Are there other alternatives that could provide the necessary assurances?

2.5.3 To what extent should any existing controls or any additional controls being contemplated in the ANPR be extended to nonsafety-related applications in "balance of plant" structures, systems and components?

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting

criteria, and Reporting and recordkeeping requirements.

The authority citation for this document is:

Authority: Sec. 161, Pub. L. 83–703, 68 Stat. 948, as amended (42 U.S.C. 2201); and Sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841).

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

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89–5101 Filed 3–3–89; 8:45 am]

BILLING CODE 7590–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loan Policy

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 102 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100–590 (102 Stat. 2989), enacted November 3, 1988, amends the Small Business Act (15 U.S.C. 636) with respect to guaranty fees on loans of $50,000 or less by Certified or Preferred Lenders. This proposed rule would implement such amendment.

DATE: Comments must be received on or before April 5, 1989.

ADDRESS: Comments may be mailed to: Allan Mandel, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Allan Mandel, 202–653–6696.

SUPPLEMENTARY INFORMATION: The Small Business Administration (SBA) charges a guaranty fee for a participating lender to obtain the SBA guaranty with respect to a percentage of a qualified loan. On loans with maturities in excess of twelve months, the guaranty fee is two percent. Such fee is paid by the lender to SBA, but the lender may pass that charge on to the small business concern borrower. This is true whether the loan being guaranteed by SBA is a regular loan, a loan made under the Certified Lenders Program (CLP) (under which a lender is promised a three-day turnaround review by SBA), or a loan made under the Preferred Lenders Program (PLP) (under which the loan does not get any processing review by SBA). Congress wants to encourage lenders to make smaller loans which are less profitable for lenders. Public Law 100–590 authorizes a Certified or Preferred Lender (which are SBA participating lenders who have exemplary records in making guaranteed loans) to keep one half of the guaranty fee for a CLP or regularly processed loan of $50,000 or less and a maturity in excess of twelve months. The proposed amendment of the regulation would implement this statutory provision.

Public Law 100–590 also refers to the use of a simplified loan form for these small loans. SBA periodically reviews its loan forms and the current version was revised in the last several years. SBA considers that the information requested on the present forms is the minimum necessary in order to make an informed decision on the creditworthiness of a borrower, regardless of the amount of the loan. Accordingly, SBA is not at this time making any changes to its loan forms to accommodate this small loan proposal.

For purposes of the Regulatory Flexibility Act (5 U.S.C. 605(b)), SBA certifies that this proposed rule will not, if promulgated in final form, have a significant impact on a substantial number of small entities because recent history indicates to SBA that there will not be made a large number of loans $50,000 or less.

SBA certifies that this proposed rule does not constitute a major rule for the purposes of Executive Order 12291, since the change is not likely to result in an annual effect on the economy of $100 million or more because it is not anticipated that such a large number of $50,000 loans will be made. In 1986, the average SBA loan was $150,000, for 1987 it was $160,000, and for 1988 it was $161,000.

The proposed rule, if promulgated in final form, would not impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

This proposed rule would not have federalism implications warranting the preparation of a Federal Assessment in accordance with Executive Order 12612.

List of subjects in 13 CFR Part 120: Loan Programs/Business.

Pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)) and Section 136 of Pub. L. 100–590 (102 Stat. 2989), SBA proposes to amend Part 120, Chapter I, Title 13, Code of Federal Regulations, as follows:

PART 120—BUSINESS LOAN POLICY

1. The authority citation for Part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636 (a) and (h).

2. Section 120.104–1 is amended by adding a new paragraph (f) to read as follows:

§ 120.104–1 Guaranty fees.

* * * * *

(f) *Retention of Guaranty Fee.* Except for loans made under the Preferred Lenders Program in Subpart D of this Part, when a Certified Lender or Preferred Lender makes a loan of $50,000 or less, with a maturity in excess of twelve months, it may retain one-half of the guaranty fee charged to the borrower.

Dated: January 26, 1989.

James Abdnor,

Administrator.

[FR Doc. 89–5118 Filed 3–3–89; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 787

[Docket No. 81147–8247]

Voluntary Self-Disclosures

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Proposed rule with request for comments.

SUMMARY: The Bureau of Export Administration proposes to amend the Export Administration Regulations to set forth procedures for dealing with voluntary self-disclosures of violations of the Export Administration Act, as amended, and the Export Administration Regulations. There have been inquiries from the public which suggest that there are uncertainties with respect to the effect that a voluntary self-disclosure may have on the treatment of violations. By publishing the practice of the Bureau of Export Administration with respect to voluntary self-disclosures, this rule will reduce that uncertainty.

Depending on the facts and circumstances of each case, the voluntary self-disclosure of a violation will ordinarily be a mitigating factor which the Bureau of Export Administration will consider, along with other aggravating and mitigating factors, when determining the appropriate administration sanction, if any, to be imposed.

DATE: Comments should be received by April 5, 1989.

ADDRESS: Written comments (six copies) should be sent to: William H. Arvin,

Office of Export Enforcement, Room H-4616, Bureau of Export Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, Telephone: (202) 377-8252.

FOR FURTHER INFORMATION CONTACT: Anthony K. Hicks, Office of the Chief Counsel for Export Administration, Room H-3329, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, Telephone: (202) 377-5311; or

Thomas Andrukonis, Office of Export Intelligence, Room H-6087B, Bureau of Export Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, Telephone: (202) 377-8208.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements and Invitation to Comment

1. This rule is consistent with Executive Order 12291 and 12661.

2. This rule contains a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h) *et seq.*) and has been submitted to the Office of Management and Budget for review. The public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Office of Security and Management Support, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230, and to the Office of Management and Budget, Paperwork Reduction Project (0694-xxxx), Washington, DC 20503. This rule will not be published in final form until and unless the Department of Commerce has obtained the approval to do so from the Office of Management and Budget. Further, in accordance with 5 CFR 1320.13 and 1320.15:

a. The title for this collection of information is "the procedure for the voluntary self-disclosure of violations of the Export Administration Regulations".

b. The information is needed to detect violations of the Export Administration Act and Regulations. It will be used to determine whether an investigation or prosecution is necessary and to reach settlements with violators.

c. The likely respondents will be export-related businesses.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)), no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. Section 13(b) of the Export Administration Act does not require that this rule be published in proposed form because this rule does not impose a control on exports. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, consistent with the intent of Congress set forth in section 13(b) of the Export Administration Act to provide public participation in rulemaking, these regulations are issued in proposed form and comments will be considered in developing final regulations.

The period for submission of comments will close April 5, 1989. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room H-4886, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with the regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration, Freedom of Information Officer, at the above address or by calling (202) 377-2593.

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

List of Subjects in 15 CFR Part 787

Exports, Enforcement, Criminal and administrative sanctions, Penalties, Violations, Reporting and recordkeeping requirements.

PART 787—[AMENDED]

Accordingly, Part 787 of the Export Administration Regulations (15 CFR Parts 700-799) is proposed to be amended as follows:

1. The authority citation for 15 CFR Part 787 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 100-418 of August 23, 1988, and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*) and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

2. A new § 787.15 is added to read as follows:

§ 787.15 Voluntary self-discipline.

(a) *General policy.* Because it is in the national interest, the Department strongly encourages the disclosure of information to the Office of Export Intelligence by persons who believe that they may have violated the export control provisions of the Act or any regulation, order, license or other authorization issued under the Act. Depending on the facts and circumstances of each case, a voluntary

self-disclosure will ordinarily be a mitigating factor with respect to the administrative sanctions, if any, imposed by the Office of Export Enforcement.

(b) *Limitations.* (1) The provisions of this section apply only to information provided to the Office of Export Intelligence for review by either the Office of Export Enforcement or the Office of Export Intelligence and use by the Office of Export Enforcement in determining whether to take administative action under Part 788 for violations of the export control provisions of the Act and the Regulations.

(2) The provisions of this section apply only when information is provided to the Office of Export Intelligence for review prior to the time that either the Office of Export Enforcement or the Office of Export Intelligence or another agency, bureau or department of the United States Government has learned of the same or substantially similar information from another source.

(c) *Information to be provided to the Office of Export Enforcement in connection with a voluntary self-disclosure—(1) General.* Any person wanting to disclose information which constitutes a voluntary self-disclosure should, in the manner outlined below, initially notify the Office of Export Intelligence as soon as possible after violations are discovered and then conduct a thorough review of all export-related transactions where violations are suspected. Upon completion of the review, the person should prepare and submit to the Office of Export Intelligence a detailed narrative account, supported by appropriate documentation, of all the suspected violations.

(2) *Initial notification.* (i) Ordinarily, the initial notification should be in writing and sent to the address set forth in § 787.15(c)(7). The notification should include the name of the person making the disclosure and a brief description of the suspected violations.

(ii) The Office of Export Intelligence recognizes that there will be situations where it will not be practical to make the initial notification in writing. For example, this could occur if a shipment leaves the United States without the required export license and there may still be an opportunity to prevent acquisition of the commodities or technical data by unauthorized persons. In these situations, the Office of Export Intelligence should be contacted promptly at (202) 377–8208.

(3) *Narrative account.* After the initial notification, a thorough review should be conducted of all export-related transactions where possible violations are suspected. The Office of Export Intelligence suggests that the review cover a period of five years prior to the date of the initial notification. Upon completion of the review, the Office of Export Intelligence should be furnished with a narrative account that sufficiently describes the suspected violations so that the Office of Export Enforcement and the Office of Export Intelligence can assess their nature and gravity. The narrative account should also describe the nature of the review conducted and measures which may have been taken to minimize the likelihood that violations will occur in the future. Where appropriate, the narrative acount should include, but is not limited to:

(i) The kind of violation involved, *e.g.*, an unlicensed shipment, dealing with a party denied U.S. export privileges;

(ii) An explanation of when and how the violations occurred;

(iii) The complete identities and addresses of all individuals and organizations, whether foreign or domestic, involved in the activities giving rise to the violations;

(iv) Export license numbers;

(v) Commodity classification numbers, product descriptions and quantities, and value in U.S. dollars of the commodities or technical data involved; and

(vi) A description of any mitigating circumstances.

(4) *Supporting documentation.* (i) The narrative account should be accompanied by copies of those documents which explain and support it. Where appropriate, the documentation should include, but is not limited to:

(A) Licensing documents such as export licenses, license applications, import certificates and end-user statements;

(B) Shipping documents such as Shipper's Export Declarations, air waybills and bills of lading; and

(C) Other documents such as telexes and other evidence of written or oral communications, internal memoranda, purchase orders, invoices, letters of credit and brochures.

(ii) Any other relevant documents must be retained by the person making the disclosure until the Office of Export Intelligence or the Office of Export Enforcement requests them or until a final decision with respect to the disclosed information has been made. After a final decision, the documents should be handled in accordance with the recordkeeping rules set forth in § 787.13.

(5) *Certification.* A certification must be submitted stating that all of the representations made in connection with the voluntary self-disclosure are true and correct. Certifications made by a corporation or other organization should be made by someone with the authority to do so. In connection with the disclosure of information under this section, § 787.5, relating to false or misleading representations, applies.

(6) *Oral presentations.* The Office of Export Intelligence believes that oral presentations are generally not necessary to augment the narrative account and supporting documentation. Therefore, if the person making the disclosure believes a meeting is desirable, a request for one should be included with the disclosure.

(7) *Where to make voluntary self-disclosures.* The information constituting a voluntary self-disclosure or any other correspondence pertaining to a voluntary self-disclosure should be mailed to:

Office of Export Intelligence, U.S. Department of Commerce, Ben Franklin Station, P.O. Box 7138, Washington, DC 20044.

or delivered to:

Office of Export Intelligence, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room H–6087 B, Washington, DC 20230.

(d) *Action by the Offices of Export Intelligence and Export Enforcement.* After the Office of Intelligence has been provided with the required narrative and supporting documentation, it will acknowledge the disclosure by letter, provide the person making the disclosure with a point of contact and take whatever additional action it deems appropriate. As quickly as the facts and circumstances of a given case permit, the Office of Export Enforcement, after consultation with the Office of Export Intelligence, may then take any of the following actions:

(1) Inform the person making the disclosure that no action is warranted;

(2) Issue a warning letter;

(3) Issue a proposed charging letter pursuant to § 788.17(b) and attempt to settle the matter;

(4) Issue a charging letter pursuant to § 788.4 if a settlement is not reached; or

(5) Refer the matter to the United States Department of Justice for possible prosecution.

(e) *Criteria.* For purposes of determining what action to take and what sanctions, if any, to impose, the fact that a voluntary self-disclosure has been made will be a mitigating factor which will be taken into account along with other mitigating and aggravating factors that may exist. The factors

which the Office of Export Enforcement will consider are in its sole discretion. Some of the factors are:

(1) Whether the goods involved in the violation are of significant strategic importance;

(2) Whether a license would have been granted for the goods had one been applied for;

(3) The quantity and value in U.S. dollars of the commodities or technical data involved;

(4) The reasons why the violations occurred. For example, OEE may consider whether the violations were intentional or inadvertent; the degree to which the person making the disclosure was familiar with the Regulations and whether the person who committed the violations was the subject of some prior administrative or criminal action for violating the Act of any regulation, order, license or other authorization issued under the Act;

(5) Whether as a result of the information provided, the Office of Export Enforcement is able to prevent any commodities or technical data exported contrary to the Act or any regulation, order, license or other authorization issued under the Act, from reaching unauthorized persons or destinations;

(6) Whether the information provided to the Office of Export Intelligence includes information about other possible violations of the Act or any regulation, order, license or other authorization issued under the Act; and

(7) The degree of cooperation with the ensuing investigation.

(f) *Treatment of unlawfully exported commodities after voluntary self-disclosure.* (1) In accordance with § 772.7(b), of commodities or technical data which are the subject of a voluntary self-disclosure were exported without the required license, no such license will be issued after the fact.

(2) Reexport authorization for commodities or technical data which are the subject of a voluntary self-disclosure and which have been exported contrary to the provisions of the Act or the regulations may be requested from the Office of Export Licensing in accordance with the provisions of Part 774. The request should state that a voluntary self-disclosure was made in connection with the export of the commodities for which reexport authorization is sought.

(3) Section 787.4(a) prhibits any person from taking certain actions with knowledge or reason to know that a violation of the Act the the Regulations has occurred. Any person who has made a voluntary self-disclosure at least has reason to believe that a violation may have occurred. However, with respect to the commodities or technical data which are the subject of a voluntary self-disclosure, permission to take any of the actions set forth in § 787.4(a), which may otherwise be prohibited, may be requested from the Office of Export Licensing. The Office of Export Licensing's decision with regard to any such request will be made after consultation with the Office of Export Enforcement. Requests for permission should be sent of the Office of Export Licensing at the following address: Office of Export Licensing, P.O. Box 273, Washington, DC 20044.

Dated: March 1, 1989.

William V. Skidmore,

Acting Assistant Secretary for Export Enforcement.

[FR Doc. 89-5115 Filed 3-1-89; 3:57 pm]

BILLING CODE 3510-DT-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 7

[INTL-988-86]

Requirements Relating to Certain Exchanges Involving a Foreign Corporation; Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document provides proposed Income Tax Regulations concerning requirements relating to certain exchanges involving a foreign corporation. In the rules and regulations portion of this **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to these matters. The portions of the text of those temporary regulations that amend Part 7 of 26 CFR also serve as the comment document for this proposed rulemaking. When the regulations are made final, Part 7 will be amended by removing the temporary regulations and Part 1 will be amended by adding the final regulations to that part.

DATES: Written comments and requests for a public hearing must be delivered or mailed before May 5, 1989.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:CORP:T:R (INTL-988-86), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Richard Chewning of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224 (Attention: CC:CORP:T:R (INTL-988-86)) (202-566-6384, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** amend, in part §§ 7.367 (b)-2 (d) and (f), 7.367 (b)-7 (c)(1) and 7.367 (b)-9(b) of 26 CFR Part 7. The final regulations that are proposed to be based on the temporary regulations would amend 26 CFR Parts 1 and 7. For the text of the temporary regulations, see paragraphs 2 through 4 of Treasury decision [T.D. 8243] published in the Rules and Regulations portion of this issue of the **Federal Register.**

Temporary regulations under §§ 7.367 (b)-2, 7.367 (b)-7 and 7.367 (b)-9 with cross-reference notice were originally published on December 20, 1977 (42 FR 65152, 65204). This document, therefore, also serves to amend that notice of proposed rulemaking.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291, and a Regulatory Impact Analysis is therefore not required. Although this document is a notice of proposed rulemaking which solicits public comment, it has been concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations as final, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Drafting Information

The principal author of these regulations is Richard Chewning, of the

Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects

26 CFR Part 1

Income taxes, Corporations, Corporate distributions, Corporate adjustments, Reorganizations.

26 CFR Part 7

Income taxes, Tax Reform Act of 1976.

Proposal of Regulations

Paragraphs 2 through 4 of the temporary regulations [T.D. 8243] published in the rules and regulations portion of this issue of the **Federal Register** are hereby also proposed as final regulations under section 367(b) of the Internal Revenue Code.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 89-4994 Filed 3-3-89; 11:08 am]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

38 CFR Part 21

Vocational Rehabilitation Panel

AGENCY: Veterans Administration.

ACTION: Proposed regulatory amendment.

SUMMARY: The Veterans Administration (VA) is proposing to change the rules under which the cases of seriously disabled veterans are referred to the Vocational Rehabilitation Panel (VRP). Under the new procedure VA staff members may refer cases to the Panel on a voluntary basis. The requirement that certain cases be referred to the VRP is eliminated. This change should enable VA staff to focus their attention on cases in which their professional judgment indicates that consideration by the VRP is necessary.

DATES: Comments must be received on or before April 5, 1989. Comments will be available for public inspection until April 17, 1989. These amendments are proposed to be effective 30 days after publication of the final regulations.

ADDRESS: Send written comments to: Administrator of Veterans' Affairs, Veterans Administration, 810 Vermont Avenue NW., Washington DC, 20420. All written comments received will be available for public inspection only in the Veterans' Services Unit, room 132 of the above address, between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until April 17, 1989.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation and Education Service, Department of Veterans' Benefits, (202)-233-2886.

SUPPLEMENTARY INFORMATION: The VRP is a multidisciplinary group of professional staff of the Veterans Administration. The VRP furnishes technical assistance in cases involving seriously disabled veterans and dependents. Under current provisions the VRP reviews each case in which an extended evaluation of more than 12 months is being requested, a finding of infeasibility for vocational rehabilitation is being considered, or a finding of serious employment handicap for a veteran with a service-connected disability which is rated as less than 30 percent disabling is recommended. Placing the use of the VRP on a discretionary basis will allow the VRP to focus its efforts on those cases in which the professional judgment indicates such consideration is needed. The resulting conservation of staff time resulting from discretionary use of the VRP should improve administrative efficiency.

The proposed regulatory amendments contained herein will better acquaint eligible veterans, vocational training and rehabilitation facilities, and the public at large with the way these provisions will be implemented.

These proposed amendments do not meet the criteria for major rules as contained in Executive Order, 12291, Federal Regulation. The proposed changes will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

The Administrator certifies that these proposed regulatory amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these proposed rules are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that these proposed regulatory amendments concern only the internal agency procedures for reviewing the eligibility and participation of individual veterans under this program.

The Catalog of Federal Domestic Assistance Number is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: February 10, 1989.

Thomas E. Harvey,

Acting Administrator.

38 CFR Part 21, Vocational Rehabilitation and Education, is proposed to be amended as follows:

PART 21—[AMENDED]

§ 21.52 [Amended]

1. In § 21.52 paragraph (e)(3) is removed.

2. In § 21.53, paragraph (f) is redesignated as paragraph (g), paragraph (e)(2) is revised and new paragraph (f) is added to read as follows:

§ 21.53 Reasonable feasibility of achieving a vocational goal.

* * * * *

(e) *Criteria for reasonable facility not met.*

(2) A finding that achievement of a vocational goal is infeasible without a period of extended evaluation requires compelling evidence which establishes infeasibility beyond any reasonable doubt.

(Authority: 38 U.S.C. 1504(a)(1), 1506(b))

(f) *Independent living services.* The counseling psychologist shall determine the current reasonable feasibility of a program of independent living services in each case in which a vocational rehabilitation program is not found reasonably feasible. The concurrence of the Vocational Rehabilitation and Counseling (VR&C) Officer is required in any case in which the counseling psychologist does not approve a program of independent living services.

(Authority: 38 U.S.C. 1500)

3. In § 21.57 paragraph (c) is revised to read as follows:

§ 21.57 Extended evaluation.

* * * * *

(c) *Determination.* (1) The determination of the reasonable feasibility of a veteran achieving a vocational goal will be made at the earliest time possible during an extended evaluation, but not later than the end of the period of evaluation, or an extension of that period. Any reasonable doubt as to feasibility will be resolved in the veteran's favor;

(2) When it is reasonably feasible for the veteran to achieve a vocational goal, an individualized written rehabilitation plan (IWRP) will be developed as indicated in § 21.84 of this part.

(Authority: 38 U.S.C. 1506(b))

* * * * *

4. Section 21.62 is revised to read as follows:

§ 21.62 Duties of the Vocational Rehabilitation Panel.

(a) *Consultation requested.* The panel shall provide technical and consultative services when requested by professional staff of the Vocational Rehabilitation and Counseling (VR&C) Division to:

(1) Assist staff members in planning and carrying out a rehabilitation plan for seriously disabled veterans and their dependents; and

(2) Consider other cases of individuals eligible for, or being provided assistance under chapter 31 and other programs of education and training administered by the Veterans Administration.

(Authority: 38 U.S.C. 1504(a))

(b) *Independent living services.* The Panel has a key responsibility to assure that seriously disabled service-connected veterans who need independent living services to increase their independence in daily living are provided necessary services. In carrying out this responsibility the Panel shall review all cases which come before it to assure that the proposed program of vocational rehabilitation or independent living services includes those services necessary to enable the veteran to achieve the goals of the program.

(Authority: 38 U.S.C. 1500)

(c) *Dependents.* The specific duties of the Panel with respect to dependents are more fully described in §§ 21.3300, 21.3301, 21.3304, 21.4105, and 21.4276 of this part.

(Authority: 38 U.S.C. 1736, 1740, 1741, 1742, 1743)

5. In § 21.74 paragraph (c)(2) is revised to read as follows:

§ 21.74 Extended evaluation.

* * * * *

(c) * * *

(2) An additional period of extended evaluation of up to 6 months may be approved by the counseling psychologist, if there is reasonable certainty that the feasibility of achieving a vocational goal can be determined during the additional period. The counseling psychologist will obtain the concurrence of the Vocational Rehabilitation and Counseling Officer before approving the extension of a period of extended evaluation.

* * * * *

6. In § 21.76 paragraph (b) is revised to read as follows:

§ 21.76 Independent living.

* * * * *

(b) *Period of independent living services.* The duration of an independent living services program may not exceed 24 months unless the counseling psychologist finds that an additional period of up to 6 months would enable the veteran to substantially increase his or her level of independence in daily living. The concurrence of the Vocational Counseling and Rehabilitation Officer in this finding is required.

(Authority: 38 U.S.C. 1505(d))

[FR Doc. 89-5072 Filed 3-3-89; 8:45 am]

BILLING CODE 8320-01-M

Notices

Federal Register
Vol. 54, No. 42
Monday, March 6, 1989

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Governmental Processes, Committee on Judicial Review, and Working Group on Model Rules; Public Meetings

Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92-463), notice is hereby given of meetings of the Committee on Governmental Processes, the Committee on Judicial Review, and the Working Group on Model Rules of the Administrative Conference of the United States.

Committee on Governmental Processes

Date: Thursday, March 16, 1989
Time: 12:15 p.m.–2:30 p.m.
Location: Covington and Burling, 1201 Pennsylvania Avenue, NW., Washington, DC (Lawyers' Dining Room, 12th floor).
Agenda: The committee will meet to discuss a study of the Federal personnel complaint, appeal, and grievance process, conducted by Professor William V. Luneburg of the University of Pittsburgh School of Law.
Contact: David M. Pritzker, 202–254–7065

Committee on Judicial Review

Date: Friday, March 31, 1989
Time: 10:00 a.m.
Location: Administrative Conference of the United States Library, 2120 L Street, NW., Suite 500, Washington, DC.
Agenda: The committee will meet to discuss a proposed statement based on Professor Robert Anthony's study of judicial deference to agency statutory interpretations expressed in various formats.
Contact: Mary Candace Fowler, 202–254–7020

Working Group on Model Rules

Date: Friday, March 31, 1989
Time: 1:00 p.m.
Location: Administrative Conference of the United States Library, 2120 L Street, NW., Suite 500, Washington, DC.
Agenda: The committee will meet as part of an ongoing effort to develop model rules of practice and procedure which can be used by Federal agencies in formal adjudications.
Contact: Gary J. Edles, 202–254–7020

Public Participation

Attendance at the committee meetings is open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least one day in advance of the meeting. The committee chairmen may permit members of the public to present oral statements at meetings. Any member of the public may file a written statement with a committee before, during, or after a meeting. Minutes of the meetings will be available on request to the contact persons. The contact persons' mailing address is: Administrative Conference of the United States, 2120 L Street, NW., Suite 500, Washington, DC 20037.

Jeffrey S. Lubbers,
Research Director.
March 2, 1989.

[FR Doc. 89-5211 Filed 3-3-89; 8:45 am]
BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Office Of The Secretary

State of Ohio Agricultural Pollution Abatement Program

AGENCY: Office of the Secretary, USDA.
ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that all State cost-share payments made under the Ohio Agricultural Pollution Abatement Program are made primarily for the purpose of soil and water conservation, and protecting or restoring the environment. This determination is in accordance with section 126 (a) and (b) of the Internal Revenue Code of 1954, as amended. The determination permits recipients of these payments to exclude them from gross income to the extent allowed by the Internal Revenue Service.

FOR FURTHER INFORMATION CONTACT: Lawrence G. Vance, Chief, Division of Soil and Water Conservation, Ohio Department of Natural Resources, Fountain Square, Columbus, Ohio 43224; or Director, Land Treatment Program Division, Soil Conservation Service, USDA, P.O. Box 2890, Washington, DC 20013, (202) 382–1870.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1954, as amended 26 U.S.C. 126, provides that certain payments made to persons under state conservation programs may be excluded from the recipient's gross income for federal income tax purposes if the Secretary of Agriculture determines that payments are made "primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife * * *" The Secretary of Agriculture evaluates these conservation programs on the basis of criteria set forth in 7 CFR Part 14, and makes a "primary purpose" determination for the payments made under each program. Before there may be an exclusion, the Secretary of the Treasury must determine that the payments made to a person under these conservation programs do not substantially increase the annual income derived from the property benefited by the payments.

The Ohio Pollution Abatement Program is authorized by Ohio Revised Code Chapter 1511. It is funded by annual state appropriations to provide financial assistance to owners of agricultural land to help them install various conservation practices on their land. Cost-share payments accomplish one or more of the following purposes:

(1) Properly conserve and utilize the water and related land resources;

(2) Assist in maintaining water quality;

(3) Prevent erosion and degradation of agricultural land.

Procedural Matters

The USDA has classified this determination as "not major" in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1. The Secretary has determined that this determination will not result in an annual effect on the economy of $100 million or more; will not cause a major

increase in cost to consumers, individuals, industries, government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to complete with foreign-based enterprises in domestic or export markets. An Ohio Agricultural Pollution Abatement Program Primary Purpose Determination for Federal Tax Purposes, Record of Decision, has been prepared and is available upon request from the Director, Land Treatment Program Division, Soil Conservation Service, P.O. Box 2890, Washington, DC 20013, or the Ohio Department of Natural Resources, Division of Soil and Water Conservation, Fountain Square, Columbus, Ohio 43224.

Determination

As authorized by section 126 (a) and (b) of the Internal Revenue Code of 1954, as amended, I have examined the authorizing legislation, regulations, and operating procedures of the Ohio Agricultural Pollution Abatement Program. In accordance with the criteria set out in 7 CFR Part 14, I have determined that all cost-share payments made under this program are primarily for soil and water conservation and protecting or restoring the environment. Subject to further determination by the Secretary of the Treasury, this determination permits payment recipients to exclude from gross income, for federal income tax purposes, all or part of such payments made under the Ohio Agricultural Pollution Abatement Program.

Signed at Washington, DC, on February 23, 1989.

Peter Myers,

Deputy Secretary.

[FR Doc. 89-5060 Filed 3-3-89; 8:45 am]

BILLING CODE 3410-01-M

Office of the Secretary

State of Virginia Agricultural Best Management Practice Cost-Share Program; Determination of Primary Purpose of Program Payments and Benefits for Consideration as Excludable From Income

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that certain payments made and benefits that results under the Virginia Agricultural Best Management Cost-Share Program, as authorized by sections 10.1-505 and 10.1-542 of the Code of Virginia, are made primarily for the purpose of improving water quality by conserving soil and water, protecting or restoring the evnironment, and providing a habitat for wildlife. The determination permits recipients of these payments and benefits to exclude them from gross income to the extent allowed by the Internal Revenue Service. This determination is in accordance with section 126 of the Internal Revenue Code of 1954, as amended.

FOR FURTHER INFORMATION CONTACT: Roland B. Geddes, Director, Department of Conservation and Historic Resources, Division of Soil and Water Conservation, 203 Governor Street, Suite 206, Richmond, Virginia 23229; or Director, Land Treatment Program Division, Soil Conservation Service, USDA, P.O. Box 2890, Washington, DC. 20013, (202) 382-1870.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1954, as amended 26 U.S.C. 126, provides that certain payments made to persons under state conservation programs may be excluded from the recipient's gross income for federal income tax purposes if the Secretary of Agriculture determines that payments are made "primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife.* * *" The Secretary of Agriculture evaluates these conservation programs on the basis of criteria set forth in 7 CFR Part 14, and makes a "primary purpose" determination for the payments made under each program. Before there may be an exclusion, the Secretary of the Treasury must determine that the payments made to a person under these conservation programs do not substantially increase the annual income derived from the property benefited by the payments.

The Virginia Agricultural Best Management Cost-Share Program is a Virginia Soil and Water Conservation Board project to improve water quality in the state's streams, rivers, and the Chesapeake Bay. The program is funded with state and federal monies and administered through local soil and water conservation districts. State appropriations are funded on a bi-annual basis through the Virginia General Assembly. Federal funds are obtained from a grant from the U.S. Environmental Protection Agency.

The districts, in turn, use this funding to administer a cost-share and incentive program in accordance with the Virginia Agricultural Best Management Cost-Share Program manual to encourage farmers and landowners to apply needed best management practices (BMPs) to their land to control sediment, and to reduce nutrient loss and the transportation of pollutants into the waters of Virginia casued by excessive surface flow, erosion, and inadequate animal waste management.

The districts receive their funding allocation based on need as determined from analysis of major agricultural factors that influence water quality, such as intensive cropland cultivation, erosive soil conditions, and animal unit numbers. The districts then distribute assistance to applicants whose requests have been evaluated to have the highest cost-effectiveness potential for water quality improvement. Although resource based problems affecting water quality occur on all land uses, this program emphasizes efforts for corrective action on agricultural and forested lands only, and offers cost-share assistance as an incentive to carry out construction or implementation of selected BMPs.

Procedural Matters

The Department of Agriculture (USDA) has classified this determination as "not major" in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512-1. The Secretary has determined that these program provisions will not result in an annual effect of the economy of $100 million or more; will not cause a major increase in cost to consumers, individuals, industries, government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign-based enterprises in domestic or export markets. A Virginia Agricultural Best Management Practice Cost-Share Program Primary Purpose Determination for Federal Tax Purposes Record of Decision, has been prepared and is available upon request from the Director, Land Treatment Program Division, Soil Conservation Service, P.O. Box 2890, Washington, DC 20013, or the Director, Department of Conservation and Historic Resources, Division of Soil and Water Conservation, 203 Governor Street, Suite 2906, Richmond, Virginia 23229.

Determination

As required by section 126(b) of the Internal Revenue Code of 1954, as amended, I have examined the authorizing legislation, regulations and operating procedures of the Virginia Agricultural Best Management Cost-

Share Program. In accordance with the criteria set out in 7 CFR Part 14, I have determined that payments made and benefits provided under this program are primarily for soil and water conservation, protecting or restoring the environment, and providing wildlife habitat. Subject to further determination by the Secretary of the Treasury, this determination permits authorized participants to exclude from gross income, for federal income tax purposes, all or part of such payments made and benefits resulting from the Virginia Agricultural Best Management Cost-Share Program.

Signed at Washington, DC, on February 23, 1989.

Peter Myers,

Deputy Secretary.

[FR Doc. 89-5059 Filed 3-3-89; 8:45 am]

BILLING CODE 3410-01-M

Animal and Plant Health Inspection Service

[Docket No. 89-024]

Public Meeting; Availability of Environmental Assessment and Preliminary Finding of No Significant Impact for Field Testing a Genetically Engineered Vaccinia Vectored Rabies Vaccine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we are holding a public meeting of a select group of experts to discuss an environmental assessment and preliminary finding of no significant impact that have been prepared by the Animal and Plant Health Inspection Service concerning the field testing of a genetically engineered vaccinia vectored rabies vaccine, that expresses the rabies virus surface glycoprotein. The assessment indicates that the field testing of rabies vaccine will not cause any significant impact on the human environment. Based upon this preliminary finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

DATE: The public meeting will be held on March 30, 1989.

ADDRESSES: The public meeting will be held at the Holiday Inn-Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

A copy of the environmental assessment and preliminary finding of no significant impact is available for public inspection at the United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250 between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy may also be obtained from the person listed under "FOR FURTHER INFORMATION CONTACT."

FOR FURTHER INFORMATION CONTACT: Dr. David Espeseth, Deputy Director, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8245.

SUPPLEMENTARY INFORMATION:

Notice of Public Meeting/Scope of Issues

The Animal and Plant Health Inspection Service (APHIS) has prepared an environmental assessment and preliminary finding of no significant impact relative to a request for authorization to conduct a limited field trial using an experimental live vaccinia vectored rabies vaccine that expresses the rabies virus surface glycoprotein. The sponsor of the field trial is the Wistar Institute of Anatomy and Biology, Philadelphia, Pennsylvania.

Prior to the issuance of the environmental assessment and the preliminary finding of no significant impact (hereinafter "the document") the document was reviewed by APHIS' Veterinary Biologics Biotechnology Committee, an interagency advisory group. This interagency group includes select experts from the U.S. Department of Agriculture's Agricultural Research Service, the Food Safety and Inspection Service, the Animal and Plant Health Inspection Service's National Veterinary Services Laboratories, the Food and Drug Administration, and the Office of Recombinant DNA Activities at the National Institutes of Health. Because of the special scientific issues raised by this request for field testing, the document was also reviewed by the National Vaccine Program Interagency Group of the Public Health Service, which includes members from the Centers for Disease Control.

At the request of an animal rights/environmental interest organization APHIS is convening a public meeting of experts from the interagency committee that reviewed the document. The purpose of the meeting is to provide a forum in which the public may participate, in an open discussion of the issues raised in the document. APHIS is considering convening a separate public meeting in the future for the purpose of discussing the broader issue of use of vaccinia as a vector for veterinary biological products.

Procedures for public meeting

The meeting will begin at 10:00 a.m., and is scheduled to end at 4:30 p.m., local time. However, the meeting may end earlier if the expert panel has concluded its discussion and all persons who are present and who have requested an opportunity to speak have been heard. Persons who wish to deliver a statement that has been prepared in advance of the meeting, should register at the meeting location with the presiding officer, before the meeting. Pre-meeting registration will be conducted at the meeting location from 9:30 a.m., to 10:00 a.m., local time, on the meeting date. Registered persons will be heard in the order of their registration. However, other persons who wish to speak at the meeting will be afforded the opportunity after the registered persons have been heard. It is requested that two copies of any written statements that are presented be provided to the presiding officer at the meeting. If the number of preregistered persons and other participants at the meeting warrants, the presiding officer may limit the time for each presentation in order to allow everyone wishing to speak an opportunity to be heard. Interested persons may appear and be heard in person, or by attorney or by other representative.

Environmental Assessment and Preliminary Finding of No Significant Impact

Before a veterinary biological product can be licensed under the Virus-Serum-Toxin Act (VSTA) (21 U.S.C. 151 *et seq.*), it must be shown to be pure, safe, potent, and efficacious. Field testing is necessary in order to satisfy vaccine safety requirements as a prerequisite to licensing vaccines under the VSTA. In the course of reviewing the field testing protocol for the vaccinia vectored rabies vaccine, APHIS assessed the impact on the human environment of authorizing the sponsor to conduct a limited field test of the product on three offshore islands, one off the coast of Virginia and two off the coast of South Carolina.

The environmental assessment and preliminary finding of no significant impact provide the public with documentation of APHIS' review and analysis of environmental effects which would be associated with the gathering of information in this limited field trial.

The facts that support a preliminary finding of no significant impact are

summarized below and are contained in the environmental assessment.

1. Genetic engineering procedures were employed to incorporate only the rabies glycoprotein gene within the Thymidine Kinase (TK) locus of vaccinia virus. The recombinant vaccine virus cannot induce rabies.

2. The vaccinia rabies glycoprotein (V-RG) recombinant vaccine has been shown to cause no adverse clinical signs or gross or histopathological lesions, yet is fully capable of eliciting an immune response that protects a variety of species from virulent rabies virus challenge. Although virus was isolated from tissues in two of ten immune deficient mice, this is not considered significant under the conditions of this field trial. The V-RG recombinant virus is unable to evoke antibodies to the remaining rabies viral structural proteins. This allows differentiation between unvaccinated rabies-exposed animals and vaccinated animals.

3. Biological transmission of the V-RG recombinant virus cold not be demonstrated with rodents, foxes, cats, swine, cattle, ferrets or badgers in that rabies virus neutralizing antibody was not elicited from sentinel animals which were held as nonvaccinated contact controls. All control animals remained fully susceptible to challenge with wild-type rabies virus. Contact transmission (mechanical) of the V-RG recombinant virus was observed between two of five vaccinated male-female paired raccoons, a vaccinated lactating female raccoon and her kits, and between two foxes when an orally vaccinated fox immediately bit its cage mate.

4. The TK gene inserting is a stable characteristic of the V-RG recombinant virus vaccine with a probability of loss or reversion being low.

5. The V-RG recombinant virus does not contain an oncogene or cancer causing substance. The recombinant-derived virus does not contain any new genetic information to enhance the likelihood of it being oncogenic.

6. In the proposed field trial, deliberate human exposure would be limited to individuals protected against vaccinia in accordance with Public Health Service guidelines.

7. Laboratory containment experiments demonstrate that the vaccine is non-pathogenic, safe, and efficacious in a variety of laboratory animal model systems, e.g., mice, hamsters, rats, and a number of target and non-target species, including the major terrestrial wildlife reservoirs of rabies and domestic animal species.

Based on the foregoing, APHIS has made a preliminary determination that the field testing of the vaccinia vectored rabies vaccine that expresses the rabies virus surface glycoprotein would have no significant impact on the human environment.

The environmental assessment and preliminary finding of no significant impact have been prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*); (2) regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR Part 1b); and (4) APHIS guidelines implementing NEPA (44 FR 50381–50384 and 44 FR 51272–51274).

Done at Washington, DC, this 1st day of March 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89–5123 Filed 3–3–89; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 89-030]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that six applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR Part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Document Control Officer, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 847, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, APHIS has received and is reviewing the following applications to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organism	Field test location
89-034-10	Monsanto Co	2-3-89	Genetically engineered cotton plants for glyphosate herbicide tolerance	Alabama.
89-034-11	do	2-3-89	Genetically engineered soybean plants for glyphosate herbicide tolerance	Illinois.
89-034-12	do	2-3-89	do	Arkansas.
89-034-15	do	2-3-89	do	Alabama.
89-038-01	Northrup King Co	2-7-89	Genetically engineered alfalfa plants for glyphosate herbicide tolerance	Minnesota.
89-038-03	do	2-7-89	do	California.

Done at Washington, DC, this 28th day of February 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-5083 Filed 3-3-89; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 89-007]

Veterinary Biological Product and Establishment Licenses; Issuances and Terminations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The purpose of this notice is to advise the public of the issuance and termination of veterinary biological product and establishment licenses by the Animal and Plant Health Inspection Service during the month of December 1988. The licenses have been issued or terminated in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act governing the licensing of veterinary biological products and establishments producing such products.

FOR FURTHER INFORMATION CONTACT: Dr. Peter L. Joseph, Senior Staff Veterinarian, Veterinary Biologics Staff, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6332.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR Part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

Pursuant to these regulations, APHIS issued the following U.S. Veterinary Biological Product Licenses during the month of December 1988:

Product license code	Date issued	Product	Establishment	Establishment license No.
1015.10	12-27-88	Autogenous Vaccine, Killed Virus	Biomune, Inc	368
15B5.20	12-21-88	Feline Leukemia-Rhinotracheitis-Calici-Panleukopenia Vaccine	Agrion Corporation	213
18B5.10	12-23-88	Psittacine Pox Vaccine, Killed Virus	Maine Biological Laboratories, Inc	240
2051.00	12-22-88	Autogenous Bacterin	CAVL	364
2680.00	12-23-88	Leptospira Bratislava-Canicola-Grippotyphosa-Hardjo-Icterohaemorrhagiae-Pomona Bacterin.	Norden Laboratories	189
3605.01	12-23-88	Normal Colostral Whey, Bovine Origin	Cuprem, Inc	363
3870.00	12-02-88	Streptococcus Suis Antiserum, Equine Origin	Midcon Labs, Inc	326
9350.00	12-21-88	Propionibacterium Acnes Immuno-stimulant	ImmunoVet, Inc	302A
B69A.00	12-02-88	Pasteurella Haemolytica Bacterin	American Home Products Corporation	112-A
I350.00	12-21-88	Propionibacterium Acnes Immuno-stimulant	ImmunoMed Corporation	302

The regulations in 9 CFR Part 105 provide for the termination of U.S. Veterinary Biological Product Licenses if the licensed product has not been prepared by the licensee for 5 years and the licensee has failed to show intent to resume production within 6 months. Pursuant to these regulations, APHIS terminated the following Veterinary Biological Product Licenses during the month of December 1988:

Product license code	Date terminated	Product	Establishment	Establishment license No.
5018.00	12-06-88	Canine Heartworm Antigen Test Kit	Mallinckrodt, Inc	295
1895.S0	12-20-88	Pseudorabies Vaccine	Molecular Genetics, Inc	284
3525.00	12-20-88	Escherichia Coli Monoclonal Antibody	Molecular Genetics, Inc	284
3800.00	12-20-88	Pseudorabies Virus Monoclonal Antibody	Molecular Genetics, Inc	284
5032.00	12-20-88	Escherichia Coli Antigen Test Kit	Molecular Genetics, Inc	284
19M5.10	12-21-88	Sendai Vaccine Killed Virus	Whittaker M.A. Bioproducts, Inc	278
5029.00	12-21-88	Feline Infectious Peritonitis Antibody Test Kit	Whittaker M.A. Bioproducts, Inc	278
5030.00	12-21-88	Infectious Bronchitis Virus Antibody Test Kit	Whittaker M.A. Bioproducts, Inc	278
5040.00	12-21-88	Infectious Bursal Disease Antibody Test Kit	Whittaker M.A. Bioproducts, Inc	278
5070.00	12-21-88	Mycoplasma Gallisepticum Antibody Test Kit	Whittaker M.A. Bioproducts, Inc	278
5080.00	12-21-88	Newcastle Disease Antibody Test Kit	Whittaker M.A. Bioproducts, Inc	278
5285.00	12-21-88	Toxoplasma Gondii Antibody Test Kit	Whittaker M.A. Bioproducts, Inc	278

The regulations in 9 CFR Part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biological Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

Pursuant to these regulations, APHIS issued the following U.S. Veterinary Biological Establishment Licenses during the month of December 1988:

Establishment	Establishment license No.	Date issued
CAVL, 9602 South Washington, Rt. 7, Box 594, Amarillo, Texas 79118	364	12-22-88

Establishment	Establishment license No.	Date issued
Cuprem, Inc., 202 North Smith Avenue, P.O. Box 147, Kenesaw, Nebraska 68956	363	12-23-88
Biomune, Inc., 8906 Rosehill Road, Lenexa, Kansas 66215	368	12-23-88

Also, the regulations in 9 CFR 102.4 provide that when a licensee no longer holds an unexpired, unsuspended, or unrevoked product license authorizing the preparation of a biological product, the establishment license shall be submitted to the Deputy Administrator for termination. The following establishments submitted U.S. Veterinary Bilogical Establishment Licenses to the Deputy Administrator for termination and APHIS terminated their licenses without prejudice during the month of December 1988:

Establishment	Establishment license No.	Date terminated
Mallinckrodt, Inc.	295	12-06-88
Molecular Genetics, Inc	284	12-20-88
Whittaker M.A., Bioproducts, Inc.	278	12-21-88

Done at Washington, DC, this 28th day of February 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-5084 Filed 3-3-89; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Electronic Instrumentation Technical Advisory Committee; Partially Closed Meeting

A meeting of the Electronic Instrumentation Technical Advisory Committee will be held March 29 and 30, 1989, in the Herbert C. Hoover Building, 14th Street and Constitution Avenue NW., Washington, DC. On March 29 the meeting will convene in Executive Session at 9:00 a.m. in Room 1617F. On March 30 the meeting will reconvene in Open Session at 9:00 a.m. in Room 1617F.

The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to electonics and related equipment and technology.

Agenda

March 29, 1989

Executive Session

1. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

March 30, 1989

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Presentation of ECCN 1537A.

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting and can be directed to: Betty Anne Ferrell, Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis, Room 4086, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or protions of meeting of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes please call Betty Ferrell, 202-377-2583.

Date: March 1, 1989.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89-5102 Filed 3-3-89; 8:45 am]

BILLING CODE 3510-DT-M

Laser and Opto-Electronic Subcommittee of the Electronic Instrumentation Technical Advisory Committee; Partially Closed Meeting

A meeting of the Laser and Opto-Electronic Subcommittee of the Electronic Instrumentation Technical Advisory Committee will be held March 28, 1989, 9:00 a.m. in Room 1617F, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC. The Subcommittee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to lasers and related equipment and technology.

General Session

1. Opening Remarks by the Chairman.
2. Presentation of papers or comments by the public.

Executive Session

3. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting and can be directed to: Betty Anne Ferrell, Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis, Room 4086, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or

portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes please call Betty Ferrell, 202–377–2583.

Date: March 1, 1989.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89–5103 Filed 3–3–89; 8:45 am]

BILLING CODE 3510–DT–M

Semiconductor Technical Advisory Committee; Partially Closed Meeting

A meeting of the Semiconductor Technical Advisory Committee will be held March 29, 1989, 9:00 a.m., Herbert C. Hoover Building, Room 1092, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to semiconductors or technology.

Agenda

General Session

1. Opening Remarks by the Chairman & Commerce Representative.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Discussion on Status of Committee Tasks.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the occurrence of the delegate of the General Counsel, formally determined on Janaury 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202–377–4959.

March 1, 1989.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology and Policy Analysis.

[FR Doc. 89–5104 Filed 3–3–89; 8:45 am]

BILLING CODE 3510–DT–M

National Oceanic and Atmospheric Administration

Evaluation of State/Territorial Coastal Management Program, Coastal Energy Impact Program and National Estuarine Research Reserves

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Office of Ocean and Coastal Resource Management.

ACTION: Notice of availability of evaluation findings.

SUMMARY: Notice is hereby given of the availability of the evaluation findings for the New Jersey, Michigan, Puerto Rico, Northern Mariana Islands, and Guam Coastal Management Programs, and the California (Elkhorn) National Estuarine Research Reserve. Section 312 of the Coastal Zone Management Act of 1972, as amended, (CZMA) requires a continuing review of the performance of each coastal state with respect to funds authorized under the CZMA and to the implementation of its federally approved Coastal Management Program. Section 315(f) of the CZMA requires a periodic review of the performance of each reserve with respect to its operation and management. The states/territories evaluated were found to be adhering to the programmatic terms of their financial assistance and/or to their approved coastal management programs; and to be making progress on award tasks, special award conditions, and significant improvement tasks aimed at program implementation and enforcement, as appropriate. Accomplishments in implementing Coastal Management Programs were occurring with respect to the national coastal management objectives identified in section 303(2)(A)–(I) of the CZMA. A copy of the assessment an detailed findings for these programs may be obtained on request from: John H. McLeod, Evaluation Officer, Policy Coordination Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue NW., Washington, DC 20235 (telephone 202/673–5104).

DATE: February 27, 1989.

Thomas J. Maginnis,

Assistant Administrator for Ocean Services and Coastal Zone Management.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

[FR Doc. 89–5065 Filed 3–3–89; 8:45 am]

BILLING CODE 3510–08–M

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council's Reef Fish Advisory Panel (AP) will meet on April 11–12, 1989, at the Howard Johnson Plaza Hotel, 700 N. Westshore Boulevard, Tampa, FL. The AP will meet from 8 a.m. to 6 p.m., on Apirl 11 to review draft Amendment #1 for the Reef Fish Fishery Management Plan which addresses bag, size, and quota limits for the various reef fish species. The meeting will reconvene at 8 a.m., on April 12 and will adjourn at 3 p.m.

FOR FURTHER INFORMATION CONTACT: Douglas R. Gregory, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609; telephone: (813) 228–2815.

Dated: February 28, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–5092 Filed 3–3–89; 8:45 am]

BILLING CODE 3510–22–M

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council and its Committees will met on March 13–16, 1989, at the Omni Hotel, Biscayne

Boulevard at 16th Street, Miami, FL. Except for the sessions noted, the meetings are open to the public. The schedule is as follows:

Council—On March 15, 1989, the Council will meet at 10:30 a.m., to hear a shark presentation, and from 1:30 p.m., to 2 p.m., to hear public comments on Amendment #4 to the Coastal Pelagic Fishery Management Plan (FMP). The Council will then review Spiny Lobster, Shark, and Shrimp Management Committee reports from 2 p.m., to 3:30 p.m. At 3:30 p.m., the Council will meet in a closed session to appoint economists/sociologists to the Stock Assessment Group, and to make selections for the Scientific and Statistical Committee (SSC), the Advisory Panel (AP), and the Personnel Committee. This session will be closed to allow discussion of the backgrounds of the candidates. The Council will recess at 5 p.m., and reconvene the public meeting on March 16 at 8:30 a.m., to review the Law Enforcement Committee report, to appoint a Butterfish Management Committee, to hear a summary of the Council Chairmen's meeting, the South Atlantic Fishery Management Council's meeting, the South Atlantic Fishery Management Council's Liaison Report, the Directors' Reports, and enforcement reports. The Council will also discuss conditional fisheries. It will adjourn at 11 a.m., on March 16.

Committees—On March 13, 1989, at 10 a.m., the Habitat Protection Committee will meet to host a Mosquito Control Workshop, and recess at 6 p.m. On the same day, the Law Enforcement Committee will meet from 1 p.m. to 5 p.m. The Shark Management Committee will meet on March 14 at 8 a.m., and be followed by a meeting of the Shrimp Management Committee. At 11:30 a.m., the Red Drum Management, SSC Selection, AP Selection, and Personnel Committee also will meet in closed sessions to review the appointments and selections mentioned above (under Council). On March 15 the Mackerel Management Committee will meet at 8 a.m., in open session and adjourn at 10 a.m.

For further information contact: Wayne E. Swingle, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL; telephone: (813) 228–2815.

Date: February 28, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89–5903 Filed 3–3–89; 8:45 am]

BILLING CODE 3510–22–M

COMMISSION FOR THE IMPROVEMENT OF THE FEDERAL CROP INSURANCE PROGRAM

Hearings

Under the Federal Crop Insurance Commission Act of 1988 (7 U.S.C. 1508 note), the Commission for the Improvement of the Federal Crop Insurance Program announces the following public hearings to receive testimony from farmers, insurers, and other interested persons on recommendations for the improvement of the Federal crop insurance program:

March 7, 1989—10:00 a.m.–5:00 p.m.

Lubbock Plaza, Arlington Room, 3201 S. Loop 289, Lubbock, TX 79423
Rural Development Center Auditorium, Hwy. 41 North & Interstate 75 (Exit 21), Tifton, GA 31793

March 9, 1989—10:00 a.m.–5:00 p.m.

Memphis Cook Convention Center, 255 N. Main, Memphis, TN 38103
North Raleigh Hilton, 3415 Old Wake Forest Road, Raleigh, NC 37608

March 14, 1989—10:00 a.m.–5:00 p.m.

Kenwood Hall, 300 West Ash, Kenwood Park, Salina, KS 67401
Airport Hilton, 4411 Peoria, Denver, CO 80239

March 16, 1989—10:00 a.m.–5:00 p.m.

Best Western Frontier Motor Lodge, 2216 27th Avenue, Council Bluffs, IA 51501
Bone Student Center, BBC Activity Room, Illinois State University, Normal, IL 61761

Additional hearings have been scheduled by the Commission for March 21 (Harrisburg, Pennsylvania, and Baton Rouge, Louisiana), April 11 (Fresno, California, and Fargo, North Dakota), April 13 (Spokane, Washington), and April 18 (Great Falls, Montana). When the meeting places for the additional hearings are determined, they will be announced in the **Federal Register.**

The Commission was established by Congress to ensure a thorough review of the Federal crop insurance program and the development of recommendations for such changes as are needed to improve the program so as to lessen, if not eliminate, the need for additional disaster payment programs while providing to producers of agricultural commodities more equitable, efficient, and predictable protection from natural disasters.

Persons interested in testifying at a particular Commission hearing are requested to write or call the Commission at least one week prior to the date of the hearing. The address and telephone number of the Commission are as follows: Commission for the Improvement of the Federal Crop Insurance Program, 1255 23rd Street NW., Suite 880, Washington, DC 20037. Telephone: (202) 887–6700.

Done at Washington, DC, this 1st day of March 1989.

Kellye A. Eversole,

Executive Director.

[FR Doc. 89–5185 Filed 3–3–89; 8:45 am]

BILLING CODE 3410–01–M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next scheduled meeting is Wednesday, 22 March 1989 at 10:00 a.m. at the Commission's offices at 708 Jackson Place, NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566–1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC 27 February 1989.

Charles H. Atherton,

Secretary.

[FR Doc. 89–5907 Filed 3–3–89; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Turkey

March 1, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: March 7, 1989.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the

Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6582. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

The current limits for certain cotton textile products are being increased by application of swing. The fabric group limit is being reduced to account for the swing being applied.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1989). Also see 53 FR 25526, published on July 7, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreements, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 1, 1989.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on June 30, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Turkey and exported during the period which began on July 1, 1988 and extends through June 30, 1989.

Effective on March 7, 1989, the directive of June 30, 1988 is being amended to adjust the current limits for cotton and man-made fiber textile products in the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and Turkey:

Category	Adjusted twelve-month limit [1]
FABRIC GROUP	
219, 313, 314, 315, 317, 326, 617, 625, 626, 627 and 628, as a group.	77,177,714 square meters.
LIMITS NOT IN A GROUP	
335	99,510 dozen.
338/339	1,391,000 dozen of which not more than 973,700 dozen shall be in Categories 338-S/339-S.[2]
341	561,750 dozen.
342/642	300,563 dozen.
347/348	1,417,750 dozen of which not more than 708,875 dozen shall be in Categories 347-T/348-T.[3]
350	148,730 dozen.
361	535,000 numbers.
369-S [4]	791,111 kilograms.

[1] The limits have not been adjusted to account for any imports exported after June 30, 1988.

[2] In Categories 338-S/339-S, only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0035, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005 in Category 338-S; and 6104.22.0060, 6104.29.2046, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022 in Category 339-S.

[3] In Categories 347-T/348-T, only HTS numbers 6103.19.2015, 6103.19.4020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.3010, 6112.11.0050, 6113.00.0035, 6203.19.1020, 6203.19.4020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.3020, 6210.40.2030, 6211.20.1520, 6211.20.3010 and 6211.32.0040 in Category 347-T; and 6104.12.0030, 6104.19.2030, 6104.22.0040, 6104.29.2034, 6104.62.2010, 6104.62.2025, 6104.69.3022, 6112.11.0060, 6113.00.0040, 6117.90.0042, 6204.12.0030, 6204.19.3030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.3010, 6204.69.9010, 6210.50.2030, 6211.20.1550, 6211.20.6010, 6211.42.0030 and 6217.90.0050 in Category 348-T.

[4] In Category 369-S, only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89–5134 Filed 3–3–89; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Partially Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: March 21–22, 1989.

Note: All sessions are open except: 0845–1145, 21 March 1989, CSTA Facility Tour (Closed/Classified); 1300–1645, 21 March 1989, BRL Facility Tour (Closed/Classified).

Place: Aberdeen Proving Ground, MD.

Agenda: The 1989 Army Science Board Spring General Membership Meeting will include briefings by the Ad Hoc Subgroups, and will also include five Functional Subgroup meetings. The open portions of the meeting are open to the public. Any person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee. The closed portions of the meeting are closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d).

Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89–5116 Filed 3–3–89; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: March 23, 1989.

Time of Meeting: 0900–1500 hours.

Place: Aberdeen Proving Ground, MD.

Agenda: The Army Science Board Subgroup for Army Analysis will meet. A presentation on Army activities will be given by the Logistics Management Institute. Group discussion of the subject will follow. Also, a report on the recent visit to the TRADOC Analysis Center at White Sands will be given by two panel members. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89–5117 Filed 3–3–89; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Navy Strategy Formation Task Force will meet March 16–17, 1989 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to discuss the Formation of Navy Strategy. The entire agenda for the meeting will consist of discussions of key issues regarding formation of Navy Strategy in support of U.S. national security and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

This notice is being published late because of a time sensitive topic of critical interest to the Chief of Naval Operations, thereby constituting an exceptional circumstance, not permitting 15 days' notice.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Date: March 2, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89–5162 Filed 3–3–89; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.168D]

Invitation for Applications for New Awards Under the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages for Fiscal Year 1989

Purpose: To provide assistance to State and local educational agencies, institutions of higher education, and nonprofit organizations for nationally significant projects designed to improve the quality of instruction in mathematics and science.

Deadline for Transmittal of Applications: April 28, 1989.

Deadline for Intergovernmental Review: June 28, 1989.

Applications Available: March 14, 1989.

Estimated Range of Awards: $200,000—$600,000.

Estimated Average Size of Awards: $400,000.

Estimated Number of Awards: 10.

Project Period: Up to 24 months.

Applicable Regulations: (a) Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages, 34 CFR Part 755, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 79, 80 and 85. The Department expects to propose regulations applying 34 CFR Part 79, Intergovernmental Review of Department of Education Programs and Activities, to this program. When the proposed regulations become final, the Department expects that Part 79 will apply to this program. The Department published proposed regulations implementing the amended Part E of the General Provisions Act on December 2, 1988 at 53 FR 48866, and those regulations, when final, will apply to this program.

Important Note to Applicants: Applicants should note that this competition will be conducted under the regulations for this program in 34 CFR Part 755. Although a separate notice of proposed rulemaking amending these regulations will be published in the **Federal Register**, the changes will not affect this competition.

Absolute Priority: In accordance with 34 CFR 755.11(b)(3), 755.13(b), 755.13(c), and 75.105(c)(3), the Secretary has chosen as an absolute priority projects that improve curricula in mathematics and science, including the use of new technologies, at the secondary school level. Only applications proposing activities under this priority will be considered.

Within this absolute priority and in accordance with 34 CFR 75.105(c)(1), the Secretary encourages applications for the establishment of secondary schools that offer specialized and intensive programs in mathematics and science for students from a broad geographic area. These schools may include those serving an entire State, a region within a State, or large school district.

The Secretary urges applicants to:

- Propose full year academic programs in mathematics and science rather than short term programs, such as summer institutes.
- Demonstrate a substantial financial commitment to the proposed project and show evidence of plans to continue the project upon termination of the Federal grant.
- Involve partnerships with business/industry and/or institutions of higher education.

Applicants meeting this invitational priority will not receive an absolute or competitive preference over applications that do not meet the invitational priority.

Selection Criteria: The program regulations at § 755.30(b) and (d) authorize the Secretary to distribute an additional 15 points among the criteria described in the regulations at § 755.32 to bring the total to maximum of 100 points. For the purposes of this competition, the Secretary will distribute the additional points as follows:

National significance. (§ 755.32(g)) Five (5) additional points will be added for a possible total of 25 points for this criterion.

Applicant's commitment and capacity. (§755.32(h)) Ten (10) additional points will be added for a possible total of 20 points for this criterion.

For Applications or Information: Fund for the Improvement and Reform of Schools and Teaching, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 522, Washington, DC 20208–5524. Telephone (202) 357–6496.

Program Authority: 20 U.S.C. 2992.

(Catalog of Federal Domestic Assistance No. 84.168, Mathematics and Science)

Dated: March 1, 1989.

Patricia Hines,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89–5147 Filed 3–3–89; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.168A]

Invitation for Applications for New Awards Under the Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages for Fiscal Year 1989

Purpose: To provide assistance to State and local educational agencies, institutions of higher education, and nonprofit organizations for nationally significant projects designed to improve the quality of instruction in mathematics and science.

Deadline for Transmittal of Applications: April 28, 1989.
Deadline for Intergovernmental Review: June 28, 1989.
Applications Available: March 14, 1989.
Available Funds: $2,000,000.
Estimated Range of Awards: $50,000—$200,000.
Estimated Average Size of Awards: $100,000.
Estimated Number of Awards: 20.
Project Period: Up to 36 months.
Budget Period: 12 months.
Applicable Regulations: (a) Secretary's Discretionary Program for Mathematics, Science, Computer Learning, and Critical Foreign Languages, 34 CFR Part 755, and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 79, 80 and 85. The Department expects to propose regulations applying 34 CFR Part 79, Intergovernmental Review of Department of Education Programs and Activities, to this program. When the proposed regulations become final, the Department expects that Part 79 will apply to this program. The Department published proposed regulations implementing the amended Part E of the General Provisions Act on December 2, 1988 at 53 FR 48866, and those regulations, when final, will apply to this program.
Important Note to Applicants: Applicants should note that this competition will be conducted under the regulations for this program in 34 CFR Part 755. Although a separate notice of proposed rulemaking amending these regulations will be published in the **Federal Register**, the changes will not affect this competition.
Absolute Priorities: In accordance with 34 CFR 755.11(b)(2), 755.11(b)(3), 755.13(b), 755.13(c), and 75.105(c)(3), the Secretary has chosen two absolute priorities for this competition. Applications for this competition must propose projects that either:

(1) Improve the qualifications and skills of elementary school teachers in mathematics and/or science; or

(2) Improve curricula in mathematics and/or science at the elementary school level.

Selection Criteria: The program regulations at § 755.30(b) and (d) authorize the Secretary to distribute an additional 15 points among the criteria described in the regulations at § 755.32 to bring the total to a maximum of 100 points. For the purposes of this competition, the Secretary will distribute the additional points as follows:

Plan of operation. (§ 755.32(a)) Ten (10) additional points will be added for a possible total of 20 points for this criterion.

Evaluation plan. (§ 755.32(d)) Five (5) additional points will be added for a possible total of 10 points for this criterion.

For Applications or Information Contact: Fund for the Improvement and Reform of Schools and Teaching, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 522, Washington, DC 20208–5524. Telephone (202) 357–6496.
Program Authority: 20 U.S.C. 2992.

(Catalog of Federal Domestic Assistance No. 84.168, Mathematics and Science)

Dated: March 1, 1989.

Patricia Hines,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 5148 Filed 3–3–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistant Award Intent To Award Grant Agreement to East-West Center

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of Intent to make a Financial Assistance Award to the East-West Center on a sole source basis.

SUMMARY: Pursuant to 10 CFR 600.7(b), The U.S. DOE announces that it is restricting eligibility for award of DE–FG03–89SFE61811 to the East-West Center, Resource Systems Institute, to conduct a study and workshops on the Potential for Thermal Coal and Clean Coal Technology Export in the Asia-Pacific Region.

The study and the workshops are to address thermal coal trade and clean coal technology requirements in the Asia-Pacific region within the scope of the "Asia-Pacific Coal Project," an ongoing research project at the Resource Systems Institute. Senior government and industry officials from the U.S. and many of the Asia-Pacific countries are to be brought together to strengthen their relationship through cooperation and dialogue over the issues associated with the expansion of thermal coal trade and regional energy interdependence. Options and opportunities for both thermal coal and clean coal technology trade for U.S. industry will be identified. The East-West Center's Coal Trade model will enable its users to quickly and easily project the potential reaction of the international market to shifts in the supply or demand for thermal coal and/or from changes in the capacity of the logistical system to handle the anticipated coal export level.

This noncompetitive financial assistance award is necessary to enhance the public benefits by increasing the cooperative information exchange among key DOE and industry officials from the U.S. and their counterparts in Asia-Pacific countries. There is no known other entity which is conducting or is planning to conduct a study of such magnitude and detail on thermal coal trade and clean coal technology requirements in the Asia-Pacific region.

FOR FURTHER INFORMATION CONTACT: Bettyanne Moore, U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612.

Issued in Oakland, California, February 2, 1989.

David J. Tenca,

Acting Director, Contracts Management Division.

[FR Doc. 89–5149 Filed 3–3–89; 8:45 am]

BILLING CODE 6450–01–M

Noncompetitive Grant Award to the State of Utah

AGENCY: Department of Energy.

ACTION: Notice of Noncompetitive Grant Award to the State of Utah.

SUMMARY: The Department of Energy, Idaho Operations Office, announces that it intends to issue a grant award to the state of Utah for reimbursement of CERCLA costs.

Grant Award Number: DE–FG07–89ID12849.

Scope of Work: The Congress provided, through the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), a provision in section 107, that the Government and states were entitled to recover funds related to the cost of removal of remedial action taken to clean up hazardous substances as long as such costs are not inconsistent with the national contingency plan. Further, through an October 31, 1988 memorandum, the Deputy Secretary for Environmental, Safety and Health, Department of Energy, determined it was in the Government's best interest to pay states reasonable costs incurred under Interagency Agreement for environmental cleanup. Pursuant to DOE policy, only CERCLA response costs are recoverable. The state of Utah is eligible for such costs in relation to work performed in the three-party Monticello Federal Facilities Agreement (dated December 19, 1988) with DOE and EPA. The

types of activities the state will pursue include reviewing documents and preparation of technical comments, monitoring grant progress, participating in the public process, conducting split sampling and analyses, oversight of DOE field work/investigations as directed by EPA, attending meetings, and interfacing with state contractors to perform technical review of documents and/or sampling analyses. Travel should be kept to a minimum. It is anticipated that total funding for this grant will be approximately $600,000, with an estimated 10-year project period. The award will be made during FY 1989.

FOR FURTHER INFORMATION CONTACT: Dallas L. Hoffer, U.S. Department of Energy, Idaho Operations Office, 785 Doe Place, Idaho Falls, Idaho 83402, or call (208) 526-0114.

Issued in Idaho Falls, Idaho.
Date: February 27, 1989.

H. Brent Clark,

Director, Contracts Management Division.

[FR Doc. 89-5146 Filed 3-3-89; 8:45 am]

BILLING CODE 6450-01-M

Clean Coal Technology Program

AGENCY: Department of Energy (DOE).

ACTION: Notice of availability of a draft Program Opportunity Notice (PON) for the Clean Coal Technology Program, and request for public comments.

SUMMARY: DOE is issuing a draft Program Opportunity Notice (PON), No. DE-PS01-89FE61825, for public comment. The draft PON solicits proposals for cost-shared projects to demonstrate clean coal technologies that could be commercialized in the 1990's. A total of $575 million dollars (less approximately $30 million for DOE's administrative expenses) has been appropriated for financial assistance awards under this solicitation.

DATE: The deadline for receipt of comments on the draft PON is March 31, 1989 at 4:30 p.m. e.s.t.

ADDRESS FOR PUBLIC COMMENTS: Written comments must be delivered or mailed to the U.S. Department of Energy, Office of Procurement Operations, Attn: Herbert D. Watkins, MA-452.1, Room 1I-065, 1000 Independence Avenue SW., Washington, DC 20585.

ADDRESSES FOR OBTAINING DRAFT PON: Written requests must be sent to U.S. Department of Energy, P.O. Box 2500, Attn: Document Control Specialist, MA-451.1, Washington, DC 20013. Written requests to be placed on the mailing list for the draft PON should be received by March 15, 1989. Also, copies of the draft PON may be picked up at the U.S. Department of Energy, Office of Procurement Operations, Document Control Specialist, Forrestal Building, Room 1J-005, 1000 Independence Avenue, SW., Washington, DC between the hours of 9 a.m. and 3 p.m., e.s.t., Monday through Friday except Federal holidays. The draft PON is anticipated to be available on or after March 15, 1989. If you have received past solicitations and/or attended the 1988/1989 Clean Coal Technology public meetings you need not submit a written request for the draft PON.

SUPPLEMENTARY INFORMATION: On September 27, 1988, the President signed Pub. L. 100-446, "An Act Making Appropriations for the Department of Interior and Related Agencies for the Fiscal Year Ending September 30, 1989, and for Other Purposes." The Act appropriates $575 million for DOE to conduct and make cost-shared financial assistance awards under a third competitive solicitation for clean coal technology demonstration projects. As recommended by the Congress, DOE plans to issue a final PON on May 1, 1989. A preproposal conference will be announced in the final PON. The preproposal conference is presently scheduled to occur at 10:00 a.m. on May 18, 1989 in the Thomas Jefferson Auditorium, U.S. Department of Agriculture (South Building between the 5th and 6th wings), 14th and Independence Avenue, SW., Washington, DC. The final PON will establish a 120-day deadline for the submission of proposals. The evaluation and selection of proposals is expected to be completed 120 days later, by approximately December 27, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert D. Watkins, Tel. (202) 586-1026.

Signed in Washington, DC, this 28 day of February, 1989 for the United States Department of Energy.

Jeffrey Rubenstein,

Director of Contract Operation "A", Office of Procurement Operations.

[FR Doc. 89-5145 Filed 3-3-89; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL COMMUNICATIONS COMMISSION

[Gen. Docket 88-351; FCC 88-386]

The Plenipotentiary Conference of the International Telecommunication Union, Nice, France (1989)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On November 22, 1988, the Commission adopted a Report and Order in Gen. Docket No. 88-351, FCC 88-386, that summarized the comments received in this proceeding, provided a brief explanation of the ITU Plenipotentiary Conference (PLENIPOT) and determined that U.S. participation in the ITU and its telecom purposes should be fully supported. Noting that this proceeding was instituted to provide information concerning the ITU and the Nice PLENIPOT to the American public, that the ITU PLENIPOT is a government-to-government process, and that the information assembled via public comments would be used by the U.S. Delegation preparatory process in developing U.S. proposals and positions, the Commission determined that specific conclusions from the comments received would not be elaborated in its Report and Order. In order to provide this public input to the U.S. Delegation preparatory process as rapidly as possible and to preserve the full range of options in developing the U.S. positions for this important conference, the Commission stated its intent to provide this Report and Order, along with complete copies of all comments received, to the Head of the U.S. Delegation to the Nice Plenipot and to the U.S. State Department's Executive Director of the U.S. Delegation. With this action, the proceeding was terminated.

ADDRESS: Federal Communications Commission, 1919 M. Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Douglas V. Davis, International Policy Division, Common Carrier Bureau, (202) 632-3214.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, Gen. Docket 88-351, adopted November 22, 1988, and Released December 16, 1988.

The full text of this Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M. Street, NW., Washington, DC. It may also be purchased from the Commission's copy contractors, International Transcription Service, 2100 M. Street, NW., Suite 140, Washington, DC 20037, (202) 857-3800.

On July 8, 1988, the Commission released a Notice of Inquiry (Notice) [1] in

[1] Not published in the Federal Register.

this proceeding, Gen. Docket 88–351, FCC 88–223, in order to inform the general public, particularly the U.S. telecommunciations community of users and companies interested in the provision of international telecommunications facilities, services and related equipment, of the ITU's 13th Plenipotentiary Conference (PLENIPOT) scheduled to be held in Nice, France, during the period 23 May through 29 June 1989. The Notice provided extensive background information on the ITU, a brief summary of the previous PLENIPOT (Nairobi, 1982) and a listing of the agenda for the Nice PLENIPOT. The Notice stated that this would be basically an information providing and gathering proceeding, as opposed to a preparatory effort for a specific technical conference, and that the information developed within this proceeding would be made available to the preparatory process of the U.S. ITU PLENIPOT Delegation. The Notice identified ten topic areas that potentially could have a significant impact on U.S. telecommunications policy and/or on U.S. companies and individuals involved with international telecommunications and requested comments on these particular areas while generally calling for public comment on the totality of the agenda for the Nice PLENIPOT.

The Report and Order provides a brief description of the ITU and the PLENIPOT and a complete summary of the public comments submitted in this proceeding. The commenting parties fell broadly within the categories of large users, broadcasting interests, satellite interests, international common carriers and the RBOCS (Regional Bell Operating Companies. Most Commenters did not address all ten potential significant issues, but rather limited their comments to selected areas, some not listed in the Notice. Of those commenting in a particlar area, the following observations apply: (1) Role of the ITU, most commenting parties support continuation of the existing ITU telecommunications role within the UN family of agencies of harmonizing international telecommunications between and among nations; (2) Election of ITU officials, most commenters supported the election of Directors of the two CCIs by their respective Plenary Assemblies, while one commenter cautioned that attempts to move such elections back from the PLENIPOT at Nice might unnecessarily alienate the developing countries who had pushed for these elections at the PLENIPOT at Nairobi; (3) Principle of Rotation, there was unanimous opposition against applying this principle to the election of ITU officials and to membership of countries on the ITU Administrative Council; (4) ITU Headquarters Structure, there was a general consensus that the ITU federal structure should not be changed, since it generally reflected a balance of interests within the ITU and among its Member countries; (5) Future program of Conferences and Meetings, there was a general view that no conference or meeting should be held unless there was a demonstrated need for it, but some individual commenters argued for and against specific conferences to be held in the 1992–1995 time frame; (6) IFRB Technical Standards, of those commenting, there was unanimity that the IFRB should consult with Administrations when it is developing technical standards; (7) Status of Final Acts of Regional Conferences, there were few commenters, but the general view was that this topic should receive further sutdy as to its potential ramifications; (8) Basic instrument of the Union, most commenters supported the objectives of Resolution 62 of the Nairobi PLENIPOT which would bifurcate the existing ITU Convention into a "permanent" Constitution and a "Less permanent" Convention; (9) Reservations, most commenters were of the opinion that the issue of the status of reservations required clarification at the Nice PLENIPOT, while several urged that the U.S. should reiterate its reservations to final acts and regulations of prior conferences, out of an abundance of caution, until the matter is definitively clarified; and (10) Financing Technical Cooperation and Assistance, most commenters favored support of ITU technical assistance activities as well as funding for such from traditional sources—government support and voluntary private contributions, while there was strong opposition to funding from portions of international telecommunications accounts settlements (but one commenter suggesting further exploration of this potential source for funding) and one commenter strongly opposing any form of international access charge for this purpose. Additional comments, not raised in the Notice included: an urging that the U.S. Delegation seek changes in the ITU basic documents that would recognize the increasingly important role played by private entities in the provision of international telecommunications; proposals by one commenter that would create standing working groups to carry on ITU Administrative Council business between sessions, open ITU conferences and meetings to the press and the public, and revise the definition of "administrations" contained in the ITU Convention so as to account for modern approaches in many countries toward provision of telecom services; and a proposal by one commenter to allow Scientific and Industrial Organizations (SIOs) to participate fully in the work of the CCIs on a par with Recognized Private Operating Agencies (RPOAs).

The Commission concluded that that it would not draw specific conclusions from the comments submitted in this proceeding, since this was an information providing and gathering proceeding. In order to protect the full range of options in developing U.S. positions and proposals for the PLENIPOT and to provide the information to the U.S. Delegation preparatory process as rapidly as possible. The commission ordered that this Report and Order, together with complete copies of all comments received, be sent to the Head of the U.S. Delegation to the Nice PLENIPOT and to the U.S. State Department's Executive Director of the U.S. Delegation to the Nice PLENIPOT. The Commission further ordered that the motion to accept late-filed pleadings in this proceeding be granted and that this proceeding is terminated.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89–4501 Filed 3–3–89; 8:45 am]

BILLING CODE 67R–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

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.: 224–010839–003.

Title: Port of Seattle Terminal Agreement.
Parties: Port of Seattle; American President Lines, Ltd.
Synopsis: The Agreement amends the basic lease agreement (Agreement No. 224–010839) by providing for the addition of approximately six (6) acres of improved terminal area upon completion of certain construction of the premises, a change in rent to reflect the additional area and appropriate substitution of lease exhibits.

Agreement No.: 224–200221.
Title: City of Salem Municipal Port Authority Terminal Agreement.
Parties: City of Salem Municipal Port Authority (Authority); Mid-Atlantic Shipping and Stevedoring, Inc. (MSS).
Synopsis: The Agreement provides for MSS's ten (10) year sublease from the Authority of certain port facilities. It also provides for MSS to pay a specified annual rental for the sub-leased premises and further to make certain improvements to those premises.

By Order of the Federal Maritime Commission.

Dated: February 28, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89–5056 Filed 3–3–89; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (35 FR 3685, February 25, 1970, as amended most recently in pertinent part at 53 FR 8979, March 18, 1988) is amended to reflect an organization change in the Food and Drug Administration (FDA).

FDA is proposing to centralize the management of FOI requests, legislative correspondence, and professional and consumer affair activities in the Office of Compliance within the Center for Biologics Evaluation and Research to coordinate similar functions. The functions relating to FOI requests and professional and consumer affairs will accordingly be deleted from the Office of Biological Product Review.

Section HF-B, Organization and Functions is amended as follows:

1. Delete subparagraphs p–2 and p–3, Office of Compliance (HFBC) and Office of Biological Product Review (HFBD).

2. Insert new subparagraphs p–2 and p–3, Office of Compliance (HFBC) and Office of Biological Product Review (HFBC) to read as follows:

(p–2) *Office of Compliance* (HFBC). Monitors the quality of marketed biological products through surveillance, inspections, and compliance programs and coordinates testing of marketed products with other parts of FDA.

Advises the Center Director and other Agency officials on FDA's regulatory responsibilities for biological products.

Directs and coordinates Center regulation-writing activities.

Directs the Headquarters' biologics inspection program and training of Headquarters' inspectors of biological products.

Develops standards for biological product industry practices, including Current Good Manufacturing Practice (CGMP) regulations, and ensures their uniform interpretation.

Directs the Center's bioresearch monitoring program for biological products.

Identifies problems in biological product regulation, manufacturing, and quality assurance and conducts voluntary compliance programs and studies.

Develops biological product quality assurance compliance and surveillance programs; coordinates and directs their field implementation; and advises other Center components on these programs.

Coordinates Center-field relations, provides support and guidance to the field on legal actions, case development and contested cases, and reviews and decides disposition of field and Headquarters' submissions involving deviations from standards.

Evaluates, in coordination with appropriate Agency regulatory affairs officials, a firm's conformance with CGMP in producing biological products for procurement by Federal and State agencies.

Evaluates, classifies, and recommends biological product recalls and provides Center coordination with field recall activities.

Coordinates Center inspectional programs including providing appropriate training opportunities for Center inspectors.

Initiates Center-field surveillance assignments to monitor pivitol research data submitted as part of pre-marketing applications.

Directs and controls development and coordination of important and sensitive Center responses to Congressional requests, including proposed legislation. Serves as Center liaison with the Office of Legislative Affairs.

Directs and implements Center consumer and professional informational activities and coordinates these activities with other Agency components.

Identifies, plans, and develops informational and educational programs and materials on the prevention, identification, and treatment of AIDS and on biological products and their use for consumers and health professionals.

Prepares, develops, and coordinates Center and Agency responses to inquiries on AIDS and biological products from health professionals, consumers, and others, including requests under the Freedom of Information Act, the Privacy Act, and other statutes.

Serves as Center liaison with the National Technical Information Service and serves as Center small business and small manufacturing assistance program liaison.

Serves as Center focal point for developing and maintaining international communications, policies, and programs.

Coordinates the development of annual field workplans in conjunction with other Center components and ORA.

(p–3) *Office of Biological Product Review (HFBD).* Reviews, evaluates, and takes appropriate action on establishment and product licenses and other marketing applications submitted by manufacturers, tests products submitted for release in coordination with other Center components, as appropriate, and establishes written and physical standards for biological products regulated by the Office.

Develops policy and procedures on and reviews, evaluates, and takes appropriate action on biological product investigations and biological product licenses.

Administers applicable provisions of the FD&C Act as they pertain to investigational products and to certain devices and drugs that are related to biological products.

Evaluates and takes appropriate action, in coordination with other Agency components, on the results of continuing surveillance and medical evaluation of the labeling, advertising, clinical experience, and reports submitted by manufacturers and sponsors of products regulated by the Center.

Reviews, evaluates, and takes appropriate action on recommendations concerning withdrawal of approval of

license applications for products regulated by the Center.

Date: February 7, 1989.

Wilford J. Forbush,

Director, Office of Management, PHS.

[FR Doc. 89-5114 Filed 3-3-89; 8:45 am]

BILLING CODE 4160-1-M

Office of the Assistant Secretary for Health Rural Health Medical Education Demonstration Project; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority of January 27, 1989, from the Secretary of Health and Human Services to the Assistant Secretary for Health, the Assistant Secretary for Health has redelegated the authorities delegated to him under section 4038 to the Administrator, Health Resources and Services Administration, except Section 4038(d) which was delegated to the Administrator, Health Care Financing Administration.

Redelegation

This authority may be redelegated.

Effective Date: This delegation became effective on February 23, 1989.

Robert E. Windom,

Assistant Secretary for Health.

Date: February 23, 1989.

[FR Doc. 89-5066 Filed 3-3-89; 8:45 am]

BILLING CODE 4160-15-M

Office of the Assistant Secretary for Health

Privacy Act of 1974; New System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a proposal to establish a new Privacy Act system of records 09-37-0021, "AIDS Cost and Service Utilization Survey (ACSUS), HHS/OASH/NCHSR." This system will be used solely to support health services research. We are proposing one routine use for this system.

DATES: PHS invites interested parties to submit comments on the proposed new routine use on or before April 5, 1989. PHS has sent a Report of New System to the Congress and to the Office of Management and Budget (OMB) on February 13, 1989. The system of records will be effective 60 days from the date submitted to OMB unless PHS receives comments on the routine use which would result in a contrary determination.

ADDRESS: Comments should be addressed to the National Center for Health Services Research and Health Care Technology Assessment Privacy Act Coordinator at Room 18-23, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Comments received will be available for inspection from 9 a.m. to 3 p.m., Monday through Friday in Room 18-23, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Cluster Chief, Cost and Financing Cluster, Division of Extramural Research, National Center for Health Services Research and Health Care Technology Assessment, Room 18A19, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 or call 301/443-6990. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The National Center for Health Services Research and Health Care Technology Assessment (NCHSR) proposes to establish a new system of records 09-37-0021, "AIDS Cost and Service Utilization Survey (ACSUS), HHS/OASH/NCHSR".

This proposed system of records will consist of records generated by the AIDS Cost and Service Utilization Survey (ACSUS). NCHSR will use a contractor to survey a representative sample of patients with Acquired Immunity Deficiency Syndrome (AIDS) and HIV-related illnesses and the providers of services to these patients. The purpose of the survey will be to obtain data which will allow for making informed national estimates of the use, costs, and financing of health services for patients with AIDS and other HIV-related illnesses and to examine variations in resource use across geographic areas, risk groups, and stages of illness. Records will be obtained solely to support the congressionally-mandated responsibility for the conduct of health services research activities by NCHSR. Participation in the survey subject individuals will be strictly voluntary.

The records in this system will be maintained in a secure manner compatible with their content and use. The contractor will be required to adhere to the provisions of the Privacy Act and the HHS Privacy Act Regulations. The System Manager and the Contract Project Director will control access to the data. Only contractor personnel whose duties require the use of such information will have regular access to the identifiers of the records in this system. Records will be stored in locked files or safes, in secured areas. Computer terminals will be located in secured areas. Data stored in computers will be accessed through the use of passwords known only to authorized contractor personnel. These passwords will be changed frequently. Names and other identifying particulars will be deleted when data from original records are encoded on data files for delivery to the Government. Once the Government has received and accepted all servies and deliverables called for delivery under the terms of the contract, the contractor will destroy all individual respondent identifiers and maintain no copies.

The data collection activities of NCHSR are governed by 42 U.S.C. 242m(d), section 308(d) of the PHS Act. Under this provision, information collected which can be identified with an individual may not be used for any purpose other than the purpose for which it was collected, i.e., health services research, unless that individual has given specific consent for such release. No data will be used to affect the subjects individually; there will be no use of the data to make determinations about individual's rights, benefits, or privileges. NCHSR proposes to use a contractor to collect and process the ACSUS data as NCHSR lacks the internal resources to conduct the survey and process the data. Contracted services will include data collection, collation, analysis, and computer input. The contractor is subject to the Privacy Act and the confidentiality provisions of 42 U.S.C. 242m(d), and HHS contract officials and the ACSUS project officer will monitor contractor compliance.

NCHSR is proposing only one routine use which will permit the disclosure of records to the Department of Justice should the Department of Health and Human Services become a defendant in litigation in which the system records could become evidence.

The following notice is written in the present, rather than the future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the system has become effective.

Dated: February 22, 1989.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management, Public Health Service.

09-37-0021

SYSTEM NAME:

AIDS Cost and Service Utilization Survey (ACSUS), HHS/OASH/NCHSR.

SYSTEM CLASSIFICATION:

None.

SYSTEM LOCATION:

At selected contractor locations. A current list of contractor sites is available by writing the System Manager at the address below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals with HIV-related illnesses and Acquired Immunity Deficiency Syndrome (AIDS) and providers of services to these individuals.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Names, respondent identification numbers, demographic and socioeconomic characteristics such as age, marital status, education, occupation, and income; (2) quality of life and functional status data; (3) medical data on presenting diagnosis; (4) current medical insurance data; (5) names of providers from whom respondents have received services; and (6) the costs of these services, and the costs of drugs or other therapies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 304 of the Public Health Service Act as amended (42 U.S.C. Section 242b) Research, Evaluations, and Demonstrations in Health Statistics, Health Services and Health Care Technology Assessment.

PURPOSE OF THE SYSTEM:

The data are to be used in aggregated form for health services research purposes, i.e., analysis and evaluation of the cost and financing of AIDS and other HIV-related illnesses and service utilization by individuals with these illnesses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department has contracted with a organization for the purpose of collecting, aggregating, or otherwise refining records in this system. The contractor maintains all individually identifiable records and is required to maintain Privacy Act safeguards with respect to such records.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Justice Department to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System:

Storage. File folders and magnetic tapes or computer disks.

Retrievability. Information is retrieved by name and/or patient identification number.

Safeguards. NCHSR and its contractors implement personnel, physical, and procedural safeguards as follows:

1. Authorized Users—Access is limited to persons authorized and needing to use the records, including the project director, interviewers, analysts, statisticians, statistical clerks, and data entry clerks on the project staff of the contractor.

2. Physical Safeguards.—The hard-copy records are stored in locked safes, locked files, and locked offices when not in use. Computer terminals used to process identifiable data are located in secured areas and are accessible only to authorized users. Automated backup files are maintained.

3. Procedural Safeguards.—All contractor personnel will access to NCHSR records are required, as a condition of employment, to sign an affidavit binding them to nondisclosure of individually identifiable information.

An identifying number is given by the contractor to each individual from whom information is obtained. The file is maintained by the contractor and the data accessed only to update information on each individual over the course of the data collection period. At the end of the data collection period when the files have been completely updated, names and any other identifying information will be removed from the files with each individual file being identified only by a numeric code. Only information in unidentifiable form will be delivered to the Government.

The contract contains provisions that preclude the release or use of the information in the records system. Privacy Act requirements and the restrictions of 42 U.S.C. 242m(d) are included in this contract. The project director, contracting officer, and the project officer oversee compliance with these requirements.

RETENTION AND DISPOSAL:

After NCHSR has received and accepted the final data tape and all other contract deliverables the contractor will destroy all information linking the numeric codes with the names of the individuals who supplied the data. Hard-copy records will be burned or shredded following verification that such data were correctly keyed into a machine readable format.

SYSTEM MANAGER AND ADDRESS:

Chief, Cost and Financing Cluster, Division of Extramural Research, National Center for Health Services Research and Health Care Technology Assessment, Mail Stop 18A19, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

NOTIFICATION PROCEDURE:

See Record Access Procedure.

RECORD ACCESS PROCEDURES:

To determine if a record exists, write to the contractor, giving your full name and address. To receive a copy of any record the written request must have a notarized signature. Photo identification will be required for system access in person. Willful misrepresentation to obtain access to the system is subject to a $5,000 fine.

In the case of a parent or guardian seeking access to a minor's or incompetent person's record, this individual must verify the relationship to the minor/incompetent person as well as provide appropriate identification.

CONTESTING RECORD PROCEDURES:

Contact the System Manager and reasonable identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, or untimely.

RECORD SOURCE CATEGORIES:

Respondents in the survey include: persons with AIDS and HIV-related illnesses, next of kin of these persons, and the providers of services to these persons including hospitals, physicians, pharmacists, staff of nursing and personal care homes.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

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BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N-89-1917; FR-2606]

Unutilized and Underutilized Federal Buildings and Real Property Determined by HUD To Be Suitable for Use for Facilities To Assist the Homeless

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

ACTION: Notice.

SUMMARY: This Notice identifies Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

DATE: March 6, 1989.

ADDRESS: For further information, contact Morris Bourne, Director, Transitional Housing Development Staff, Room 9140, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-9075; TDD number for the hearing- and speech-impaired (202) 426-0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, D.C.D.C. No. 88-2503-OG, HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized property controlled by such agencies and by the General Services Administration (GSA) from its current inventory of excess and surplus property.

The court order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about unutilized and underutilized properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and GSA, which of those properties are suitable for use for facilities to assist the homeless. The court order requires HUD to publish, on a weekly basis, a Notice in the **Federal Register** identifying property determined sutiable. HUD published the first Notice on January 9, 1989 (54 FR 667).

HUD's responsibility under section 501 is to determine the suitability of the properties for use as facilities to assist the homeless. It is important to note that, because HUD's determination of suitability is made without a specific proposal for use, approval for use is conditioned upon a number of factors, including the suitability of the property or any portion of the property for the type of activity planned, as well as the user's compliance with applicable federal, state, and local requirements that may govern the proposed use of the property. Property may also be found suitable even though the property may be currently occupied or in use. Under section 501, the issue of availability is the responsibility of GSA and HHS.

Unutilized and underutilized properties identified in this Notice may ultimately be available for use by the homeless, but they are first subject to review by the controlling agencies, pursuant to the court's Memorandum opinion of December 14, 1988 and section 501(b) of the McKinney Act. Section 501(b) requires HUD to notify each Federal agency with respect to any property of such agency that has been identified as suitable. Within 30 days from receipt of the notice from HUD, the agency must transmit to HUD its intention to: (1) Declare the property excess to the agency's need, or to make the property available on an interim basis for use for facilities to assist the homeless; or (2) state the reasons that the property cannot be declared excess or made available for such use on an interim basis.

First, if the controlling agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis, the property will no longer be available.

Second, if the controlling agency declares the property excess to the agency's need, that property may be made available for use by the homeless in accordance with applicable law and the court's order of December 12, 1988 and Memorandum of December 14, 1988, subject to screening by other Federal agencies that may wish to make use of the property. In accordance with its normal procedures, GSA will notify the public when properties that HUD has determined suitable are declared excess to the controlling agency's needs. The properties identified by GSA will be held available for expressions of interest for 30 days following GSA's notification to the public. Thus, applicants will have 30 days after the notification by GSA that the properties have been declared excess to submit an application or written expression of interest in a property to Judy Brietman, Division of Health Facilities Planning, Public Health Services, HHS, Room 17A-10 Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-2265. (This is not a toll-free number.)

Finally, in lieu of declaring any particular property as excess, the controlling agency may decide to make the property available to the homeless for use on an interim basis. Public bodies and private nonprofit organizations wishing more information about a particular property identified as suitable in this Notice or wishing to make application for use of a particular property on an interim basis should contact the appropriate landholding agency at the following addresses: U.S. Army: (military facilities) HQ-DA, Attn: DAEN-ZCI-P-Robert Conte, Room 1E671, Pentagon, Washington, DC 20360-2600 (202) 693-4583; (civil works projects) Bob Swieconek, HQ-US Army Corps of Engineers, Attn: CERE-MM, 20 Massachusetts Ave. NW., Washington, DC 20314-1000 (202) 272-1750; U.S. Air Force; Bill Kimball, HQ-USAF/LEER, Washington, DC 20332-0500 (202) 767-4384; Veterans Administration: Linda Tribby, 084A, Real Property Program Management, Veterans Administration, 810 Vermont Ave. NW., Washington, DC 20420 (202) 233-5026; GSA; James Folliard. Federal Property Resources Services, GSA, 18th and F Streets, NW, Washington, DC 20405, (202) 535-7067; U.S. Department of Transportation: Angelo Picillo, Deputy Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW., Room 10319D, Washington, DC 20590 (202) 366-4246. (These are not toll-free telephone numbers.)

Detailed information about the properties identified in today's Notice from the current excess and surplus inventory of GSA may be obtained from

James Folliard or Richard Stinson, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405, (202) 535–7067. (This is not a toll-free telephone number.) Please refer to the GSA identification number given with each property. Public bodies and private nonprofit organizations wishing to apply for use of a property from the GSA excess and surplus inventory should submit a written expression of interest and a request for the necessary application forms, within 30 days from the date of this publication, to the HHS address given above.

Although not required to do so by either section 501 or the court order, HUD is identifying property, from the information furnished by landholding agencies or GSA, determined unsuitable for use for facilities to assist the homeless, along with the reason for the finding. The court order prohibits the sale, transfer, or other disposition of property found unsuitable for a period of two weeks following the determination.

Dated: February 27, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

Excess and Surplus Property in GSA Inventory

Suitable Buildings

Number of Properties ( )

Portion, Former Brookhaven National Lab (1), Brookhaven, NY
Location: Property 01–GR–NY–429X

Unsuitable Land

Portion, Allatoona Lake Project (1), Sewage Treatment Plant, Canton, GA
Reason: Contamination
Location: Property GA–0424B

Unutilized and Underutilized Property

Suitable Buildings (by agency)

Number of Properties ( )

U.S. Air Force

Wurtsmith AFB (2), Bayshore, MI 49711–
Location: Buildings 5043, 7357
Wurtsmith AFB (2), 379 CSG, Wurtsmith, MI 48753–5000
Location: Buildings 55,2295
Calumet Air Force Station (93), 23 Mile North of Calument, MI, Keweenaw County, MI
Location: Eagle Harbor Township. 93 Buildings 1, 3, 5–13, 14–16, 20, 21, 23, 24, 30–37, 39–68, 70, 72–89, 168, 211–224.
Wurtsmith AFB (1), 379th CSG, Wurtsmith, MI 48750–5000
Location: Property 201
Port Austin Air Force Station (47), Port Austin, Huron County, MI
Location: One mile south of Port Austin Township and Lake Huron—17 Mile North of Bad Axe
Comment: Site consists of 57 acres and has 47 bldgs—all suitable either occupancy/storage
Camp Kohler Annex (2), 6 miles NE of Sacramento, Sacramento, CA
Location: Buildings 4000, 4004
Barksdale AFB (139), Wherry Housing, Barksdale, LA 71110–5000
Location: 139 residential units are outside of secured area—contact Berry McKinney, (318) 456–4824.
Pease AFB (1), Pease, NH
Location: Building 94
Brooks AFB (1), San Antonio, TX 78235–5000
Location: Building 653
Brooks AFB (1), San Antonio, TX 78235–5000
Location: Building 658

Army

Yuma Proving Ground (2), Yuma, AZ 85365–9102
Location: Buildings S–105, S–309
Comment: Friable asbestos to be abated as of 6/89
Fort Gordon (3), August, GA 30905–5000
Location: Buildings 505, 521, 15301
US Army Reserve Training Bldg. and Shop (2), 1700 Carswell Avenue, Waycross, GA
Mountain Home Installation (1), Mountain Home, ID
Comment: National Guard will occupy building in Spring 1989
US Army Garrison (2), Ft. Sheridan, IL
Location: Buildings 62, 575
Cagles Mill Lake (1), Rt. 2 Box 469, Poland, IN
Location: Midway between Indianapolis and Terre Haute
Kentucky River Lock & Dam No. 3 (1), Adjacent to Highway 561, Henry County, KY
Ft. Knox (43), Ft. Knox, KY
Location: Buildings T00247–248, T00252, T00255–258, T00837, T01059, T01060, T01061, T01311, T01312, T01505, T01519, T01520, T02831, T02834, T02836, T02842, T02851, T02857, T02863, T02868, T02869, T02872, T02873, T02880, T02882, T02884, T02885, T02899, T02900, T02901, T02902, T02906, T02914, T02925, T02926, T02927, T02928, T02929, T02935
Fort Knox (17), Ft. Knox, KY
Location: T02937, T04243, T05006, T07060, T07315, T07317, T07319, T07320, T07322, T07323, T07325, T07327, T07328, T0347, T07362, T07363, T07368
Ft. Missoula (3), Missoula, MT
Location: Buildings T–310, T–312, T–316
Ft. Monmouth (Evans Area) (3), Ft. Monmouth, NJ
Location: Buildings 9005, 9004, 2524
Comment: With cleanup of asbestos
Ft. Monmouth (Evans Area) (1), Ft. Monmouth, NJ
Location: Buildings 401
White Sands Missile Range (14), White Sands, NM
Location: 213 and 105 Rossford; 603 Seirra; 417, 416, and 412 Pershing; 436, 434, 430, and 408 Thor; 429 Zuni; 315 and 313 Twin Cities; 311 Watervliet
Comment: May be security problem—Army must verify
Hawthorne Army Ammunition Plant (1), Hawthorne, NV 89415–5000
Location: Building 00359
Woodcock Creek Lake (1), Saegertown, PA
Location: Downstream, below the dam
New Cumerland Army Depot (1), Miffland Avenue, New Cumerland, PA 17070–5001
Location: Building Building 505
Comment: Because of large maintenance costs, demolitions is being scheduled
Tobyhanna Village Apartments (248), Rte. 423, Tobyhanna, PA
South Nike Education Annex (2), Ellsworth, SD
Location: Buildings 204, 205
Comment: Currently used as an education center
Volunteer Army Ammunition Plant (13), Chattanooga, TN 34701–
Location: Buildings 200–1, 200–3, 200–2A, 200–2B, 333–1, 411, 714, 767, 820–1, 820–2, 820–3, 821–1, 821–3
Saginaw Army Aircraft Plant (1), Tarrant County, TX
Comment: Available 2–89 after tenant vacates property
Ft. Sam Houston (10), San Antonio, TX
Location: Buildings P–626, T–1179, T–1183, T–1189, T–1192, T–1193, T–4001, T–4004, T–4013, T–227
Midway Family Housing Site (32), 240th Military Road, King County, WA
Comment: 31 3 bedroom units 1 2 bedroom unit
Youngs Lake Family Housing Site (28), 116th Avenue SE 192nd Street, King County, WA
Comment: 24 3 bedroom units 4 2 bedroom units

Department of Transportation

Tibbits Point Light (1), Tibbits Point, NY
Location: USCG Property

GSA

Warehouse (1), 49 L. Street SE, Washington, DC

Federal Building (1), Sunset & Church Streets, Asheboro, NC 27203–
Comment: Building presently being repaired
Warwick Mill Annex (1), Brookside Avenue, West Warwick, RI

Veterans Administration

VA Medical Center (1), 1900 East Main Street, Danville, IL 61832–
Location: Building 11
Comment: Occupied by local Community College

Suitable Land

Army

Portion, North Little Rock AFRC (1), Arkansas Avenue, Little Rock, AR
Location: 10 acres
Portion, Buffalo Soldier Trail (1), Kayetan Drive, Fort Huachuca, AZ 85613–6000
Portion, Parcel 1 (1), Kayetan Drive/Fort Avenue, Fort Huachuca, AZ 85613–6000
Portion, Parcel 2 (1), Highway 90/ Airport Road, Fort Huachuca, AZ 85613–6000
Parks Reserve Forces Training Area (1), Dublin, CA
Stoneridge Drive (2), Santa Rita Road, Pleasanton, CA
Isabella Lake (1), Kern County, CA
Location: 63 acres
New Hogan Lake (1), 229 acres, Valley Spring, CA
Lake Mendocino (1), 12 acres, Ukiah, CA
Pinon Canyon Maneuver Site (1), Pinon Canyon, CO
Location: 16,707 acres
Portion, Army Reserve Facilities (2), West Palm Beach, FL
Location: Two parcels (1.15 and 3.1 acres) adjacent to southern boundary of International Airport
Fort Gillen (1), Forest Part, GA 30050–7000
Location: 17.75 acres
J. Strom Thurmond Dam Reservoir Project (6), Columbia County, GA
Location: Tracts B, C, F, G, H, I
Joliet Army Ammunition plant (5), Joliet, IL 60436–5000
Location: Parcels 1, 3, 5, 6, 7
Fort Benjamin Harrison (1), East 56th Street, Lawrence Township, IN 46216–5450
Location: 3.23 acres at SW corner of installation and E. 56th Street
John Redmond Dam & Reservoir (1), Coffey County, KS
Location: Parcel 3
Fall River Lake (11), Greenwood County, KS
Location: Parcels 1–11 (155 acres)
Barkley Lake (1), Grand Rivers, Lyon County, KY
Location: 233 acres
Fort George C. Meade (1), Fort Meade, MD 20755–5155
Location: 191 acres
Leech Lake (2), Federal Dam, MN
Location: Tract B, Parcel 6
Portion, Fort Missoula (1), Missoula, MT
Location: 6.82 acres
Portion, Phillips Memorial ARC (1), Between Silver and Swan Streets, Silver City, NM
Location: 1 acre
Portion, Hannibal L/D Ohio River (1), P.O. Box 8, Hannibal, OH
Portion, Optima Lake (1), Texas County, OK
Location: Parcel 4
Portions, Fort Gibson Lake (5), Mayes County, OK
Location: Property 71, 72, 75, 76, 78
Portions, Fort Gibson Lake (11) Wagoner, OK
Location: Property 85, 86, 87, 89, 91, 93, 94, 99, 100, 102, 105
Portion, Sardis Lake (2), Latimer County, OK
Location: Property 3, 4
Portion, Pine Creek (4), McCurtain, OK
Location: Property 1, 3, 6, 7
Portion, Tenkiller Ferry Lake (30), Cherokee, OK
Location: Property 8, 10, 12, 14, 15, 18, 19, 20, 21, 22, 26, 28, 29, 34, 35, 36, 39, 41, 42, 43, 44, 45, 47, 49, 50, 51, 53, 55, 1, 3
Portion, Kaw Lake (1), Kay County, OK
Location: Parcel 1
Portion, Webbers Falls (1), Property 4, Wagoner County, OK
Portions, Hugo Lake (4), Choctaw County, OK
Location: Properties 1, 2, 3, 4
Lock & Dam No. 7 (1), Monongahela River, Greensboro, PA
Portion, Loyalhanna Lake (1), Road 2, Saltsburg, PA 15681–
Portion of Conemaugh River Lake (1), Rd. 1 Box 702, Saltsburg, PA 15681–
J. Strom Thurmond Dam/Reservoir Project (1), McCormick County, SC
Location: Tract J
Portion, J. Percy Priest (1), Tract 2319, Davidson County, TN
Portion, Milan Army Ammunition Plant (2), Highway 45E/N. of Graball Gate, Milan, TN 38358–5000
Portion, Pat Mayse Lake (3), Lamar County, TX
Location: Property 8, 10, 15
Portion, Lake Texoma (4), Cooke County, TX
Location: Property 170, 172, 174, 186
Lake Texoma (1), Grayson County, TX
Location: Property 201
Saginaw Army Aircraft Plant (1), Tarrant County, TX
Ft. Bliss (1), Area East of Dyer, Ft. Bliss, TX
Ft. Bliss (1), Area North of 3300 area, Ft. Bliss, TX
Portion, Pike Island Lock & Dam (1), Indian Short Creek, Wheeling, WV
Portion, Pike Island Lock & Dam (1), Buffalo Creek Public Access, Wellsburg, WV

Veterans' Administration

VA Medical Center (1), Wilshire and Swatello Blvds., West Los Angeles, CA 90073–
Location: 80 acres
VA Medical Center (1), 12th & 9th Avenue NW, Minot, ND 58701–
VA Medical Center (1), Tomah, WI

Unsuitable buildings (by agency)

Air Force

South Nike Education Annex (2), Ellsworth, SD
Reason: Structurally unsound—needs rehab; friable asbestos
Location: Buildings 200, 201

Army

Fort Chaffee (F3), Fort Chaffee, AR
Reason: Friable asbestos
Location: Buildings 1025, 1027–1032, 1037, 1039, 1044, 1062, 1077–1080, 1083–1085, 1075, 1023, 1037, 1038, 1040, 1043, 1045, 1046, 1049, 1024, 1026, 1028, 1031, 1034, 1041, 1042, 1047, 1076, 1081, 1086, 1092, 1094, 1095, 1010–1021, 1050–1060, 1063–1073
Yuma Proving Ground (3), Yuma, AZ 85365–9102
Reason: Other environmental; Friable asbestos
Location: Buildings S–1003, S–6076, S–6078
Yuma Proving Ground (1), Yuma, AZ 85365–9102
Reason: Friable asbestos
Location: Building S–425
Oakland Army Base (8), Oakland, CA 94626–5000
Reason: Within 2000 ft. from flammable or explosive material; Security area
Sierra Army Depot (1), 5th & G Street, Herlong, CA
Reason: Within 2000 ft. from flammable or explosive material; Secured area, public access denied structurally unsound building
Location: Building T–368
Sierra Army Depot (125), Susanville Rd. & Flagler Blvd., Herlong, CA
Reason: Other environmental; Secured area, buildings structurally unsound, asbestos
Rocky Mountain Arsenal (4), Commerce City, CO 90022–2180
Reason: All buildings are in a secured area, public access denied
Location: Buildings 522B, 831, T–1619, 1710

Former Nike Battery Barracks (3), Eagle Drive, Shelton, CT
Reason: Friable asbestos
Fort Gordon (13), Augusta, GA 30905–5000
Reason: Structurally unsound
Location: Buildings 970, 2203, D2030, 8030, 14303, 33802, 15707, 51319, 81201, R–0011, R–0012, R–0013, 0021
Ft. Shafter (1), Kilauea Mil Res; Honolulu, HI
Reason: Isolated area; near an active volcano
Location: Buildings T–59, T–82, T–93
Fort Sheridan (6), Ft. Sheridan, IL
Reason: Structurally unsound
Location: Buildings 360, 363, 724, 725, 726, 452
Jefferson Proving Ground (3), Jefferson County, IN
Reason: Within 2000 ft. from flammable or explosive material; Secured area, public access denied
Location: Buildings 150, 152, 154
Louisiana Army Ammunition Plant (8), Patton Drive/Eisenhower Avenue; Shreveport, LA 71130–0050
Reason: Contamination; within 2000 ft. from flammable or explosive material; High Security Area
Location: Property A108, Y2629, L–22453, E1702, K1104, A111, A110, A112
Aberdeen Proving Ground Installation (1), Aberdeen, MD
Reason: Contamination
Ft. Monmouth (Evans Area) (17), Ft. Monmouth, NJ
Reason: Secured facility, public access denied
Location: Building 9379, 9359, 9342, 9347, 9334, 9315, 9154, 9126, 9124, 9119, 9117, 9095, 9094, 9087, 9061, 9034, 9049
Fort Dix (24), Clementon Family Housing Annex, Sickerville, NJ
Reason: Asbestos, PCBs Structurally unsound buildings
Watervliet Arsenal (3), Watervliet, NY 12189–4050
Reason: Contamination; Within 2000 ft. from flammable or explosive material; Secure facility
Location: Buildings 25, 20, 10
Watervliet Arsenal (1), Watervliet, NY 12189–4050
Reason: Within 2000 ft. from flammable or explosive material; Secure facility
Location: Building 40
Ravenna Army Ammunition Plant (8), 8451 State Route 5, Ravenna, OH 44266–9297
Reason: Friable asbestos
Location: Buildings 1030, 151A, 251A, 351A, 7068, 4741, F–1, 6–5
New Cumberland Army Depot (1), Miffland Avenue, New Cumberland, PA 17070–5001
Reason: Building structurally unsound
Location: Building 501
New Cumberland Army Depot (2), Miffland Avenue, New Cumberland, PA 17070–5001
Reason: Secured area
Location: Building 276
Hayes Army Ammunition Plant (1), Pittsburgh, PA
Reason: Building structurally unsound; secured area
Location: Building 1
New Cumberland Army Depot (1), Miffland Avenue, New Cumberland, PA 17070–5001
Reason: Within 2000 ft. from flammable or explosive material
Location: Building 279
J. Strom Thurmond Dam and Reservoir (5), McCormick County, SC
Reason: Friable asbestos
Longhorn Army Ammunition Plant (1), Marshall, TX
Reason: Within 2000 ft. from flammable or explosive material; Secured area, public access denied
Location: Building 27A
Lone Star Army Ammunition Plant (156), Texoma, TX 75505–9101
Reason: Not accessible by road; Contamination; Within 2000 ft. from flammable or explosive material; Secured area
Green River Test Complex (38), Green River, UT
Reason: Contamination
Radford Ammunition Plant (5), Radford, VA
Reason: Within 2000 ft. from flammable or explosive material

Air Force

Composite Medical Facility (11), Malmstorm, MT 59402–
Reason: Secured facility, general public access denied
Location: Buildings 2055, 1502, 1500, 1445, 1444, 1443, 1441, 621, 439, 280, 140
Pease AFB (3), Weapons Storage Area, Pease, NH
Reason: Within 2000 ft. from flammable or explosive material; Secured area, public access denied
Location: Buildings 439, 317, 343
Pease AFB, Dormitory Building 8 (1), Pease, NH
Reason: Within 2000 ft. from flammable or explosive material
Reese Air Force Base (2), 64th Flying Training Wing, Reese, TX 79489–
Reason: Other environmental; Secured area, public access denied building structurally unsound
Location: Buildings Nr 3104, Nr26

Veterans Administration

VA Medical Center (1), 1900 East Main Street, Danville, IL 61832–
Reason: Asbestos extensive interior renovation would cost $2,000,000
Location: Building 12
VA Medical Center (1), 5000 West National Center, Milwaukee, WI
Reason: Friable asbestos; structurally unsound
Location: Building 45

Unsuitable Land (by agency)

Army

Glacier Training Site (1), Eklutna, AK
Reason: Not accessibly by road; Contamination
Location: Eklutna Mountain
Oakland Army Base (1), Wake Avenue/ West Grand Avenue, Oakland, CA
Reason: Within 2000 ft. from flammable or explosive material
Riverbank Army Ammunition Plant (1), Claus & Claribel Roads, Riverbank, CA 95367–0670
Reason: Within 2000 ft. from flammable or explosive material; Soil contamination
Oakland Army Base (1), Wake Ave./ Baldwin yard, Oakland, CA
Reason: Within 2000 ft. from flammable or explosive material
J. Strom Thurmond Dam Reservoir Project (2), Columbia County, GA
Reason: Not accessibly by road
Location: Tracts A, E
Ft. Shafter (1), Kipapa Ammunition Storage Area, Ft. Shafter, HI 96868–5100
Reason: Contamination
Fort Shafter (1), Fort Shafter Flats, Ft. Shafter, HI 96868–5100
Reason: Part of public street
Location: Middle Street right-of-way
Joliet Army Ammunition Plant (1) Joliet, IL 60436–5000
Reason: Within 2000 ft. from flammable or explosive material
Location: Parcel 2
Joliet Army Ammunition Plant (1), Joliet, IL 60436–5000
Reason: Not accessible by road
Location: Parcel 4
Fall River Lake (1), Greenwood County, KS
Reason: Not accessible by road
Location: Parcel 12
Barkley Lake (1) Lyon County, KY
Reason: Not accessible by road
Location: Property 2403
Barkley Lake (1), Tract 11503, Barkley Lake, KY
Reason: Not accessible by road
Pine River (1), Crosslake, MN
Reason: Not accessible by road
Location: Parcel D
Sandy Lake (1), McGreagor, MN
Reason: Not accessible by road
Location: Tract 92
Leech Lake (1), Benedict, MN

Reason: Not accessible by road
Location: Tract 98
Fort Monmouth (Evans Area) (2), Fort Monmouth, JN
Reason: Secured area, public access denied
Location: 5 and 91 acre parcels
Fort Monmouth (Charle Wood Area) (1), Ft. Monmouth, NJ
Reason: Not acessible by road
Location: 15.56 acre parcel
Fort Dix (1), Clementon Family Housing Annex, Sickerville, NJ
Reason: Not accessible by road
Location: Crosskeys and Williamstown Roads
Hawthorne Army Ammunition Plant (1), County of Mineral, NV
Reason: Within airport runway clear zone
Hawthorne Army Ammunition Plant (1), Hawthorne, NV
Reason: Contamination
Location: Parcel B
New Cumberland L/D Ohio River (1), Stratton, OH 43952–
Reason: Secure facility
Lake Texoma (2); Bryan County, OK
Reason: Not accessible by road
Location: Property 42, 45
Pine Creek (1), Choctaw County, OK
Reason: Not accessible by road
Location: Parcel 4
Lake Texoma (1), Bryan County, OK
Reason: Not accessible by road
Location: Property 15
Lake Texoma (10), Lake Texoma, OK
Reason: Not accessible by road
Location: Parcels 91, 92, 93, 95, 97, 98, 99, 101, 102, 103
Waurika Lake (1), Parcel 9 (5 acres), Jefferson, OK
Reason: Not accessible by road
Lake Texoma (1), Lake Texoma, OK
Reason: Within 2000 ft. from flammable or explosive material
Location: Parcel 94
Umatilla Depot Activity (7), Hermiston, OR
Reason: Secured area, public access denied
Location: Fixed wing runway
J. Percy Priest (1), Cumberland River, Davidson County, TN
Reason: Not accessible by road
Location: Tract 2107
J. Percy Priest (3), Cumberland River, Davidson County, TN
Reason: Not accessible by road
Location: Tracts 1911, 2227, 2321
Portion, Lock and Dam, Ohio River, Wheeling, WV
Location: Abutment Site of Old Lock & Dam f10

Department of Transportation

Cold Bay, Cold Bay, AK
Reason: Within airport runway clear zone
Location: FAA Property
Comment: Swampland

Air Force

Fairchild AFB, Fairchild, WA 99011–
Land Holding Agency: USAF
Number of Properties: 2
Reason: Within 2000 ft. from flammable or explosive material; Periodically covered with water

Veterans Administration

VA Medical Center (1), Ft. Snelling, St. Paul, MN
Reason: Friable asbestos

[FR Doc. 89–5021 Filed 3–3–89; 8:45 am]
BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Memorandum of Agreement Between Bureau of Indian Affairs, (Interior) and Indian Health Service (IHS), To Implement a Program for Services to Handicapped Indian Infants, Children and Youth From Birth Through 21 Years of Age

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Memorandum of Agreement Between The Department of the Interior Bureau of Indian Affairs and The Department of Health and Human Services Indian Health Services to implement a coordinated, multidisciplinary, interagency program for services to handicapped Indian infants, children and youth from birth through twenty-one years of age in accordance with Pub. L. 94–142 as amended by Pub. L. 99–457, the 1986 Technical Amendments to the Education of the Handicapped Act. Notice: Request for Comments.

SUMMARY: Notice is hereby given that the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS) have completed a Memorandum of Agreement (MOA) regarding the implementation of a coordinated, multidisciplinary, interagency program for services to handicapped Indian infants, children and youth from birth through twenty-one years of age. This agreement provides for the development and implementation of joint policies and procedures and a method to establish program priorities for the education and treatment of identified handicapped Indian children within the joint jurisdictions of the BIA and IHS.

DATES: Comments shall be submitted no later than 30 days from the date of publication.

ADDRESSES: All comments concerning this Memorandum of Agreement should be addressed to Goodwin K. Cobb, Acting Chief, Branch of Exceptional Education, Office of Indian Education Programs, Bureau of Indian Affairs, 1951 Constitution Avenue NW. (MS 3512 MIB, Code 523), Washington, DC 20245.

FOR FURTHER INFORMATION CONTACT: Carol L. Zilka, Education Specialist, Early Childhood Program, Telephone: (202) 343–3559.

SUPPLEMENTARY INFORMATION: The authority for this Memorandum of Agreement is the Snyder Act (25 U.S.C. 13), Pub. L. 94–142, Education of the Handicapped Act (EHA) (20 U.S.C. secs. 1400–1485), as amended by the Education of the Handicapped Amendments of 1986 (Pub. L. 99–457), and the Economy Act (31 U.S.C. 1535).

Pub. L. 99–457 (The Education of the Handicapped Act Amendments of 1986) amended the Education of the Handicapped Act (Pub. L. 94–142), reauthorized the discretionary programs under the Act, and authorized a new early intervention program for handicapped infants and toddlers and their families.

Under existing regulations (34 CFR 300.600), a State Education Agency (SEA) may utilize interagency agreements as a means of implementing its general supervision requirements. The 1986 Amendments require that State plans include policies and procedures for developing and implementing interagency agreements between the State and "other appropriate State and local agencies." The BIA, while not a State, is required to submit a State plan that meets the requirements of Pub. L. 99–457 sec. 1413 and an application which meets the requirements of sec. 1414, as well as, sec. 1484 of Part H (Infants and Toddlers Program).

This Memorandum of Agreement reflects the BIA's understanding of section 613(a)(13) of the statute that "other appropriate" agencies are those Federal, State, and local agencies other than the BIA that provide or pay for special education or related services for Indian children with handicapping conditions. The MOA describes the role that the BIA and IHS have in providing or paying for those services. The MOA also describes the responsibilities of each agency and establishes a mechanism for resolving interagency disputes.

The 1986 Amendments state that Part B shall not be construed to limit the responsibilities of agencies other than educational agencies for providing or paying for services provided to children under Part B. The 1986 Amendments

also state that Part B shall not be construed to permit a State to reduce assistance or alter eligibility under programs supported by Federal Medicaid and Maternal and Child Health Programs. This is intended to ensure that no child is treated differently under those two programs because the child is receiving services under an individual Education Plan (IEP), or for any other reason related to the existence or applicability of Part B.

While States have until 1990–1991 to provide services for handicapped children, ages three through five, the BIA was mandated under Pub. L. 99–457 to begin providing services for these children during the 1987–1988 school year.

The Education of the Handicapped Act Amendments of 1986 (Pub. L. 99–457) added a new State formula grant program to assist States in establishing a statewide system of early intervention services for infants and toddlers with handicaps and their families. This new program (designated as Part H of the EHA) replaces, and substantially expands, the State grant provisions established in 1983 under the Handicapped Children's Early Education Program (HCEEP). Part H focuses on similar activities, but limits the age range to children from birth through two years of age.

Part H is the only program administered by the Department of Education (DOE) that focuses exclusively on meeting the needs of infants and toddlers with handicaps. Children in this age group have been traditionally served through programs administered by the Department of Health and Human Services. The BIA has been designated as the Lead Agency under Part H. The Lead Agency is responsible for: (a) Submitting applications for, and receiving funds under this program, and (b) serving as the lead agency responsible for the general administration of program and activities carried out under Part H. The BIA is mandated under Part H to develop a comprehensive system of early interventio services for handicapped Indian infants and toddlers by 1990–1991 that fits the individual characteristics of the BIA.

Each comprehensive system of early intervention is to be planned and carried out as a coordinated, interagency, multidisciplinary program. Generally, no one agency has the funding resources, services, or authority to provide all appropriate early intervention services for all infants and toddlers with handicaps. The legislative history of Pub. L. 99–457 emphasizes the concept of interagency coordination, by acknowledging that even in States requiring a free appropriate public education from birth, no single agency provides all services to all children with handicaps. Rather, existing service delivery systems represent interdependence among public and private agencies and organizations at the State and local levels.

While the BIA is the Lead Agency under Part H, it does not have available within its system, the full complement of services needed by handicapped infants and toddlers and their families, e.g., developmental disability programs, health services, education, social services, and mental health. Currently, the BIA has available special education, related services, and social services. The IHS provides, within the scope of its health program, direct medical, social, and mental health services to handicapped Indian infants and toddlers, children, and youth.

This MOA provides the mechanism for the development of a coordinated, multidisciplinary, interagency program between the Bureau of Indian Affairs and the Indian Health Service for the provision of services for handicapped Indian infants, toddlers, children, and youth. The MOA will remain in effect until such time as agreed upon by both parties. The MOA will be reviewed annually and modified as needed for compliance with law and regulation. A BIA and IHS Task Group will develop an Action Plan which will include: goals, objectives, related activities or products, names of responsible agency/person, timelines, and evaluation criteria for each objective. The Action Plan will be reviewed quarterly by the task group of appropriate BIA/IHS representatives and the Plan will be revised annually. This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Wilson T. Babby,

Deputy to the Assistant Secretary, Indian Affairs/Director (Indian Education Programs).

Memorandum of Agreement (MOA)

This memorandum provides the terms of agreement for services to be shared by the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS) in fulfilling each agency's individual responsibilities and identified areas of joint cooperative needs for handicapped Indian children and youth.

I. PURPOSE

The purpose of this agreement is to provide for the development and implementation of joint policies and procedures and to establish program priorities for the education and treatment of handicapped Indian children identified in the statute within our joint jurisdictions.

II. AUTHORITY

Snyder Act (25 U.S.C. 13) and 20 U.S.C. Secs. 1400–1485, Pub. L. 94–142, the Education of the Handicapped Act (EHA), as amended by the Education of the Handicapped Amendments of 1986 (Pub. L. 99–457), and the Economy Act, 31 U.S.C. 1535.

III. INTRODUCTION

The Assistant Secretary of the Interior—Indian Affairs (BIA) and the Director of Indian Health Service (IHS) as administrators of agencies responsible to serve Indian children and youth recognize that:

A. The BIA has responsibilities to the extent it receives set-aside funding under the EHA:

(1) To provide special education and related services to handicapped Indian children attending BIA schools;

a. *Related services* include diagnostic, developmental, corrective and supportive services such as (1) speech pathology and audiology, (2) psychological services, (3) physical and occupational therapy, (4) recreation, (5) counseling, and (6) medical diagnosis and evaluation but *not* other medical services (20 U.S.C. 1401(a)(17)).

(2) Within a statewide system, to coordinate with State agencies for the provision of special education and related services to preschool aged Indian handicapped children, ages three through five, on reservations serviced by BIA schools;

(3) Within a statewide system, to coordinate with State agencies for the provision of early intervention services to handicapped Indian infants and toddlers, ages birth through two, on reservations serviced by BIA schools.

a. *Early intervention services* include *related services* plus family training, counseling and home visits, case management services, and "health services necessary to enable the infant and toddlers to benefit from the other early intervention services" (20 U.S.C. 1472).

With respect to infants and toddlers, ages birth through two, EHA requires that the State Lead Agency ensure that each handicapped infant and toddler in the State (including Indian children) shall receive a multidisciplinary assessment of a child's unique needs and identification of service to meet those needs, a written Individualized Family Service Plan (IFSP), and case management services to implement the IFSP. The House Report (Report 99–860) at page 11 states:

> In State's serving significant numbers of Indian handicapped infants and toddlers, the lead agency must consult with and obtain input from Tribal education offices/committees, BIA schools, tribal schools, head start programs and other providers of service at the local and State level to ensure that the needs of these infants and toddlers are considered and accounted for in the statewide system.

Handicapped Indian infants and toddlers are clearly included within the intended statewide system of services and in carrying

out its responsibilities the BIA is acting as part of the statewide system.

B. The IHS provides health services to Indians under the discretionary authority of the Snyder Act, some of which overlap with *related services* and *early intervention services* as defined in the EHA. The IHS has no responsibilities as such under the EHA. It is not an education agency funded under said act.

The BIA and IHS in recognizing that neither agency can provide a comprehensive program that would satisfy all the needs and services for different age groups and handicapping conditions further confirms their respective belief that services within their jurisdictions require a comprehensive, multidisciplinary, interagency approach to meet the needs of handicapped Indian infants and toddlers, children and youth.

In keeping with the intent to provide appropriate services and to extend present collaborative efforts, the purpose of this MOA is to identify areas of national and local cooperation needed to serve the needs of handicapped Indian children and youth within our joint jurisdictions. Local BIA/IHS agreements are to be developed based on the identified areas of this MOA to ensure the purpose of the MOA is fulfilled.

Tribal organizations, other Federal and State agencies providing services are to be included in agreements for handicapped services.

IV. SUBSTANCE OF AGREEMENT

Areas of Collaboration. The BIA and IHS recognize that the provision of services to handicapped Indian infants and toddlers, children and youth will require a comprehensive, interagency program which includes components for:

a. Prevention, early recognition and intervention activities to provide medical, mental health, dental, education, social and family support services for handicapped Indian infants and toddlers from birth to two years of age and their families.

b. Education, medical, dental, mental health, social and family support services for handicapped Indian children and youth from three through twenty-one years of age.

c. Transition, tracking and educational placement services for handicapped Indian children and youth.

The BIA will establish, on an as needed basis, task force groups to review programs and services under this agreement which will include appropriate representatives from the Indian Health Service. These groups will meet as needs arise to develop procedures, guidelines and service priorities for coordination with statewide systems. Major areas of focus are:

A. The development of administrative policies, procedures, and guidelines consistent with applicable Federal regulations which reflect program, staff and funding responsibilities needed for interagency cooperation and services for handicapped Indian infants and toddlers (birth to two years of age, inclusive) and children and youth (three through twenty-one years of age) including:

(1) Eligibility and placement criteria for "at risk" and developmentally delayed infants and toddlers.

(2) Coordinate agency efforts regarding Child Find and screening.

(3) Registry, tracking, and referral.

(4) Multidisciplinary team evaluation and assessment.

(5) Multidisciplinary team formulated Individual Education Plan (IEP) and Individualized Family Service Plan (IFSP), which give attention to education, medical, mental health and social needs for:

a. Special Education.
b. Related Services.
c. Medical Services.
d. Social Services.
e. Mental Health Services.
f. Communication and Audiological Services.
g. Physical and Occupational Therapy Services.
h. Nutrition Services.
i. Home Nursing Services.
j. Dental Services.
k. Vocational Services.
l. Parent and Family Training.

(6) Family involvement in formulating and implementing the IEP and IFSP.

(7) Follow-up and non-BIA/IHS referrals.

(8) Transition Services.

(9) Institutional Care.

(10) Program Evaluation.

B. As funds become available under EHA, the BIA and IHS will delineate responsibility within statewide systems for specific professional services and financial resources for providing comprehensive handicapped care which includes:

(1) Guidance and consultation for determination of staffing and program needs to provide services at local levels.

(2) Determination of program cost and funding responsibilities for services.

3. Establishing policy, procedures and accountability for interagency transfer of funds under the Economy Act.

4. Establishing and publishing policies and guidelines for distribution to each Agency's programs and staff regarding program requirements and responsibilities.

5. Guidance and consultation for establishing local procedures to ensure service delivery through interagency coordination, e.g., model agreements.

C. Develop an interagency, confidential system of data collection and tracking of those Indian individuals (ages birth through twenty-one) within joint jurisdictions in need of and/or receiving handicapped services in each area and for information exchange for program services which includes:

1. Development of a computerized program which will be used locally to track Indian infants and toddlers, children and youth in need of handicapped services.

2. Informing health, education and social service professionals about the handicapped registry and tracking system.

(3) Developing guidelines and procedures for the exchange and transfer of client/student information within statewide systems.

(4) Developing data reporting formats which will provide statistical information which can be used for epidemiologic study, funding justification and program evaluation.

D. Subject to the availability of funds, the development and provision of educational programs, materials and equipment to raise awareness and improve services to handicapped children which includes:

(1) Training and technical assistance for education, medical, dental and social services staff and related services workers.

(2) Community education.

(3) Child, family, and extended family training to meet general and specific needs of handicapped Indian children.

(4) Training, technical assistance, and education for other Federal agencies regarding the general and unique needs of handicapped Indian children.

(5) Health Promotion/Disease Prevention.

E. Developing procedures to resolve interagency differences and disputes for meaningful cooperation and coordination.

V. RESPONSIBILITIES

The following areas of responsibilities are agreed to by the BIA and IHS.

A. Responsibility of the BIA. The BIA is responsible for serving handicapped Indian children on reservations serviced by BIA operated elementary and secondary schools. The BIA will assist individual States in the coordination of State services for handicapped children, ages birth through five, who live on reservations that are serviced by BIA elementary and secondary schools. The BIA will develop within the state-wide system a comprehensive, multidisciplinary, interagency program of services for exceptional education and related services as specified in Pub. L. 94-142 as amended by Pub. L. 99-457.

The BIA will submit an Annual Application to the Department of Education for funding of the handicapped infants and toddlers program (Part H) and for Part B services under Pub. L. 94-142 as amended by Pub. L. 99-457 and Department of Education Regulations 34 CFR Parts 300, 301 and 303.

Provide task groups and provide for representation of members from IHS on these groups.

Provide staff to develop an interagency program to respond to the major focus of this MOA and to provide management of this MOA.

B. Responsibility of the IHS. The IHS will assist in the development of a systemwide, comprehensive, multidisciplinary, interagency program including identification and intervention services for handicapped infants and toddlers and their families by providing services consistent with the scope of IHS health care and within the limitations of available IHS resources and by coordinating services with other agencies responsible under 20 U.S.C. Subchapter VII.

The IHS will participate in the development of an action plan as specified in Section IV, Terms of Agreement and will include the following elements:

a. The IHS will assist in the development and implementation of a handicapped Indian children's registry and tracking system that will efficiently and effectively facilitate provisions of education and health care needs of handicapped Indian children, ages birth through twenty-one. Components of this system will include: definitions of "at risk" and handicapping conditions, computer

hardware and software needs, and registry and tracking formats.

b. The IHS will coordinate, in cooperation with existing state and federal coordination activities, multidisciplinary activities necessary to meet the comprehensive needs of handicapped Indian infants and toddlers and children through age twenty-one living on reservations where BIA operated or funded schools exist. As funds become available, IHS area coordiantion will be established in consultation with the BIA to initiate and maintain local registries and tracking systems, to develop and strengthen communication linkages between the IHS and BIA and other federal agencies, to facilitate information exchange between the IHS and other agencies, as required to serve the needs of handicapped Indian children, and, by regulation and policy, establish services ensuring efficient transition of handicapped Indian children from one jurisdiction of responsibility to another.

c. This MOA focuses on the needs of handicapped Indian children who live on reservations served by BIA funded schools, however, this does not preclude the IHS from meeting its legal service mandates.

Such funds that may become available to the IHS during the first two years of this MOA will be used in program development. Based on the specifics of the Action Plan, the IHS is responsible to submit a plan detailing program actions including any plan to contract activities before any funds will be transferred and to provide quarterly written progress reports to the BIA indicating program status.

If the specifics of the Action Plan requires the transfer of any portion of the BIA's Pub. L. 99-457, Part H funds to the IHS, the IHS agrees to maintain these funds separately and will account for these funds quarterly and will meet any applicable requirements of the Economy Act.

The IHS is currently providing within its health program, direct medical, social, and mental health services to handicapped Indian children. As program development progresses, and children are served, it is expected that additional special consultation, evaluation and intervention services will be necessary. The IHS has inadequate resources to meet all these health needs. However, the IHS is responsible to assist in arranging for the comprehensive health care needs of handicapped Indian children and is committed to meet the needs of handicapped Indian children and to collaborate with the BIA and other responsible agencies, to identify needs and funding sources to meet the needs of handicapped Indian children.

VI. TERMS OF AGREEMENT

This MOA will remain in effect until such time as agreed upon by both parties. This MOA will be reviewed annually and modified as needed for compliance with law and regulation.

Within 45 days of the effective date of this agreement and thereafter, within 45 days of the beginning of each fiscal year (FY) beginning with 1990, a BIA and IHS Task Group will develop an Action Plan which will include the following:

a. Goals,

b. Specific objectives to be accomplished,

c. Related activities or products,

d. Names of responsible agency/person,

e. Timelines (beginning and ending) and,

f. Evaluation criteria for each objective.

This Action Plan will be reviewed quarterly by the Task Group of appropriate BIA/IHS representatives. The Action Plan will be revised annually.

[FR Doc. 89-5057 Filed 3-3-89; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[UT-040-09-4322-02]

Cedar City District Grazing Advisory Board Meeting

Notice is hereby given in accordance with Pub. L. 992-463 that a meeting of the Cedar City District Grazing Advisory Board will be held on Thursday, April 13, 1989. The meeting will begin at 9:30 a.m. in the Bureau of Land Management Cedar City District Office located at 1767 E. DL Sargent Drive, Cedar City, Utah.

The agenda is as follows: (1) Public Comments; (2) APHIS report on Animal Damage Control Program; (3) status report on Animal Damage Control Environmental Assessment; (4) construction standards for Range improvement projects; (5) Escalante Recreation Area Management plan; (6) briefing on June 1988 GAO Report on Rangland Management; (7) distribution of 8100 Funds; (8) project ranking for FY90; (9) Advisory Board Business.

Grazing Advisory Board meetings are open to the public. Interested persons may make oral statements or file written statements for the Board's consideration. Oral statements will be received at 9:30 a.m. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 176 East DL Sargent Drive, Cedar City, Utah 84720, phone (801) 586-2401, by April 10, 1989. Depending on the number of persons wishing to make statements, a per person time limit may be established by the District Manager.

Summary minutes of the Board meetings will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

February 23, 1989.

Gordon R. Staker,

District Manager.

[FR Doc. 89-5061 Filed 3-3-89; 8:45 am]

BILLING CODE 4310-DQ-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Mark Itson, Las Vegas, NV, PRT-734952

The applicant requests a permit to purchase one female tiger (*Panthera tigris*) from Jan Giacinto of Tarzana, California. The tiger will perform in applicant's illusionist show and will be displayed in a manner designed to educate the public with regard to this species' ecological role and conservation needs. Applicant also intends to export and reimport this tiger and a male tiger for similar displays in the future.

Applicant: Honolulu Zoo, Honolulu, HI, PRT-735360

The applicant requests a permit to export five pairs of captive-hatched Hawaiian (=nene) geese (*Nesochen (=Branta) sandvicensis*) to the Kaohsiung City Government, Wan-Sou San Park, Kaohsiung, Taiwan, for purposes of captive propagation and zoological display.

Applicant: Dr. Michael Baden Thompson, Gainesville, FL, PRT-735365

The applicant requests a permit to import fixed whole eggs and histological sections of tuataras (*Sphendon punctatus*), taken from wild individuals between the years of 1980 and 1983, from the Department of Zoology, Victoria University of Wellington, New Zealand. The specimens will be used for embryological and histological studies of the species. They will then be returned to the Victoria University of Wellington.

Applicant: Detroit Zoological Parks, Royal Oak, Michigan, PRT-735319

The applicant requests a permit to import three captive-born female chimpanzees (*Pan troglodytes*) from the Ruhr Zoo, West Germany, for purposes of propagation and public display.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 403, 1375 K. Street NW., Washington DC 20005, or by writting to the Director, U.S. Office of Management Authority, P.O. Box 27329, Central Station, Washington, DC 20038-7329.

Interested person may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or

data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Date: February 28, 1989.

R. K. Robinson,

Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 89-5151 Filed 3-3-89; 8:45 am]

BILLING CODE 4310-AN-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31398]

Chicago, Missouri & Western Railway Co.; Trackage Rights Exemption; Burlington Northern Railroad Co.

Burlington Northern Railroad Company (BN) has agreed to grant overhead trackage rights to Chicago, Missouri & Western Railway Company (CM&W) between BN milepost 43.41 at Girard, IL, and BN milepost 10.24 at Jacksonville, IL, a distance of approximately 33.17 miles.[1] The trackage rights were to have become effective when CM&W commenced operations over the joint trackage, which was scheduled for February 23, 1989.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Any comments must be filed with the Commission and served on: John H. Broadley, Jenner & Block, 21 Dupont Circle, NW., Washington, DC 20036, and Peter M. Lee, 777 Main Street, Fort Worth, TX 76102.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

[1] As part of the Agreement, the parties constructed new connector track on their respective portions of the connection at Girard. This construction is outside the jurisdiction of the Commission. *See* Finance Docket No. 31290, *Burlington Northern Railroad Company—Trackage Rights—Union Pacific Railroad Company* and Finance Docket No. 31290 (Sub-No. 1), *Burlington Northern Railroad Company—Construction and Operation Exemption* (not printed), served October 21, 1988.

Dated: March 1, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-5143 Filed 3-3-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Coordinating Council on Juvenile Justice and Delinquency Prevention; Meeting

ACTION: Notice of meeting.

The first quarterly meeting for the 1989 calendar year of the Coordinating Council on Juvenile Justice and Delinquency Prevention will be held on April 16, 1989, from 9:00 a.m. until 3:00 p.m. Because of difficulty in locating appropriate meeting space, the meeting is being held six days into the second quarter of the year. There will be, however, four quarterly meetings held during the 1989 calendar year. This meeting of the Council will take place in the Great Hall of the Charles Sumner School Museum and Archives, 1201 17th Street NW., Washington, DC 20032.

On April 16, 1989, the Coordinating Council will address the topic "Missing and Exploited Children." The agenda will include presentations on parental abductions, nonfamily abductions, multiple child victimizations, child exploitation including child prostitution and pornography, and effective community responses to these serious child safety issues.

Individuals and organizations concerned with these issues are encouraged to attend this meeting. Because of limited seating, please contact Roberta Dorn, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue NW., Washington, DC., (202) 724-7655 to reserve seating. Requests will be received until space is filled, or until 4:00 p.m. on March 28, 1989, whichever occurs first.

Dated: February 23, 1989.

Diane M. Munson,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 89-5155 Filed 3-3-89; 8:45 am]

BILLING CODE 4410-18-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and 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 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before April 20, 1989. 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–89–12). Routine library service records relating to audio-visual information.

2. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–88–3). Radar Weather Observations Files.

3. Farm Credit Administration (N1–103–88–2). Various financial reporting forms retained by the agency for administrative use or used as input documents for an electronic system.

4. Farm Credit Administration (N1–103–88–4). Retired and cancelled stock, meeting minutes, loan files of individual borrowers, and general correspondence created by Farm Credit System financial institutions prior to 1957.

5. Farm Credit Administration (N1–103–89–2). Administrative records relating to the commissioning of examiners.

6. General Accounting Office (N1–411–89–2). Case files maintained by the Legal Support Services Branch in which no digest was prepared and which were not signed by the Comptroller General, Deputy Comptroller General, Special Assistant to the Comptroller General, General Counsel, or Deputy General Counsel.

7. Department of Labor, Pension and Welfare Benefits Administration (N1–174–89–1). Routine administrative records created in the Office of the Assistant and Deputy Assistant Secretary for Pension and Welfare Benefits.

8. National Aeronautics and Space Administration, Planetary Geoscience Program (N1–255–89–3). Program files consisting of copies of contracts, procurement requests and grant correspondence with principal investigators.

9. Railroad Retirement Board (N1–184–89–2). Part three of a four part comprehensive schedule covering administrative, operational and program records.

10. Tennessee Valley Authority, Division of Personnel (N1–142–88–16). Report of distribution of annual salary policy employees by schedule, title, grade, step and salary.

11. Department of the Treasury, Internal Revenue Service, Collection Activity (N1–58–88–6). Additions to Records Control Schedule 204.

12. Department of the Treasury, Internal Revenue Service (N1–58–89–1). Order processing records generated during the sale of Eisenhower silver dollars, 1971.

13. Department of the Treasury, Internal Revenue Service, Service Centers (N1–58–89–2). Additions and changes to Records Control Schedule 206.

Dated: February 28, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 89–5156 Filed 3–3–89; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 89–15]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee Ad Hoc Review Team on Low-Cost Expendable Launch Vehicles.

DATE AND TIME: March 21, 1989, 8 a.m. to 4 p.m., and March 22, 1989, 8 a.m. to 4 p.m.

ADDRESS: Martin Marietta Deer Creek Facility, Monarch Room, 12999 Deer Creek Canyon Road, Littleton, CO 80127.

FOR FURTHER INFORMATION CONTACT: Mr. David Stone, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–3654.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on space systems and technology programs. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on Low-Cost Expendable Launch Vehicles, chaired by Mr. Marc Constantine, is comprised of nine members. The meeting will be open to the public up to the seating capacity of the room (approximately 20 persons including the team members and other participants).

Type of Meeting: Open.

Agenda:

March 21, 1989

8 a.m.—Summary of Expendable Launch Vehicle Industry Technology Needs.

11 a.m.—Presentation on Preliminary Technology Program Planning.

4 p.m.—Adjourn.

March 22, 1989

8 a.m.—Discussion of Preliminary Technology Program Plan.

1 p.m.—General Discussion.

4 p.m.—Adjourn.

February 27, 1989.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89–5069 Filed 3–3–89; 8:45 am]

BILLING CODE 7510–01–M

[Notice 89–16]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Ad Hoc Review Team on Planet Earth Technologies.

DATE AND TIME: March 30, 1989, 9 a.m. to 4:30 p.m., and March 31, 1989, 9 a.m. to 3:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Langley Research Center, Building 1219, Room 225, Hampton, VA 23665.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne R. Hudson, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2740.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OSAST) on space systems and technology programs. Special ad hoc review teams are formed to addresss specific topics. The Ad Hoc Review Team on Planet Earth Technologies, chaired by Dr. Paul W. Mayhew, is comprised of eight members. The meeting will be open to the public up to the seating capacity of the room (approximately 75 persons including the team members and other participants).

Type of Meeting: Open.

Agenda:

March 30, 1989

9 a.m.—Introduction.

9:10 a.m.—Key Questions From the OAST Perspective.

9:20 a.m.—Office of Space Science and Applications, Earth Science and Appications Division Program and Mission Plans—an Update.

10 a.m.—Geostationary Platform Earth Science Steering Committee.

10:30 a.m.—Global Change Overview.

11 a.m.—Sensors Working Group Report.

1 p.m.—Data Systems Technology Working Group Report.

2 p.m.—Global Change Technology Steering Committee Report.

4 p.m.—Discussion.

4:30 p.m.—Adjourn.

March 31, 1989

9 a.m.—Discussion Continued.

2:30 p.m.—Critical Issues and Actions Summary.

3:30 p.m.—Adjourn.

February 27, 1989.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 89-5070 Filed 3-3-89; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted by April 5, 1989.

ADDRESSES: Send Comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests a review of the revision of a currently approved collection. This entry is issued by the Endowment and contains the following information (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Basic State Grant Application Narrative Format.

Fequency of Collection: Biennially; Triennially.

Respondents: State or local governments.

Use: Requested information is needed to enable the Endowment to determine whether applicants meet eligibility requirements and criteria and to provide the Endowment with information on past performance of applicant agencies.

Estimated Number of Respondents: 25.

Average Burden Hours per Response: 13.75.

Total Estimated Burden: 342.

Anne C. Doyle,

Administrative Services Division, National Endowment for the Arts.

[FR Doc. 89-5113 Filed 3-3-89; 8:45 am]

BILLING CODE 7537-01-M

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted on or before April 5, 1989.

ADDRESSES: Send comments to Mrs. Ingrid Reyes, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-786-0233) and Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202-395-7316).

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Reyes, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202) 786-0233 from whom copies of forms and support documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revision, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of hours needed to fill out the form. None of the entries are subject to 44 U.S.C. 3504(h).

Category: Extension

Title: Negotiation of Indirect Cost Rate Information Needed

Form Number: 3136-0055

Frequency of collection: One per year from each respondent.

Respondents: Not-For-Profit Institutions.

Use: Evaluation of Indirect Cost Rate.

Estimated Number of Respondents: 75.

Frequency of Response: Depending on type of rate provisional-annually, predetermined-biannually.

Estimated Hours for Respondents to Provide Information: 20 hours per respondent or 1500 total hours for all respondents.

Estimated Total Annual Reporting and Recording Burden: 1650 hours.

Susan H. Metts,

Assistant Chairman for Administration.

[FR Doc. 89-5133 Filed 3-3-89; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. *Type of submission, new, revision, or extension*: Extension.

2. *The title of the information collection*: NRC Form 314—Certificate of Disposition of Materials.

3. *The form number if applicable*: NRC Form 314.

4. *How often the collection is required*: The form is submitted once, when a licensee terminates its license.

5. *Who will be required or asked to report*: Persons holding an NRC license for the possession and use of radioactive byproduct, source, or special nuclear material who are ceasing licensed activities and terminating the license.

6. *An estimate of the number of responses*: 400.

7. *An estimate of the total number of hours needed to complete the requirement or request*: An average of 0.5 hours per response, for a total of 200 hours.

8. *An indication of whether section 3504(h), Pub. L. 96-511 applies*: Not applicable.

9. *Abstract.* NRC Form 314 furnishes information to NRC regarding transfer or other disposition of radioactive material by licensees who wish to terminate their licenses. The information is used by NRC as part of the basis for its determination that the facility has been cleared of radioactive material before the facility is released for unrestricted use.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW., Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer, Nicolas B. Garcia, Paperwork Reduction Project (3150-0028), Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 28th day of February 1989.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,

Designated Senior Official for Information Resources Management.

[FR Doc. 89-5100 Filed 3-3-89 8:45 am]

BILLING CODE

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-16839; 812-6840]

ML Venture Partners II, L.P., et al.; Application

February 27, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: ML Venture Partners II, L.P. ("MLVP II"), Merrill Lynch Venture Capital Inc. (the "Management Company") and ML Technology Ventures, L.P. ("ML Technology").

Relevant 1940 Act Sections: Exemption requested under section 57(c) from the provisions of section 57(a)(1) and under section 17(d) and Rule 17d-1 thereunder authorizing a transaction prohibited under section 57(a)(4).

Summary of Application: Applicants seek an order granting an exemption (1) under section 57(c) from the provisions of section 57(a)(1) to permit MLVP II to acquire certain securities from the Management Company and (2) under section 17(d) and Rule 17d-1 thereunder to permit MLVP II and ML Technology to participate in a joint arrangement relating to such securities which would otherwise be prohibited under section 57(a)(4).

Filing Date: The application was filed on August 19, 1987 and amended on September 1, 1988, October 20, 1988 and February 16, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application, or ask to be notified if a hearing is ordered. Any request should be in writing and should be received by the SEC by 5:30 p.m., on March 20, 1989. A request for a hearing should state the nature of the requestor's interest, the reason for the request, and the issues contested. Any person requesting a hearing should serve the Applicants with a copy of the request, either personally or by mail, and should send the request to the Secretary of the SEC, along with proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. A request for notification of the date of a hearing may be made by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20459. MLVP II and the Management Company, 717 Fifth Avenue, New York, New York 10022. ML Technology, World Financial Center, North Tower, 18th Floor, New York, New York 10281.

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Staff Attorney, at (202) 272-2847, or H.R. Hallock, Jr., Special Counsel, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The 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 commerical copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. MLVP II, a Delaware limited partnership, is a business development company under the 1940 Act. The investment objective of MLVP II is to seek long-term capital appreciation by making venture capital investments.

2. The General Partners of MLVP II consist of the MLVP II Individual General Partners and MLVP II Co., L.P., (the "MLVP II Managing General Partner"). The MLVP II Individual General Partners include the three MLVP II Independent General Partners (defined to be individuals who are not "interested persons" of MLVP II) and one General Partner who is an individual and who is an affiliated person of the MLVP II Managing General Partner. The MVLP II Managing General Partner is the managing general partner of MLMP II and is responsible for its venture capital investments. The MLVP II Managing General Partner is a limited partnership controlled by its general partner, the Management

Company, which performs the management and administrative services necessary for the operation of MLVP II. The MLVP II Managing General Partner and the Management Company are both registered investment advisers under the Investment advisers Act of 1940. The Management Company is an indirect subsidiary of Merrill Lynch & Co., Inc. ("ML & Co."), a holding company which, through its subsidiaries, provides investment, financing, real estate, insurance and related services.

3. ML Technology is a limited partnership which has the investment objectives of seeking cash flow from, *inter alia*, investments in portfolio limited partnerships or warrants to purchase common stock of companies that sponsor portfolio limited partnerships. ML R&D Co., L.P. (the "ML Technology General Partner") is the general partner of ML Technology and is responsible for selecting ventures. The general partner of the ML Technology General Partner is an indirect wholly-owned subsidiary of ML & Co.

4. BBN Advanced Computer Partners, L.P. ("BBN Computer"), a Delaware limited partnership, intends to develop, produce, and derive income from the sale of a high performance general purpose computer system in the industrial, technical and engineering markets. The General Partner of BBN Computer is BBN Advanced Computer Development Corporation, which is a Delaware corporation and a wholly-owned subsidiary of Bolt, Beranek and Newman, Inc. ("BBN"), a diversified high technology corporation.

5. Applicants seek an order of the SEC relating to the acquisition by MLVP II from the Management Company of 22 Class A limited partnership interests (the "Class A Interests") in BBN Computer and warrants to purchase 16,500 shares of common stock of BBN. The investment opportunity was brought to the attention of the ML Technology General Partner during February of 1987, and was subsequently brought to the attention of MLVP II. The MLVP II Managing General Partner and the ML Technology General Partner conducted separate evaluations of the proposed investment and independently determined to approve investments of up to $1,000,000 and $2,500,000, respectively, for MLVP II and ML Technology.

6. On April 2, 1987, ML Technology acquired 55 BBN Computer Class A Interests. The purchase was $45,500, per Class A Interest, for an aggregate purchase price of $2,502,500. On April 2, 1987, ML Technology made a cash payment of $550,440 to BBN Computer for the Class A Interests (representing $10,008 per Class A Interest purchased) and delivered a non-interest bearing promissory note (the "Investor Note") payable to BBN Computer in the aggregate principal amount of $1,952,060 (equal to $35,492 per Class A Interest purchased) evidencing ML Technology's obligation to make three annual installment payments commencing May 15, 1988 to BBN Computer with respect to the purchase price of the Class A Interests. Also on April 2, 1987, pursuant to a Partnership Purchase Option Agreement among BBN Computer, BBN Advanced Computer Development Corporation and the limited partners of BBN Computer (the "Option Agreement"), each limited partner, including ML Technology, granted to BBN an irrevocable option (the "Purchase Option") to purchase its Class A Interests. As consideration for the grant to BBN of the option to purchase the Class A Interests, BBN issued warrants the holder to purchase 750 shares of Common Stock, $1.00 par value, of BBN per Class A Interest. As consideration for the grant to BBN of an option to purchase its 55 Class A Interests, ML Technology acquired 41,250 BBN Warrants.

7. MLVP II's investment in BBN Computer Class A Interests could not be made concurrently with ML Technology because of the need for the requested relief. Accordingly, the Management Company agreed to purchase 22 BBN Computer Class A Interests on behalf of MLVP II and to sell such Class A Interests to MLVP II following receipt of the requested order. On April 2, 1987, the Management Company acquired 22 BBN Computer Class A Interests on behalf of MLVP II, which represents approximately 3.6% of the BBN Computer Class A Interests presently outstanding, for an aggregate purchase price of $1,001,000. On April 2, 1987, the Management Company made a cash payment of $220,176 for the Class A Interests (representing $10,008 per Class A Interest purchased) and delivered an Investor Note payable to BBN Computer in the aggregate principal amount of $780,824 (equal to $35,492 per Class A Interest purchased) evidencing the Management Company's obligation to make three annual installment payments commencing May 15, 1988 to BBN Computer with respect to the purchase price of the Class A Interests. The terms of the purchase of BBN Computer Class A Interests by the Management Company and ML Technology are identical in all respects other than the number of Class A Interests purchased. On April 2, 1987, pursuant to the Option Agreement, the Management Company granted a Purchase Option to BBN to purchase its 22 Class A Interests, and in consideration therefor acquired 16,500 BBN Warrants on behalf of MLVP II.

8. The purchase price to be paid by MLVP II to the Management Company for the BBN Computer Class A Interests and accompanying BBN Warrants proposed to be acquired by MLVP II will be the lower of (i) the fair value of the investment on the date MLVP II acquires the BBN Computer Class A Interests and accompanying BBN Warrants (as determined in good faith by the MLVP II Independent General Partners in accordance with paragraph 9, below) ("Value") or (ii) the cost to the Management Company of purchasing and holding the investment (determined in accordance with paragraph 10, below) ("Cost"). If the Value is greater than the balance remaining under the Investor Note, MLVP II will assume the obligation to make any remaining payments evidenced by the Investor Note, and will simultaneously make a cash payment to the Management Company equal to the difference between the lesser of the Cost or Value and the balance remaining under the Investor Note. If the Value is less than the balance remaining under the Investor Note, MLVP II will still assume the obligation to make any remaining payments evidenced by the Investor Note; however, the Management Company will simultaneously make a cash payment to MLVP II equal to the difference between the balance remaining under the Investor Note and the Value. If the Value is equal to the balance remaining under the Investor Note, MLVP II will assume the obligation to make any remaining payments evidenced by the Investor Note, and neither MLVP II nor the Management Company will make a cash payment.

9. The Managing General Partner of MLVP II will render its written opinion as to the fair value of the BBN Computer Class A Interests and accompanying BBN Warrants on the date the investment is proposed to be acquired by MLVP II, which opinion shall discuss each of the factors, assumptions, estimates and projections (collectively, "Factors") considered in determining fair value. The Managing General Partner will make a presentation to the Independent General Partners of MLVP II as to the basis for its opinion, which presentation will include detailed information as to each Factor considered. The Managing General Partner's opinion and each Factor considered therein will then be independently reviewed by the Independent General Partners of MLVP

II, at least a majority of whom shall have extensive knowledge in financial and business matters. Based upon their review of the opinion and presentation of the Managing General Partner and upon such other information as they deem necessary and appropriate, the Independent General Partners of MLVP II shall determine the fair value of the BBN Computer Class A Interests and accompanying BBN Warrants on the date the investment is proposed to be acquired by MLVP II. Detailed minutes, which shall at a minimum specifically discuss each of the Factors considered and the basis for any action taken, shall be kept of the Managing General Partner's presentation, the review of the Managing General Partner's opinion, and the determination of fair value by the Independent General Partners of MLVP II. All such minutes, the Managing General Partner's opinion, and any documents considered or reviewed by the Independent General Partners of MLVP II, shall be available for inspection by the Commission or its staff.

10. Cost shall be the original purchase price of $1,001,000 for the 22 BBN Computer Class A Interests paid by the Management Company on April 2, 1987, plus carrying costs related to such investments. The Cost shall therefore equal all cash payments made by the Management to BBN Computer, the balance remaining under the Investor Note, and carrying costs assessed as discussed below. MLVP II will pay no carrying costs with respect to the period prior to April 2, 1987, the acquisition date of the purchase by the Management Company, which was subsequent to the authorization of the investment by the Independent General Partners of MLVP II. The carrying costs will be assessed only with respect to the intitial cash payment made to BBN Computer by the Management Company and any payments made by the Management Company under the Investor Note. Such carrying costs will accrue with respect to each payment from the date such payment is made. For purposes of this transaction, carrying costs consist of interest charges computed at the lower of (i) the prime commercial lending rate charged by Citibank, N.A. during the period for which carrying costs are being paid or (ii) the effective cost of borrowing by ML & Co. during such period. The effective cost of borrowings by ML & Co. is its actual "Average Cost of Funds," which it calculates on a monthly basis by dividing its consolidated financing expenses by the total amount of borrowings during the period.

11. The purchase will not be consummated unless the Independent General Partners of MLVP II determine, following the issuance of the order requested in the application and prior to the acquisition of the BBN Computer Class A Interests and the accompanying BBN Warrants from the Management Company, that the investment continues to be appropriate for MLVP II.

Applicants' Legal Analysis

A. Relief under Section 57(c)

1. The relief requested under section 57(c) is justified by both the terms of the transaction and the fact that the proposed investment is not otherwise available to MLVP II. The MLVP II Managing General Partner is sophisticated and experienced in valuing securities and evaluating financial transactions generally, and has reviewed the proposed investment in detail. In this regard, the MLVP II Managing General Partner considered all information deemed relevant, including the nature of the investment, the nature of the investment by affiliates of ML & Co. in BBN Computer, and the fairness of the purchase price proposed to be paid by MLVP II. The MLVP II Managing General Partner determined that the proposed investment by MLVP II will not directly or indirectly benefit entities affiliated with ML & Co.

2. At a meeting of the Independent General Partners of MLVP II held on March 30, 1987, MLVP II's investment was approved after consideration of each of the factors set forth in section 57(c). The MLVP II Independent General Partners have such knowledge in financial and business matters as to be capable of determining whether the investment is appropriate for MLVP II. As stated above, the purchase will not be consummated unless the Independent General Partners of MLVP II make an additional determination that the investment continues to be appropriate for MLVP II.

3. MLVP II's Independent General Partners considered the fact that the proposed purchase price to be paid by MLVP II will include carrying costs incurred by an affiliated person (i.e., the Management Company) if the fair value of the investment at the time of the acquisition by MLVP II is determined to be more than the sum of the purchase price plus the affiliates's carrying costs. MLVP II believes that it is appropriate for it to reimburse an affiliate for carrying costs in a situation where an affiliate purchased an investment as, in effect, its nominee and where MLVP II would have purchased such investment directly if it had not been necessary to obtain the requested relief.

4. The investment is not otherwise available for purchase by MLVP II. the MLVP II Managing General Partner has approved the investment after review of a considerable number of possible investments for MLVP II. The proposed transaction is consistent with MLVP II's investment objective and is the kind of transaction in which it was contemplated that MLVP II would participate.

B. Relief under Section 17(d) and Rule 17d–1

1. The MLVP II Managing General Partner and the ML Technology General Partner reviewed the proposed investments and determined, repectively, that the investments were consistent with MLVP II's and ML Technology's investment objectives and would not disadvantage either MLVP II or ML Technology in making, maintaining or disposing of the investments. In reaching such determinations, the MLVP II Managing General Partner and ML Technology General Partner recognized that although the purchase price per Class A Interest would be the same, MLVP II and ML Technology would each acquire a different number of Class A Interests. However, MLVP II and ML Technology are at different points in their investments programs, and do not believe that the different number of Class A Interests acquired makes MLVP II's proposed investment in BBN Computer any more or less advantageous than ML Technology's investment. To the extent that the investments prove to be successful, MLVP II and ML Technology will profit equally in proportion to their respective investments.

2. The prospectus of MLVP II indicated that MLVP II may be a co-investor in portfolio companies with affiliates of management. Similarly, the prospectus of ML Technology indicated that ML Technology may co-invest in research and development partnerships with affiliates of management. MLVP II and ML Technology thus submit that the relief requested is consistent with the purposes of ML Technology and MLVP II, their stated policies and the disclosure made to prospective investors. Applicants also believe that the proposed investments are in the best interest of ML Technology and MLVP II.

Applicants' Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. The BBN Computer Class A Interests and BBN Warrants will be acquired by MLVP II in the manner and on the terms described above.

2. In connection with the deliberations and determinations by the Independent General Partners of MLVP II, appropriate record-keeping will be maintained and made available for inspection by the Commission upon request.

3. MLVP II will not have more than 45% of its assets invested jointly with all affiliates, except as a higher percentage may result from appreciation rather than acquisition of assets.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-5105 Filed 3-3-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Advisory Committee on Oceans and International Environmental and Scientific Affairs, Partially Closed Meeting

Department of State officials responsible for the foreign policy aspects of chemical weapons, nuclear non-proliferation, toxic waste disposal, ocean dumping, and global warming and climate change issues will be present at 9:00 a.m. Thursday, April 13 in Room 1205 of the Department of State at 2201 C Street, NW., Washington, DC, to discuss key issues and problems concerning the above matters. This session, which is being convened by the Department's Advisory Committee on Oceans and International Environmental and Scientific Affairs, will be open to the public and will last until 11:00 a.m. Members of the general public will be admitted to the session to the limits of seating capacity and will be given the opportunity to participate in discussions according to the instructions of the Chairperson. In that regard, entrance to the Department of State building is controlled, and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the Office of Advanced Technology by contacting William Moody, telephone (202) 647-4923. All attendees must use the C Street entrance to the building.

Officers of the Bureau of Oceans and International Environmental and Scientific Affairs, along with the Department of State's Advisory Committee on Oceans and International Environmental and Scientific Affairs, will meet at 9:00 a.m. on Wednesday, April 12 in a session which will not be open to the public. This session will include discussion of classified material under 5 U.S.C. 552b(c)(1) and U.S.C. 552b(c)(9)(b). The disclosure of classified material and revelation of considerations which go into policy development could adversely affect the ability of the United States to achieve its foreign policy objectives. The purpose of these discussions will be to elicit views and discuss issues relating to chemical weapons, nuclear non-proliferation, toxic waste disposal, ocean dumping, and global warming and climate change. This portion of the meeting will include classified briefings and discussion of classified documents pursuant to Executive Order 12356.

Requests for further information should be directed to William Moody of the Office of Advanced Technology, of the Department of State's Bureau of Oceans and International Environmental and Scientific Affairs. He may be reached at telephone (202) 647-4923.

Frederick M. Bernthal,

Chairman, Advisory Committee on Oceans and International Environmental and Scientific Affairs.

February 9, 1989.

[FR Doc. 89-5099 Filed 3-3-89; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms, and Recordkeeping Requirements; Submittals to OMB on February 27, 1989

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on February 27, 1989, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

FOR FURTHER INFORMATION CONTACT: John Chandler, Annette Wilson, or Cordelia Shepherd, Information Requirements Division, M-34, Office of the Secretary of Transportation, 400 Seventh Street, SW., Washington, DC 20590, telephone, (202) 366-4735, or Gary Waxman, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395-7340.

SUPPLEMENTARY INFORMATION:

Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the **"FOR FURTHER INFORMATION CONTACT"** paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on February 27, 1989.

DOT No: 3177
OMB No: 2106-0038
Administration: DOT/Office of the Secretary
Title: Part 204—Data to Support Fitness Determinations
Need for Information: To establish the fitness of carriers seeking certificate or commuter authority.
Proposed Use of Information: To determine whether carriers are "fit" to engage in their proposed air transportation operations.
Frequency: On occasion when seeking authority under sections 401 or 419 of the Federal Aviation Act.
Burden Estimate: 7,800
Respondents: U.S. air carriers
Form(s): None
Average Burden Hours Per Respondent: 39.0.

DOT No: 3178
OMB No: 2133–0005
Administration: Maritime Administration
Title: Uniform Financial Reporting Requirements
Need for Information: To prepare and file periodic financial statements.
Proposed Use of Information: To determine compliance with legal and contractual requirements.
Frequency: Semi-annually, annually
Burden Estimate: 7,440
Respondents: Shipowners, ship operators
Form(s): MA–172
Average Burden Hours Per Respondent: 15 hours reporting and 1 hour recordkeeping.

DOT No: 3179
OMB No: 2133–0501
Administration: Maritime Administration
Title: Records Retention Schedule
Need for Information: To ascertain if financial assistance has been properly used.
Proposed Use of Information: To permit proper audit of pertinent financial records at the end of an ODS or CDS contract.
Frequency: Quarterly, Semi-annually, annually
Total Estimated Burden: 3,914 hours
Respondents: Ship operators, ship owners
Form(s): None
Estimated Average Per Response: 78 hours reporting and 50 hours recordkeeping.

DOT No: 3180
OMB No: 2138–0023
Administration: Research and Special Programs Administration
Title: Part 291 Domestic Cargo Transportation
Need for Information: Information database for all cargo air carriers.
Proposed Use of Information: The data from Form 291–A is used to monitor the domestic all-cargo industry and the individual carriers continuing fitness.
Frequency: Annual
Burden Estimate: 76 hours
Respondents: Domestic all-cargo air carriers
Form(s): 291A
Average Burden Hours Per Respondent: 4 hours.

DOT No: 3181
OMB No: 2138–0013
Administration: Research and Special Programs Administration
Title: Report of Financial and Operating Statistics for Large Certified Air Carriers
Need for Information: To provide basic financial and traffic data which are used extensively by DOT in its ongoing programs i.e., international negotiations, fitness, safety, airport planning, etc.
Proposed Use of Information: To accomplish program and policy objectives also to fulfill an international Treaty obligation.
Frequency: Monthly, quarterly, semi-annually and annually
Burden Estimate: 35,306 hours
Respondents: Large air carriers
Form(s): Form 41
Average Burden Hours Per Respondent: 3.7 hours per schedule.

DOT No: 3182
OMB No: New
Administration: U.S. Coast Guard
Title: Instructional material for lifesaving, fire protection and emergency equipment
Need for Information: The requirements contained herein are needed to make sure that vessel crew members have the necessary information to properly use the equipment.
Proposed Use of Information: Merchant vessel crew members use this information during training sessions held on board the vessel and during emergencies.
Frequency: On occasion
Burden Estimate: 27,500
Respondents: Manufacturers and vessel operators
Form(s): N/A
Average Burden Hours Per Respondent: .25 for reporting; 1 hour for recordkeeping.

DOT No: 3138
OMB No: 2105–0508
Administration: Department of Transportation
Title: Uniform Relocation Assistance and Real Property acquisition Regulations for Federal and Federally Assisted Programs.
Need for Information: Compliance and program management.
Proposed Use of Information: Proper expenditure of Federal funds; owners/occupants get the protections of law.
Frequency: Report once each 3 years
Burden Estimate: 25,910 hours total
Respondents: State and local governments.
Form(s): (1) to be approved with submission
Average Burden Hours Per Response: 8.5 hours per report and ½ hour for recordkeeping.

DOT No: 3184
OMB No: New
Administration: U.S. Coast Guard
Title: Identification of Lifesaving, Fire Protection, and Emergency Equipment
Need for Information: The requirements contained herein are needed to make sure that the proper equipment is used on vessels inspected under 46 U.S.C. 3306(A) and that it is in proper location.
Proposed Use of Information: Merchant vessel crew members and Coast Guard inspectors use this information to determine that the material meets the regulatory requirements.
Frequency: On occasion
Burden Estimate: 23,000
Respondents: Manufacturers and vessel operators
Form(s): N/A
Average Burden Hours Per Response: .10 for reporting; 1 hour for recordkeeping.

DOT No: 3185
OMB No: New
Administration: U.S. Coast Guard
Title: Offshore Supply Vessels, 46 CFR Subchapter L
Need for Information: These requirements are needed to ensure the safety of individuals and property on board offshore supply vessels.
Proposed Use of Information: The information is used by crew, offshore workers, boarding officers and inspectors to make sure that the vessel is in compliance with the various regulations and treaties. Posting requirements are used to provide instructions to the crew members in order to prevent or respond to an emergency.
Frequency: On occasion
Burden Estimate: 2047
Respondents: varies
Form(s): CG–811
Average Burden Hours Per Response: Reporting—2.99 hours; Recordkeeping 74.33 hours.

DOT No: 3186
OMB No: New
Administration: U.S. Coast Guard
Title: 46 CFR Subchapter T, "Small Passenger Vessels"
Need for Information: This information collection requirement is needed to enforce the laws and regulations promoting the safety of life and property in marine transportation. Also, this requirement ensures safe operation of vessels and allows for proper reaction to emergencies.
Proposed Use of Information: These requirements are used to determine if the vessel's construction, arrangement stability and equipment are satisfactory for the intended service. Further, the requirements contained herein makes readily apparent to the crew, passengers, boarding officers and inspectors that the vessel is in compliance with the various regulations and treaties.

Frequency: On occasion
Burden Estimate: 249,689
Respondents: Small Passenger Vessels
Form(s): CG–854, CG–949, CG–3752, CG–3753, CG–5256
Average Burden Hours Per Response: .26 hours for reporting and 3.6 hours for recordkeeping.

Issued in Washington, DC, on February 27, 1989.

Robert J. Woods,
Director of Information Resource Management.

[FR Doc. 89–5139 Filed 3–3–89; 8:45 am]
BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended February 24, 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 No. 46133

Date Filed: February 21, 1989
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 21, 1989
Description: Application of Northwest Airlines, Inc. pursuant to Section 401 of the Act and Subpart Q of the Regulations applies for an amendment of its certificate of public convenience and necessity for Route 3–F or a new certificate authorizing it to provide non-stop service between Tampa, Florida and Cancun, Mexico.

Docket No. 46140

Date Filed: February 21, 1989
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 23, 1989
Description: Application of Northwest Airlines, Inc. pursuant to Section 402 of the Act and Subpart Q of the Regulations applies for a foreign air carrier permit to authorize it to engage in the scheduled foreign air transportation of persons, property, and mail between Toronto, Ontario and Atlantic City, New Jersey.

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 89–5138 Filed 3–3–89; 8:45 am]
BILLING CODE 4910–62–M

Maritime Administration

[Docket S–845]

Lykes Bros. Steamship Co., Inc.

In the matter of an application to acquire Argonaut Line, Inc. including Farrell Lines Incorporated and all of its subsidiaries and an application purusant to section 605(c) of the Merchant Marine Act, 1936, as amended, authorizing additional service from the U.S. Gulf to the Mediterranean.

By letter of February 16, 1989, as amended on February 27, 1989, Lykes Bros. Steamship Co., Inc. (Lykes) advised that it has entered into a Plan and Agreement of Merger pursuant to which Lykes will be acquiring all of the outstanding stock of Argonaut Line, Inc. (Argonaut) including Farrell Lines Incorporated (Farrell) and all of its subsidiaries. As presently contemplated, Lykes Enterprises V, Inc. (LEV), a newly incorporated Delaware corporation and a wholly-owned subsidiary of Lykes will be one of the constituent companies to the merger, and Argonaut will be the other.

Lykes and Farrell each currently served the Mediterranean. Lykes' Operating Differential Subsidy Agreement (ODSA) MA/MSB–451 permits, among other things, operation on Trade Route (TR) 13 (U.S. Gulf & South Atlantic/Mediterranean) up to a maximum of 48 annual sailings. Farrell's ODSA MA/MSB–482 permits operation of TR 10/13 (U.S. Atlantic/Mediterranean) up to a maximum of 66 annual sailings. Lykes states that, essential to realizing the economies of scale made available by the acquisition, it is necessary to amend Farrell's ODSA MA/MSB–482 to expand its authority to include U.S. Gulf ports.

Lykes believes that the authority sought by the application would do no more than allow Gulf port calls in addition to the geographic authority already provided for in the ODSA. While it is contemplated that there may be redeployment, either directly or by interchange or transfer of certain vessels, no increase in authorized sailings is requested.

It is Lykes' view that the inclusion of Gulf ports to the ODSA will allow more efficient utilization of the vessels in the future operations of the companies, while at the same time causing no injury to any other U.S.-flag liner company. Approval of the application would create a larger geographic area to be serviced by vessels operating under the ODSA and thereby limit or reduce the capacity which might be available to directly compete with any U.S.-flag liner company serving the Atlantic coast. Furthermore, no U.S. liner service is provided to U.S. Gulf ports, except that provided by Lykes.

Accordingly, Lykes believes that the facts demonstrate that to the extent any "additional service" within the meaning of section 605(c) of the Merchant Marine Act, 1936, as amended, might be sought by the application, such service is not in addition to any existing service other than that of Lykes and, therefore, Lykes knows of no entity which could satisfy the minimal requirements for standing in any section 605(c) proceeding, should one be considered.

In connection with the planned acquisition of Argonaut, including the stock of Farrell, Lykes requests that the Maritime Subsidy Board and the Maritime Administrator, as required, issue all consents, waivers, and other approvals necessary to permit the proposed transaction.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5:00 P.M. on March 17, 1989. The Maritime Subsidy Board will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies.))

By Order of the Maritime Subsidy Board.

Date: March 1, 1989.

[FR Doc. 89–5063 Filed 3–3–89; 8:45 am]
BILLING CODE 4910–18–M

National Highway Traffic Safety Administration

Fourth Meeting of the Rollover Subcommittee of the Motor Vehicle Safety Research Advisory Committee

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Correction.

SUMMARY: This notice announces a change in the meeting room for the fourth meeting of the Rollover Subcommittee of the Motor Vehicle Safety Research Advisory Committee (MVSRAC). The MVSRAC established this subcommittee at the February 1988 meeting to examine research questions regarding crashworthiness and crash avoidance for vehicles under 10,000 pounds GVW.

DATE AND TIME: The meeting is scheduled for Thursday, March 16, 1989, from 10:00 a.m. to 5:00 p.m.

ADDRESS: The meeting will be held in Room 10234 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Louis V. Lombardo, Office of Research and Development, 400 Seventh Street, SW., Room 6208, Washington, DC 20590, telephone: (202) 366–4862.

Issued on: February 28, 1989

Howard M. Smolkin,

Chairman, Motor Vehicle Safety Research Advisory Committee.

[FR Doc. 89–5140 Filed 3–3–89; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: February 28, 1989.

The Department of the Treasury has made revisions and resubmitted 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, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0988.
Form Number: 8609.
Type of Review: Resubmission.
Title: Low-Income Housing Credit Allocation Certification.
Description: Form 8609 is used by State and local housing credit agencies to allocate a low-income housing credit dollar amount to owners of low-income housing. Also used by owners to certify that the building qualifies for credit. Part I completed by State or local agency; rest of form completed by building owner. (Part II completed first year only; Part III completed each year for 15-year compliance period.)
Respondents: State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents: 1,000.
Estimated Burden Hours Per Response/Recordkeeping:

	8609	Sched. A
Recordkeeping	7 hrs. 25 mins	6 hrs. 13 mins.
Learning about the law or the form.	1 hr. 59 mins	53 mins.
Preparing, and sending the form to IRS.	2 hrs. 11 mins	1 hr. 2 mins.

Frequency of Response: Annually.
Estimated Total Recordkeeping/Reporting Burden: 1,307,100 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. 89–5110 Filed 3–3–89; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: February 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, 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 Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512–0007.
Form Number: ATF F 3310.6.
Type of Review: Extension.
Title: Interstate Firearms Shipment Report of Theft/Loss.
Description: ATF F 3310.6 is part of a voluntary program in which the Common Carrier and/or shipper report losses or thefts of firearms from interstate shipments. The form is completed by the carrier/shipper to notify ATF of the loss or theft. ATF uses this information to ensure that the firearms are entered into the National Crime Information Center (NCIC), to initiate investigations and to perfect criminal cases.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 750.
Estimated Burden Hours Per Response: 20 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 250 hours.
OMB Number: 1512–0096.
Form Number: ATF F 5130.12 (1689).
Type of Review: Extension.
Title: Beer for Exportation.
Description: Untaxpaid beer may be removed from a brewery for exportation without payment of the excise taxes normally due. In order that this will be accomplished, and for ATF to monitor such transactions, brewers complete ATF F 5130.12 (1689). The form monitors exports on ships and aircraft or to military bases. The form is certified by U.S. Customs and ensures that untaxpaid beer does not reach domestic markets.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 101.
Estimated Burden Hours Per Response: 1 hour 39 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 10,000 hours.
OMB Number: 1512–0138.
Form Number: ATF F 1520.20 (2605).
Type of Review: Extension.
Title: Certification of Tax Determination—Wine.
Description: Wine that has been manufactured, produced, bottled or packaged in bulk containers in the U.S. and then exported, may have the revenue tax already paid or determined on the refunded to the exporter. The form validates from the producing winery that the wine was produced in the U.S. and was taxpaid on withdrawal from bond.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Response: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 500 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. 89–5111 Filed 3–3–89; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: March 1, 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, 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, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512–0081.

Form Number: ATF F 5130.23.

Type of Review: Extension.

Title: Brewer's Bond Continuation Certificate.

Description: ATF F 5130.23 is completed by brewers to indicate that an existing bond is being continued by the surety company. The brewer may use this form instead of a new bond. The certificate identifies the respondent, the respondent's address and description of the bonds which are being continued by this certificate.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 35.

Estimated Burden Hours Per Response: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 35 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. 89–5112 Filed 3–3–89; 8:45 am]

BILLING CODE 4810–25–M

VETERANS ADMINISTRATION

Agency Information Collection Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The responsible department or staff office; (2) the title of the collection(s); (3) the agency form number(s), if applicable; (4) a description of the need and its use; (5) how often the information collection must be completed, if applicable; (6) who will be required or asked to report; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to respond; and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Department of Veterans Benefits (203C), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–2744.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before April 5, 1989.

Dated: February 27, 1989.

By direction of the Administrator.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Department of Veterans Benefits.

2. Apprenticeship—Standards and Training Agreement; On-The-Job-Training Agreement and Training Standards; Employer's Application to Provide Job Training.

3. VA Forms 22–8863, 22–8864, and 22–8865.

4. The information is collected from employers and trainees to ensure that apprenticeship and on-the-job training programs and agreements meet the statutory requirement for approval.

5. On occasion.

6. State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations.

7. 4,500 responses.

8. 3,750 hours.

9. Not applicable.

[FR Doc. 89–5073 Filed 3–3–89; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department sponsoring the information collection; (2) the title of the information collection; (3) the agency form number, if applicable; (4) a description of the need and its use; (5) frequency of the information collection; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the study and supporting documents may be obtained from Ann Bickoff, Department of Medicine and Surgery (136E), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2282.

Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before April 5, 1989.

Dated: February 17, 1989.

By direction of the Administrator.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Department of Medicine and Surgery.
2. Agent Orange Registry Code Sheet.
3. VA Form 10–9009.
4. The form is used to obtain information from the veteran during an Agent Orange examination. Information is obtained through an interview with the examining physician and is used to identify veterans who may have been exposed to Agent Orange.
5. One-time (non-recurring).
6. Individuals or households.
7. 10,000 responses.
8. 1,500 hours.
9. Not applicable.

[FR Doc. 89–5074 Filed 3–3–89; 8:45 am]

BILLING CODE 8320–01–M

Availability of Report; Program Evaluation; Nursing Home Care Programs

Notice is hereby given that the VA's Nursing Home Care Program Evaluation has been completed.

Single copies of the VA's Nursing Home Care Programs Evaluation Report are available. Reproduction of multiple copies can be arranged at the user's expense.

Direct inquiries, specifying the name of the program evaluation desired, to Mr. Joseph W. Bauernfeind, Acting Director, Studies and Evaluation Service, Veterans Administration (072), 810 Vermont Avenue NW., Washington, DC 20420.

Dated: February 23, 1989.

By direction of the Acting Administrator.

H. Raymond Wilburn,

Acting Director, Office of Program Analysis and Evaluation.

[FR Doc. 89–5075 Filed 3–3–89; 8:45 am]

BILLING CODE 8320–01–M

federal register

Monday
March 6, 1989

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1 and 23

Small Airplane Airworthiness Review Program Notice 2; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1 and 23

[Docket No. 25811; Notice No. 89-5]

RIN 2120-AC15

Small Airplane Airworthiness Review Program Notice 2

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice is one of a series of notices that proposes to adopt new and amended airworthiness standards for small airplanes which are based on certain proposals discussed at the Small Airplane Airworthiness Review Conference held on October 22–26, 1984, in St. Louis, Missouri. These new and amended airworthiness standards result in the need for new definitions to be added to the regulations, and this notice also proposes the addition of those definitions. The proposals of this notice reflect advancements in technology being incorporated in current designs, permit type certification of spin resistant airplanes, and reduce the regulatory burden in showing compliance with some of the requirements while maintaining the standards governing the design and type certification of small airplanes as may be required in the interest of safety.

DATE: Comments must be received on or before July 5, 1989.

ADDRESS: Comments on this notice may be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Docket No. 25811, 800 Independence Avenue SW., Washington, DC 20591, or delivered in triplicate to: Room 915-G, 800 Independence Avenue SW., Washingotn, DC 20591. Comments delivered must be marked Docket No. 25811. Comments may be inspected in Room 915-G between 8:30 a.m. and 5:00 p.m. on weekdays, except on Federal holidays.

In addition, the FAA is maintaining an information docket of comments in the Office of Assistant Chief Counsel, ACE-7, Federal Aviation Administration, Central Region, 601 East 12th Street, Kansas City, Missouri 64106. Comments in the information docket may be inspected in Room 1558 between the hours of 7:30 a.m. and 4:00 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ervin E. Dvorak, Standards Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rules by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals in this notice are invited. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administartor before taking further rulemaking action. Commenters wishing the FAA to acknowledge receipt of comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25811." The postcard will be date stamped and returned to the commenter. All comments received 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 substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center, (APA-200), 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRMs should also request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On January 31, 1983, the FAA announced the Small Airplane Airworthiness Review Progarm, Notice CE-83-1, (48 FR 4290), and invited all interested persons to submit proposals for changes to the airworthiness standards of Part 23. The Review Program objective was to encourage public participation in improving and updating the airworthiness standards applicable to small airplanes.

In response to requests from interested persons, the FAA reopened the time period for submission of proposals by issuing Notice CE-83-1A (48 FR 26623; June 9, 1983). This action was based upon an FAA determination that it would be in the public interest to permit additional time for the public and the aviation industry to submit proposals.

By the close of the reopened proposal period on May 3, 1984, the FAA had received approximately 560 proposals in response to Notices CE-83-1 and CE-83-1A. On July 25, 1984, the FAA issued Notice CE-84-1 (49 FR 30053) announcing the Availability of Agenda, Compilation of Proposals, and Announcement of the Small Airplane Airworthiness Review Program Conference to discuss the proposals. The conference was held on October 22-26, 1984, in St. Louis, Missouri. A copy of the transcript of all discussions held during the conference is filed in Docket 23494.

Since the conference, Part 23 has been amended by amendments 23-31, 23-32, 23-33 and 23-34. Consequently, these proposals are based on Part 23, as amended through amendment 23-34.

Notice 1 (51 FR 44878, December 12, 1986) of the Small Airplane Airworthiness Review Program is directed toward improvement of crashworthiness. After a further consideration of the review proposals and the October 22-26, 1984, conference transcript, the FAA found that proposals selected for Notice 2 were identified in conference discussion as those next in priority. It should be noted the some of the originally scheduled Notice 2 proposals have been removed from this notice and that these proposals will be included in a separate notice identified as Notice 5.

This action was taken to expedite a limited number of proposals and, thus, eliminate the need for further processing of special conditions and exemptions; thereby eliminating costly delays to the applicants and reducing of the FAA resources dedicated to approval of these documents. The proposals in Notice 5 would upgrade airworthiness standards to include design requirements for complex systems critical to safety in Part 23 airplanes and amend the flight instrument requirements of Parts 91 and 135. The remaining review proposals will be divided between Notice 3 and 4. Those proposals for propulsion and systems items will be addressed in Notice 3 with flight and airframe items in Notice 4.

Regulatory and Economic Evaluations

Most of the proposals in this notice are directed at developing uniform airworthiness standards (many of which have been applied previously as special conditions in specific type certification programs) in addressing the design and incorporation of advanced technology (anti-stall systems, icing systems, digital fuel control systems) in small airplanes as well as to facilitate the type certification of new designs (canard or tandem wing configurations). These proposals are of a cost-relieving nature because they would eliminate the need for special conditions processing, which often involves costly delays. In addition, many of these proposals involve design features that are optional in the sense that the manufacturers are not being directed to incorporate the newest technology in the design of their future models, but are being afforded a set of regulations to observe should they choose the new technology.

The benefits were estimated on the basis of two alternative assumptions of small airplane production. The conservative assumption projects a continuation of the depressed condition of this industry. A more optimistic assumption that the industry will regain its economic health was also used to estimate the benefits. These two assumptions were used to estimate a range of the expected benefits. It was determined that the most cost effective proposal pertained to spin resistant airplanes, which was estimated to involve fairly substantial quantifiable benefits amounting to about $21 million (discounted) over the 20 year study period (see Table 1) based on the optimistic assumption about small airplane production. Estimates of the potential benefits of these proposals were also derived on the basis of the conservative assumption of a continuation of the depressed condition of this industry. Using this alternative assumption, the benefits of this proposal were estimated at about $3 million. Three other proposals were expected to produce benefits amounting to a total of about $1.5 million over the study period, based on the optimistic assumption, and on the order of $.4 million using the more conservative assumption.

TABLE 1.—SUMMARY OF ESTIMATED BENEFITS (DISCOUNTED) AND COSTS (MILLIONS OF DOLLARS)

Proposed rule	Best estimate of benefits	Range	Costs
A. Based on assumption of a continuation of recent small airplane production trends:			
§§ 23.221–23.445 Spin Resistant & Canard Configured Airplanes	$3.0	$2.50–3.6	Relieving.
§ 23.735 Anti-Skid Braking Systems	0.02	0.01–.06	Minor.
§ 23.831 Ventilation	0.33	0.27–0.38	Relieving.
§ 23.1163 Powerplant Accessories	0.08	0.04–0.12	Relieving.
Total	3.43	2.82–4.16	
B. Based on assumption of a rebound in production:			
§§ 23.221–23.445 Spin Resistant & Canard Configured Airplanes	21.4	17.70–25.6	Relieving.
§ 23.735 Anti-Skid Braking Systems	0.13	0.07–0.4	Minor.
§ 23.831 Ventilation	0.78	0.39–1.95	Relieving.
§ 23.1163 Powerplant Accessories	0.57	0.29–0.86	Relieving.
Total	22.88	18.45–28.81	

Trade Impact Analysis

The proposals in this notice would have little or no impact on trade for both U.S. firms doing business in foreign countries and foreign firms doing business in the U.S. In the U.S., foreign manufacturers would have to meet U.S. requirements, and thus they would gain no competitive advantage. In foreign countries, U.S. manufacturers would not be bound by Part 23 requirements and could, therefore, implement the proposal under study solely on the basis of competitive considerations.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The FAA's criteria for a small airplane manufacturer is one employing less than 75 employees, a substantial number is a number which is not less than 11 and which is more than one-third of the small entities subject to the proposed rules, and a significant impact is one having an annual cost of more than $14,900 (in 1987 dollars) per manufacturer.

A review of domestic general aviation manufacturing companies indicates that only six companies meet the size threshold of 75 employees or less. The proposed amendment to 14 CFR Part 23 will, therefore, not affect a substantial number of small entities.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on 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

The FAA has determined that this document involves regulations which are not considered to be major under the procedures and criteria prescribed by Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained from the person identified as the contact for further information. For the reasons stated above and in the regulatory evaluation, I certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities. In addition, this proposed rule will have little or no impact on trade opportunities for the U.S. firms doing business overseas or for

foreign firms doing business in the United States.

List of Subjects

14 CFR Part 1

Definitions, Abbreviations.

14 CFR Part 23

Aircraft, Aviation safety, Air transportation, Safety, Tires.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend Parts 1 and 23 of the Federal Aviation Regulations (14 CFR Parts 1 and 23) as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

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

Authority: 49 U.S.C. 1347, 1348, 1354(a), 1357(d)(2), 1372, 1421 through 1430, 1432, 1442, 1443, 1472, 1510, 1522, 1562(e), 1655(c), 1657(f); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. Section 1.1 is amended by adding the definitions "Canard" and "Canard configuration" after "Calibrated airspeed"; "Forward wing" after "Foreign air transportation"; "Tandem wing configuration" after "Takeoff thrust"; and "Winglet or tip fin" after "VFR over-the-top" to read as follows:

§ 1.1 General definitions.

* * * * *

"Canard" means the forward wing of a canard configuration and may be a fixed, movable, or variable geometric surface, with or without control surfaces.

"Conard configuration" means a configuration in which the span of the forward wing is substantially less than that of the main wing.

* * * * *

"Forward wing" means a forward-lifting surface of a canard configuration or tandem-wing configuration airplane. The surface may be a fixed, movable, or variable geometric surface, with or without control surfaces.

* * * * *

"Tandem wing configuration" means a configuration having two wings of similar span, mounted in tandem.

* * * * *

"Winglet or tip fin" means an out-of-plane surface extending from a lifting surface. The surface may or may not have control surfaces.

* * * * *

Explanation

This proposal would adopt generally accepted terminology used to define airplane components and configurations that have come into use with new airplane designs and advanced technology.

Conference discussions indicated the definition of "canard" in conference proposal 520 was too brief and did not clearly indicate a canard's relationship to controlling an airplane with a canard. This relationship was implied in the definition of a forward wing and has therefore been included in the proposed definition of canard.

The advancement of technology has made it desirable to design airplanes with configurations differing from the conventional configurations where the wing (or wings for the common biplane) has ailerons and flaps, and the empennage has horizontal and vertical stabilizers, elevators, and rudders. The components of these new configurations have been used in amateur-built designs and sophisticated military designs for several years. A specific component has not always been referred to with the same terminology, although that component performs essentially the same function from one design to the next. However, the commercial use has resulted in some generally accepted terminology. Furthermore, this notice includes other proposals that use this terminology.

Reference: Conference proposal 520.

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, ACROBATIC, AND COMMUTER CATEGORY AIRPLANES

3. The authority citation for Part 23 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

4. Section 23.67 is amended by revising paragraphs (a), (a)(2), (a)(5), (b), and (c) to read as follows:

§ 23.67 Climb: One engine inoperative.

(a) For normal, utility, and acrobatic category, reciprocating-engine-powered multiengine airplanes, one-engine-inoperative climb gradients must be determined at each weight established as an operational limit by the applicant, with the—

(1) * * *

(2) Remaining engines at not more than maximum continuous power or thrust;

* * * * *

(5) The means for controlling the engine cooling air supply in the position used in the engine cooling tests required by §§ 23.1041 through 23.1047 of this part.

(b) For normal, utility, and acrobatic category reciprocating-engine-powered multiengine airplanes the following apply:

(1) Each airplane with a V_{SO} of more than 61 knots, or of more than 6,000 pounds maximum weight, must be able to maintain a steady gradient of climb of at least 1.5 percent at a pressure altitude of 5,000 feet and at standard temperature (41 degrees F) with the airplane in the configuration prescribed in paragraph (a) of this section.

(2) Each airplane with a V_{SO} of 61 knots or less and of 6,000 pounds or less maximum weight must have its steady rate of climb at a pressure altitude of 5,000 feet and at standard temperature (41 degrees F) determined with the airplane in the configuration prescribed in paragraph (a) of this section.

(c) For normal, utility, and acrobatic category turbine-engine-powered multiengine airplanes the following apply:

(1) The steady gradient of climb must be determined at each weight, altitude, and ambient temperature within the operational limits established by the applicant, with the airplane in the configuration prescribed in paragraph (a) of this section.

(2) Each airplane must be able to maintain at least the following climb gradients with the airplane in the configuration prescribed in paragraph (a) of this section:

(i) 1.5 percent at the pressure altitude of 5,000 feet and standard temperature (41 degrees F); and

(ii) 0.75 percent at a pressure altitude of 5,000 feet and 81 degrees F (standard temperature plus 40 degrees F).

(3) The minimum climb gradient specified in paragraphs (c)(2)(i) and (ii) of this section must vary linearly between 41 degrees F and 81 degrees F and must change at the same rate up to the maximum operating temperature approved for the airplane.

* * * * *

Explanation

This proposal, which is applicable to normal, utility, and acrobatic category airplanes, would establish a climb gradient as the performance requirement for the one-engine-inoperative condition in place of the current rate-of-climb requirement, which is based upon the airplane's landing configuration stalling speed, and would consolidate the airplane's configuration requirements for determining climb gradients in one

paragraph rather than three paragraphs as currently stated.

The current rule is the only small airplane performance requirement expressed in terms of stall speed and results in a variable climb gradient, depending on an airplane's landing configuration stall speed if above 61 knots. In addition, the current requirement for a small airplane is also expressed in a different manner than the one-engine-inoperative climb requirements for transport category airplanes which has been used successfully and satisfactorily for many years.

A proposal to the 1974–1975 Airworthiness Review Program recommended use of climb gradients in the flight performance requirements rather than rate of climb for specifying climb performance requirements. In Notice 75–25 (40 FR 24664, June 9, 1975) the FAA stated that it would give further study to the issue of converting the climb requirements from a rate of climb to a gradient of climb.

The General Aviation Manufacturers Association (GAMA) petitioned for a change to the current rule (47 FR 38705, September 2, 1982) to require that the one-engine-inoperative climb requirements be independent of the airplane's stall speed if above 61 knots and instead be expressed as a simple gradient of at least 1.2 percent. Subsequently, GAMA, the FAA, and several other interested persons submitted proposals relative to this issue to the Small Airplane Airworthiness Review Program (48 FR 4290, January 31, 1983).

Of the seven proposals concerning § 23.67 submitted for the review, only proposals 46, 47, and 50 were discussed at the conference. Proposals 46 and 50 addressed requirements for airplanes having a gross weight of 6,000 pounds or less. Proposal 47 addressed turbine-engine-powered airplanes and reciprocating-engine-powered airplanes with a gross weight of more than 6,000 pounds. Proposal 46 recommended a climb gradient not less than zero at takeoff, while proposal 50 recommended a climb gradient of 1.0 percent when the airplane is flying 1,000 feet above the airport. Proposal 46 received one comment in support and one comment in opposition. Another commenter stated that there is no substantive information presented to support a need for a requirement change as recommended in proposal 46. One commenter opposed proposal 50 because it is an operational rather than an airworthiness requirement. In light of views expressed at the conference, and upon further review by the FAA, the FAA concludes that no further action is necessary on proposals 46 and 50.

Proposal 47 would establish a 1.2 percent climb gradient and remove the rate-of-climb requirement based on stall speed for turbine engine-powered airplanes and reciprocating-engine-powered airplanes having a gross weight of more than 6,000 pounds. In the conference discussion, one attendee expressed a desire to retain the rate-of-climb requirement based on stall speed and also retain the 1.2 percent climb gradient requirement. This expressed desire was predicated as being consistent with special conditions issued in past certifications and, at that time, considered necessary. Other commenters supported only the 1.2 percent climb gradient requirement. After further consideration and review of the background of the current requirement, including pertinent special conditions, the FAA concludes that the arguments presented in support of the intent of proposal 47 and the discussions at the conference in support of simplifying the requirement are valid reasons for proposing a rule change.

However, the FAA does not consider a one-engine-inoperative climb gradient of 1.2 percent as providing a minimum requirement equivalent to that required by the current rule in all cases. The FAA examined the performance data as presented in Airplane Flight Manuals (AFM) and Pilot Operating Handbooks (POH) for twelve reciprocating-engine-powered small airplanes and seven turbine-engine-powered small airplanes. A comparison of the current requirement based upon 0.027 V_{SO}^2 for reciprocating-engine-powered small airplanes and the 1.2 percent climb gradient, or if greater, the 0.027 V_{SO}^2 rate of climb for turbine-engine-powered small airplanes showed that the prevailing requirement for one-engine-inoperative climb is dictated by the landing configuration stall speeds, even when assuming that the climb gradient requirement as applicable for turbine-engine-powered airplanes would be applicable in the case of reciprocating-engine-powered airplanes. The landing configuration stall speeds varied from 62 knots calibrated airspeed (CAS) for one reciprocating-engine-powered airplane with a maximum certificated weight of 7,000 pounds to 79 knots CAS for another with a maximum certificated weight of 7,800 pounds. In addition, one of the twelve airplanes had a V_{SO} of 71 knots CAS at a maximum weight of 8,400 pounds. The one-engine-inoperative, rate of climb requirement for these airplanes, therefore, varies from 104 feet-per-minute to 169 feet-per-minute. When these rates of climb are converted to climb gradient equivalents using the AFM or POH published best rate of climb speeds with one engine inoperative, the climb gradient equivalents then vary from 0.99 to 1.34 percent. The actual performance as set forth in the AFM or POH for these airplanes varied from 150 feet-per-minute to 320 feet-per-minute and equivalent climb gradients from a low of 1.26 percent to a high of 2.77 percent at the one engine inoperative speeds. For the twelve reciprocating-engine-powered airplanes, the average climb gradients from the AFM or POH data was 1.92 percent, and ten of these twelve exceeded a climb gradient of 1.8 percent at a pressure altitude of 5,000 feet and at standard temperature, 41 degrees F. The comparison of the performance requirements for the seven turbine-engine-powered airplanes and the data contained in the AFM or POH showed an even wider variation between the Part 23 minimum requirements and actual performance than that for reciprocating-engine-powered airplanes. However, because of the higher landing configuration stall speeds of these turbine-engine-powered airplanes, compliance with the rate of climb requirement of Part 23 results in higher rate of climb performance. Current § 23.67(c) results in rate of climb requirements for the seven turbine-engine-powered airplanes of 124 feet-per-minute to 224 feet-per-minute. For the airplane with 124 feet-per-minute climb gradient, the requirement of 1.2 percent prevails by increasing the rate of climb by 6 feet-per-minute over that obtained by using the 0.027 V_{SO}^2 value. When the preceding rates of climb of 124 to 224 feet-per-minute are converted to climb gradient equivalents using the AFM or POH published best rate of climb speeds with one engine inoperative, the climb gradient equivalents then vary from 1.2 to 1.65 percent, and averages 1.38 percent for the seven turbine-engine-powered airplanes. However, the actual performance as set forth in the AFM or POH for these airplanes varied from 2.65 percent to 5.82 percent.

The FAA reviewed the accidents/incidents due to one-engine-inoperative operations for the past five years for each of the reciprocating-engine-powered airplanes and turbine-engine-powered airplanes in the previously discussed comparisons. During this five year period, there were a total of 37 accidents in the reciprocating-engine-powered airplane models and nine accidents in the turbine-engine-powered airplane models. The difference in the number of accidents between the two

types of airplanes can be attributed to a number of reasons, not the least of which could be the actual performance achieved by the designs of the turbine-engine-powered airplanes as opposed to mere compliance with the minimum performance requirements of § 23.67.

The FAA is proposing an increase in the minimum performance requirements of § 23.67 when compared to the current requirements. However, the proposed increase is not significant when compared to the actual performance achieved by current type certificated designs. The proposal also establishes a uniform minimum performance standard for one-engine-inoperative climb for all multiengine airplanes with maximum weights of 6,000 pounds or more, or stall speeds in excess of 61 knots, unrelated to the landing configuration stall speed, by requiring a minimum climb gradient as discussed at the Part 23 Airworthiness Review Conference. Therefore, the FAA is proposing to require as a minimum performance standard, a climb gradient of 1.5 percent at a pressure altitude of 5,000 feet and at standard temperature, 41 degrees F. In addition, the FAA is proposing that the climb gradient be achieved at a speed not less than 1.2 V_{S1} to assure that the airspeed used in showing compliance does not degrade below a safe value.

Reference: Conference proposals 46, 47, 48, 49, 50, 51, and 52. Proposals 48, 49, 51, and 52 were withdrawn at the conference.

5. Section 23.75 is amended by revising paragraphs (a), (b), and (f)(3); and by adding a new paragraph (h) to read as follows:

§ 23.75 Landing.

* * * * *

(a) A steady approach with a calibrated airspeed of not less than 1.3 V_{S1} must be maintained down to the 50-foot height and—

(1) The steady approach must be at a gradient of descent not greater than 5.2 percent (3 degrees) down to the 50-foot height.

(2) In addition, for airplane designs incorporating short field landing features, the landing distance must be determined by tests, after approach to the 50-foot height, at the maximum steady approach gradient selected by the applicant as an operating limitation.

(b) The landing may not require more than average piloting skill or conditions.

* * * * *

(f) * * *

(3) Is such that no more than average skill is required to control the airplane.

* * * * *

(h) If any device is used that depends on the operation of any engine, and the landing distance would be increased when a landing is made with that engine inoperative, the landing distance must be determined with that engine inoperative unless the use of other compensating means will result in a landing distance not more than that with each engine operating.

Explanation

This proposal would require that landing distances be determined for all airplanes by using a steady approach at a gradient of descent of 5.2 percent; require that landing distance for airplanes with short field landing features be determined at the maximum steady approach gradient selected by the applicant as an operating limitation; require that if any device used in determining the landing distance is dependent on any engine operation, and if the distance would be greater with that engine inoperative, the distance with that engine inoperative must be determined unless the use of compensating means will result in a landing distance not more than that with each engine operating; and require that the landing not require more than average piloting skills or average conditions. This FAA proposal was developed after further rview of conference proposals 56 through 61, and the conference discussions of these proposals.

Safety and repeatability of landings and landing distances for operational use are primary considerations in the type certification of airplanes. Unrealistically steep approaches and high vertical velocities at touchdown have damaged airplanes during the flight test phase of some type certification programs in attempting to establish short landing distances under the wording of the current requirements for determining landing distances.

The FAA has concluded that safer and more realistic methods should be proposed for establishing landing distance data.

The proposed steady approach at a gradient of descent of 5.2 percent (3 degrees) was considered by conferees to have advantages and disadvantages. It would eliminate the "gliding approach" of the current rule which resulted in each airplane approaching at different gradients of descent during landing distance tests depending on each airplane's ability to glide in a landing configuration, and, instead, require that the landing distance determination be made after approaching at the typical Instrument Landing System (ILS) approach gradient, 5.2 percent, used by the vast majority of instrument landing systems throughout the world. Some conferees preferred the gliding approach, but it was generally agreed that the 5.2 percent gradient would result in an operationally realistic and repeatable landing distance. The 5.2 percent approach gradient was also opposed because operating rules may factor landing distances determined during type certification. The FAA has determined that safe and repeatable landing distances should be established during type certification and, if an additional landing distance is required by any operating rule, such as Part 135, determination of that additional distance for an increased level of safety is a part of the operations certification and independent of the type certification process.

Another concern expressed was that the 5.2 percent approach gradient would discourage development of steep approach and short landing airplanes. The FAA expressed the position at the conference and continues to maintain the position, that it does not consider the 5.2 percent approach gradient design limiting since any applicant can demonstrate an approach envelope that includes the unique steep landing features of their airplanes. However, the 5.2 percent approach gradient is needed to assure landing distance data for the normal approach and landing environments in which all airplanes may be required to operate; i.e., standard instrument landing system, regardless of their steep landing features that may allow them to operate in unique environments, such as Microwave Landing System (MLS) approaches that are presently considering approach angles as great as eight degrees.

One conference proposal recommended a computation, in lieu of testing, to determine the landing distance. There was concern expressed at the conference that allowing computation of the distance from the 50-foot height point to the touchdown point, in lieu of testing, would remove incentive for manufacturers to provide airplanes with devices, such as spoilers, which could enhance landing safety. After further consideration, the FAA has concluded that computation, in lieu of testing, will not assure the level of safety necessary to make routine landings within the calculated landing distance or on the other hand, the calculated distance may be excessive and not provide a minimum requirement.

One conference proposal recommended limiting the touchdown velocity to six feet per second. The opinion was expressed that airplanes can be designed to land safely at touchdown sink rates in excess of six

feet per second. The FAA agrees that such designs are possible, and is of the opinion that such a requirement may set forth an unwarranted restraint in light of the requirements presently in § 23.75(c).

There was no specific disagreement expressed relative to skill of pilots; i.e., "average piloting skill" versus "exceptional skill is not required." The FAA has concluded that the landing distances established during type certification must be able to be consistently and safely accomplished by the average pilot during routine operations.

Conference proposal 58 recommended landing distance determinations with all engines operating and also with the critical engine inoperative, and, in addition, that those distances should be factored. The conferees did not object to the greater of the all-engines operating and one-engine-inoperative landing distance, but did object to the factoring of the distances because the factoring is associated with specific operating rules. The FAA agrees and is proposing a new § 23.75(h) that requires the longer of the all-engine- or one-engine-inoperative landing distances be set forth in the Airplane Flight Manual unless the use of other compensating means such a drag chute will result in a landing distance not more than that with each engine operating. In addition, the FAA agrees with the conferees that factoring is not appropriate in the airworthiness requirements for type certification.

Conference proposal 56 recommended adding a new § 23.73 Landing speeds, to replace current § 23.75(a) that defines the landing approach and speed conditions. The recommended landing speeds would be dependent on a new V_{REF}, appropriate to the recommended all-engines-operating landing configuration, and a new V_{REF-1}, appropriate to the recommended one-engine-inoperative landing configuration. The conference discussion opposed this recommendation because Part 23 presently contains one-engine-inoperative controllability test. Furthermore, the airworthiness standards require procedures be established for one-engine-inoperative landings, and seemed to the conference participants to have worked well up to this point in time. The FAA agrees and proposal 56 has not been included in this notice.

Conference proposal 61 recommended an approach speed of at least 1.3 V_{S1}, and not less than V_{MC}. This concept was supported by the conferees but concern was expressed that V_{MC} is a speed determined in the takeoff configuration at the maximum takeoff weight. V_{MC} is a design constraint in that it may not exceed 1.2 V_{S1}, where V_{S1} is determined at the maximum takeoff weight. Because the required approach speed must be at least 1.3 V_{S1}, it readily appears to be a speed that exceeds V_{MC}. This is not necessarily true because V_{S1} determined in the takeoff configuration is likely to be higher than the V_{S1} determined in the landing configuration. The difference in the values can result in 1.3 V_{S1}, in the landing configuration being less than V_{MC} where V_{MC}=1.2 V_{S1} in the landing configuration.

To make proposal 61 a meaningful requirement, it would be necessary to require V_{MC} be determined for the envelope of approved approach weights and configurations. This would add to the cost of flight testing and, at this time, the FAA does not have records of adverse service experience to justify the additional requirements. Therefore, the FAA is not taking further action on this proposal.

Reference: Conference proposals 56, 57, 58, 59, 60, and 61.

6. Section 23.161 is amended by revising paragraphs (b)(1), (c)(1), (c)(1)(i), (c)(1)(ii), (c)(2), (c)(3)(i), introductory text of (d), and (d)(4); and by adding a new paragraph (c)(4) to read as follows:

§ 23.161 Trim.

* * * * *

(b) * * *

(1) For normal, utility, and acrobatic category airplanes at a speed of 0.9 V_H, V_C, or V_{MO}, whichever is the lower; and

(2) * * *

(c) * * *

(1) A climb with maximum continuous power at—

(i) The speed used in determining the climb performance required by § 23.65 of this part with the landing gear retracted, and the flaps in the take-off position; and

(ii) The recommended all-engines-operating climb speed specified in § 23.1585(a)(2)(i) of this part.

(2) An approach at a gradient of descent of 5.2 percent (3 degrees) with the landing gear extended and with—

(i) Flaps retracted and at a speed of 1.4 V_{S1}; and

(ii) Flaps extended and at a speed of 1.3 V_{SO}.

(3) * * *

(i) For normal, utility, and acrobatic category airplanes, at any speeds from the lesser of V_H and V_{NO} or V_{MO}, as applicable, to 1.4 V_{S1}; and

(ii) * * *

(4) A descent at 0.9 V_{NO} or 0.9 V_{MO}, whichever is applicable, with power off and with the landing gear and flaps retracted.

(d) In addition, each multiengine airplane must maintain longitudinal and directional trim, and the lateral control force must not exceed five pounds, at the speed used in complying with § 23.67 of this part and with—

* * * * *

(4) Wing flaps in the position selected for showing compliance with § 23.67.

* * * * *

Explanation

The proposal would establish standards for those airplanes for which a maximum operating limit speed, V_{MO}, has been established in accordance with § 23.1505(c). In addition, the proposal addresses additional flight conditions for which, as a minimum requirement, the airplanes need to be trimmed. There was objection to revising the general trim requirements of § 23.161(a), as recommended in proposal 113 on the basis of the apparent vagueness of the proposal. The FAA agrees and no further action is being taken on proposal 113.

The proponent of proposal 114, which recommended a change to the lateral and directional trim controls, desired to modify the proposal as submitted to the conference by indicating the requirement be applicable only to those airplanes to be certificated for IFR flight. Opposition was expressed to proposal 114, as modified, because the requirement would require three axis trim systems on all airplanes to be type certificated for use in accordance with instrument flight rules (IFR) and it was not considered justified by the conferees. The FAA agrees and no further action is being taken on proposal 114.

There was a consensus of agreement with the proposed changes for longitudinal trim in that airplanes should be capable of being trimmed in level flight from the lesser of V_H and V_{NO} or V_{MO}, as applicable, to 1.4 V_{SI} with the landing gear and flaps retracted and not just from 0.9 of these upper values as presently required. The FAA agrees since these speeds, V_H and V_{NO} or V_{MO}, are sustained cruise speeds. In addition, it was the consensus of attendees that airplanes should be capable of being trimmed from 0.9 V_{NO} or 0.9 V_{MO}, whichever is applicable, in a descent with the power off and the landing gear and flaps in the retracted position. The FAA agrees because this regime is not addressed in the current requirements and 0.9 of these speeds, V_{NO} or V_{MO}, is considered a necessary minimum requirement for power-off descents.

Another proposal addresses the issue of lateral control forces at the speed used in showing compliance with § 23.67—Climb: One engine inoperative. It was noted at the conference that the current requirements are silent on this issue and the proposal is considered necessary to assure the overall task of the pilot in these circumstances is not unduly excessive in achieving an accurate airspeed for the one engine inoperative climb. One commenter on this proposal stated that designing an airplane to be trimmed laterally with one engine inoperative becomes very difficult, but recommended that the 5-pound force be the maximum force permitted under this condition. Another commenter stated that airplanes should be capable of being trimmed laterally to remove any need of input to hold lateral control. The FAA agrees that it is impractical to require lateral trim to be designed so that no one-engine inoperative lateral control is needed, but also agrees that the five-pound lateral control force should be the maximum untrimmable force and is proposing this as the minimum standard.

Proposal 117 recommended, in part, changing the longitudinal trim speed from a range of speeds, to a more specific climb speed. Although there was little discussion of this proposal, commenters supported this change. The FAA agrees that testing for a trim speed more closely related to operational climb speeds is desirable and changes are proposed accordingly.

Reference: Conference proposals 113, 114, 115, 116, 117, and 118. Proposal 115 was withdrawn at the conference.

7. Section 23.221 is amended by revising paragraph (a), (b), and (c)(3) to read as follows:

§ 23.221 Spinning.

(a) *Normal category.* Except as provided in paragraph (d) of this section, single-engine, normal category airplanes must be demonstrated to comply with either the one-turn spin or the spin-resistant requirements of this paragraph.

(1) One-turn spin. The airplane must recover from a one-turn spin or a three (3) second spin, whichever takes longer, in not more than one additional turn after the controls have been applied for recovery. In addition—

(i) For both the flaps-retracted and flaps-extended conditions, the applicable airspeed limit and positive limit maneuvering load factor may not be exceeded;

(ii) There must be no excessive back pressure during the spin or recovery;

(iii) It must be impossible to obtain unrecoverable spins with any use of the flying or engine power controls either at the entry into or during the spin; and

(iv) For the flaps-extended condition, the flaps may be retracted during the recovery, but not before rotation has ceased.

(2) Spin resistant. The airplane must be demonstrated to be spin resistant by the following:

(i) During the stall maneuvers contained in § 23.201 of this part, the pitch control must be pulled back and held against the stop. Then, using ailerons and rudders in the proper sense of direction, it must be possible to maintain wings-level flight within 15 degrees of bank and to roll the airplane from a 30-degree bank in one direction to a 30-degree bank in the other direction;

(ii) Reduce the airplne speed using pitch control at a rate of approximately one knot per second until the pitch control reaches the stop; then with the pitch control pulled back and held against the stop, apply full rudder control in a manner to promote spin entry, for a period of seven (7) seconds or through a 360-degree heading change, whichever occurs first. If the 360-degree heading change is reached first, it must have taken no less than four (4) seconds. This maneuver must be performed first with the ailerons in neutral position; and then with the ailerons deflected opposite the direction of turn in the most adverse manner. Power or thrust and airplane configuration must be set in accordance with § 23.201(f) of this part without change during the maneuver. At the end of seven (7) seconds or a 360-degree heading change, the airplane must respond immediately and normally to primary flight controls applied to regain coordinated, unstalled flight without reversal of control effect and without exceeding the termporary control forces specified by § 23.143(c) of this part; and

(iii) Compliance with §§ 23.201 and 23.203 of this part must be demonstrated with the airplane in uncoordinated flight, corresponding to one ball width displacement on a slip-skid indicator, unless one ball width displacement cannot be obtained with full rudder, in which case the demonstration must be with full rudder applied.

(b) *Utility category.* A utility category airplane must meet the requirements of paragraph (a) of this section or the requirements of paragraph (c) of this section if approval for spinning is requested.

(c) * * *

(3) It must be impossible to obtain unrecoverable spins with any use of the flight or engine power controls either at the entry into or during the spin.

* * * * *

Explanation

This proposal would allow certification of single-engine, normal category airplanes as spin resistant as an alternative to being recoverable from a one-turn spin as now required.

Conference proposal 162 recommended adding requirements for an option to certify airplanes as spin resistant. The concept of a spin resistant airplane was supported by all commenters but the discussions clearly showed the proposal was inadequate for the purpose. As a result of the discussions, National Aeronautics and Space Administration (NASA) and General Aviation Manufacturers Association (GAMA) representatives agreed to restudy the issue and submit a replacement proposal for conference proposal 162. GAMA forwarded the amended proposal to the docket by letter dated May 2, 1985. The amended proposal 162 alleviates the concerns expressed at the conference and is the basis for the proposal to add a spin-resistant option for type certification of single-engine, normal category airplanes.

In the amended conference proposal 162, a new § 23.204, titled "Uncoordinated stalls," was recommended. It is the FAA's opinion that the requirements of the recommended new section are integral to the spin-resistant option and that these requirements should be a part of the FAA proposal to amend § 23.221(a) instead of adding a new § 23.204.

As part of the FAA's request to NASA and GAMA to rework proposal 162, it was requested that material suitable for inclusion in this preamble be developed to justify and explain the recommended change.

Although the FAA has made changes to incorporate clarifying recommendations from other proposals discussed at the conference and incorporated the recommended requirements for a new § 23.204 in this proposal to amend § 23.221(a), the rationale developed by NASA and GAMA to support the recommended changes remains applicable to this proposal and is quoted here as justification for the proposed change:

The requirement of FAR 23.221 for Normal Category airplanes to demonstrate recovery from a one-turn spin (or delayed stall) in no more than one additional turn was first established in the airworthiness rules in CAR amendment 03–0, effective January 13th, 1945. The requirement for a private or a

commercial pilot to demonstrate competency in spin recovery was deleted from CAR 20 with amendment 20–3, effective August 15th, 1949. This amendment placed greater emphasis on the recognition and recovery from stalls in lieu of the spin demonstration requirement. Also, this amendment stated the belief that "elimination of the required spin maneuver will act as an incentive for manufacturers to build and operators of schools to use spin-resistant or spin-proof aircraft." At the GAMA Stall/Spin Workshop, the majority completely agreed with the goal stated in amendment 20–3. At the same time it was recognized that, in actuality, there was no effective incentive for manufacturers to press beyond the regulations and no substantial technical base from which to do so.

Because of the high percentage of stall/spin accidents occurring at pattern altitudes and because the one-turn spin demonstrations consume considerable altitude, there was considerable skepticism expressed at the workshop that the one-turn spin requirement had any impact on stall/spin accident rate reduction. From this discussion, an effort emerged to formulate and propose an alternative to the one-turn spin demonstration requirement that would promote development of airplanes with the spin-resistant qualities that CAR amendment 20–3 called for and that, at the same time, would be more related to operational situations. Also, technology developments from NASA research and from industry suggested that the capability to produce airplanes with these desirable qualities was within reach.

The first proposal that was made and ultimately discussed as part of the FAR 23 Review adopted the approach of control abuse from MIL–S–83691A (USAF) to simulate potential pilot mishandling in a stall situation. This approach has been maintained and expanded in this modified proposal. The proposal embodies the requirement that an airplane would qualify to be identified as a "spin-resistant airplane" would have to demonstrate the tolerance to maintain controllability after sustained control abuse in a stall situation. The proposal is made as an additional path for approval of the spin requirements for certification of a normal category airplane. If this proposal is adopted, approval for a normal category airplane could be made either with the existing one-turn spin test or with the new requirements for a "spin-resistant" airplane. When satisfactory experience is gained on spin resistant testing, FAA could consider deleting the one-turn spin test demonstration.

This new requirement is proposed with the thought that it would provide a test for spin resistance in a manner that would simulate potential operational circumstances. The "spin resistant" label could provide some of the incentive hoped for but not realized by the current regulatory approaches.

There are three demonstration requirements in the proposed regulation. The first would be to show that complete lateral control can be maintained in the course of stall manevuers. The existing stall requirements in FAR 23.201 are retained and expanded by adding the requirement, within the spin-resistant requirements, to be able to maintain level flight with no uncontrolled roll tendency, with the elevator held against the stop, and, further, to be able to generate 30-degree banks upon command.

The second demonstration requirement is to maintain controllability after sustained control abuse represented by pro-spin control inputs through a 360-degree heading change or seven (7) seconds. The 360-degree heading change turn was proposed in order to maintain a pro-spin entry situation at least as severe as the current one-turn requirement. In the case of an airplane with a very strong resistance to pro-spin controls and a corresponding slow yawing rate in this situation, seven (7) seconds was selected as a reasonable cutoff for the pro-spin control inputs. This time period is far longer than that allowed as recognition time for impending disastrous situations (autopilot malfunctions, for example), and is considered conservative from a safety point of view. For airplanes that have a tendency to build up yawing rate very quickly, a disorienting situation can develop even though controllability could be maintained. For this reason, a minimum time period of four (4) seconds to reach a 360-degree heading change with the prescribed pro-spin controls was selected. This is based on experience involving a number of airplane spin time histories developed from the NASA spin research program and from industry experience. Ailerons have been prescribed both in neutral position and deflected opposite the direction of turn, to allow for the adverse effect on spin entry that ailerons can add. These two aileron positions are believed to encompass the most adverse possibilities with consideration given to effects of timing of the aileron inputs. Power or thrust set according to FAR 23.201, but without change during the maneuver, considers the potential adverse effects of power or thrust setting on the possible spin entry in a manner that would be consistent with inadvertent spin entry. The primary requirement is that the airplane be able to respond to primary flight controls to regain coordinated unstalled flight after this control abuse. This will be possible only if the airplane has successfully resisted an entry into a spin situation. Any delay in airplane response would indicate that a recovery from a spin entry situation was required which would be considered unsatisfactory under this requirement.

The third requirement is that the airplane be demonstrated to have the capability to meet the requirements of the stall characteristics of FAR 23.201 and 23.203 with a degree of uncoordinated controls. The degree of uncoordinated controls was selected as that corresponding to one ball width on a standard slip-skid indicator. This selection was chosen as the best way to define uncoordinated controls for the test in a simple, straightforward manner.

This proposal has been developed with the benefit of a wide range of inputs and suggestions from various individuals and organizations, including representatives of aircraft manufacturers, NASA, other government agencies and a number of universities. It has also had the benefit of considerable spin testing experience developed both by manufacturers and by NASA over the past several years. The concepts and objectives that have been sought have been outlined above. The proposal is offered with the same openness for possible improvement that has existed throughout the many meetings and discussions that have produced its present format.

Conference proposal 163 recommended limiting applicability of spin requirements to airplanes used in non-VFR conditions unless tests with only 50 percent of the full rudder control during level stall or turning stall tests would lead to a spin or maneuver requiring exceptional piloting skill. This recommendation was opposed by all commenters and by the FAA, as a pilot would likely apply full rudder control during routine stalls resulting in maneuvers not adequately evaluated during certification. No further action is being taken on proposal 163.

Conference proposal 164 recommended changing § 23.221, paragraph (a) by replacing "with the controls used in the manner normally used for recovery" with "after the controls have been applied for recovery" to assure the additional turn of a spin that is allowed during recovery is from the point at which controls used for recovery have been applied. That proposal would further replace paragraph (a)(2) with a new requirement to prevent over-balancing of the control surfaces such that it is not excessive and difficult to overcome in the recovery instead of the current requirement that there be no excessive back pressure during the spin or recovery. It also proposed to change paragraph (a)(3) by replacing "unrecoverable spins" with "irrecoverable spins" and "any use of the controls" with "any use of the flying or engine power controls either at the entry to or during the spin" to assure that misuse of the flying controls during recovery is addressed. The proposal would also add at the end of the paragraph (a) closing statement, on retraction of flaps during spin recovery, "but not before the rotation has ceased" to prevent retracting the flaps as part of the stopping of spin rotation, but allow flap retraction to avoid exceeding flap limit speeds during the post rotation portion of the spin recovery; and add appendix material on application of this rule. Also presented at the conference was a position paper relative to conference proposal 164 that recommended a "reverse recovery" procedure where the controls are misused during the recovery attempt for up to two seconds before proper recovery controls are applied, with

recovery occurring in not more than four additional turns.

The conference discussion of proposal 164 concerned the recommended abused control tests. One commenter strongly opposed any change that would allow four turns for recovery from a spin in a normal category airplane, while other commenters supported some relief from the current recovery requirements but didn't endorse proposal 164 as submitted to the conference. Misuse of controls on recovery is required as part of showing compliance with current § 23.221(a)(3), however, the FAA has concluded that minor clarification of the requirement is needed, but a more specific requirement as proposed in the submitted appendix material, is not necessary. As thus modified, proposal 164 is incorporated into the rule change.

Conference proposal 165 recommended amending paragraph (b) to make it clearer that the rule does not require utility category airplanes to comply with paragraph (c) unless the affected airplane is to be approved for intentional spins. The conference discussion showed that proposal 165 wording was also unclear, but one commenter recommended adding the phrase "if approval for spinning is requested" after the current requirement. This appeared to satisfy the intent of the conference proposal, and the FAA agrees. Therefore, the FAA is proposing a clarification to the requirements of § 23.221(b).

Conference proposal 166 recommended amending the acrobatic spin tests of paragraph (c)(1) to require proceeding for six turns prior to application of the controls for recovery, whereas the current rule requires six turns or three seconds, whichever takes longer. This proposal recommended that the flaps remain extended during recovery from spins with the flaps extended in paragraph (c)(2), whereas the current rule allows flap retraction during recovery provided the airplane is placarded to prohibit intentional spins with flaps extended. This proposal also recommended the reference to controls in paragraph (c)(3) be expanded to include engine power controls and that the requirement relative to misapplication of controls in paragaph (c)(3) be more specific to state that such misapplication includes the entry and during the spin. In addition, the proposal included in an appendix, material to require that multiple airplanes be spin tested to prove that variability and recovery characteristics are within acceptable limits for type approval.

The full six turns before initiating recovery, regardless of time, was opposed by commenters because they preferred the current requirement and stated that for some airplanes recovery after the fewer turns that occur in three seconds, rather than a full six turns, is more difficult. Accordingly, no change is proposed for § 23.221(c)(1).

The recommended change relative to flap retraction during spin recovery caused commenters concern relative to whether an airplane could be approved in the acrobatic category for spins if it didn't meet the full spin requirements with the flaps both up and down. A commenter explained there was no intent to change an applicant's option of certification with the airplane limited to intentional flaps-up spins. However, the FAA does not agree to elimination of testing, to assure ability to recover from unintentional spins with flaps down, on all airplanes to be type certificated in the acrobatic category. Accordingly, no change is proposed for § 23.221(c)(2).

The recommended testing of multiple airplanes for type certification was also objected to by a commenter and no justification was offered to substantiate the need for the recommended testing of more than one airplane. The FAA agrees with the objection to this recommendation and no further action is being taken.

Inclusion of reference to engine power controls and misapplication of flight controls in paragraph (c)(3) was accepted without comment at the conference. The FAA agrees that engine power controls should be considered and the proposal to amend § 23.221(c)(3) reflects this consideration of engine power controls.

Conference proposal 167 recommended deleting § 23.221(d) which allows normal category airplane designs which are characteristically incapable of spinning, because it had only been applied to a very few types of airplanes. In contrast, conference proposal 522 recommended requiring all normal category airplanes be incapable of spinning. Conference proposal 522 was opposed with no supporters at the conference. Conference proposal 167 was both supported and opposed by commenters. The supporters of deleting § 23.221(d) expressed the opinion that deletion of § 23.221(d) would strengthen the effort to add a requirement for a spin resistant airplane option, while opposing commenters expressed the opinion that the spin-resistant airplane is a separate issue. The FAA agrees that the requirements for a spin-resistant airplane is a separate issue, and is proposing requirements for it in § 23.221(a)(2). Furthermore, the FAA does not concur with removing the option of an applicant for an airplane "characteristically incapable of spinning," and requiring that all normal category airplanes be required to be incapable of spinning. Past experience has shown that the primary method available to make an airplane incapable of spinning is to restrict the elevator authority, which increases landing distances and severely restricts a pilot's ability to correct for minor windshear during the approach to landing.

Reference: Conference proposals 161, 162, 163, 164, 165, 166, 167, and 522.

8. Section 23.301 is amended by revising paragraph (b) to read as follows:

§ 23.301 Loads.

* * * * *

(b) Unless otherwise provided, the air, ground, and water loads must be placed in equilibrium with inertia forces, considering each item of mass in the airplane. These loads must be distributed to conservatively approximate or closely represent actual conditions. Methods used to determine load intensities and distribution on unconventional configurations must be validated by flight test measurement unless the methods used for determining those loading conditions are shown to be reliable or conservative on the configuration under consideration.

* * * * *

Explanation

This proposal would establish criteria for determining load intensities and distributions on unconventional configurations (canard and tandem wing). At the conference, several commenters argued that the proposed rule would not allow use of wind tunnel data in lieu of flight load measurements on conventional configurations. The FAA representatives did not agree because the conference proposal concerned "methods used for determining those loading conditions are shown to be reliable or conservative on the configuration under consideration." The FAA representatives contended that this wording allowed conventional configurations to be approved as they are now. Some conference commenters remained skeptical that all FAA elements would apply the rule as the FAA representatives at the conference contended. Therefore, the proposed rule now refers to "load intensities and distribution on unconventional configurations." Another conference commenter wanted the option to use wind-tunnel data as an option to flight load measurements. The proposed rule allows methods other than flight measurement that "are shown to be reliable or conservative on the

configuration under consideration." When such a showing is made, wind-tunnel data would be allowed.

Reference: Conference proposal 175.

9. Part 23 is amended by adding a new § 23.302 to read as follows:

§ 23.302 Canard or tandem wing configurations.

The forward structure of a canard or tandem wing configuration must:

(a) Meet all requirements of Subpart C of this part applicable to a wing; and

(b) Meet all requirements applicable to the function performed by these surfaces.

Explanation

This proposal would require canard or tandem wing configurations to meet all requirements of Subpart C applicable to a wing and to meet all requirements applicable to the function performed by the affected surface. While it might appear that proposed paragraph (a) is redundant to the proposed requirement in paragraph (b), an FAA representative at the conference explained that paragraph (a) is necessary for clarity to counter any misconception that the forward structure of a canard or a tandem wing configuration performs primarily a control function and not a lifting function. On a canard or forward wing configuration, the forward structure is a lifting surface similar to a main wing, and, therefore, should meet the wing requirements.

Conference proposal 177, in part, recommended that the requirements of proposed § 23.302 be added as a new paragraph (e) to § 23.301 Loads. However, as one commenter pointed out, requirements other than loads are applicable to canard configurations. Another commenter pointed out that specific items should not be part of the general loads requirements. The FAA agrees and therefore is proposing a new § 23.302 to clarify that all requirements applicable to a component performing a function in a conventional configuration are applicable to the components of these unconventional configurations (canard and tandem wing) that perform the same function.

Other discussions concerned the general wording of the conference proposal relative to "all the requirements applicable to a wing." As another commenter pointed out, the intent when the conference proposal was developed, was to incorporate by reference "all requirements of Subpart C applicable to a wing." The FAA agrees and proposed paragraph (a) includes the clarified wording.

Reference: Conference proposal 177.

10. Section 23.331 is amended in paragraph (a) by replacing "§ 23.331" with "§ 23.333" and by adding a new paragraph (c) to read as follows:

§ 23.331 Symmetrical flight conditions.

* * * * *

(c) Mutual influence of the aerodynamic surfaces must be taken into account when determining flight loads.

Explanation

Section 23.331 states that symmetrical flight conditions are specified in §§ 23.331 through 23.341. Since no symmetrical flight conditions are specified in § 23.331, this proposal corrects an error existing since recodification of Part 23.

Present requirements for flight loads are generally applicable only to airplanes with the horizontal stabilizing surface located aft of the main wing lifting surface. The induced velocities and vortices of a forward wing change the local flow angles, and therefore, the lift distribution of the main wing lifting surface. An airplane with a canard or tandem wing configuration responds differently than a conventional airplane in vertical gusts. The concern is that the forward surface penetrates the gust ahead of the main lifting surface, thus, increasing the effective airplane angle of attack. The reverse occurs as the airplane exits the gust. Therefore, the flight loads applicable to canard configurations and tandem wing configurations in which a horizontal surface is located forward of the main lifting surface need to be evaluated during the type certification process. There was a consensus of support for the proposal at the conference as a needed addition to § 23.331 and the FAA agrees.

Reference: Conference proposal 186.

11. Section 23.341 is amended by adding the words "for conventional configurations" after the word "analysis" in the existing test, and designating this existing text, as amended, as paragraph (b); and by adding a new paragraph (a) to read as follows:

§ 23.341 Gust load factors.

(a) The gust load factors for a canard or tandem wing configuration must be computed using a rational analysis considering the gust criteria of § 23.333(c) of this part or may be computed in accordance with paragraph (b) of this section provided the resulting load factors are shown to be conservative with respect to the gust criteria of § 23.333(c) of this part.

* * * * *

Explanation

This proposal would establish gust load requirements necessary for an airplane with a canard or tandem wing. Conference proposal 189 recommended a "Note" to § 23.341 to state that the method was not adequate for determining gust loads for canard or tandem wing airplanes. There was opposition expressed at the conference because a conference commenter stated the material of § 23.341 should be acceptable if it is demonstrated to produce conservative or acceptable values. It was concluded by the conference attendees, and the FAA agrees, that if an applicant can show gust load factors to be conservative with respect to the "1-Cosine" gust criteria of § 23.333(c), it is acceptable to use the current material of § 23.341 in computing the gust load factors.

Reference: Conference proposal 189.

§ 23.351 [Amended]

12. Section 23.351 is amended by removing the word "tail."

Explanation

This proposal would extend the yawing conditions requirements, that are now limited to vertical tail surfaces, to all vertical surfaces, such as winglets, that are now appearing in new airplane designs. There was not a specific conference proposal to amend this section and the amendment of this section was not discussed at the conference. However, development of recommended changes to requirements incorporated by reference in § 23.351, specifically §§ 23.441 through 23.445, caused a review of this section and resulted in this proposed change. This change is considered necessary to provide structural integrity of all vertical surfaces equivalent to that required for conventional vertical tail surfaces.

13. Subpart C is amended by revising the introductory title preceeding §§ 23.421 through 23.427 to read as follows:

Horizontal Stabilizing and Balancing Surfaces.

Explanation

The proposal is considered necessary because the present title implies the sections following it are limited to tail surfaces of conventional airplane designs. The affected sections, when amended, will be applicable to airplanes utilizing canards and tandem wing configurations. A change of title was included in conference proposal 203 that also proposed changes to § 23.421. Several alternate titles were touched

upon briefly at the conference, with the title now proposed being the most descriptive of the affected sections.

Reference: Conference proposal 203.

14. Section 23.421 is amended by removing the word "tail" in paragraph (a) and inserting in its place the word "surface"; by removing the word "tail" in paragraph (b) and adding in its place the word "balancing"; and by removing the last sentence of paragraph (b) which reads as follows, "The distribution in Figure B6 of Appendix B may be used."

§ 23.421 [Amended]

Explanation

This proposal would extend the current balancing load requirements for conventional configurations to include canard and tandem wing configurations. Conference proposal 203 would have prohibited use of appendix B, but several commenters felt the use of appendix B should be allowed provided such use is shown to be conservative. Another commenter who had participated on the FAA-industry committee originating the conference proposal stated that the originating committee had intended prohibiting use of appendix B for canard configurations because, in their collective judgment, the simplified criteria of appendix B were unlikely to produce satisfactory results when applied to forward surfaces. This commenter also stated that someone might develop a procedure that would give acceptably conservative results utilizing appendix B for forward surfaces. The FAA does not agree with the continued use of appendix B. Appendix B to Part 23, "Control Surface Loadings," presents average load magnitudes and distributions for control surfaces and was provided to define loads information in the absence of a more rational analysis. In order for such data to be meaningful, it must by necessity be general. The curves and distributions shown in appendix B represent average conditions where considered conservative and, as such, are compromises based on typical airplanes and aeronautical knowledge available at the time. The information presented in appendix B has been part of the small airplane certification requirements in one form or another since the early 1930's. Particular curves, for example the tail surface load distribution of figure B6, have remained unchanged since initial promulgation.

The FAA recognizes that the intent of appendix B was to provide conservative load information when more extensive analysis was beyond the capability of the manufacturer. The FAA now proposes to eliminate appendix B in its entirely because the capability of the industry has increased whereby more accurate and realistic loads can readily be developed for the specific airplane design under consideration without the compromises used in appendix B and because in some cases, appendix B loads do not provide the conservative results intended.

The FAA recognizes that a multitude of airplane designs have been based on the loads of appendix B and that the service history and safety record of U.S. airplanes has long been a standard of world aviation. However, the FAA realizes that more accurate analysis techniques are now readily available and proposes to eliminate appendix B in its entirety.

Reference: Conference proposal 203.

15. Section 23.423 is revised to read as follows:

§ 23.423 Maneuvering loads.

Each horizontal surface with pitch control must be designed for the maneuvering loads imposed by the following conditions:

(a) A sudden movement of the pitching control, at the speed V_A, to the maximum aft movement, and the maximum forward movement, as limited by the control stops, or pilot effort, whichever is critical.

(b) A sudden aft movement of the pitching control at speeds above V_A, followed by a forward movement of the pitching control resulting in the following combinations of normal and angular acceleration:

Condition	Normal Acceleration (n)	Angular Acceleration (radian/sec^2)
Nose-up pitching	1.0	$\frac{+39n_m(n_m-1.5)}{V}$
Nose-down pitching	n_m	$-39n_m(n_m-1.5)$

where—

(1) n_m = positive limit maneuvering load factor used in the design of the airplane; and

(2) V = initial speed in knots.

The conditions in this paragraph involve loads corresponding to the loads that may occur in a "checked maneuver" (a maneuver in which the pitching control is suddenly displaced in one direction and then suddenly moved in the opposite direction). The deflections and timing of the "checked maneuver" must avoid exceeding the limit maneuvering load factor. The total horizontal surface load for both nose-up and nose-down pitching conditions is the sum of teh balancing loads at *V* and the specified value of the normal load factor *n*, plus the maneuvering load increment due to the specified value of the angular acceleration.

Explanation

This proposal would extend the current maneuvering loads requirements for conventional configurations to include canard and tandem wing configurations and delete the use of appendix B in showing compliance for canard, tandem wing, and conventional configurations. To accomplish this purpose where the current requirements refer to control deflections, and up and down loads, it is proposed to refer to the control movements as nose-up and nose-down pitching of the airplane. Conference discussions supported the proposal with suggested clarifications. The reasons for deleting use of appendix B is discussed in detail in the explanation for proposal 14.

Reference: Conference proposal 204.

16. Section 23.425 is amended by removing the text of current paragraph

(b) and designating paragraph (b) as "Reserved"; and by revising the introductory text of paragraph (a), paragraph (c), and the introductory text of paragraph (d) to read as set forth below. In addition, the definitions of a_{ht} and S_{ht} in the formula following paragraph (d) is revised by changing a_{ht} from "a_{ht}=Slope of horizontal tail lift curve (per-radian)" to "a_{ht}=Slope of aft horizontal lift curve (per radian)" and by changing S_{ht} from "S_{ht}=Area of horizontal tail (ft²); and" to "S_{ht}=Area of aft horizontal lift surface (ft²); and".

§ 23.425 Gust loads.

(a) Each horizontal surface, other than a main wing, must be designed for loads resulting from—

* * * * *

(b) [Reserved]

(c) When determining the total load on the horizontal surfaces for the conditions specified in paragraph (a) of this section, the initial balancing loads for steady unaccelerated flight at the pertinent design speeds V_F, V_C, and V_D must first be determined. The incremental load resulting from the gusts must be added to the initial balancing load to obtain the total load.

(d) In the absence of a more rational analysis, the incremental load due to the gust must be computed as follows only on airplane configurations with aft-mounted, horizontal surfaces, unless its use elsewhere is shown to be conservative:

* * * * *

Explanation

This proposal would extend the current horizontal tail surface gust load requirements to include canard configurations. Commenters at the conference expressed concern that the surfaces the proposed requirements would be applicable to should be clearly identified. The main wing is the only horizontal surface that is intended to be excluded from complying with the requirements of this section and the proposed revision of paragraph (a) clarifies the applicability of the requirements. The reasons for deleting use of appendix B are discussed in detail in the explanation for proposal 14.

Reference: Conference proposal 207.

§ 23.427 [Amended]

17. Section 23.427 is amended by removing the word "tail" from paragraphs (a) and (c); by removing the word "tail" from paragraph (b) and inserting in its place the word "horizontal"; and by adding the words "other than main wing" after the amended phrase which reads "horizontal surfaces" in paragraphs (a), (b), and (c).

Explanation

This proposal would extend the current unsymmetrical loads requirements for horizontal tail surfaces of conventional configurations to canard and tandem wing configurations. Commenters at the conference expressed concern that conference proposal 208 would extend the requirements to the main wing. This was not the intent and this proposal would specifically exclude the main wing but involve all other horizontal surfaces. Conference proposal 209 would limit the applicability of § 23.427(c) relative to V-tail surfaces. This proposal was opposed by FAA and industry representatives at the conference because they considered the current rule adequate for V-tail surfaces and their supporting structure. Accordingly, proposal 209 has not been included in this notice.

Reference: Conference proposals 208 and 209.

18. Subpart C is amended by revising the introductory title preceding § 23.441 to read as follows:

Vertical surfaces.

Explanation

The proposal is considered necessary because the present title implies the sections following it are limited to tail surfaces of conventional airplane designs. The affected sections, when amended, will be applicable to design features of airplanes utilizing vertical surfaces at locations other than the tail of the airplane. The removal of the word "Tail" from the title was not a conference proposal and was not specifically discussed at the conference. However, discussions of subsequent sections addressing vertical surfaces at locations other than the tail logically leads to the deletion of the word "Tail" from the title, as proposed.

§ 23.441 [Amended]

19. Section 23.441 is amended by removing the word "tail" in two places in paragraph (a); and by removing the text of paragraph (b) and designating paragraph (b) as "Reserved."

Explanation

This proposal would extend the maneuvering loads requirements that are now limited to vertical tail surfaces to all vertical surfaces such as winglets that are appearing in new airplane designs. There was not a specific conference proposal to amend this section as proposed herein and it was not discussed at the conference. However, development of recommended changes to requirements in § 23.445, which incorporates this section by reference, caused a review of this section and resulted in this proposed change. This change is considered necessary to assure structural integrity of the affected surfaces equivalent to that required for conventional vertical tail surfaces.

Conference proposal 210 recommended amending § 23.441 to require vertical tail surfaces be designed to withstand the maneuvering loads at V_D rather than at V_A as is now required. Both FAA and industry representatives at the conference opposed this recommended change. The FAA plans no further action on conference proposal 210. The reasons for deleting the use of appendix B is discussed in detail in the explanation for proposal 14.

Reference: Conference proposal 210.

§ 23.443 [Amended]

20. Section 23.443 is amended by removing the word "tail" from paragraph (a); by removing in three places the word "tail" in paragraph (c) and adding in its place the word "surface"; and by removing paragraph (d).

Explanation

See explanation for proposal 19 and proposed changes to § 23.441.

21. Section 23.445 is amended by revising the section title; by revising paragraph (a); by adding the words "or winglets" after the words "outboard fins" in paragraphs (b) and (c); and by adding a new paragraph (d) to read as follows:

§ 23.445 Outboard fins or winglets.

(a) If outboard fins or winglets are on the horizontal surfaces or wings, the horizontal surfaces or wings must be designed for their maximum load in combination with loads induced by the fins or winglets and moments or forces exerted on the horizontal surfaces or wings by the fins or winglets.

* * * * *

(d) When rational methods are used for computing loads, the maneuvering loads of § 23.441 of this part on the vertical surfaces and the one-g horizontal surface load, including induced loads on the horizontal surface and moments or forces exerted on the horizontal surfaces by the vertical surfaces, must be applied simultaneously for the structural loading condition.

Explanation

This proposal would amend the outboard fins requirements in § 23.445 to include all loads that are likely to occur

simultaneously; require that rational analysis include all loads likely to be applied to horizontal surfaces, in addition to the one-g unaccelerated normal horizontal surface loads, during the maneuvering conditions specified in § 23.441; and extend the proposed revised requirements to all vertical surfaces that are mounted on horizontal surfaces including wings. Conference proposal 211 recommended amending the requirements to include all loads that are likely to occur simultaneously be deleting the last sentence of paragraph (a); however, it did not clearly recommend extending the requirements to vertical surfaces during a rational analysis. Discussions at the conference clarified that conference proposal 211 was intended to include vertical surfaces on wings. Other recommended changes in conference proposal 211 were accepted without discussion. The need to propose a new paragraph (d) was identified during development of this proposal from conference proposals and conference discussions and is based on past certification practices of accepting rational analysis where maneuvering loads on vertical surfaces are applied to the wings through the fuselage simultaneously with the one-g horizontal balancing load.

Reference: Conference proposal 211.

§ 23.455 [Amended]

22. Section 23.455 is amended by removing the text of paragraph (b) and designating paragraph (b) as "Reserved."

Explanation

The reasons for deleting use of appendix B are discussed in detail in proposal 14.

23. Section 23.677 is amended by revising paragraph (d) to read as follows:

§ 23.677 Trim Systems.

* * * * *

(d) It must be demonstrated that the airplane is safely controllable and that the pilot can perform all maneuvers and operations necessary to effect a safe landing following any probable powered trim system runaway which might be reasonably expected in service, allowing for appropriate time delay after pilot recognition of the runaway. The demonstration must be conducted at critical airplane weights and center of gravity positions.

Explanation

This proposal would extend the requirements for powered trim systems currently applicable to commuter category airplanes, to all categories of Part 23 airplanes. Such systems are now common on small airplanes. Control column forces can become excessive in adverse trim conditions and consideration must be given in the design of powered trim systems in order that the airplane does not become uncontrollable before the pilot can recognize the situation and take corrective action. In addition, under this proposal, the requirement that the airplane be capable of continued safe flight and landing following the appropriate corrective action taken by the pilot would be applicable to all categories of Part 23 airplanes. It was suggested at the conference that conference proposal 251 be revised to address "powered trim systems" and not just "electric trim systems" and delete the word "tab" in the recommended paragraph (d). The consensus at the conference was that these two changes improved the proposal and the FAA concurs.

Reference: Conference proposal 251.

24. Section 23.701 is amended by revising paragraph (a); by redesignating paragraph (b) as (c); and by adding a new paragraph (b) to read as follows:

§ 23.701 Flap interconnection.

(a) The main wing flaps and related movable surfaces as a system must—

(1) Be synchronized by mechanical connection; or

(2) Maintain synchronization so that the occurrence of an unsafe condition has been shown to be extremely improbable; or

(b) The airplane must be shown to have safe flight characteristics with any combination of extreme positions of individual movable surfaces (mechanically interconnected surfaces are to be considered as a single surface).

* * * * *

Explanation

This proposal would update the regulations to include provisions for airplanes with a flap configuration other than one flap on each wing. It would also address the failure of any single element in the flap control system and allow for an alternate equivalent means to the mechanical interconnection required by the present rule. Airplanes are currently being manufactured with two flaps on each side of the airplane and are being designed with flaps on canards and tandem wings. On an airplane with four flaps, there is a possibility that only one flap may be assymetric with respect to the other three and this issue needs to be addressed in the airworthiness standards, as proposed in paragraphs (a) and (b).

After further consideration of the discussion of conference proposals 256 and 257 on flap interconnection and study of configurations of small airplanes now being proposed, the FAA is proposing a requirement that addresses all of the concerns discussed at the conference and also includes consideration of failures that are likely to occur in the more complex designs.

Reference: Conference proposals 256 and 257.

25. Section 23.735 is amended by adding a new paragraph (c) to read as follows:

§ 23.735 Brakes.

* * * * *

(c) If antiskid devices are installed, the devices and associated systems must be designed so that no single probable malfunction or failure will result in a hazardous loss of braking ability or directional control of the airplane.

Explanation

The proposal would establish minimum airworthiness standards for airplanes equipped with antiskid braking systems. Conference proposal 267, which would have exempted airplanes weighing 3,000 pounds or less from meeting the requirements in § 23.735(a) was opposed by one conference commenter on the basis that the current requirements provide a good standard for airplane brakes. The FAA agrees and no further action is being taken on proposal 267. Conference proposal 268, which recommended a new paragraph (c) be added to § 23.735 for airplanes with antiskid braking systems, was supported by three conference commenters and the FAA agrees that this requirement is necessary as a minimum standard when antiskid devices are installed.

Reference: Conference proposals 267 and 268.

§ 23.83 [Amended]

26. Section 23.831 is amended by removing the word "In addition, for pressurized commuter category airplanes," in paragraph (b) and adding in their place the words "For pressurized airplanes,".

Explanation

This proposal would require hazardous gas free ventilating air for all Part 23 airplane pressurized crew and passenger compartments in normal operation and after probable equipment failures. Smoke evacuation must be readily accomplished if hazardous

quantities are probable in the cockpit area.

Conference proposal 298, which would have required 10 cubic feet of fresh air for each cabin occupant, was opposed by one commenter and, subsequently, withdrawn by the proponent.

Conference proposal 299, which one conference commenter remarked was taken verbatim out of § 25.831, proved to be confusing to two other commenters. Other commenters stated there was merit in the proposal for pressurized airplanes. However, proposal 299 did imply that all airplanes were pressurized.

After further consideration and review, the FAA concludes that the present ventilation requirements of § 23.83(a) should be retained for all airplanes and that the additional requirements of § 23.831(b) should only be proposed for pressurized airplanes. Because ventilation air is introduced through the pressurization system in such airplanes, consideration must be given to system failures that could contaminate cabin air. Also, inflow and outflow values must be sized to adequately exhaust smoke from the cockpit area.

Reference: Conference proposals 298 and 299.

27. Section 23.939 is amended by revising paragraphs (b) and (c) to read as follows:

§ 23.939 Powerplant operating characteristics.

* * * * *

(b) Turbocharged, reciprocating engine operating characteristics must be investigated in flight to assure that no adverse characteristics, as a result of an inadvertent overboost, surge, flooding, or vapor lock, are present during normal or emergency operation of the engine(s) throughout the range of operating limitations of both airplane and engine.

(c) For turbine engines, the air inlet system may not, as a result of airflow distortion during normal operation, cause vibration harmful to the engine.

Explanation

This proposal would add a requirement for an in-flight investigation of turbocharged reciprocating engine operating characteristics. It would also make it clear that airflow distortion must not cause vibration harmful to turbine engines.

One commenter, in addressing proposal 323, said that the operating characteristics requirement was reasonable, but that the proposed requirements for magnetos and spark plug gaps were not. Another commenter conceded that the parameters spelled out in proposal 323 were the typical operating characteristics normally assessed and evaluated in turbocharged engine installations. After further consideration of proposal 323, the FAA agrees with the recommended engine operating characteristics and is proposing a revision of § 23.939(b), which includes these recommended characteristics. No further action is being taken on the recommended magnetos and spark plug gaps requirement in this proposal.

While a commenter did not object to the airflow distortion requirement recommended by proposal 324 for § 23.939(c), the commenter did object to the justification which stated that an inlet airflow distortion survey would be necessary to show compliance. Another commenter cited an engine that was not sensitive to having the inlet partially blocked. An FAA representative stated that the traditional way of satisfying the requirement was to run an inlet survey but, at the same time, conceded that there may have been other ways of satisfying the requirement. Still another commenter could not recall seeing an inlet distortion survey carried out as a part of many installations made by his company.

After further consideration, the FAA agrees that an inlet airflow distortion survey may not be necessary. However, some consideration of airflow distortion is necessary in designing inlet air systems in airplanes because of the requirements of § 33.7 which, in part, requires the engine manufacturer to establish operating limitations for each type engine based on consideration of inlet air distortion at the engine air inlet and, therefore, a revision to § 23.939(c) is included in this proposal.

Reference: Conference proposals 323 and 324.

28. Part 23 is amended by adding a new § 23.1109 to read as follows:

§ 23.1109 Turbocharger bleed air system.

The following applies to turbocharger bleed air systems used for cabin pressurization:

(a) The cabin air system may not be subject to hazardous contamination following any probable failure of the turbocharger or its lubrication system.

(b) The turbocharger supply air must be taken from a source where it cannot be contaminated by harmful or hazardous gases or vapors following any probable failure or malfunction of engine exhaust, hydraulic, fuel, or oil system.

Explanation

This proposal would assure clean air for pressurized cabins using bleed air from turbocharged engines by stating requirements similar to those required for bleed air from turbine engines (ref. § 23.1111). It was noted by one commenter at the conference that the criteria of conference proposal 396 have been used by the FAA for such approvals since turbochargers were first used for bleed air systems. No other comments were made concerning the conference proposal.

Reference: Proposal 396.

29. Section 23.1163 is amended by combining paragraphs (a)(1) and (a)(2) as paragraph (a)(1); by adding a new paragraph (a)(2); by revising paragraph (a)(3); by removing the words "In addition, for commuter category airplanes, if" in paragraph (d); and adding in their place the word "If"; and by adding a new paragraph (e) to read as follows:

§ 23.1163 Powerplant accessories.

(a) * * *

(1) Be approved for mounting on the engine involved and use the provisions on the engines for mounting; or

(2) Have torque limiting means on all accessory drives in order to prevent the torque limits established for those drives from being exceeded; and

(3) In addition to paragraphs (a)(1) or (a)(2) of this section, be sealed to prevent contamination of the engine oil system and the accessory system.

* * * * *

(e) Each accessory drive by a gearbox that is not approved as part of the powerplant driving the gearbox must—

(1) Have torque limiting means to prevent the torque limits established for the affected drive from being exceeded;

(2) Use the provisions on the gearbox for mounting; and

(3) Be sealed to prevent contamination of the gearbox oil system and the accessory system.

Explanation

This proposal would require provisions to stop rotation of engine accessories whose continued rotation after failure or malfunction would be hazardous, add torque limiting criteria for accessory drives of accessories mounted on engines but not specifically approved for the affected engine when the accessory design was first approved, and add requirements for accessories driven by gearboxes not approved as part of the affected powerplant.

During the conference discussion, one commenter said proposal 406 appeared

to be a solution to a nonexistent problem because the commenter could not visualize any situation where continued rotation of an accessory would be hazardous. Another commenter, in support of the proposal, stated that if an accessory seizes, something should be done to prevent damage to the engine, and that providing a shear section in the drive mechanism should not be a great hardship. Still another commenter said that the engine would destroy the accessory if no shear section were provided. A fourth commenter noted that designing a starter/generator installation for an engine could pose a problem because starting torque could be 5 to 10 times greater than the running torque. A fifth commenter didn't believe the justification was adequate. The FAA agreed to look into the proposal's background.

Conference proposal 406 originated as a result of a special condition issued for a pressurized turbopropeller-engine powered airplane. That special condition and similar requirements were based on Civil Air Regulation § 4b.477. The concern for small airplane certifications remained essentially the same as the concern for large airplane certifications even after § 4b.477 became a requirement; that is, that continued rotation of an accessory could cause mechanical damage that could affect continued safe flight.

During the further review that resulted from the conference discussions, it became clear that § 23.1163, as amended by amendment 23–29, is now compatible with newly type certificated engines, but may not be adequate for installations involving previously approved engines still in production and eligible for installation in all new small airplane designs. Also, recent certification programs have involved accessory drives in gearboxes not approved as part of the affected engine. Therefore, accessory torque limiting means are proposed, with emphasis on not exceeding the engine accessory drive limits, and additional requirements are proposed for accessory drives on gearboxes not approved as part of the affected powerplant.

Reference: Conference proposal 406.

30. Section 23.1323 is amended by adding a new paragraph (e) to read as follows:

§ 23.1323 Airspeed indicating system.

* * * * *

(e) If certification for instrument flight rules or flight in icing conditions is requested, each airspeed system must have a heated pitot tube or an equivalent means of preventing malfunction due to icing.

Explanation

This proposal, while not specifically discussed at the conference, is based upon, in part, proposal 418, which recommended that § 23.1303 be expanded to list items needed for various kinds of operations. The recommendation for IFR operation included a heated pitot tube, which has been inadvertently omitted from previous Part 23 requirements. That item from proposal 418 is more appropriate for inclusion in § 23.1323 rather than the recommended § 23.1301 and, accordingly, has been proposed for that section. The remaining portion of proposal 418 will be addressed in another notice.

Maintaining a functional and accurate airspeed system is essential to safe and reliable control of an airplane in instrument meteorological conditions and flight in icing conditions. The proposal is considered necessary as a minimum airworthiness standard when the above operations in the airplane are to be approved.

Conference proposal 440 recommended relaxing the upper limit of V_{NE} to V_C and this conference proposal was not generally supported. The consensus at the conference was that the requirement should not be changed in accordance with conference proposal 440 and the FAA agrees.

Conference proposal 442 recommended adding a new § 23.1326 for a pitot heat indication system which is identical to § 25.1326. Section 25.1326 was added to Part 25 in 1978 and, at the same time, Part 91 was amended by adding § 91.50. Section 91.50 required transport category airplanes to comply with § 25.1326 within a specified time. In 1981, the general aviation operators of transport category airplanes were relieved from this requirement by deleting § 91.50 since a study indicated that there never had been an accident attributed to a pitot heating system failure by general aviation transport category airplanes. The requirements for pitot heat indication systems were still in effect for air carrier operations in accordance with Parts 121, 125, and 135.

During the conference proceedings on this proposal, it was questioned whether warning indication is necessary because a pilot should be able to recognize misleading airspeed information. A commenter stated that the amber warning light would become a hindrance when the pitot heat system was turned off during day and VFR conditions.

For a five year period ended October 21, 1986, no accidents or incidents for small airplanes were reported due to a pitot heat failure. The FAA concludes that no further action on this recommendation should be taken at this time.

The FAA has required in past type certification programs, where an applicant applies for approval for flight in icing conditions pursuant to § 23.1419, that a heated pitot tube be a part of that system approval. Therefore, the requirement for a heated pitot tube for flight in icing conditions is a clarification of an existing requirement and no additional burden on an applicant.

Reference: Proposals 418, 440, and 442.

31. Section 23.1325 is amended by adding a new paragraph (g) to read as follows:

§ 23.1325 Static pressure system.

* * * * *

(g) For airplanes specifically prohibited from flight in instrument meteorological conditions and icing conditions in accordance with § 23.1559(b) of this part, paragraph (b)(3) of this section does not apply.

Explanation

This proposal would allow airplanes which are specifically prohibited from flight in instrument meteorological conditions and Instrument Flight Rule (IFR) icing conditions to be certificated without an alternate static air source.

At the conference, two commenters said they could foresee no problem with the proposed regulation; however, one commenter said it was debatable as to whether it was needed or not. The conference chairperson, in encouraging further comment, mentioned an FAA Flight Standards policy letter that justified the alternate static air source on the basis that freezing rain can occur in Visual Flight Rule (VFR) conditions.

Another commenter agreed that static system errors resulting from continued flight in freezing rain would be the least likely problem for a pilot in such a situation. The same commenter went on to cite an example where the alternate air source might prove useful to a pilot; i.e., taking off with moisture in the static line on a cold day.

The FAA reviewed the rationale supporting the requirements in § 23.1325(b)(3) that "each static pressure port must be designed or located in such a manner that the correlation between air pressure in the static pressure system and true ambient pressure is not altered when the airplane encounters icing condition," and "an anti-icing means or an alternate source of static

pressure may be used in showing compliance with this requirement." The primary concern was that airframe ice accumulation would disturb airflow in the vicinity of static port(s) causing errors in the static pressure systems and altimeter indications.

The need for such a requirement, as stated in Notice 64–14 (29 FR 3310, March 12, 1964) was based on IFR operations at higher airspeeds and altitudes above 14,500 feet. The purpose was "to increase safety and improve airspace utilization" (vertical separation of air traffic).

In the case of an airplane certificated for flight in IFR conditions, an applicant can show compliance without flying the airplane in icing conditions; e.g., if the airplane were equipped with a pitot-static probe, anti-icing would be appropriate. If the airplane had static pressure ports installed on the fuselage, an alternate static pressure source would suffice.

Under the present requirements, an airplane limited to approval for flight in VFR conditions must meet a requirement intended to povide better vertical separation for airplanes flying in IFR conditions or icing conditions at altitudes above 14,500 feet. Section 23.1325(b)(3) requires that all small airplanes, including an airplane which isn't required to have a sensitive altimeter or a heated pitot, must either be tested in icing conditions or show compliance by means of a heated static pressure source or an alternate static pressure source.

In view of the above, it is considered inappropriate to continue to impose a requirement for an alternate static source or a means for anti-icing the static source on airplanes specifically prohibited from flight in IFR or icing conditions. It is considered unlikely that a midair collision could be caused by the altitude error in an airplane flying VFR that inadvertently enters icing conditions. Continued flight in such conditions cannot be sustained for long periods by airplanes without anti-icing or deicing equipment and most airplanes certificated for VFR only do not fly above 14,500 feet. Furthermore, an FAA review of incidents of static system malfunction in VFR icing conditions for the past five years showed no reported incidents or accidents.

Reference: Conference proposal 441.

32. Part 23 is amended by removing Appendix B and inserting the words "Appendix B [Removed and Reserved]" in its place.

Appendix B—[Removed and Reserved]

Explanation

Appendix B is removed for the reasons explained in proposal 14.

Issued in Washington, DC, on February 23, 1989.

M.C. Beard,

Director, Aircraft Certification Service.

[FR Doc. 89–4951 Filed 3–3–89; 8:45 am]
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Monday
March 6, 1989

Part III

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Hazardous Waste Operations and Emergency Response; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-760A]

Hazardous Waste Operations and Emergency Response

AGENCY: Occupational Safety and Health Administration; Labor.

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is amending the OSHA standard for hazardous waste operations and emergency response found in 29 CFR 1910.120. This final rule will replace the existing interim final rule required by Congress in the Superfund Amendments and Reauthorization Act of 1986 (as amended) (SARA) (Pub. L. 99-499, 29 U.S.C. 655 note). When this final rule becomes effective one year from today, the interim final rule promulgated December 19, 1986 (51 FR 45654) will be revoked. The interim final rule remains in effect until then. The Notice of Proposed Rulemaking for this final rule was published in the **Federal Register** on August 10, 1987 (52 FR 29620).

This rule will regulate the safety and health of employees involved in clean-up operations at uncontrolled hazardous waste sites being cleaned-up under government mandate, in certain hazardous waste treatment, storage, and disposal (TSD) operations conducted under the Resource, Conservation and Recovery Act of 1976 as amended (RCRA) [42 U.S.C. 6901 *et seq*], and in any emergency response to incidents involving hazardous substances.

This standard provides for employee protection during initial site characterization and analysis, monitoring activities, materials handling activities, training, and emergency response.

DATES: This final rule will become effective March 6, 1990.

Paperwork authorization has been granted by the Office of Management and Budget (OMB) under control number 1218-0139.

ADDRESS: In compliance with 28 U.S.C. 2112(a), the Agency designates for receipt of petitions for review of the standard, the Associate Solicitor for Occupational Safety and Health, Office of the Solicitor, Room S-4004, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Division of Consumer Affairs, Room N-3647, 200 Constitution Avenue NW., Washington, DC 20210, 202-523-8151.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Environmental Protection Agency estimates that approximately 57 million metric tons of hazardous waste are produced each year in the United States.[1] These wastes must be treated and stored or disposed in a manner that protects the environment from the adverse affects of the various constituents of those wastes.

In response to the need to protect the environment from the improper disposal of these hazardous wastes, Congress, over the years, has enacted several pieces of legislation intended to control the nation's hazardous waste problem. Federal laws passed in 1965 [2] and 1970 [3] initially addressed solid waste disposal. Several other pieces of legislation have been enacted by Congress that have ultimately led to the development of this rule and they are discussed below.

A. The Resource Conservation and Recovery Act of 1976

The first comprehensive, federal effort to deal with the solid waste problem in general, and hazardous waste specifically, came with the passage of the Resource Conservation and Recovery Act of 1976 (RCRA) [4]. The act provides for the development of federal and state programs for otherwise unregulated land disposal of waste materials and for the development of resource recovery programs. It regulates anyone engaged in the creation, transportation, treatment, and disposal of "hazardous wastes." It also regulates facilities for the disposal of all solid wastes and prohibits the use of open dumps for solid wastes in favor of requiring sanitary landfills.

There are, however, many hazardous waste disposal sites that were created prior to the passage of RCRA. These sites are often abandoned and contain unknown quantities of unknown wastes.

B. The Comprehensive Environmental Response, Compensation and Liability Act of 1980

In response to the need to clean-up and properly reclaim these pre-RCRA sites, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) [5] commonly known as "Superfund." Superfund established two related funds to be used for the immediate removal of hazardous substances released into the environment. Superfund is intended to establish a mechanism of response for the immediate clean-up of hazardous waste contamination from accidental spills and from chronic environmental damage such as is associated with abandoned hazardous waste disposal sites.

The treatment and disposal of hazardous wastes under RCRA and CERCLA creates a significant risk to the safety and health of employees who work in treatment and disposal operations. Exposure to hazardous wastes through skin contact, skin absorption, and inhalation pose the most significant risks to employees. Employee exposure to these risks occurs when employees respond to hazardous substance or waste emergencies, when they work with hazardous wastes during storage, treatment and disposal operations or when they participate in the clean-up of abandoned-waste sites.

This risk of exposure and the need for protecting employees exposed to hazardous wastes is addressed in the "Superfund Amendments and Reauthorization Act of 1986" (SARA).

C. Superfund Amendments and Reauthorization Act of 1986

On October 17, 1986, the President signed into law the "Superfund Amendments and Reauthorization Act of 1986" (SARA).[6] As part of SARA, in section 126 of Title I, Congress addressed the risk of injury to employees by providing that the Secretary of Labor ("Secretary") issue interim final worker protection regulations within 60 days after the date of enactment of SARA that would provide no less protection for workers engaged in hazardous waste operations than the protections contained in the U.S. Environmental Protection Agency's (EPA) "Health and Safety Requirements for Employees Engaged in Field Activities" manual (EPA Order 1440.2) dated 1981, and the existing OSHA standards under Subpart C of 29 CFR Part 1926. OSHA published those interim final regulations in the **Federal Register** on December 19, 1986 (51 FR 45654). A correction notice was published on May 4, 1987 (52 FR 16241).

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[1] U.S. Environmental Protection Agency, *Everybody's Problem Hazardous Waste* at 1 (1980).

[2] Solid Waste Disposal Act, Pub. L. No. 89-272, 79 Stat 99.

[3] Resource Recovery Act, Pub. L. No. 91-512, 84 Stat 1427 and Pub. L. 93-14, 87 Stat II.

[4] 42 U.S.C. 6901 *et seq.*

[5] 42 U.S.C. 9601 *et seq.*

[6] Pub. L. 99-499.

With the exception of a few provisions that had delayed start-up dates, OSHA's interim final regulations became effective on December 19, 1986 in accordance with section 126(e) of SARA, and apply to all regulated workplaces until the final rule developed under sections 126 (a)–(d) becomes effective.

Section 126(a) of SARA provides that the Secretary shall " * * * pursuant to section 6 of the Occupational Safety and Health Act of 1970, promulgate standards for the health and safety of employees engaged in hazardous waste operations." These standards must be promulgated within one year after the date of enactment of SARA. This notice completes the development of those standards by issuing a final rule based upon the proposed regulations as indicated in sections 126(a) and 126(b) of SARA.

Pursuant to section 126(c) of SARA, the final regulations issued today are to take effect in one year. Section 126(c) also provides that the final regulations are to include each of the worker protection provisions listed in section 126(b), unless the Secretary determines that the evidence in the public record developed during this rulemaking and considered as a whole does not support inclusion of any such provision. A discussion of the public record for this rulemaking and the changes made to the proposed regulations issued August 10, 1987 follows.

This final rule has been adapted from the language of the proposed rule. Changes have been made to address more fully the provisions which Congress directed the Agency to cover and the comments made in the public record. OSHA utilized several sources for the proposal. These included the EPA manual entitled "Health and Safety Requirements for Employees Engaged in Field Activities" (1981), the language of OSHA's safety and health standards in Subpart C of 29 CFR Part 1926 and various documents issued either jointly or separately by the EPA, OSHA, the U.S. Coast Guard, and the National Institute for Occupational Safety and Health (NIOSH).

OSHA specifically used the joint OSHA/EPA/USCG/NIOSH manual entitled, *"Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities"* (Preamble Reference 6), as an outline in preparing the interim rule and the proposed rule. This manual was developed as a result of the collaborative efforts of professionals representing the four agencies. These professionals, who are knowledgeable in hazardous waste operations, worked with over 100 experts and organizations in the development of the criteria contained in this manual. The manual was published in October 1985 and is public information. The manual is a guidance document for managers responsible for occupational safety and health programs at inactive hazardous waste sites. The manual is intended for use by government officials at all levels and contractors involved in hazardous waste operations. The manual provides general guidance and is intended to be used as a preliminary basis for developing a specific health and safety program for hazardous waste operations. Further, the major subject areas listed in section 126(b) of SARA are nearly identical to the major chapters in the manual.

Based upon the extensive public comments and hearing testimony, OSHA has modified the proposal. The final rule takes into account the entire record. In addition, the language of this final rule clarifies some areas of confusion in the interim rule that OSHA has identified during the public comment period and since the promulgation of the interim final rule. The final rule also reorganizes some of the sections to clarify the standard.

D. Regulatory History

The Superfund Amendments and Reauthorization Act of 1986 (SARA) gave the Secretary of Labor 60 days to issue interim final regulations which would provide no less protection for workers employed by contractors and emergency response workers than the protections contained in the Environmental Protection Agency Manual (1981) "Health and Safety Requirements for Employees Engaged in Field Activities" and existing standards under the Occupational Safety and Health Act of 1970 found in Subpart C of Part 1926 of the Code of Federal Regulations. Those interim final regulations were to take effect upon issuance and would apply until final regulations became effective (SARA, § 126(e)). OSHA issued its interim final regulations on December 19, 1986 (51 FR 45654).

SARA also instructed the Secretary of Labor to promulgate, within one year after the date of the enactment of section 126 of SARA and pursuant to section 6 of the Occupational Safety and Health Act of 1970, standards for the health and safety protection of employees engaged in hazardous waste operations (SARA, section 126(a)). On August 10, 1987 OSHA issued a Notice of Proposed Rulemaking and Public Hearings (52 FR 29620). That Notice set forth OSHA's proposed language for its final rule and announced public hearings that would be held to gather further information to aid the agency in developing its permanent final rule.

Informal public hearings on the subject of this rulemaking were scheduled and held to afford interested parties the opportunity to comment on OSHA's proposals. The hearings were held October 13–16 and 20–21, 1987 in Washington, DC and October 27–28, 1987 in Seattle, Washington. The hearings originally scheduled for San Francisco, CA in the August 10, 1987 Notice of Proposed Rulemaking were rescheduled for Seattle, WA in an October 13, 1987 announcement (52 FR 37973).

Testimony from over 40 witnesses was presented at the hearings. Further, over 30 post hearing comments were submitted to the record of this rulemaking. In addition to the public hearings and the testimony received in response to those hearings, OSHA received over 125 written comments on its proposed language for a final rule.

II. Summary and Explanation of the Standard

Paragraph (a)—Scope, Application, and Definitions

1. *Scope.* OSHA proposed to define the scope of this final rule in paragraphs (a)(1) and (a)(2). "*Scope*" defines the specific worker populations to be covered by this rule.

The scope of this rulemaking has been an issue during the development and promulgation of the final rule. OSHA requested specific comment on whether the proposed rule was appropriate.

Eastman Kodak's comment (10–36) states, "The preamble of the proposed standard at page 29622 requested 'specific comment on whether [OSHA's] interpretation of scope is too broad or too narrow.' The scope of applicability of the standard, especially with regard to ongoing operations at hazardous waste management facilities regulated under RCRA and/or corresponding state programs, appears to be appropriate."

While the language of the final rule is somewhat different from the language of the proposed rule, the four major areas of scope remain essentially the same. These four areas of scope include (1) clean-up operations at uncontrolled hazardous waste disposal sites that have been identified for clean-up by a governmental health or environmental agency, (2) routine operations at hazardous waste treatment, storage and disposal facilities or those portions of any facility regulated by 40 CFR Parts 264 and 265, (3) emergency response

operations at sites where hazardous substances have been or may be released, and (4) corrective actions at RCRA sites. In addition OSHA has clarified that the agency intends to cover voluntary clean-ups at government identified sites.

OSHA's proposal addressed the three specific populations of workers at the above operations. First, it was proposed to regulate those operations where employees are engaged in the clean-up of uncontrolled hazardous waste sites. These operations include those hazardous substance response operations under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended (CERCLA), including initial investigations at CERCLA sites before the presence or absence of hazardous substances has been ascertained, those major corrective actions taken in clean-up operations under the Resource Conservation and Recovery Act of 1976 as amended (RCRA), and those hazardous waste operations at sites that have been designated for clean-up by state or local governmental authorities.

The second worker population proposed to be covered included those employees engaged in operations involving hazardous waste treatment, storage, and disposal (TSD) facilities regulated under 40 CFR Parts 264 and 265 pursuant to RCRA, except for small quantity generators and those employers with less than 90 days accumulation of hazardous wastes as defined in 40 CFR 262.34.

The third and final worker population proposed to be covered were those employees engaged in emergency response operations for releases or substantial threats of releases of hazardous substances, and post-emergency response operations to such releases at all workplaces.

In paragraph (a)(1)(i) of the final rule OSHA is regulating all government mandated clean-up operations at uncontrolled hazardous waste disposal sites. These operations were included in paragraphs (a)(1)(i) and (a)(1)(iii) of the proposal. For the purposes of this final rule, "Superfund" and other uncontrolled hazardous waste disposal sites include hazardous substance response operations at sites regulated under 40 CFR Part 300, Subpart F; RCRA closure activities conducted under 40 CFR Part 265, Subpart G; and those similar uncontrolled hazardous waste disposal sites that have been designated for clean-up by Federal, state or local governments.

OSHA intends and the change in language clarifies that all government mandated clean-ups are covered. These include not only sites on the various "Superfund" lists, but also all other government mandated clean-ups as well. The changed language makes clear that such clean-ups are covered whether or not they are financed by the government. The language further clarifies that clean-ups mandated by any level of government are covered.

In paragraph (a)(1)(ii) of the final rule, OSHA is regulating corrective actions at RCRA facilities. This paragraph adopts the language proposed in paragraph (a)(1)(ii) of the proposal with one change. The term 'major' has been deleted as a modifier of "corrective action." Several commenters requested clarification of the term "major corrective action." International Technologies, a major hazardous waste clean-up contractor, requested in their comment (10–44), "Please clarify 'major corrective actions conducted under RCRA.' What distinguishes 'major' corrective actions from other corrective actions?" The State of Indiana commented (10–23), "There is no definition of what constitutes a 'major corrective action' under RCRA." In addition, the term "major" is not used in EPA terminology.

"Corrective action" is a term unique to RCRA and has been defined for use with RCRA. OSHA's addition of the modifier "major" raised many definitional questions. Therefore OSHA, in the final rule, is deleting the word "major" to be consistent with EPA terminology and eliminate confusion. Rather than define "major corrective action," OSHA is amending the language of the proposal to include a phrase describing the level of corrective action that is to be regulated in the scope of this rule. OSHA will be regulating those corrective actions that potentially expose employees to a "safety or health hazard." OSHA is not concerned with those corrective actions that are intended to abate environmental risks without exposing employees to safety or health hazards. The phrase "safety or health hazard" in the introductory language is the phrase that OSHA has used to differentiate the type of releases that this standard regulates versus those release that may pose only environmental threats rather than safety or health threats to employees.

OSHA has decided to add a new paragraph (a)(1)(iii) to the final rule that would include within the scope of this rule those voluntary clean-up operations conducted at sites recognized by governmental bodies as uncontrolled hazardous waste disposal sites. All other voluntary clean-ups would be exempt from 29 CFR 1910.120. OSHA does not have the statutory responsibility to identify hazardous waste sites. It will leave to agencies with that authority the responsibility to identify those sites. Those voluntary sites that are not recognized by the government as uncontrolled hazardous waste disposal sites would be exempt from 29 CFR 1910.120; however, they would still be regulated by the other OSHA general industry or construction industry standards applicable to the work being performed at the site.

OSHA did not propose to cover voluntary clean-ups of hazardous substances in its proposed rule. Many comments suggested this, however, the Agency has concluded that individuals involved in voluntary clean-ups may be exposed to the same safety and health risks at voluntary sites identified by the government whether or not the government is compelling action. However, it would be difficult to know whether or not sites not identified by the government are hazardous waste sites without a structured evaluation system for such potential sites.

OSHA raised an issue on the scope in the preamble to the proposal that generated several comments. On page 29622 of the preamble to the proposal, OSHA listed several TSD facilities that would not be covered by the final rule. The exemptions were taken from a list published by the U.S. EPA that are not directly regulated by U.S. EPA. However, the proposed standard's language did not grant these exemptions. Comments did not support the exemptions and OSHA did not believe that they were appropriate.

The particular exemption that generated the most comment exempted those TSD facilities which operate under a state hazardous waste program pursuant to RCRA section 3006. These state hazardous waste programs are recognized by U.S. EPA in a similar fashion to the OSHA state plan states under section 18 of the OSH Act. A number of commenters, such as the State of Indiana (10–23), objected to this type of exemption by OSHA as not being appropriate. They stated OSHA jurisdiction should not be impacted by U.S. EPA state agreements, but only those state agreements provided in the OSH Act. OSHA agrees with these commenters and therefore OSHA jurisdiction will be delegated to only those states which OSHA has formal agreements with under the OSH Act. However, it should be noted that the U.S. EPA jurisdictions under SARA section 126 may make use of their state agreements.

Other commenters, EXXON (10–33) and CONOCO (10–32), suggested that OSHA incorporate the exemptions on page 29622 as a separate paragraph in the final rule.

Typical TSD facilities range from the hazardous waste generator with a hazardous waste storage area to the large, complex hazardous waste disposal facility. EPA estimates that approximately 80 percent of all generators also treat, store, or dispose of their hazardous wastes and thereby qualify as a TSD facility. Over 30,000 TSD facilities notified EPA in 1980 that they would qualify for regulation under section 3004 of RCRA.

OSHA continues to regulate RCRA TSD facilities in paragraph (a)(1)(iv) of the final rule as it was proposed in the regulatory language of the proposal. The list of exemptions on page 29622 will not be incorporated into the final rule. OSHA believes that such a list would create too great a gap in the protection of workers. For example, with respect to workers at TSD facilities operating under a state hazardous waste program pursuant to RCRA section 3006, OSHA agrees with a comment made by the State of Indiana (10–23) that it is possible that the workers in those 42 authorized states identified by Indiana could be without the protections mandated by Congress.

In paragraph (a)(1)(v) OSHA would continue to regulate emergency response operations for releases of, or substantial threats of releases of, hazardous substances without regard to the location of the operation as proposed in paragraph (a)(2) of the proposal. Such emergency response operations are not limited to those responses at uncontrolled hazardous waste disposal sites or RCRA TSD facilities. With respect to transportation incidents, responders to the scene are covered but operators (i.e., truck drivers and train crews) are not covered unless they become actively involved in the response action.

OSHA is making major revisions to proposed paragraph (1). These revisions have been made in response to comments concerning OSHA's involvement in regulating emergency response at every site involving hazardous substance release or potential release. Some of the comments were in favor of OSHA's continued involvement with emergency response (i.e., American Chemical Society, 10–44) and others were opposed to continued involvement (i.e., ECOLAB, 10–64). Others supported OSHA involvement in emergency response activities at uncontrolled hazardous waste sites and certain RCRA facilities but opposed the agency's involvement with non-waste clean-up or non-RCRA facilities (i.e., The Chlorine Institute, 10–24). Yet others called for two separate areas in the rule; one for hazardous waste operations, and one for emergency response (i.e., Allied Signal, 10–38). Others opposed coverage of emergency response to petroleum spills (CONOCO, Ex. 10–32).

OSHA after reviewing all the comments, continues to believe that it is the clear intent of Congress that any employees participating in an emergency response to the release or potential for release of hazardous substance be covered by this rulemaking. This Congressional intent applies to all such emergency responses including those both off and on hazardous waste sites.

The statutory language indicates that all emergency responses where the threat of hazardous substance spills exist are to be covered.

Section 126(b)(11) of SARA specifically provides that "requirements for emergency response" are to be included and is not limited to hazardous waste sites.

In addition, section 126(d)(4) states:

> Training of Emergency Response Personnel.—Such training standards shall set forth requirements for the training of workers who are responsible for responding to *hazardous emergency situations* who may be exposed to toxic substances in carrying out their responsibilities. (emphasis added)

This is very broad language that is not limited to hazardous waste operations or hazardous wastes or substances on CERCLA or RCRA sites. It covers all "hazardous emergency situations" for all "toxic substances" which would clearly cover all types of emergency response for chemical spills including chemical tanker spills and the like. It should also be noted that once a tank truck spills a toxic chemical in an emergency it creates a hazardous waste in the very real sense.

Further, the grant provision of the statute clearly indicates that grants can be made to train workers for emergency response at any location, not just on hazardous waste sites.

Section 126(g)(1) states:

> Grant Purposes.—Grants for the training and education of workers who are or may be engaged in activities related to hazardous waste removal or containment or *emergency response* may be under this section. (emphasis added)

Other statutory sections also indicate the legislative intent to cover all emergency responses where hazardous chemical spills are possible.

In addition to the statutory language, the documents cited by Congress as the minimum guides for OSHA to use in developing this rule refer to all emergency responses. The EPA manual and the OSHA construction standards referred to in the statute require preparations and planning for emergencies generally, not just for hazardous waste site emergencies.

In addition the legislative history indicates that Congress intended Section 126 to cover emergency response to all situations where spills of hazardous chemicals were a possibility and not just emergency response on hazardous waste sites. For example, Senator Hatch stated:

> This amendment will address the concerns that have been raised that the Department of Labor issue standards for employees engaged in hazardous waste operations, as well as emergency response. (9/24/88 Cong. Rec. pg. S–12031)

As discussed elsewhere in this preamble OSHA believes there is a clear need for training and other provisions to protect workers engaged in all emergency responses when there is the possibility of hazardous substance spills. This is needed whether or not the emergency occurs on a hazardous waste site. The agency believes that the hazards are the same in these cases.

Finally, other parts of SARA, in particular Title III, address emergency response actions and planning by communities and local government employers outside of the hazardous waste clean-up operation. The Congressional concerns on toxic emergencies also discussed in *Task Force on Toxic Emergencies,* Environmental and Energy Study Conference Special Report, September 18, 1986. This report stresses the need for training of emergency response personnel as well as emergency response planning and related areas. This was part of the legislative research which led to the passage of section 126 of SARA.

OSHA's final rule rulemaking divides emergency response into three separate areas. First, OSHA is regulating emergency response by employees at uncontrolled hazardous waste sites in paragraph (l) of the final rule. This paragraph contains the requirements that were in paragraphs (l)(1) and (l)(2) of the proposal and the interim rule. These regulations applied to the "on-site" operations of the interim rule. Second, OSHA is regulating emergency response at RCRA facilities in paragraph (p)(8). This paragraph contains the requirements that were in paragraphs (l)(1) and (l)(3) of the proposal and interim rule. These regulations applied to the "off-site"

operations of the interim rule. Third, OSHA is regulating emergency response to hazardous substance releases by employees not covered by paragraphs (l) and (p)(8) in paragraph (q). Paragraph (q) contains the requirements proposed in paragraphs (l)(1), (l)(3), (l)(4), and (l)(5) of the proposal and interim rule. These regulations were directed toward emergency response teams, industrial fire brigades, and hazardous materials teams.

In its proposal OSHA covered emergency response to releases of hazardous substances. The agency did not propose to limit emergency response to uncontrolled hazardous waste sites but decided instead to propose to cover all emergency response whether it was done at uncontrolled hazardous waste sites or anywhere else, including petrochemical and similar manufacturing facilities.

OSHA's decision to propose coverage of all emergency response was based upon the high risk associated with emergency response by untrained and unprotected employees and the need for proper training and equipment to be provided for emergency response to hazardous substance releases. In testimony during the public hearings on this rulemaking, Mr. William Bunner stated, "The highest-risk incidents are the persons who respond to spills and accidental releases of hazardous chemicals; and those personnel, particularly public first responders, have had the least protection in terms of chemical emergency response safety and health plans, training and equipment." (Tr. pgs. 24–25). Mr. Bunner goes on to state, "The real strength of 29 CFR 1910.120 is that it not only provides for a more consistent and thorough approach to protecting workers involved in hazardous waste operations, but also for personnel who face extremely high risk to life and health that's associated with chemical emergency response." (Tr. pg. 25).

Another witness, Mr. Ray Simpson, one of OSHA's expert witnesses on fire suppression, fire inspection, and training, testified, "I like to support any concept that advocates properly equipping, training, and supporting emergency responders. When I talk about an emergency responder, I'm not talking simply about fire fighters although that's basically my expertise. I'm talking about the emergency medical technicians, the people who handle the victims. I'm talking about the police officer who, many times, is first on the scene before any of us get there: the many who really must make, in some situations, the initial decision about what's going to happen. I have learned over these many years that the two greatest dangers that face us as emergency responders are ignorance or non-awareness of what we're facing and the lack of plan or any procedure that will take us to the end that we're trying to accomplish." (Tr. pgs. 89–90).

Margaret Seminario, Associate Director, Department of Occupational Safety, Health and Social Security of the American Federation of Labor-Congress of Industrial Organizations (AFL–CIO) also testified at OSHA's public hearings on the issue of emergency response. Ms. Seminario discussed the participation of the AFL–CIO in hearings before the House Subcommittee on Employment and Housing of the Government Operations Committee and the Safety and Health Subcommittee of Education and Labor. Ms. Seminario stated, "Those hearings dealt with the issues of the problems for hazardous waste workers in both Superfund operations and RCRA operations, but they also got into an issue that had really not been explored very fully: the problems facing emergency response workers, particularly for the AFL–CIO firefighters. The members of our firefighter's union were the ones who were called in when there were spills, leaks and other accidental releases. These weren't hazardous waste sites, per se, at the time. They became hazardous waste sites and were defined as such after the fact; but they were routinely called in without information, without adequate protection to deal with these problems. That was an issue, as I said, that was fully explored in those hearings and it was the reason that, when we moved from those hearings into a legislative opportunity in Superfund, we looked beyond the language that we had come up with in the 1980 law which dealt only with hazardous waste and expanded it to include emergency response operations." (Tr. pgs. 345–346)

Further, OSHA still believes that Congress intended this rule to have such coverage. This is indicated by the language of SARA as well as the legislative history.

As OSHA stated in the preamble to the proposed rule, "The language of section 126(a) mandates safety and health standards for the protection of employees engaged "in hazardous waste operations." The term "hazardous waste operation" is not limited in the legislation and a response to spills of hazardous substances on the highway or from a railway tank car in order to control and contain the hazardous substance (which has become a waste once it is not contained) is in the common sense meaning a hazardous waste operation."

"This interpretation is reinforced by the fact that SARA is a free-standing statutory provision and not an amendment to CERCLA. The clear Congressional intent then is to provide protection to employees whenever they deal with hazardous wastes."

In addition section 126(d)(4) discussing training for emergency response personnel utilizes the very broad term "hazardous emergency situation." Section 126(g)(1) indicates that training grants may be given independently for emergency response training separate from hazardous waste removal training. Section 126(b)(11) also indicates emergency response is an independent concept separate from hazardous waste removal operation. For those and other reasons OSHA believes section 126 is intended to cover emergency response to hazardous substances whether on an uncontrolled hazardous waste disposal site, a RCRA site or elsewhere. However, the clarified language in the scope sections makes it clear the only employers whose employees have the reasonable possibility of engaging in emergency response are covered. Emergency response employees who respond or will respond to incidents involving hazardous substances are covered by this final rule to the extent that they are exposed to hazardous substances. State and local government employees in states that have agreements with OSHA under section 18 of the OSH Act must be regulated by state regulations at least as effective as these to protect public employees. Those state regulations must be issued within six months of the date of promulgation of this final rule.

However, some commenters have commented that OSHA has exceeded the intent of Congress with the scope of the proposed rule. Many of these commenters stated that OSHA's coverage of emergency response at sites other than specific cleanup or TSD facilities was too broad and unwarranted. AMOCO's comment (10–26) is representative of some of the comments made on this issue. In their comment AMOCO stated that, "Section 126(a) of SARA is the directive to OSHA to promulgate standards 'for the health and safety protection of employees engaged in hazardous waste operations.' There is no reference whatsoever in this directive to promulgate standard (sic) with respect to emergency response activities outside of hazardous waste operations." However, other comments received from the petrochemical

industry support, on a limited basis, OSHA's decision to cover emergency response with the scope of the standard. CONOCO's comment (10–32) is representative of this point of view. CONOCO states, "Conoco's primary concern with the proposed rule centers on the extremely broad scope of employee coverage under this standard and compared to Congress' intent to cover 'hazardous waste operations and emergency response.' We believe that Congress intended section 126 of SARA to cover employees engaged in hazardous waste operations and emergency response to these operations on a full-time basis." While this comment would seem to support OSHA's coverage of employees engaged in emergency response, that support is limited to those employees engaged in response on a full-time basis at hazardous waste operations.

Based upon public testimony and written comments received into the record of this rulemaking, OSHA has concluded, that because of the high risk associated with emergency response to the releases of hazardous substances and the number of these incidents occurring, that coverage of workers conducting such emergency response activities is both appropriate and necessary.

OSHA believes that the scope of this final rule carries out the intent of Congress and is consistent with good occupational safety and health policy. Employees performing clean-up operations under CERCLA, RCRA (corrective actions) and state or local government designated sites—generally those employees likely to have the highest exposures to hazardous substances over a longer period—would be covered by virtually all the provisions of this final rule. Employees exposed to hazardous wastes in routine RCRA hazardous waste operations, who are regularly exposed to hazardous wastes but in a more controlled environment, would be covered by the more limited requirements of paragraphs (p) and (q). Emergency response workers, exposed usually for short periods to often unknown but possibly high levels of hazardous substances, would be regulated by paragraph (q).

2. *Application.* OSHA proposed to define the application of this final rule in paragraph (a)(3) of OSHA's Notice of Proposed Rulemaking (NPRM) published on August 10, 1987 (52 FR 29620). "*Application*" establishes which regulations within this rule apply to the specific worker populations to be protected by this rule.

In paragraph (a)(3)(i) OSHA proposed that the employer would have to comply with the standards in 29 CFR Parts 1910 and 1926, as well as with the requirements specifically covered in the proposed rule. If there were a conflict or overlap between standards, it was proposed that the more protective provisions would apply. Since this rule does not cover all of the hazards present at hazardous waste operations, other OSHA standards in Parts 1910 and 1926 should apply to ensure employee safety and health. Other OSHA standards regulate many other hazards, and OSHA wants to make clear that the other standards continue to apply. Also, OSHA proposed that hazardous waste operators who are not within the scope of this standard should continue to be regulated by the Parts 1910 and 1926 standards. OSHA is keeping those provisions in the final rule for the reasons stated with minor editorial changes for clarification.

In paragraph (a)(3)(ii), OSHA proposed that all paragraphs of section 1910.120 except paragraph (o) would apply to hazardous wastes operations at CERCLA sites, at major corrective action at RCRA sites, and at sites designated for clean-up by state and local governments. Paragraph (o) of the proposal addressed certain operations conducted under the Resource Conservation and Recovery Act of 1976 (RCRA).

OSHA recognizes that the hazards presented to employees engaged in clean-up operations involving uncontrolled hazardous wastes are far greater than those presented to employees engaged in the routine, day-to-day operations of an EPA licensed TSD facility.

OSHA has made two editorial changes in its proposed language in paragraph (a)(3)(ii) without changing the intent of the paragraph. First, rather than referring to each of the types of sites individually, OSHA is making reference to the scope paragraphs (a)(1)(i) through (a)(1)(iii) to identify the sites that this application paragraph addresses. The sites to be addressed remain the same as proposed. Second, because the codification of paragraphs has changed in this final rule due to changes made to the proposal, paragraph (p) of § 1910.120 rather than paragraph (o) will apply specifically to hazardous waste operations at RCRA sites which are involved in treatment, storage, disposal and handling of hazardous waste. The new requirements of paragraph (p) are discussed later in the preamble.

In paragraph (a)(3)(iii), OSHA proposed that the requirements set forth in paragraph (o) of section 1910.120 would apply specifically to the hazardous waste operations at RCRA sites which are involved in treatment, storage, disposal and handling of hazardous waste. The proposal contained a limited exclusion from these regulations for certain small quantity generators and less than 90-day accumulators, such as dry cleaners and gas stations, which come within the purview of RCRA, but are not hazardous waste operations in the normal meaning of the term. The exclusion was available to these operations depending upon the employer's decision to provide or not provide emergency response by employees to releases of, or substantial threats of releases of, hazardous substances.

OSHA proposed to exempt small quantity generators and less than 90 day accumulators from all parts of the rule if they did not provide emergency response by their employees to releases of, or substantial threats of releases of, hazardous substances. OSHA further proposed to exempt small quantity generators and less than 90 day accumulators from all parts of the rule except paragraph (l) if they did provide emergency response by their employees to releases of, or substantial threats of releases of, hazardous substances.

OSHA recognized that many small quantity generators are smaller businesses with limited employee populations. Since most of these establishments rely on the emergency response services of local fire and rescue departments, OSHA is providing a complete exemption from these proposed standards when the employer can show that employees are not required or encouraged to engage in emergency response, but are directed in the case of emergency spills of hazardous substances to maintain a safe distance and to call local fire or other emergency response organizations. In cases where such establishments do provide emergency response by employees, and thereby expose employees to hazardous substances, OSHA proposed that such employers meet the emergency response requirements of paragraph (l) of this proposed rule. OSHA concludes its proposal is supported by the record.

Without these exemptions, these regulations could be interpreted to cover gas stations, dry cleaners, and other small businesses which temporarily store small quantities of a hazardous waste. These businesses are not engaged in hazardous waste operations as that term is conceived of normally. In addition, it is not believed that Congress intended such businesses to be covered. They do not present the relatively high

exposure to a number of hazardous health risks to employees that hazardous waste sites typically do.

In paragraph (a)(3)(iv) OSHA proposed that the requirements set forth in paragraph (l) of this section would specifically apply to the work conducted by emergency response personnel when they respond to hazardous substance emergency incidents. Emergency response personnel include firefighters, EMS personnel, and police as well as other employees.

The regulation of employees providing emergency response has been discussed under the "Scope" portion of this preamble discussion. Further discussion of OSHA's changes to the emergency response portion of this rulemaking is contained in the discussion of paragraph (l) of the proposal.

OSHA also requested comment on what other operations should be and are intended by Congress to be covered, and whether specific operations should be excluded because of low exposures. For example, municipal or other sanitary landfills that handle domestic wastes would not normally be regulated by this rule. Similarly, waste paper or scrap metal operations would not normally be regulated because of the type of wastes they handle. However, both types of operations would be regulated if they have clean-ups for or handle hazardous wastes meeting the scope provisions of the standard.

Also, employees at hazardous waste disposal sites who will not be exposed to, or do not have the potential to be exposed to, hazardous substances are not covered by this rule. The provisions of these regulations are designed to protect employees who have or may have exposures, and would not be needed for those employees who do not.

Operations with no exposure to hazardous substances, i.e., road building for site access, construction of or the setting up of temporary facilities in the clean zone, or the closure of a RCRA site involving the building of a clay cap over hazard wastes, are considered to be construction activities covered by the standards in 29 CFR Part 1926.

As a result of the comments received during the public comment phase of this rulemaking, OSHA has made some changes to the degree of regulation for emergency response workers. However, the scope of this standard continues to cover such workers and paragraph (a)(2)(iv) identifies the new paragraphs within the rule that reflect the changes and identifies the standards that apply to emergency response operations.

3. *Definitions.* In paragraph (a)(4), *Definitions,* OSHA proposed to identify and define the various terms used in this rulemaking that may cause confusion. However, the following new definitions have been added as a result of comments made in the record: "published exposure level," and "uncontrolled hazardous waste site". Except for the definition of "established exposure level" which has been amended to define "published exposure level," no definitions have been removed from the proposal.

The term "established permissible exposure limit" was incorporated as part of the determination of whether medical surveillance was required. There were a number of comments on this definition.

One commenter, Four Seasons Industrial Services (10–5), believed that the definition should be broadened. Four Seasons stated, "The routes of chemical exposure are through inhalation, skin absorption, and ingestion. All of these have to be considered when dealing with permissible exposure limits. Your definition as written does not include ingestion." Other commenters were concerned that OSHA included the NIOSH Recommended Exposure Limits in the definition of PELs. The E. I. DuPont de Nemours, Co. (10–28) comments summarize many of those received against the NIOSH levels. DuPont stated, "NIOSH limits have not undergone public review and comment as have national consensus standards and regulatory exposure standards. Therefore, they should not be included in the definition of 'established exposure limits'." CONOCO (10–32) agreed when they stated, "These NIOSH limits are not subject to peer review or public comment as are OSHA's PELs. We encourage OSHA to remove the references to these NIOSH limits. We strongly urge OSHA to *only* use PELs given in 29 CFR 1910, Subpart Z."

Dr. James Melius, Division of Environment Health Assessment, State of New York Department of Health Medical Surveillance, and one of OSHA's expert witnesses in occupational medicine, stated in his testimony (Tr. pg. 115) that, "I think it's important that the OSHA standards be supplemented by information from NIOSH and ACGIH, both of which cover a larger number of chemicals or toxic substances and both of which include, or at least consider, more up to date information on the toxicity of these substances."

In addition, during the public hearings, OSHA, through its panel of staff members specifically asked Captain Richard A. Lemen, Director of the Division of Standards Development and Technology Transfer within NIOSH, about the peer review process of NIOSH RELs. Mr. Thomas Seymour of OSHA directed the following question to Captain Lemen (Tr. pg. 195).

> [Mr. Seymour:] We have received some feedback in our record about the order of the hierarchy that we have used for permissible exposure limits. There have been statements made that the RELs are not peer-reviewed or developed. I wonder if you might describe to us how the RELs have been developed by the National Institute for Occupational Safety and Health.

Captain Lemen's response (Tr. pgs. 195–197) to Mr. Seymour was:

> Okay. In response to the peer review question, I would say that probably the RELs were more peer reviewed than most recommendations. The first process of developing an REL at National Institute for Occupational Safety and Health is to propose such a recommendation be developed to the Director of NIOSH through a position paper.
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> That is then reviewed by senior NIOSH staff. Once that approval is given, a criteria manager then develops the recommended exposure standard in the form of a criteria document.
>
> Once the criteria document has gone through several layers of review within NIOSH, it is then sent out for external review. On the average, we usually send out to more than 40 experts in the field that document for their external comments.
>
> We receive those comments back. We incorporate those comments where appropriate. We then submit the document through the same internal review within NIOSH. It goes through every division within the Institute and it finally winds up in the senior review staff at the directors' level at our headquarters in Atlanta.
>
> A meeting is then held with the Director of NIOSH at which time the criteria manager and the senior scientists within the Institute [review] all of the reviewer—external and internal reviewer—comments and a decision is made by the Director of NIOSH whether or not to publish a recommended exposure limit.
>
> If the decision is to publish, then we do so and submit that criteria document to the Director of OSHA.
>
> So it goes through a very extensive peer review process compared to, for example, an article submitted to peer-review journal which is written by a researcher and generally sent out to three to five individuals to review before it's placed in a peer review journal.
>
> So the extensiveness of our review process, I think, is much greater than that for a peer-preview journal article.

In light of these comments OSHA has concluded that the NIOSH REL's have undergone the necessary peer review to be included in the standard's hierarchy of limits.

The term "established exposure levels" was defined in the proposal to indicate the levels which would trigger medical surveillance of the exposed employees. The term included not only OSHA established PELs, but also

exposure limits suggested by NIOSH and ACGIH. After review of these and other comments, OSHA concludes that it is appropriate to go beyond the OSHA established PELs in triggering medical surveillance. First, medical surveillance is appropriate for workers exposed to toxic chemicals other than those covered by the PEL's. Second, because of the broadly-worded language in section 126(b)(3), which requires medical surveillance for workers engaged in hazardous waste operations "which would expose them to toxic substances." Some of these "toxic substances" are not included in the OSHA PELs. When OSHA completes its rulemaking on the air contamination proposal (PEL's project), there will be fewer toxic substances not covered by PEL's. But in light of Congressional language and the large number of hazardous chemicals present in an uncontrolled hazardous waste site, OSHA concludes that this definition is appropriate to protect employee safety and health.

The term "permissible exposure limits" was defined in the proposal as the inhalation or dermal permissible exposure limit specified in 29 CFR Part 1910, Subpart Z. As a result of the comments received in the record, OSHA has amended its definition that ignored the health limits specified in Subpart G, for "permissible exposure limits."

OSHA has amended the definition for "permissible exposure limits" to include a reference to Subpart G of Part 1910. It now includes both Subpart Z health hazards and those requirements in Subpart G of Part 1910.

First, OSHA has changed the term "established exposure levels" to the term "published exposure level" to reduce confusion. Second, the term "published exposure level" is defined as the exposure limits published in "NIOSH Recommendations for Occupational Health Standards" dated 1986, incorporated by reference, or if none is specified, the exposure limits published in the standards specified by the American Conference of Governmental Industrial Hygienists in their publication "Threshold Limit Values and Biological Exposure Indices for 1987–88" dated 1987, incorporated by reference. Third, the provisions of (f)(2) on medical surveillance have been changed to cover overexposures to both PEL's and, if none, then over-exposure to published exposure limits. OSHA concludes that with these changes the definitions are clear, comprehensive and carry out both statutory directives and appropriate medical criteria in determining whether medical surveillance is required. Some commenters stated a broader guide is necessary for respirator use and that is discussed under paragraph (g).

OSHA requested comment on the appropriateness of its definitions of hazardous waste, health hazard and hazardous substance and whether they were consistent with EPA and DOT practice. Several comments were received on these issues. One set of comments criticized OSHA's incorporation of petroleum and petroleum products in its definition of hazardous substances.

A typical comment was made by EXXON (10–33). In their comments EXXON presented the following discussion:

> Perhaps the most fundamental misinterpretation contained in this rule is the inclusion of petroleum and petroleum products in the definition of hazardous substance. As discussed in Comment II.A.4.v. below at pages 11 to 14 [internal EXXON comment references], Congress, the Environmental Protection Agency (EPA), and the Department of Transportation (DOT) have uniformly recognized the inappropriateness of characterizing petroleum as a hazardous substance. There is no indication in SARA Section 126 that Congress intended to change the petroleum exclusion or to subject petroleum releases to emergency response regulation.

EXXON further stated:

> It is EXXON's understanding that a situation is not an emergency response subject to the requirements of paragraph (1) unless there is a release of a "hazardous substance." Therefore it is essential that the definition of "hazardous substance" be accurate and correct.
>
> The proposed definition of "hazardous substance" references the Department of Transportation's definition of "hazardous materials" under 49 CFR 171.8. By so doing, petroleum and petroleum products have been included as hazardous substances; and, related spills may be subject to the burdensome requirements for emergency response operations.
>
> Congress, in the very CERCLA sections cited in the proposed definition of "hazardous substance," has recognized that petroleum and petroleum products are excluded from the federal definition of "hazardous substance." EPA regulations under CERCLA have incorporated this congressional directive. *See* 40 CFR Part 302 and discussion at 50 FR 13456, 13460 (April 4, 1985). DOT has specifically recognized this Federal petroleum exclusion and incorporated the exclusion in its definition of "hazardous substance." *See* 52 FR 24474 (July 1, 1987). As such, the proposed OSHA definition is inconsistent with the CERCLA, EPA and DOT definitions of "hazardous substance."
>
> The proposed definition of "hazardous waste" includes the EPA RCRA definition of hazardous waste and the DOT definitions at 49 CFR 171.8. The cited DOT regulation defines both hazardous substances and hazardous wastes. As noted above, the DOT definition of hazardous substance at 49 CFR 171.8 should properly be incorporated in the proposed OSHA definition of hazardous substance. It is not a waste definition. Therefore, the proposed definition of hazardous waste should be limited to waste materials; and, the DOT definition of hazardous substance should be clearly excluded.

OSHA does not agree with these arguments. Section 126 of SARA is directed to protecting workers from the hazards of all hazardous waste spills. Petroleum products create significant health and safety hazards. Many comments supported OSHA's incorporation of petroleum and petroleum products.

During the questioning of Dr. Kenneth H. Chase, M.D., President of the Washington Occupational Health Associates, Inc., Mr. Chappell Pierce of the OSHA panel asked Dr. Chase the following question (Tr. pg. 551):"Do you feel that medical monitoring for these types of products [petroleum products] is appropriate?"

Dr. Chase responded,"Petroleum products is just too broad a term for me to answer that in a general way. Certain petroleum derivatives are more toxic than others. Some have acute toxicity; others subacute toxicity; and others, the concern is more about chronic toxicity that is most difficult to detect."

During the hearings, OSHA asked many of the individuals who testified if petroleum and petroleum products should be included in the definition of hazardous substances.

Representative of the responses made to this question was the testimony of the Prince Georges County Fire Department; the International Association of Fire Fighters, AFL–CIO; NIOSH; and the Seattle, Washington Fire Department.

Mr. Gregory Noll, the Hazardous Materials Coordinator for the Prince George's County Maryland Fire Department, testified on the issue (Tr. pg. 448). Mr. Thomas Seymour of the OSHA panel addressed Mr. Noll by stating: "I notice in your testimony, on page 3, that you indicate that at least 50 percent of your responses are involved with flammable liquids or gas emergencies. The definition that OSHA is using in this rulemaking for hazardous substances dealing with and covering flammable liquids and gases you find, then, appropriate?"

Mr. Noll responded, "I think realistically, from the perspective of fire service, we've been successfully handling flammable liquid and gas emergencies for a number of years. Today, with HAZMATs being the buzz word, certainly those categories of

commodities have been thrown into the hazardous materials field.

"We now regard them in the hazardous materials field from a practical perspective."

Mr. Thomas Seymour of the OSHA panel asked Mr. Richard Duffy of the International Association of Fire Fighters (Tr. pg. 110), "Mr. Duffy, we have had some previous commenters who have advocated that petroleum and petroleum products be excluded from the scope of the standard.

The example that you just gave about the propane tank inside the building exploding and killing fire fighters, what is your opinion about whether we should exclude petroleum products from this standard?"

Mr. Duffy responded: "I don't know how we would classify them. I would object to that. I mean, I don't know how to better qualify—I could talk to you for days about incidents involving petroleum products. I don't see any reason to exclude them any more than excluding the oxidizers or any group. I mean, you could pick lots of products and ask to exclude them. And I'm sure a lot of the lobbying entities can establish reasons for it. But I can't see any in terms for fire fighters."

Mr. Charles Gordon of the Department of Labor's Office of the Solicitor and a member of the OSHA panel asked Captain Richard A. Lemen, Director of the Division of Standards Development and Technology Transfer of, NIOSH the following question (Tr. pg. 200–201): "In the case of spills of petroleum or petroleum products in either an emergency response situation or as a hazardous waste dump were there are petroleum products as one of the major contaminants, is it appropriate for all the provisions of the OSHA standard or the recommendations to apply in those circumstances?"

Captain Lemen responded, "We believe it is appropriate and they should apply in those circumstances, as well."

Mr. Seymour also asked Deputy Chief Roger Ramsey of the Seattle Fire Department (Tr. pg. 142): "I gather from what you have also said that the definition we have, including the DOT hazardous material definition for hazardous substance and materials is appropriate, and that we should not exclude petroleum products from the coverage of this standard?"

Deputy Chief Ramsey responded, "Absolutely not."

Many spills and emergency response to these spills involve petroleum products. These spills present both health and safety risks. Training is necessary to protect employees who respond to petroleum spills as with other spills. In fact, these are usually the same employees.

OSHA concludes that it is crucial to cover responses to petroleum spills as well as all other spills because petroleum products constitute a substantial threat to employees responding to accidental releases of these substances. Many petroleum products present health hazards as well as fire and explosion hazards. In addition they often contain fractions which present high health hazards. For example, many contain benezene, a carcinogen to which employees may be exposed.

Therefore, OSHA is not amending its definition for "hazardous substance" to include the petroleum exclusion referenced by some of the commenters.

The other definitions are discussed in the preamble to the proposal for this rulemaking. There were no major comments. OSHA concludes that those definitions are appropriate for the reasons stated in the proposal preamble.

Paragraph (b)—Safety and Health Program

Paragraph (b) of the proposal has been reorganized for clarity as a result of the public comment. Basic requirements remain the same. Specific changes are discussed below. This paragraph basically requires that a written safety and health program cover safety and health organization and specific work practices to assure employee safety and health. OSHA has concluded that it is crucial for employee safety and health to have a written safety and health program that would force the systematic identification of site hazards and identify employee response to those hazards. The written plan is necessary to communicate hazards to employees for their awareness and protection. (See preamble discussion at 52 FR 29624.)

OSHA received many comments supporting the requirement for a written safety and health program (i.e, State of Wyoming, 10–9; James T. Dufour, 10–78; International Association of Fire Fighters Local 291, 10–12); other commenters have made suggestions for changes to the proposed language.

OSHA concludes that for the reasons stated a written program is necessary. The following discussion covers specific changes.

OSHA has included a non-mandatory note at the beginning of new paragraph (b) that explains the acceptability of safety and health programs developed and implemented to meet other Federal, state, or local regulations in meeting the requirements of this paragraph. Some commenters believed that OSHA's requirements for a safety and health program were somewhat duplicative of the contingency plans and emergency response plans required by the E.P.A. for its permit requirements (i.e., Tennessee Valley Authority, 10–43; National Paint and Coating Association, 10–72; Johnson Wax, 10–84). OSHA will permit existing programs that have been designed to meet other government or corporate requirements. For example, contingency plans developed under 40 CFR 265.50 are acceptable in meeting this requirement if they are supplemented with the provisions established by the OSHA standard. OSHA does not intend to require the duplication of efforts made to meet other governmental regulations. Therefore, any plan containing all of the elements required for the OSHA plan will be acceptable in meeting this requirement without the need for developing a separate OSHA plan.

In paragraph (b)(1) of the final rule OSHA has taken the language proposed in paragraphs (b)(1)(i), (b)(2), and (b)(3) of the proposal and subdivided it into paragraphs (b)(1)(i), (b)(1)(ii), (b)(1)(iii), and (b)(1)(iv). Paragraph (b)(1)(i) contains the first two sentences of the proposal along with two new sentences that clarify what the safety and health program shall include. OSHA has included the new sentences and the new note to this paragraph to provide further guidance to employers who may need assistance in developing their safety and health program.

In paragraph (b)(1)(ii) of the final rule OSHA is using the last sentence and the list of chapters proposed in paragraph (b)(1)(i) and subparagraphs (A) through (C). There are no changes made to the language as proposed other than a recodification of the paragraphs.

In paragraph (b)(1)(iii) of the final rule OSHA is using the exact language proposed in paragraph (b)(2). The proposed language has been moved to this paragraph because it contains a requirement that is of a general nature.

In paragraph (b)(1)(iv) of the final rule OSHA is using the language proposed in paragraph (b)(3)(i) with one exception. A new phrase would require the employer to inform contractors and subcontractors of the site emergency response procedures in addition to the proposed information. One commenter, CDM Federal Programs Corporation (10–83), suggested revised language to the proposal that would assure that the contractors and subcontractors received the site specific safety and health plan as well as the safety and health programs. OSHA agrees with the suggestion of the commenter and that

the new language accomplishes the recommended change suggested by CDM Federal Programs.

In paragraph (b)(1)(v) of the final rule OSHA is using the exact language of proposed paragraph (b)(3)(ii).

In paragraphs (b)(2), (b)(3), and (b)(4) of the final rule OSHA is using the exact language of paragraphs (b)(1)(ii), (b)(1)(iii), and (b)(1)(iv) of the proposal. One commenter, James T. Dufour (10–78), while supporting the use of safety and health plans as an appropriate communication tool for identifying site hazards, suggested that OSHA should require a more comprehensive review and control of the plan to assure its professional quality. OSHA believes that the language of paragraph (b)(4)(iv) would provide for this type of oversight and control. Therefore, the only change to paragraphs (b)(1)(ii) through (b)(1)(iv) is a recodification of the paragraphs.

Paragraph (c)—Site Characterization and Analysis.

The employer needs to know the hazards faced by employees in order to develop and implement effective control measures. Site characterization provides the information needed to identify site hazards and to select employee protection methods. The more accurate, detailed, and comprehensive the information available about a site, the more the protective measures can be tailored to the actual hazards that the employees may encounter. Congress clearly intended that such a requirement be included. Section 126(b)(1) of SARA provides that the proposal include "requirements for a formal hazard analysis of the site * * *."

It is important to recognize that site characterization is a continuous process. At each phase of site characterization, information is obtained and evaluated to define the potential hazards of the site. This assessment is to be used to develop a safety and health plan for the next phase of work. In addition to the formal information gathering that takes place during the phases of site characterization described above, all site personnel should be constantly alert for new information about site conditions.

In paragraph (c) of the final rule OSHA has used most of the language in paragraph (c) of the proposal. New headnotes have been added to the major paragraphs to make reading the requirements easier.

In paragraphs (c)(1) through (c)(4) of the final rule, OSHA has used the language of paragraphs (c)(1) through (c)(3) of the proposal. The reason for the one additional paragraph in the final rule is that OSHA has numbered the initial unnumbered paragraph in the proposal, and renumbered the rest. This is an editorial change and does not change any of the proposed requirements.

In paragraph (c)(5) of the final rule, OSHA is using the language of paragraph (c)(4) of the proposal with one change. Paragraph (c)(4)(ii) of the proposal has been revised as paragraph (c)(5)(ii). The new requirement still requires the use of a five minute escape self-contained breathing apparatus, however, its need is now based upon two conditions. In the proposal, all employees had to have access to an ESCBA during initial site entry. Two commenters, the State of Wyoming (10–9) and CDM Federal Programs Corporation (10–83), suggested that OSHA revise this requirement to recognize that the use of ESCBAs should be determined by the nature of the health hazards and the nature of the work to be performed. OSHA agrees that all employees who cannot be exposed to site conditions where possible health hazards may occur should not be required to carry ESCBAs. Therefore OSHA has amended its proposal as follows. Two conditions will now limit the employee population that must be provided access to ESCBA. They are (1) if positive-pressure self-contained breathing apparatus is not used as part of the entry personal protective equipment; and (2) if respiratory protection is warranted by the potential hazards identified during the preliminary site evaluation. Workers in populations where these two conditions are not met need not be provided with ESCBA.

Paragraphs (c)(5)(i), (c)(5)(iii), and (c)(5)(iv) contain the exact language as proposed in paragraphs (c)(4)(i), (c)(4)(iii), and (c)(4)(iv).

In paragraph (c)(6) of the final rule; OSHA is using the language from paragraph (c)(5) of the proposal with some changes.

In paragraph (c)(6)(ii) of the final rule, OSHA has required that direct reading instruments be used where available. In the proposal OSHA had required only that appropriate equipment be used. The agency believes that direct reading instruments, where they are available for specific chemical hazards, will provide a more expeditious assessment of the hazards when there is not enough time during a specific work cycle to send samples out to a laboratory for analysis. In some situations, employees may be present at a particular job site for only a brief time. Certain sampling techniques, other than direct reading instruments, may require a longer time for analysis than the employee's actual exposure time on the job. Therefore, OSHA is amending its proposal by recognizing direct reading instruments as an alternative to standard testing procedures. OSHA has added the phrase "appropriate direct reading test equipment" in place of "appropriate equipment."

OSHA has also added a paragraph (c)(6)(iv) that would require that an ongoing air monitoring program be implemented in accordance with paragraph (h) of the final rule after site characterization has determined that the site is safe for start-up of operations. This is not a new requirement since it uses the same language as that proposed in paragraph (c)(8) of the proposal. OSHA has moved the paragraph from its position in the proposal to paragraph (c)(6)(iv) of the final rule because it is related to the subject matter of paragraph (c)(6). OSHA considers this to be an editorial change because there is no change in the proposed language.

Paragraphs (c)(6)(i) and (c)(6)(iii) continue to use the language of proposed paragraphs (c)(5)(i) and (c)(5)(iii).

In paragraph (c)(7) of the final rule OSHA is using the language of proposed paragraph (c)(6) with one change. In the note which describes risks to be considered, OSHA has amended paragraph (a) by changing the language to reflect the exposure limits and levels to be used in the final rule. Direct reference to Permissible Exposure Limits (PELs), Threshold Limit Values (TLVs), or Recommended Exposure Limits (RELs) has been deleted and a reference is made to permissible exposure limits and published exposure levels as defined in the final rule. No substantive change is made since those terms incorporate PELs, TLVs, and RELs by definition.

Paragraph (d)—Site Control

In paragraph (d) of the final rule OSHA is using the language of paragraph (d) of the proposal. Minor editorial changes have been made for clarity without changing the proposed requirements. The need for requirements for site control is discussed at 52 FR 29625 in the preamble to our proposal. There were few substantive comments. OSHA concludes that these provisions are necessary as discussed in the proposal.

Paragraph (e)—Training

The proposed rule included specific provisions for initial and routine training of employees before they would be permitted to engage in hazardous waste operations that could expose them to

safety and health hazards. Section 126(b)(2) of SARA requires initial and recurrent training to be included in the final rule. The intent of the final training provisions is to provide employees with the knowledge and skills necessary to perform hazardous waste clean-up operations with minimal risk to their safety and health.

The proposed requirements for training in paragraph (e) addressed the needs of employees who will be working at CERCLA sites, certain RCRA sites, and sites designated or identified for clean-up by state or local governments.

The proposed provisions included a minimum of 40 hours of initial instruction off the site, and a minimum of three days of actual field experience under the direct supervision of a trained and experienced supervisor, at the time of job assignment. Congress has specifically imposed these hour and day requirements under section 126(d) of SARA for the proposed final standard. The proposed requirement represented a one-time effort by the employer for each employee covered by this standard. Employees would not need to be retrained for 40 hours at each site at which they work. Employees who had received the required training at one site could use that training to meet the proposed requirement at other sites even if it involved a different employer, provided the previous training addressed the hazards at the new site.

There are often many hazards at a waste site. The employee must be trained to recognize the hazards and appropriate work practices to minimize those hazards. The employee must also be well trained in the use of respirators and other forms of personal protective equipment. Without training, that equipment may not be used effectively and may not provide adequate protection. An extensive training program is necessary to assure that employees can use personal protective equipment effectively.

Managers and supervisors at regulated facilities, who are directly responsible for the site's operations, must have the same training as that of site employees and additional time for specialized training on managing hazardous waste operations. Since these managers and supervisors are responsible for directing others, it is necessary to enhance their ability to provide guidance and to make informed decisions. Section 126(d)(2) of SARA provides that there shall be eight hours of additional training for supervisors and managers.

The provisions also proposed that employees be retrained on an annual basis on relevant matters such as review of health hazards and the use of personal protective equipment. Employees at hazardous waste operations may face serious health and safety risks. Reminders are needed of this and of work practices necessary to avoid hazards. Personal protective equipment provides much of this protection. If there is no retraining in the use, care and maintenance of personal protective equipment, such equipment is unlikely to be properly utilized to provide adequate protection.

In all areas of training, whether it be for general site employees, supervisors at the site, or for the use of specific equipment, the level of training provided must be consistent with the worker's job function and responsibilities. Refresher training must be provided to reemphasize the initial training and to update employees on any new policies or procedures.

Section 126(d)(3) of SARA requires that OSHA provide for certification that an employee has received the training required by the standard. Section 126(d)(1) provides that OSHA not require training for employees who have already received equivalent training. The final standard has provisions to meet this directive.

OSHA requested comment as to whether its proposed training requirements were appropriate for hazardous waste operations. OSHA's proposed training requirements in paragraph (e) were limited to hazardous waste operations that involve the clean-up of uncontrolled hazardous waste disposal sites. Of all the issues raised by OSHA in its proposal, training was one that received a substantial amount of comment. Important comments directed to the paragraph (e) training requirements follow. Comments addressing the training of emergency response workers will be discussed later in this preamble under the appropriate paragraphs.

In paragraph (e)(1) of the final rule OSHA has combined the introductory paragraph of proposed paragraph (e) with the language proposed in paragraph (e)(5). The introductory paragraph of the proposal has been designated paragraph (e)(1)(i) and proposed paragraph (e)(5) has been designated (e)(1)(ii). OSHA considers this an editorial change which groups two general requirements under a single paragraph titled "General."

In paragraph (e)(2) of the final rule OSHA is using the language of paragraph (e)(1) in the proposal. Some minor changes are made to reflect the renumbering of the paragraph without changing any of the proposed requirements.

In paragraph (e)(3) of the final rule OSHA is revising the proposed language of paragraph (e)(2) of the proposal. Several comments addressed the proposed 40-hour training requirement for all employees who work on hazardous waste sites (i.e., Wassau Insurance Company, 10–8; International Technologies, 10–44; Cooperweld Steel, 10–41; James T. Dufour, 10–78). Some of the commenters believed that 40 hours of training for some employees at this type of site was excessive. For example, it was argued that 40 hours of training was excessive for general laborers who may be installing perimeter fencing around an unopened site and who are not exposed to any hazards. This type of employee normally will not be wearing the type of protective equipment or be performing the type of tasks normally associated with removal of hazardous wastes. On the other hand, employees who will be "digging in the dirt" after the site has been opened in order to remove hazardous waste may need additional training because of the types of equipment they will be using and the types of hazards to which they will be exposed.

Wassau Insurance commented, "I feel the 40 hour minimum training requirement is excessive for many employees who will never be required to work above level D protection." The commenter continues, "The excessive training requirements of the current proposal add a significant burden to employers in situations where only low levels of protection are required (e.g., level D and level C situations)."

OSHA has revised its proposal for 40 hours of training for all employees engaged in hazardous waste operations at uncontrolled hazardous waste sites. For general site workers, OSHA is retaining the 40-hour, three-day on-the-job training requirement. OSHA has concluded that this level of training is necessary to protect general site workers because they are engaged in difficult work in areas with safety and health hazards. Moreover, OSHA believes the Congressional language is quite clear on this matter.

However, for certain types of other workers, OSHA has concluded that less training may be appropriate. For example, those workers who visit sites only on occasion and then under the supervision of experienced site workers are required to have 24 hours of training and one-day of on-the-job training. OSHA has also concluded that this same level of training would be appropriate for those general site workers who work in areas which have been monitored and fully characterized

indicating that exposures are under both permissible exposure limits and published exposure limits and that respirators are not necessary.

In paragraph (e)(4) of the final rule OSHA is using the language proposed in paragraph (e)(3).

In paragraph (e)(5) of the final rule OSHA is using the language proposed in paragraph (e)(4) with the addition of a new sentence. Some commenters thought that the proposed language for the qualification of trainers was too broad and ambiguous. The State of Indiana (10–23) offered a representative comment: "Knowledge or training equivalent to (redundant phrase removed) a level of training higher than the level that they are presenting is no assurance that an employee is capable of providing adequate training to other employees."

Another commenter, the International Union of Operating Engineers (10–58), stated, "We believe it irresponsible to summarily state that trainers must be 'qualified,' without defining the term other than to suggest that one who knows more than the person he trains may be a qualified trainer."

Subsequent to the receipt of post-hearing briefs, Congress amended section 126(d) of SARA to require the Secretary of Labor to develop requirements for the certification of training programs offered to employees and employers who must meet the training requirements of this standard. OSHA will soon be publishing a Notice of Proposed Rulemaking to carry out this Congressional direction. The requirements of that rulemaking will expand on the provisions stated in this rulemaking.

In order to provide interim guidance to employees and employers in determining the competency of trainers and their qualifications, OSHA has added two sentences to the proposed language. These sentences require the use and demonstration of training, credentials and experience to show competency as a trainer.

In paragraph (e)(6) of the final rule OSHA is using the language of proposed paragraph (e)(6) with one minor change. In addition to permitting certification to be given by the classroom instructor, OSHA will also recognize certifications given by the head or supervisory instructor of the training facility. This change recognizes the fact that some training certificates are signed by the head instructor upon recommendation of the classroom instructor, rather than by the individual classroom instructor.

In paragraph (e)(7) of the final rule OSHA is using the exact language of proposed paragraph (e)(7).

In paragraph (e)(8) of the final rule OSHA is using the language of proposed paragraph (e)(8) with the addition of an example of the type of refresher training that OSHA would consider acceptable. OSHA considers, and has now suggested, that critiques of prior emergency response performance can serve as a means of refresher training. Critiques of performance during an emergency response can give employees a training experience in which they have actual knowledge of the acceptable or nonacceptable actions taken during the response. Such critiques can also provide employees with the experience they may need to perform in a more appropriate manner during their next response. The proposed requirement for annual refresher training has not been changed.

In paragraph (e)(9) of the final rule OSHA is using the exact language of paragraph (e)(9) in the proposal.

Paragraph (f)—Medical Surveillance

The proposed rule included specific provisions for baseline, periodic and termination medical examinations. Section 126(b)(3) of SARA provides that this rule include requirements for medical examinations of workers engaged in hazardous waste operations. In addition, the EPA manual referred to in section 126(e) of SARA has more detailed requirements for initial or baseline, periodic and termination medical examinations. The clear Congressional direction is to provide a comprehensive medical surveillance program for employees engaged in hazardous waste operations where it is medically prudent.

In paragraphs (f)(1) and (f)(2) OSHA is making some changes for clarity. In addition, OSHA is using the new term "permissible exposure limits or published exposure levels" instead of the term "established exposure levels." The reasoning for this change has been discussed under the paragraph of this preamble addressing definitions.

OSHA would like to clarify an issue concerning who is covered by medical surveillance under paragraph (f)(2) that has cause confusion since the promulgation of the interim final rule. After reviewing the record of comments addressing medical surveillance, it seems that several commenters, in particular from the fire service (i.e., 10–1, 10–3, 10–4, 10–12, 10–32 10–79), believe that all firefighters must have the medical surveillance protections of paragraph (f) since they may wear respirators 30 days or more a year. Firefighters responding to structural fires will typically wear self-contained breathing apparatus when they enter burning structures or other hazardous locations and they may make such responses 30 days or more a year. OSHA is not requiring all firefighters who wear respirators 30 days or more a year to have medical surveillance. Paragraph (f) applies only to individuals within the scope of paragraph (a)(1)(i) through (a)(1)(iii) as set forth in paragraph (a)(2)(ii). Typical firefighters from local fire departments do not fall within this scope. These firefighters are normally covered by the requirements of paragraph (q) as specified in paragraph (a)(2)(iv). Paragraph (q) does not contain requirements for medical surveillance of firefighters unless they are members of an organized and designated hazardous materials response team, are hazardous materials specialists, or have been injured due to an overexposure to health hazards during an emergency incident involving hazardous substances as established in paragraphs (e)(9) (i) and (ii) of the final rule.

In paragraph (f)(3) of the final OSHA is using the language proposed in paragraph (f)(2) with some changes. In new paragraph (f)(3)(i)(B), OSHA is adding the phrase "unless the attending physician believes a longer interval is appropriate" to the proposed language of paragraph (f)(2)(i)(B). Several commenters (State of Wyoming, 10–9; American Society of Safety Engineers, 10–29; Union Carbide Corporation, 10–56) suggested that an annual medical examination may be excessive for some employees, particularly when an attending physician can make a recommendation for a less frequent schedule. The American Society of Safety Engineers (10–29) stated, "This reviewer concurs in the approach that OSHA has outlined in this comment area that the practical health benefit of annual medical examination for hazardous waste operation workers is indeed uncertain. This is a broad area that requires input from the attending physician, the employee and the employer. It is recommended that annual medical examination *not* be required rigidly, that this be a flexible time frequency."

Wyoming (10–9) stated, "Periodic occupational health physical examination on an annual basis may not be warranted under all conditions." They go on to state, "It seems reasonable that a good occupational health program requiring physical examination would be based upon documented personal exposure levels and a medical physician's recommendation rather than on an arbitrary administrative decision to require personnel to undergo annual

periodic physicals if they fit into the categories under § 1910.120 (f)(1)(i) and (f)(1)(ii)."

Union Carbide (10–56) said, "The frequency of medical examinations and consultations in this proposed rule has been redefined and the proposed change clarifies the issue of medical surveillance but retains the annual requirement for 'all employees who wear a respirator * * *.' This frequency of examination is arbitrary. There is not medically-supportable rational for this annual requirement."

There were also comments in support of OSHA's annual physical examination requirement. The Occupational Health Nurses (10–30) stated, "AAOHN supports pre-exposure, annual, and exit examinations with provision of additional exams if over-exposure or signs or symptoms develop." Lockheed (10–45) responded to OSHA's question on whether examinations should be performed yearly, or at other intervals by stating, "Medical exams should be performed at least yearly."

GSX Chemical Services, Inc. (10–63) stated, "(12) Paragraph (f) describes medical surveillance requirements. The general program described by OSHA for pre-employment, annual, post-exposure, and termination medical examinations is excellent."

BP America, Inc. (10–85) stated, "The need for medical surveillance of workers who would be covered under the provisions of the proposed regulation is appropriate and is supported." They further state, "The proposed requirement to examine workers exposed in emergency situations, but not continue periodic surveillance simply because of the single episode, *per se*, is logical, and is strongly supported. Having such employees continue under periodic medical surveillance on the basis of the findings of the medical examination is, of course, appropriate."

Because of variations in employee exposures due to work schedules, annual physicals may not be medically necessary. OSHA concludes that annual medical examinations may not always be appropriate. Accordingly the standard is amended to permit the physician to reduce the frequency to not less than bi-annually if the physician believes it is appropriate. The physician may also increase the frequency if it is medically appropriate.

OSHA has also replaced the term "established exposure limits" with the phrase "permissible exposure limits or published exposure levels" in new paragraph (f)(3)(i)(D) since the terms have been redefined as previously explained.

The rest of the language in new paragraph (f)(3) remains as it was proposed in paragraph (f)(2).

In paragraph (f)(4)(i) of the final rule OSHA is using the exact language proposed in paragraph (f)(3)(i).

In paragraph (f)(4)(ii) of the final OSHA is using the language of proposed paragraph (f)(3)(ii) with one change. OSHA is still requiring that the content of medical examination and consultations be determined by the attending physician. However, OSHA has added language that would direct the employee, employer, and physician to Appendix D for guidelines in developing the examination.

Several commenters requested guidance on the content of the medical examinations required by the proposal. The Okolona Fire District (10–1) commented, "As, written the current document is rather vague." They continued, ". . . the document should give guidance on what the physical examination should entail." The American Association of Occupational Health Nurses (10–30), suggested, "At least minimum content of the physical examination should be specified. An "exam" may be no more than visual inspection of an individual's eyes, ears and throat and have no relevance to the exposure situation."

Other commenters supported OSHA's proposal for the employer and the physician to determine examination protocols. Eastman Kodak (10–38) commented, "We support OSHA's position that the physician is best able to determine an appropriate medical surveillance protocol. As noted by OSHA, employees may be exposed to differing substances and may be required to use differing levels of personal protective equipment, such as respirators. In view of the particular circumstances presented, the physician is in the best position to formulate and follow an appropriate medical protocol. OSHA should not include a detailed protocol for medical surveillance." Lockheed (10–45) responded to OSHA's issue on protocols, "No. As with training, differences in amounts, kinds and combinations of exposures in different working situations require that protocol for medical surveillance be left to the discretion of the attending physician."

Dr. James Melius testified, "I'd like to direct most of my testimony to discussions of medical surveillance programs for hazardous waste and emergency response workers. I'd like to begin be saying that programs for both of these sets of workers are extremely important." (Tr. pg. 107) He goes on to say, "The medical surveillance program for the workers, therefore, should start with initially assessing their ability to work at the site and their capability for conducting that work. It should include an assessment that focuses through a medical history and initial physical examination on their cardiovascular and respiratory system, also looking for signs of other major medical problems. Selective testing may also be useful in these instance, including pulmonary function testing, chest x-rays and electrocardiograms. However, the workers may differ in their benefits from this testing depending on their age and other risk factors." (Tr. pgs. 110–111)

OSHA believes both sides of the argument can be addressed by placing recommended criteria for medical examination protocols in the Appendix to this section. Some commenters have suggested protocols that OSHA considered for placement in the Appendix. The St. Petersburg Fire Department (10–4) suggested, "A full physical examination: height, weight, eyesight, pulse, blood pressure, respiratory, skin examination, neurological examination, heart and lungs, medical history, and any other aspects determined by the physician. Also included are: Pulmonary function test, chest X-ray, urine analysis, SMA 18 blood test, and hearing examination." The chapter on medical surveillance found in the OSHA/NIOSH/EPA/Coast Guard manual in Appendix F also provides guidance. OSHA also believes that the language of Appendix F will provide guidance for developing the examination protocol.

In paragraph (f)(5) of the final rule OSHA is using the language of paragraph (f)(4) in the proposal with one change. OSHA has added a recommendation that a physician licensed in occupational medicine be used to supervise or administer the examination. Several commenters suggested that the use of such a physician would assure a more complete occupation-oriented examination than one offered by a physician licensed in another field.

Representative of these comments was the suggestion of the American Association of Occupational Health Nurses (10–30). The AAOHN (10–30) stated, "The nature of the potential exposures in hazardous waste operations requires specialized knowledge in toxicology—knowledge of signs and symptoms and effects of exposure to various substances—not common in basic health professional curricula. This is information that both occupational health nurses and physicians may have via advance

education degrees or continuing education, certification and experience." The AAOHN recommended that OSHA change its proposed language to require the examination to be performed "by a registered professional nurse or licensed physician with training and expertise in evaluating exposures to hazardous substances."

In recognition of AAOHN's comments, OSHA has added the recommendation for the use of a physician from the field of occupational health. The language of the final rule, while it does not preclude the use of occupational nurses, does not specifically call for the use of an occupational nurse. The final language requires that the examination be conducted under the supervision of a licensed physician and that would certainly allow the use of occupational nurses if the attending physician permits.

In paragraphs (f)(6), (f)(7) and (f)(8) of the final rule OSHA is using the exact language proposed in paragraphs (f)(5), (f)(6) and (f)(7)

Paragraph (g)—Engineering controls, work practices, and personal protective equipment for employee protection

OSHA is using the same opening paragraph for paragraph (g) that was in the opening paragraph for paragraph (g) in the proposal.

In paragraph (g)(1)(i) of the final rule OSHA is using the language of paragraph (g)(1)(i) of the proposal.

In paragraphs (g)(1)(ii) and (g)(1)(iii) of the final rule OSHA is using the exact language of paragraphs (g)(1)(ii) and (g)(1)(iii) of the proposal, except that the reference to Subpart G is deleted. A new paragraph (g)(1)(iv) is added to cross reference the requirements of Subpart G for clarity.

In paragraph (g)(2) of the final rule OSHA is using the language proposed in paragraph (g)(2) with some editorial modifications.

In paragraphs (g)(3), (g)(4) and (g)(5) of the final rule OSHA is using the language of paragraphs (g)(3), (g)(4) and (g)(5) in the proposal with minor editorial corrections to be consistent with the terms and language of the final rule.

Paragraph (h)—Monitoring

In paragraph (h)(1) of the final rule OSHA has combined the proposed language in the opening paragraph and paragraph (h)(1) of the proposal with a clarification. The new paragraphs are designated (h)(1)(i) and (h)(1)(ii).

In paragraph (h)(1)(i), OSHA has modified its proposed language by adding the phrase, "where it is not obvious that an exposure does or does not exist." OSHA is adding this phrase to clarify that monitoring is not necessary where the site environment or safety precautions taken by the employer prevent employee exposure to hazardous levels of chemical exposure. OSHA is only requiring monitoring where there may be a question as to an employee's exposure. When there is a question then the employer should monitor. Where there is no question of exposure, then monitoring is not necessary. For example, if it is obvious through site characterization and analysis that there are no exposures at the worksite, monitoring need not be performed unless worksite conditions or work practices change to the extent that workers could be potentially exposed to hazardous concentrations of chemical exposure. If an employer decides that employees should wear level B protection in an area where exposure will most probably be below the PEL's, then during initial entry monitoring will not be necessary because the employees are more than adequately protected.

In paragraphs (h)(2) and (h)(3) of the final rule, OSHA is using the language proposed in paragraphs (h)(2) and (h)(3) except for two changes. First, OSHA is adding language to clarify that monitoring should be used to determine exposure above permissible exposure limits which are not immediately dangerous to life or health. Second, OSHA is deleting proposed subparagraph (h)(3)(v) because it is too general in nature and the previous four subparagraphs adequately cover the hazard.

In paragraph (h)(4) OSHA is using the exact language proposed in paragraph (h)(4) with one addition. If employees with the highest exposure are overexposed, then representative samples of other employees who may be overexposed must be taken to determine if controls or PPE are needed.

Paragraph (i)—Informational programs

In paragraph (i) of the final rule OSHA is using the language of paragraph (i) of the proposal. Minor editorial changes have been made for clarity without changing the proposed requirements. The need for requirements for informational programs is discussed at 52 FR 29628 in the preamble to our proposal. There were few substantive comments. OSHA concludes that these provisions are necessary as discussed in the proposal.

Paragraph (j)—Handling drums and containers

In paragraph (j) of the final rule OSHA is using the language proposed in paragraph (j). Minor editorial changes have been made for clarity without changing the proposed requirements. The need for requirements for handling drums and containers is discussed at 52 FR 29629 in the preamble to our proposal. There were few substantive comments. OSHA concludes that these provisions are necessary as discussed in the proposal.

Paragraph (k)—Decontamination

In paragraph (k) of the final rule OSHA is using the language of paragraph (k) in the proposal. However, the agency has reorganized the paragraph and provided headnotes to make the reading of the paragraph easier. The need for requirements for decontamination is discussed at 52 FR 29629 in the preamble to our proposal. There were few substantive comments. OSHA concludes that these provisions are necessary as discussed in the proposal.

Paragraph (l)—Emergency response by employees at uncontrolled hazardous waste sites

In paragraph (l)(1) OSHA is using the exact language from proposed paragraph (l)(1)(i).

In paragraphs (l)(2)((i) through (l)(2)(xi) OSHA is using the exact text from paragraph (l)(1)(ii)(A) through (l)(1)(ii)(K).

In paragraph (l)(3) OSHA is using the language of proposed paragraph (l)(2)(i)(A) with some modification. The modifications are considered editorial and are made because of OSHA's reorganization of the overall proposed paragraph (l). In paragraph (l)(3) OSHA will require that employees performing emergency response at uncontrolled hazardous waste sites be trained in accordance with paragraph (e) of this section. This requirement is the same as proposed in the first part of proposed paragraph (l)(2)(i)(A). The portion of proposed paragraph (l)(2)(i)(A) that addresses training at RCRA sites is moved to the discussion of training in paragraph (p) of this rulemaking because of OSHA's reorganization of this paragraph.

The language proposed in paragraph (l)(2)(i)(B) has been moved to paragraph (e)(9) of this final rule. This move is considered editorial since it does not change any duties imposed on the employer, it only reflects the reorganization of proposed paragraph (l).

In paragraphs (l)(4)(i) through (l)(4)(vii) OSHA is using the exact language from paragraphs (l)(2)(ii)(A) through (l)(2)(ii)(G).

In summary, paragraphs (l)(1) through (l)(4) of the final rule use the language of paragraphs (l)(1) and (l)(2) of the proposal with some modifications due to the reorganization of the emergency response requirements of the proposal.

Paragraph (m)—Illumination

In paragraph (m) and Table H–120.2 of the final rule OSHA is using the language of paragraph (m) and Table H–102.1 of the proposal with one minor change. OSHA has combined the language of the opening paragraph and paragraph (m)(1) of the proposal into one paragraph designated paragraph (m). Minor editorial changes have been made for clarity without changing the proposed requirements. OSHA has combined the language of the opening paragraph and paragraph (m)(1) of the proposal into one paragraph designated paragraph (m). The need for requirements for illumination is discussed at 52 FR 29631 in the preamble to our proposal. There were few substantive comments. OSHA concludes that these provisions are necessary as discussed in the proposal.

Paragraph (n)—Sanitation at temporary workplaces

In paragraph (n) of the final rule OSHA is using the language of paragraph (n) in the proposal with some minor editorial changes. The opening paragraph of proposed paragraph (n) has been deleted because it is not a requirement, and Table H–102.2 has been renumbered Table H–102.3. Minor editorial changes have been made for clarity without changing the proposed requirements. The need for requirements for illumination is discussed at 52 FR 29631 in the preamble to our proposal. There were few substantive comments. OSHA concludes that these provisions are necessary as discussed in the proposal.

Paragraph (o)—New technology programs

In paragraph (o) of the final rule OSHA is using the language of proposed paragraph (p). This change is necessary due to the reorganization of the emergency response requirements and the moving of proposed paragraph (o), *Certain Operations Conducted Under the Resource Conservation and Recovery Act of 1976 (RCRA).* Proposed paragraph (o) has been moved to paragraph (p) of the final rule.

In paragraph (o)(1) of the final rule OSHA is using the exact language that was proposed in paragraph (p)(1).

In paragraph (o)(2) of the final rule OSHA has used the language of paragraph (p)(2) with some changes. OSHA has revised the paragraph to include some additional examples of acceptable means of suppression. The agency has also added additional information to provide guidance to the employer in making evaluations of products and new technologies. These changes are considered to be editorial since the requirement of the proposal has not changed.

Paragraph (p)—Certain operations conducted under the Resource Conservation and Recovery Act of 1976 (RCRA)

In paragraph (p) of the final rule OSHA is using the language proposed in paragraph (o) with some changes.

OSHA has revised the opening paragraph of the proposal to include large quantity generators of hazardous waste that store those wastes less than 90 days within the scope of this paragraph.

In paragraphs (p)(1), (p)(2), (p)(3), and (p)(4) of the final rule OSHA has used the proposed language of paragraphs (o)(1), (o)(2), (o)(3), and (o)(4) with some minor editorial changes. The proposed requirements for each individual paragraph remain the same.

OSHA is adding two new paragraphs, (p)(5) and (p)(6), to address new technology programs and material handling programs respectively. In paragraph (p)(5) OSHA requires the employee to develop and implement procedures for using new technologies and equipment. Congress, in the SARA legislation, directed OSHA to address new technology programs in its rule. The language of the proposal limited new technology programs to uncontrolled hazardous waste sites. OSHA is adding this paragraph to complete Congress's directive and to address these programs at RCRA TSD facilities.

In paragraph (p)(6) OSHA is requiring employers to develop and implement a material handling program for the same reasons as stated above.

In paragraph (p)(7) OSHA is using the language from paragraph (o)(5) of the proposal with some changes. In paragraph (p)(7)(i) OSHA is using the language of paragraph (o)(5)(i) with one change. OSHA has moved a requirement to paragraph (p)(7)(i) from the last sentence of proposed paragraph (o)(5)(ii) that requires employers to provide employees with a certificate indicating that they have successfully completed the training required in the paragraph. OSHA believes that the issuance of this certificate will make it easier for employers to determine if new employees have completed the necessary training and are ready for employment.

In paragraph (p)(7)(ii) of the final rule OSHA is using the language from paragraph (o)(5)(ii) of the proposal with two exceptions. First, the last sentence of proposed paragraph (o)(5)(ii) has been moved to paragraph (p)(7)(i) of the final rule as discussed above. Second, the requirement for eight hours of annual refresher training is added to this paragraph. OSHA has added this requirement to this paragraph because the new format of the final rule now addresses training for new employees and current employees separately. In the proposal there was no distinction between the two groups of employees.

In paragraph (p)(7)(iii) OSHA has added a new paragraph addressing the training of trainers who will be providing the required training to employees. OSHA received many comments on trainers' qualifications. The proposed language for RCRA facilities did not address these qualifications. Therefore OSHA is now requiring that trainers be properly trained and qualified to conduct the type of training that they are expected to provide.

In paragraph (p)(8) of the final OSHA is addressing emergency response at RCRA facilities. Paragraph (p)(8) addresses the subject matter proposed in paragraph (1) of the proposal as that paragraph applied to RCRA TSD facilities. Most of the language used in this paragraph has been taken from proposed paragraphs (l)(1).

In paragraph (p)(8)(i) of the final rule OSHA has used some of the language from paragraph (l)(1)(i) of the proposal. The basic requirement for the development and implementation of a written emergency action plan that addresses site procedures for handling emergency response is the same in the final rule as it was in the proposal. OSHA will still permit an exemption from this paragraph if the employer totally evacuates the facility at the time of the emergency and has an emergency action plan meeting the requirements of 29 CFR 1910.38(a). OSHA considers the changes made in this paragraph to be editorial since the proposed obligations of the employer remain the same.

In paragraph (p)(8)(ii) of the final rule OSHA has used the language of proposed paragraph (l)(1)(ii). This paragraph contains the minimum elements that must be addressed in the employers emergency response plan. The basic elements of the required plan remain the same as proposed.

As stated before, training and certification of training were among the many issues discussed during the rulemaking for this final rule. Several

commenters indicated that there was a need for more specific training criteria for the courses to be offered and the quality of the instructors presenting the courses. In light of those comments, OSHA has added a new paragraph (p)(8)(iii) that addresses emergency response training on RCRA TSD facilities. The language that is used in the final rule was developed from that suggested in the comments made to the record of this proceeding.

Basically OSHA is requiring that all employees who are expected to perform emergency response at RCRA TSD facilities be trained in how to safely perform emergency response duties prior to being called upon to perform those duties [See paragraph (p)(8)(iii)(A).] Examples of the types of training to be provided have been given. Exemptions are provided in Exception #1 and Exception #2 when employee exposure is reduced through pre-emergency planning that includes development of employee awareness of hazards. OSHA is also requiring that employees who have attended and successfully completed the training that is required in paragraph (p)(8) be certified as having done so. Employers would also have to certify the continued competency of employees on an annual basis [See paragraph (p)(8)(iii)(C)].

In paragraph (p)(8)(iv) of the final rule OSHA is addressing the procedures to be used for handling emergency incidents. The language in the final rule has been taken from paragraph (1)(2)(ii) and the requirements remain the same as proposed.

Paragraph (g)—Emergency response to hazardous substance releases not previously covered

In paragraph (q) OSHA is covering those emergency response situations that occur at locations other than uncontrolled hazardous waste sites and RCRA TSD facilities. The typical site covered by this paragraph would be a transportation accident where hazardous substances are or have the potential for leaking into the environment. Other sites covered by this paragraph would include hazardous substance releases at chemical manufacturing facilities such as the release that occurred at the Union Carbide plants in Buphol, India, and Institute, WV.

A typical scenario where this paragraph would be applicable would be the emergency response to a derailed tank car containing a hazardous substance that has begun to leak its contents into the atmosphere. The emergency response to this type of accident would usually include the first responders (i.e., witnesses, police, employees on the train), the first dispatched-responsers (i.e., the first due rescue and fire apparatus), any multiple alarm dispatches (i.e., additional fire and rescue apparatus, HAZMAT teams, state fire marshal, Coast Guard or Federal E.P.A. national response teams), and the clean-up crew (i.e., initial response employees of the site owner who clean-up the release). Employees of outside clean-up contractors would be covered by paragraphs (b) through (p).

As the clean-up scenario proceeds towards completion, the various employees on the scene will need different levels of training and protective equipment required in this paragraph.

In paragraph (q)(1) of the final rule OSHA is using the language taken from paragraph (l)(1)(i) with some minor editorial changes. OSHA wants to emphasize that employers who will evacuate their employees from the workplace when an emergency occurs and who do not permit any of their employees to assist in handling the emergency are exempt from the requirements of this paragraph if they provide an emergency action plan in accordance with § 1910.38(a).

In paragraph (q)(2) of the final rule OSHA is using the exact language of paragraph (l)(1)(ii).

In paragraph (q)(3) of the final rule OSHA is using the language proposed in paragraph (l)(3)(ii) with the following changes. In paragraph (q)(3)(i) OSHA has used the language proposed in paragraph (l)(3)(ii)(A) with some change. OSHA has deleted the requirement that the senior official responding to an hazardous substance emergency establish the Incident Command System (ICS). As a result of other requirements in this final rule, the Incident Command System should already be established prior to an emergency. The senior official responding to an incident scene should only need to take charge of the incident and begin to implement the preplanned ICS.

In paragraph (q)(3)(iv) OSHA has used the proposed language of paragraph (l)(3)(ii)(D) with a change. The proposed language required all employees engaged in emergency response and exposed to hazardous substances in any way to wear positive pressure self-contained breathing apparatus while engaged in emergency response. The final rule will require only those employees engaged in emergency response and exposed to hazardous substances "presenting an inhalation hazard or potential inhalation hazard" to wear positive pressure self-contained breathing apparatus. OSHA has made this change since several comments suggested that some individuals engaged in emergency response may be exposed to hazardous substances that do not pose an inhalation hazard and, therefore, would negate the need for respiratory protection. Such protection would become a burden to those employees engaged in operations not requiring the use of such equipment.

In paragraph (q)(3)(vi) of the final rule OSHA has used the language of paragraph (l)(3)(ii)(F) with the following change. In the proposal OSHA called for "qualified basic life support" personnel to be present at the site. In some emergency medical service (EMS) systems the term "basic-life support (BLS)" identifies a unique group of trained individuals who have received an established level of specialized training. Typically emergency medical response begins at the first-responder level, and progresses through basic-first aid and basic-life support to advanced-life support (ALS). The amount of training and expertise increases as individuals progress through the system. As a result of several comments, OSHA has decided to reduce the level of training required for a minimum stand-by capability at a hazardous waste sites. Employees trained and qualified in basic first aid have the basic skills such as initial patient assessment, maintenance of airway, control of bleeding, immobilization of fractures, and possibly cardiopulmonary resucitation (CPR) to control injuries until a higher level responder arrives. If response time for BLS or ALS is long enough that it is necessary for this level of training to be at the site in case of an emergency, this rule does not prohibit the stationing of this level at the site. However, OSHA believes that if BLS or ALS service is available within a reasonable time, a qualified basic first aider can provide the necessary interim care.

The rest of the language in paragraph (q)(3) contains the language that was proposed in paragraph (l)(3)(ii) without change.

In paragraph (q)(4) of the final rule OSHA has used the language from paragraph (l)(3)(i)(C) with some minor editorial changes to reflect the changes made to other paragraphs in this rule. The basic requirement for the use and training of skilled support personnel remains the same as it was proposed.

In paragraph (q)(5) of the final rule OSHA has used the language from paragraph (l)(3)(i)(B) with one major change. OSHA has eliminated the requirement for 24 hours of training for specialist employees and has replaced it

with a requirement for annual training or demonstration of competency in their area of specialization. The required minimum hours of training was deleted because some employees may need more or may need less than 24 hours for their area of specialization. Specialized employees are by definition individuals specialized in their area of expertise and should only require whatever level of training is necessary to maintain their level of competency. OSHA considers the other changes made to the language of this paragraph to be editorial.

In paragraph (q)(6) of the final rule OSHA addresses the training requirements for employees who will be responding to hazardous materials incidents. In paragraph (q)(6) (i), (ii), (iii), and (iv) OSHA has provided tiered training criteria for those employees who may be designated as members of an emergency response team. The various levels of response and the required competency levels are based upon recognized levels of response being discussed in the hazardous materials response industry as recommended in several of the comments made during this rulemaking.

To illustrate OSHA's tiered approach to training, the following scenario describes a possible emergency response call.

A state trooper is on routine patrol along a highway passing through a residential and light industrial area of a large metropolitan city. Ahead in his path of travel, the trooper notices a multi-vehicle accident involving a large overturned tank truck. Immediately the trooper uses his radio to contact his dispatcher to report the accident. After letting the dispatcher know the location and type of accident, the trooper places his vehicle across the travel lanes of the highway approaching the accident site to stop traffic. While he is doing this the dispatcher is alerting the fire and rescue companies in the immediate area and dispatching an established number of fire and rescue vehicles. The trooper then surveys the accident scene from his vehicle trying to identify the type of cargo on the overturned truck. Seeing three different U.S. DOT placards on the vehicle the trooper makes note of the four digit numbers and checks his DOT Emergency Response Guide for a summary of actions to be taken for the chemicals identified on the placards. After determining his next on-site responsibility, he recontacts his dispatcher with the additional information and secures the scene. He stays away from the immediate accident site and does not become involved in rescue or site mitigation.

While the trooper has been securing the scene, the fire and rescue units dispatched after his first radio call begin to arrive on the scene with the additional information from the trooper's second call. The officer-in-charge (OIC) of the fire/rescue response stops his vehicles in a safe location and contacts the state trooper. After determining the type of accident and vehicles involved, the OIC takes control of the scene and directs his crews to take a predetermined defensive action in controlling a leak that has begun on the tanker. The OIC then contacts the dispatcher and reports his assessment of the accident scene including the fact that the tanker is now leaking. He requests the dispatcher to send him the closest hazardous materials response team. He also asks for representatives from the shipper of the liquid and the liquid's manufacturer.

In the meantime, firefighters have established a perimeter defense of the accident scene using fire hose lines and proper personal protective equipment. They begin to evacuate surrounding homes and businesses as indicated in the Emergency Response Guide in case the leaking tanker should explode. They construct dikes and diversion pits to contain water and chemical run-off from the fire hose lines. Rescue personnel, including emergency medical technicians, have made a preliminary assessment of the accident scene and have determined whether any individuals in the spill area are trapped in their vehicles or need immediate assistance. They report their observations to the OIC.

A decision is made by the OIC, based upon the reports of the police officer, the emergency response crew, and the data on the DOT placards, that no rescue attempts can be made safely until such time as the leaking liquid is positively identified and controlled by the HAZMAT team. The proper local authorities are notified under the requirements of SARA Title III.

As firefighters continue to provide defensive protection of the scene and as emergency medical technicians establish a triage area for the treatment of injured passengers, the HAZMAT team arrives and begins to take control of the accident scene. Hazardous materials technicians and specialists assess the scene and plan their attack on the leaking tanker.

After equiping themselves properly, the HAZMAT team makes a final, pre-attack evaluation of the scene, including a scan of the area with appropriate monitoring equipment, and reports its findings to the fire and rescue personnel. Based upon the results of the pre-attack evaluation and a determination by HAZMAT team members using monitoring equipment that the spill area is non-hazardous, rescue personnel now enter the area of the accident to provide emergency medical treatment to injured passengers and to extricate those passengers who may have been trapped in their vehicles. The HAZMAT team proceeds to the point of release and secures the leak.

After all the injured have been cared for and after the leak has been stopped, the firefighters and HAZMAT team begin to clean-up the accident scene in accordance with pre-planned procedures.

All four levels of hazardous materials response have played a role in this scenario. The state trooper, the first on the scene, is the first responder awareness level. The first responding fire and rescue companies who provided the defensive attack are the first responder operations level. The responding HAZMAT team had both hazardous materials technicians and hazardous materials specialists. In this scenario the state trooper would have to have a sufficient amount of training, the first responding fire/rescue companies would need eight hours of training, and the HAZMAT team would need 24 hours of training. The tiered training schedule is based upon the duties and responsibilities of the individuals involved in the various levels of response illustrated in the scenario.

In paragraph (q)(7) of the final rule OSHA is addressing the competency of the trainers who will be providing the training necessary for those employees responding to hazardous materials incidents. As discussed before, several commenters were concerned that OSHA's proposal for the qualifications of trainers was too weak.

In paragraph (q)(8) of the final rule OSHA is addressing refresher training for those employees who have been trained in accordance with paragraph (q)(6). In paragraph (l)(3)(i)(A) of the proposal OSHA addressed the training of employees who perform emergency response at non-hazardous waste clean-up sites. OSHA is using this proposed language in paragraphs (q)(8)(i) and (q)(8)(ii) because the language of the proposal was intended to cover the type of emergency response now regulated by paragraph (q).

In paragraph (q)(9) of the final rule OSHA is using the language of paragraph (l)(4)(ii) of the proposal with some editorial change. The basic requirement that employees who are members of an organized or designated

HAZMAT team and hazardous materials specialists receive a baseline physical examination in accordance with paragraph (f) of this section remains the same as proposed.

In paragraph (q)(10) of the final rule OSHA is using the proposed language of paragraph (l)(4)(iii).

In paragraph (q)(11) of the final rule OSHA is using the exact language as proposed in paragraph (l)(5). In paragraph (l)(5) OSHA regulated post-emergency clean-up and the language used in that paragraph has caused some confusion. Rather than change the basic requirement, OSHA is offering the following clarification of the intent of paragraph (q)(11):

Post-emergency response can be performed by two basic groups of employees: employees of the site, or employees from off of the site. Post-emergency clean-up begins when the individual in charge of the initial emergency response declares the site to be under control and ready for clean-up. For the purposes of this rule, paragraph (q)(11) will apply to those employees who come from other employers located off-of-the-site to perform post-emergency clean-up. Employees of the employer at the site where the release occurred, and who perform post-emergency clean-up, are considered, under this rule, to be part of the initial emergency response and not subject to paragraph (q)(11). The reason for this distinction is that employees at the site are more familiar with the types of emergencies that may occur and the types of clean-up operations that may have to take place. The more hazardous exposure to employees occurs when outside contractors or other off-site employees are brought into a strange environment and are expected to clean-up the residue from a release. With this clarification, OSHA concludes that no change to the proposed language is necessary.

III. Summary of the Preliminary Regulatory Impact and Regulatory Flexibility Analysis and Environmental Impact Assessment

Introduction

Executive Order 12291 (46 FR 13197, February 19, 1981) requires that a regulatory impact analysis be conducted for any rule having major economic consequences for the national economy, individual industries, geographical regions, or levels of government. In addition, the Regulatory Flexibility Act of 1980 (Pub. L. 96-353, 94 Stat. 1164 (5 U.S.C. 601 *et seq.*)) requires the Occupational Safety and Health Administration (OSHA) to determine whether a regulation will have a significant economic impact on a substantial number of small entities, and the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*) requires the agency to assess the environmental consequences of regulatory actions.

In order to comply with these requirements, OSHA has prepared a Regulatory Impact and Regulatory Flexibility Analysis (RIA) for the hazardous waste operations and emergency response standard. This analysis includes a profile of the industries that will be affected, the estimated number of employees who are at risk from occupational exposures to hazardous wastes, technological feasibility, costs, benefits, and an overall economic impact of the standard. The RIA is available in the OSHA Docket Office.

Data Sources

The primary sources of information used for this analysis are: an April 1987 report by the Eastern Research Group (ERG) entitled, "Preparation of Data To Support a Regulatory Analysis and Environmental Assessment of the Proposed Standard for Working at Hazardous Waste Sites;" and the comments supplied in response to the Notice of Proposed Rulemaking, the comments made during the public hearings, and the post-hearing comments and submissions. The information contained in the ERG report was gathered from the Environmental Protection Agency sources, industry sources, experts in the area of hazardous waste management, etc. Consequently, OSHA believes that it has given due notice to all responsive parties and that the data used are the best available data for this final Regulatory Impact Analysis (RIA).

Industry Profile

The standard will affect about 20,000 uncontrolled hazardous waste sites, about 4,000 hazardous waste operations conducted under the Resource Conservation and Recovery Act (RCRA) of 1976, about 13,600 spills of hazardous materials that occur annually outside a fixed facility, and about 11,000 spills of hazardous material that occur annually inside a fixed facility. The firms that will be affected by this standard are as follows: about 100 contractors that perform hazardous waste site clean-ups, about 50 engineering or technical services firms that perform hazardous waste preliminary assessments or site investigations and remedial investigations or feasibility studies for hazardous waste site cleanups, about 300 RCRA-regulated commercial treatment, storage and disposal facilities; about 3,700 RCRA-regulated facilities that are operated by a hazardous waste generator; about 19,000 state and local police departments; about 28,000 fire departments; about 750 private hazardous materials (HAZMAT) response teams; and about 22,000 manufactures that use in-hours personnel to respond to emergency spills of hazardous materials within the facility.

Population at Risk

As many as 1.758 million employees, police officers, and firefighters may be at risk from exposure to hazardous waste or to hazardous materials during an emergency response to a hazardous material spill. Of these employees, about 14,000 work at uncontrolled hazardous waste site cleanups, 52,700 at RCRA-regulated facilities, 563,200 are police officers, 944,500 are firefighters, 7,500 are private HAZMAT members, and 176,000 are members of industrial fire brigades that provide in-plant emergency responses to hazardous material spills. Most of these employees, however, do not work fulltime around hazardous waste. In fact, most police officers will not face a hazardous material emergency response and most fire fighters and industrial fire brigade personnel, who are at risk, are annually exposed to hazardous materials for only a few hours.

Feasibility

The standard does not require the use of any large-scale capital equipment that is not currently used in normal work operations. In addition, each provision requires equipment and work practices that are currently available. Thus, OSHA has determined that the standard is technologically feasible.

Benefits

This standard will protect 1.757 million employees and firefighters from health and safety hazards caused by their exposure to hazardous wastes. The benefits of this standard are quantified in Chapter 3 of the Final Regulatory Analysis (FRA). The FRA indicates that this standard will prevent 20 cancer deaths per year and from 6 to 20 deaths per year from cardiovascular, neurological, renal and liver disorders. The standard will also prevent 1,925 injuries per year involving 18,700 lost work days. The FRA also estimates that 6 fatalities that are not illness related will be prevented. This last figure is likely to be an underestimate. Individual incidents which are discussed in

Chapter 3 and which may have been prevented by following the standard have sometimes led to more than 6 deaths. Also, the FRA does not take into account the benefits to the surrounding, non-worker community derived from the better handing of hazardous waste and emergency response incidents by the more qualified, properly trained and equiped response teams that are likely to result from compliance with this standard.

Chapter 3 of the FRA also presents risk rates. For example, the 17 excess cancer deaths per 1000 exposed hazardous waste workers for an occupational lifetime of exposures is likely to be reduced by 75 per cent.

OSHA concludes therefore, that this standard will substantially reduce the significant risk of material impairment of health which results from exposure to hazardous waste either at hazardous waste operations or from emergency response.

However, section 126 of SARA gives OSHA clear statutory directions to issue this standard and is reasonably explicit about what type of provisions should be included. Section 126 is also a free standing provision and not an amendment to the OSH Act. Accordingly, it evidences a legislative intent to issue these regulations without the specific need to quantify benefits and reach significant risk conclusions.

Cost of Compliance

OSHA used current work practices as its baseline for estimating the cost of full compliance with the standard. This estimated cost does not include any cost that is currently being incurred by employers as part of their work practices because those work practices, and therefore those costs, would continue whether or not the final standard were promulgated.

OSHA estimated that the total annualized incremental cost of full compliance with the standard will be about $153.422 million, of which $27.966 million will be spent by contractors on government-mandated clean-ups of uncontrolled hazardous waste sites, $18.372 million will be spent by RCRA-regulated facility cleanups and operations, $17.332 million will be spent by police departments, $50.553 million will be spent by fire departments, $4.226 million will be spent by private HAZMAT teams, and $29.179 million will be spent by industrial fire brigades. The provision with the largest annual cost of compliance is the employee training provision ($92.978 million), followed by the medical surveillance provision ($11.293 million), the use of escape self-contained breathing apparatus ($9.507 million), and the written plan to minimize employee exposure to hazardous materials during postemergency cleanups of hazardous materials spills ($8.381 million).

Economic Impacts

Most of the incremental cost of compliance will be paid by the government or the private firm responsible for the hazardous waste cleanup. OSHA calculated that it is economically feasible for every affected industry or group to comply with the standard. There may be an impact upon some labor markets as a consequence of the provision that only sufficiently experience employees, or employees certified to have received the necessary training at an appropriate training facility, will be allowed to work on hazardous waste sites. This provision will effectively curtail the current practice of using local subcontractors to provide short-term employees for hazardous waste site cleanups and limit the number of employees eligible to work at hazardous waste sites. This in turn, may increase future wage rates and the cost of hazardous waste site cleanups.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, the Assistant Secretary has assessed the expected impacts of the standard on small entities. Based on the available information, OSHA determined that the standard may have some impact upon some small entities. The cost of adequately training an employee off-site prior to working at a hazardous waste site cleanup will substantially reduce the use of subcontractor labor on a one-time basis. Thus, some local subcontractors face a potential reduction in hazardous waste site cleanup work. The majority of this subcontracted work will probably be performed by those subcontractors who concentrate upon this type of work. Subcontractors who have performed cleanup work but who do not elect to train employees needed to qualify for future work will probably be excluded from working in this market.

In addition, there could be an economic impact upon some small local fire departments depending upon the amount of financial resources available to them for additional training. With the allowance for different amounts of training hours depending upon the expected extent of involvement with hazardous materials spills, OSHA believes that this economic impact will not significantly affect a substantive number of local fire departments.

Environmental Impact Assessment—Finding of No Significant Impact

OSHA reviewed the final standard and concluded that no significant environmental impacts are likely to result from its promulgation. In OSHA's December 19, 1986, interim final rule for the protection of workers engaged in hazardous waste and emergency response operations, information was solicited from the public on various issues, including possible environmental impacts of the regulation. On the basis of the review detailed below, and in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.), the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR Part 1500 et seq.), and the Department of Labor's implementing regulations for NEPA compliance (29 CFR Part 11), the Assistant Secretary determined that the standard will not have a significant impact on the external environment.

In most OSHA regulatory actions, two environments may be affected: (1) The workplace environment, and (2) the general human environment external to the workplace, including impacts on air and water pollution, solid waste, and energy and land use. The hazardous waste standard, however, is unique in that it focuses on the external environment because during these operations, the workplace and the external environment are usually one and the same. The standard is also unusual in that it is the first regulation since the passage of the Occupational Safety and Health Act of 1970 (the Act) to be mandated specifically by Congress under section 126 of the Superfund Amendments and Reauthorization Act (SARA). As indicated in the earlier sections of this Notice, the provisions of section 126 detail those protections that OSHA must include for workers at hazardous waste and emergency response operations. For example, section 126 requires that provisions for site analysis, training, and medical surveillance, among others, be included in the standard. In addition, there is a wide range of OSHA, EPA, and other standards that already apply to some activities that occur at hazardous waste sites and during emergency response operations. For example, there are existing OSHA standards that cover construction activities, onsite machinery and equipment, selection and use of personal protective equipment, handling of toxic and explosive materials, and general environmental and safety issues such as walking-working surfaces, noise, and illumination. Moreover, the final

standard, in many instances, either reflects OSHA regulations, procedures adopted by other federal agencies (e.g., EPA), or practices that are commonly used by those knowledgeable in hazardous waste and emergency response operations. To the extent that existing standards, rules, or standard operating procedures are incorporated into this rule, no significant change in the environment is anticipated.

Potential Positive Environmental Effects

While OSHA does not anticipate any significant environmental effects as a result of this standard, there is a potential for some beneficial impacts. In general, as the work practices and procedures requirements of the standard reduce the incidence of employee injury, an indirect result should be a reduction in the likelihood of environmental releases of hazardous materials. (Virtually all provisions of the standard can be categorized in this manner, because once they are implemented, they will have a positive influence on worker safety.) As these requirements also provide guidance for routine reactions to situations encountered in emergencies, they may help to reduce the severity of such emergencies. Additional potentially positive impacts might be categorized as follows: (1) Direct benefits associated with reduced incidences in, or the severity of, the release of hazardous materials, and (2) indirect benefits associated with the improved flow of information and increased worker awareness of hazardous materials or with improved worker preparedness (either for normal site operations or for unexpected accidents). The following discussion highlights those provisions with potentially beneficial environmental effects.

Monitoring (h). The requirements of this provision will increase the amount of monitoring for airborne hazardous substances at uncontrolled hazardous waste sites. In some cases, hazardous materials will be detected, and steps will be taken to more quickly control the release to the atmosphere, thereby providing an environmental benefit.

Handling drums and containers (j). A number of specific requirements of this paragraph will result in potentially positive environmental impacts. Relevant subsections include: Inspecting drums and containers; making salvage drums or absorbents available; initiating a spill containment program; emptying unsound drums and containers; requiring ground penetrating radar; and decontaminating equipment. These are discussed briefly in the following sections.

Inspection of drums/containers before moving (j)(1)(iii). This section requires that drums and containers be inspected for their integrity prior to handling and moving. Under current practices at hazardous waste cleanup sites, drums and containers are often handled with mechanized equipment (e.g., a barrel grapple on a backhoe arm) before being inspected, if unsound drums rupture or leak, any solid contaminated by the rupture or leak is removed for disposal upon completion of drum handling operations. This provision will, through worker awareness, increase the probability of averting ruptures and leakage. In addition, any hazardous materials in containers that cannot be moved without rupturing will have to be transferred to safe containers (as required in paragraph (j)(1)(ix)), with obvious positive environmental effect. These procedures will reduce the volume of contaminated soil requiring disposal and will also lower the possibility that leachate or runoff will carry contaminants offsite. This requirement does not have an impact on emergency response actions because the routines outlined are already standard procedure.

Availability of salvage drums/absorbents (j)(1)(vii). This provision specifies that salvage drums or containers as well as suitable amounts of proper absorbent be kept available for use in areas where spills, leaks, or ruptures might occur. This requirement will result in increased availability of salvage drums and spill absorbents at uncontrolled hazardous waste sites and in emergency response situations where spills are imminent, thereby reducing the environmental consequences related to spills of hazardous materials. In those instances where salvage drums/absorbents would have been inadequate without this requirement, there is a potential benefit to the environment.

Implement a spill containment program (j)(1)(viii). The purpose of this provision is to develop a program to be implemented, in the event of a major spill, that would contain and isolate hazardous materials being transferred into containers and drums. To the extent that this program is implemented, there will be a potential for reducing the negative environmental effects that occur as a result of spills, leakage, etc. This requirement will reduce the environmental impact of potential spills at cleanup sites.

Empty unsound drum/containers (j)(1)(ix). Unsound containers often rupture during handling operations. This provision requires that drums and containers that cannot be moved without spillage, leakage, or rupture be emptied into a sound container. This requirement will reduce the incidence of drum and container rupture and will provide concomitant environmental benefits.

Use of a ground penetrating system to estimate depth and location of containers (j)(1)(x). At present, when preliminary investigations at hazardous waste sites indicate that buried drums or containers may be present, ground penetrating systems are frequently used to determine the depth and location of the drums. The requirements of this provision will very likely cause an increase in the use of these systems, thereby reducing the number of instances in which buried containers would go undetected or where undetected containers would be accidentally ruptured during excavation activities. Where it applies, the requirement will help prevent accidental ruptures and spills, improve the thoroughness of remedial actions, and benefit the site environment.

Develop Decontamination Procedures (k). The requirement to clean and decontaminate equipment, personnel, and personal protective equipment will prevent the migration of hazardous substances offsite, thereby benefitting the surrounding environment. It will also eliminate or minimize the contamination of personnel. Decontamination is already standard practice at most cleanup sites.

Inform Contractors of Existing Hazards (b)(1)(iv). Under this provision, contractors are to be informed of any "fire, explosion, health or other safety hazards" that are present. By ensuring that contractors know the location and nature of site hazards, this requirement will reduce the possibility that contractor activities will result in inadvertent releases or spills of hazardous materials.

Gather Information Before Site Entry (c)(4). Among the various requirements for site evaluation are those for information to be gathered regarding the (a) pathways for hazardous substance dispersion, and (b) status and capability of emergency response teams. These procedural requirements will result in an increased ability to predict and prevent movement offsite of hazardous materials, will mitigate emergency situations quickly and effectively, and will reduce the possibility or severity of contaminant release. As the requirements of the section mirror current practices, compliance will be accomplished with little difficulty.

Provide Worker Training (e). The training requirement will assure that site

activities will be carried out by qualified personnel, with the knowledge and ability to fulfill their job functions in a safe and responsible manner. To the extent that this occurs, there will be a potential benefit to the environment (in emergency-response situations, similar benefits accrue from emergency response training and RCRA-regulated facility employee training.) For example, worker training will result in a more careful handling of materials accompanied by a reduction in the potential for inadvertent spills, improper disposal, etc. In emergency situations this training will assure a more efficient and effective cleanup of hazardous materials or a quicker response to avert further hazardous material releases.

Informational Programs (i). These provisions include requirements for a site safety and health plan, pre-entry briefings, and site inspections. These requirements will not directly affect the existing environment; their purpose is to provide workers with the information necessary to carry out their activities safely. To the extent that this occurs, there will be a potential benefit to the environment. For example, implementing comprehensive site plans will reduce the incidence of accident releases of hazardous materials. Similarly, requiring pre-entry briefings will reduce the likelihood of employees unknowingly encountering contaminants or allowing their improper release or disposal.

Emergency Response Plan (l) and (r). The development and implementation of a response plan for on-site and off-site emergencies will provide for greater worker preparedness. In emergencies, workers will be able to respond more quickly and effectively, thereby benefitting the environment.

Potentially Negative Impacts

In some situations, there may be a potential for negative effects on the environment as a result of the standard. Any potential negative impacts, however, are not expected to be significant. To illustrate this, negative impacts may occur if there is an increase in the time required to implement specific cleanup and spill response activities, or to implement safe work practices or procedures required by the standard. Any such effects are likely to be negligible, however since response teams already have established operating procedures similar to those in OSHA's standard.

Another potential negative impact may result from the requirement that salvage drums and absorbents be readily available. This may increase the number of repacked hazardous waste drums and the amount of spent absorbent used, which could add to the amount of material that would require safe disposal. Similarly, the requirements for implementation of proper decontamination procedures for all equipment, personal protective gear, and personnel at hazardous waste emergencies, cleanup sites, and RCRA sites may result in an increase in the frequency and use of decontamination materials. This, in turn, could generate a larger volume of spent decontamination fluids which would then require proper handling and disposal. Again, any such impact should be negligible since decontamination is largely standard procedure for most hazardous waste operations. A possible exception may be during activities that take place in the early stages of site evaluation before cleanup, or at spill response, where decontamination procedures are not yet standardized.

Conclusion

To the extent that the work practices and procedures are implemented, increased worker awareness and preparedness will result in a safer and more healthful work environment, which may indirectly benefit the environment. Any negative impacts that may occur as a result of the implementation of these work practices or procedures are expected to be negligible. Based on this assessment and the information presented earlier in the preamble, OSHA concludes that no significant environmental changes are anticipated as a result of the standard.

IV. International Trade

OSHA has evaluated the potential impact that this final standard would have upon international trade. OSHA has determined that the final standard would have a minimal potential impact upon the prices of products, so that there would be no effective change in the level of exported or imported products.

V. OMB Approval Under the Paperwork Reduction Act

This section contains a collection of information pertaining to the preparation of a written safety and health plan site characterization and analysis, site control, training, medical surveillance, emergency controls, work practices, PPE, monitoring, informational programs, handling drums and containers, decontamination, emergency response planning, and emergency response drills. OMB has reviewed these collections and has approved them under approval number 1218–0139.

VI. Public Reporting Burden

Public reporting burden for the collection of information identified in paragraph IV above is estimated to average 3.7 hours per response, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other suggestions for reducing this burden to the Director, Directorate of Safety Standards Programs, OSHA Room N–3605, U.S. Department of Labor, Washington, DC 20210; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

VII. State Plan States

This **Federal Register** document amends an interim final rule (section 1910.120, "Hazardous Waste Operations and Emergency Response") in Subpart H of 29 CFR Part 1910, OSHA's general industry standards on hazardous materials. The 25 states with their own OSHA approved occupational safety and health plans must develop a comparable standard applicable to both the private and public (state and local government employees) sectors within six months of the publication date of this permanent final rule or show OSHA why there is no need for action, e.g., because an existing state standard covering this area is already "at least as effective" as the new Federal standard. These states are Alaska, Arizona, California (for state and local government employees only), Connecticut (for state and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for state and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. After the effective date of this final rule, until such time as a state standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in these states.

VIII. Federal and State Coverage of the Public Sector and Volunteers

Federal OSHA is specifically precluded by section 3(5) of the Occupational Safety and Health Act from covering employees of any State or political subdivision thereof. However, States that elect to have their own occupational safety and health program

under a plan approved and monitored by OSHA under section 18(b) of the Act are required to extend their coverage to these employees (see section VII of this preamble for a list of these states). Thus, a State hazardous waste operations standard that is either identical to or at least as effective as this Federal OSHA standard will apply to public sector as well as private sector employees in these States. Public sector employees in States without State plans will be protected from exposure to hazardous waste under Title I, section 126(f) of the Superfund Amendments and Reauthorization Act of 1986 (SARA), administered by the U.S. Environmental Protection Agency (EPA). This section requires EPA to promulgate, within 90 days of the promulgation date of this Federal OSHA standard, an identical standard that applies to employees of State and local governments in each State which does not have an OSHA-approved State plan.

OSHA's hazardous waste operations standard and the identical or equivalent standards which will be promulgated by States with OSHA-approved State plans apply under certain circumstances to volunteer firefighters and other volunteers engaged in emergency response operations or hazardous waste operations within the scope of these standards (see paragraphs (a) (1) and (2) of this standard). In many communities, fire and other emergency response services are provided by volunteer companies. In some cases, these companies are established as independent, private sector entities. In others, they are considered a component of State or local government (see 29 CFR 1975.5 for factors to consider in determining whether or not an entity is a public agency). A volunteer working for a public or private entity in a State with an OSHA-approved State plan must be considered an employee under State law in order to be covered by the State's hazardous waste operations and emergency response standard—for example, because of an employer-employee relationship or because of pay, retirement benefits, health insurance coverage, workers' compensation benefits, etc. This determination is made by each State as part of its standards promulgation process. In a State without an OSHA-approved State plan, a private entity fire company with one or more paid employees would be covered under this Federal standard (29 CFR 1975.4).

IX. Federalism

This final regulation has been reviewed in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987) regarding Federalism. Executive Order 12612 requires that agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions that would restrict state policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Executive Order provides for preemption of state law only if there is a clear Congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

During the development of this rule, OSHA has, to the extent possible, refrained from limiting state policy options by developing a rule that permits flexibility on the part of the States through the use of performance language. We have also consulted with the States, in particular those states with approved state OSHA plans, during the public hearings and comment period called for in the notice of proposed rulemaking for this rule. We will continue to work with the States that have state occupational safety and health plans approved under section 18 of the OSHA Act to encourage those states to develop their own policies to achieve program objectives and continue to work with appropriate state officials as they present their state standards for approval.

This rulemaking is directed by Congress under the Superfund Amendments and Reauthorization Act of 1986 (SARA). The Constitutional authority and Congressional intent for Federal action in the area of worker protection standards for employees engaged in hazardous waste operations is mandated clearly in section 126 of SARA. Congress therefore has identified the protection of employees engaged in hazardous waste operations and emergency response as a problem of national scope through the enactment of SARA.

Section 18 of the Occupational Safety and Health Act (OSH Act), permits any state to develop its own independent state occupational safety and health program. Any state may develop and submit to OSHA, for approval and use, a state occupational safety and health program that provides, among other things, worker protection "at least as effective as" that protection provided under the Federal program.

With respect to Section 4 of Executive Order 12612, Section 18 of the OSH Act also expresses Congress' clear intent to preempt state laws relating to issues with respect to which Federal OSHA has promulgated occupational safety or health standards. Under the OSH Act, a state can avoid preemption only if it submits, and obtains Federal OSHA approval of, a plan for the development of such standards and their enforcement as mentioned above. Occupational safety and health standards developed by such approved Plan-States must, among other things, be as least as effective in providing safe and healthful employment and places of employment as the Federal standards.

OSHA has used its regulatory preemption of State law to the minimum level necessary to achieve the objectives of the OSH Act and section 126 of SARA.

Section 126 of SARA, under paragraph (f), requires that the U.S. Environmental Protection Agency (EPA) provide those state and local government workers who are not covered by the protections of approved OSHA state plans with protection that is identical to that provided under the Federal OSHA standards. Non-state and local government employees would be regulated by the Federal OSHA standard. State and local government workers, employed in 25 non-OSHA state plan states, would not normally be covered by standards promulgated under Federal OSHA or approved state OSHA programs. OSHA has worked with EPA in the development of this final rule to assure that the protections provided to all state and local government employees is consistent with that provided by the Federal OSHA standard and the OSH Act. EPA as the regulatory authority for the non-OSHA state plan states will address their actions with respect to worker protection policies that have federalism implications in their rulemaking.

This final rule is written so that employees engaged in hazardous waste operations and related emergency response operations in every state, including those state and local government employees in states regulated by EPA, would be protected by general, performance oriented standards. To the extent that there are state or regional peculiarities caused by the types of hazardous waste operations, including the types of related emergency response provided, states with occupational safety and health plans approved by OSHA under section 18 of the OSH Act would be able to develop their own state standards to address any special problems. This would assure the compatibility of state or local emergency response plans developed independently by state or local emergency planning committees under Title III of SARA with Federal

worker protection standards issued by OSHA and EPA.

And, under the OSH Act, if a state develops its own OSHA approved state program, it could make additional requirements in its standards. States that will be covered by regulations issued by EPA under paragraph 126(f) of SARA will be provided the same option. Moreover, the performance nature of this final rule, of and by itself, allows for flexibility by states and owners or operators of hazardous wastes sites or providers of emergency response to provide as much safety as possible using varying methods consonant with the conditions in each state.

In summary, there is a clear national problem, identified by Congress, related to occupational safety and health in hazardous waste operations and related emergency response. While the individual states, if all acted collectively, might be able to deal with the safety problems involved, most have not elected to do so in the seventeen years since the enactment of the OSH Act. Those states which have elected to participate under section 18 of the OSH Act, would not be preempted by this final regulation and would be able to address special, local conditions within the framework provided by this performance oriented standard while ensuring that their standards are at least as effective as the Federal standard. State comments were invited on the proposal and those that were submitted to the record were fully considered prior to promulgation of this Final Rule.

The agency certifies that this document has been assessed in light of the principles, criteria, and requirements stated in sections 2 through 5 of Executive Order 12621. There are no provisions of this rulemaking that are inconsistent with the principles, criteria, and requirements stated in sections 2 through 5 of Executive Order 12621. States which have approved state occupational safety and health plans may incur additional costs associated with standards development and enforcement as a result of this rulemaking. Funding for these approved state plan programs is available from OSHA under section 18 of the OSH Act. This rulemaking would not change the State's ability to discharge traditional State governmental functions or other aspects of State sovereignty.

An outline of § 1910.120 is included for the convenience of the reader as follows:

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List of Subjects in 29 CFR Part 1910

Containers, Drums, Emergency response, Flammable and combustible liquids, Hazardous materials, Hazardous substances, Hazardous wastes, Incorporation by reference, Materials handling and storage, Personal protective equipment, Storage areas, Training, Waste disposal.

Authority

This document has been prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Pursuant to section 126 of the Superfund Amendments and Reauthorization Act of 1986 as amended (Pub. L. 99-499, 100 Stat. 1690 as amended by Pub. L. 100-202, section 101(f), 101 Stat. 1329-198, 29 U.S.C. 655 note), sections 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 657), section 4 of the Administrative Procedures Act (5 U.S.C. 553), 29 CFR Part 1911 and Secretary of Labor's Order 9-83 (48 FR 35736), it is proposed to amend 29 CFR Part 1910 by revising § 1910.120, Hazardous Waste Operations and Emergency Response, as set forth below.

Signed at Washington, DC this 28th day of February 1989.

John A. Pendergrass,

Assistant Secretary of Labor.

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for Subpart H of Part 1910 is amended by adding the following paragraph:

Authority: * * *

Section 1910.120 issued under the authority of section 126 of the Superfund Amendments and Reauthorization Act of 1986 as amended (29 U.S.C. 655 note), sections 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 657), section 4 of the Administrative Procedure Act (5 U.S.C. 553), 29 CFR Part 1911 and Secretary of Labor's Order 9-83 (48 FR 35736).

2. Section 1910.120 of Title 29 of the Code of Federal Regulations is revised to read as follows:

§ 1910.120 Hazardous waste operations and emergency response.

(a) *Scope, application, and definitions*—(1) *Scope.* This section covers the following operations, unless the employer can demonstrate that the operation does not involve employee exposure or the reasonable possibility for employee exposure to safety or health hazards:

(i) Clean-up operations required by a governmental body, whether Federal, state, local or other involving hazardous substances that are conducted at uncontrolled hazardous waste sites (including, but not limited to, the EPA's National Priority Site List (NPL), state priority site lists, sites recommended for the EPA NPL, and initial investigations of government identified sites which are conducted before the presence or absence of hazardous substances has been ascertained);

(ii) Corrective actions involving clean-up operations at sites covered by the Resource Conservation and Recovery Act of 1976 (RCRA) as amended (42 U.S.C. 6901 *et seq.*);

(iii) Voluntary clean-up operations at sites recognized by Federal, state, local or other governmental bodies as uncontrolled hazardous waste sites;

(iv) Operations involving hazardous wastes that are conducted at treatment, storage, and disposal (TSD) facilities regulated by 40 CFR Parts 264 and 265 pursuant to RCRA; or by agencies under agreement with U.S.E.P.A. to implement RCRA regulations; and

(v) Emergency response operations for releases of, or substantial threats of releases of, hazardous substances without regard to the location of the hazard.

(2) *Application.* (i) All requirements of Part 1910 and Part 1926 of Title 29 of the Code of Federal Regulations apply pursuant to their terms to hazardous waste and emergency response operations whether covered by this section or not. If there is a conflict or overlap, the provision more protective of employee safety and health shall apply without regard to 29 CFR 1910.5(c)(1).

(ii) Hazardous substance clean-up operations within the scope of paragraphs (a)(1)(i) through (a)(1)(iii) of this section must comply with all paragraphs of this section except paragraphs (p) and (q).

(iii) Operations within the scope of paragraph (a)(1)(iv) of this section must comply only with the requirements of paragraph (p) of this section.

Exceptions: For large quantity generators of hazardous waste who store those wastes less than 90 days and for small quantity generators of hazardous wastes, who have emergency response teams that respond to releases of, or substantial threats of releases of, hazardous substances, for their RCRA workplaces only paragraph (p)(8) of this section is applicable. Such generators of hazardous wastes who do not have emergency response teams that respond to releases of, or substantial threats of releases of, hazardous substances are exempt from the requirements of this section.

(iv) Emergency response operations for releases of, or substantial threats of releases of, hazardous substances which are not covered by paragraphs (a)(1)(i) through (a)(1)(iv) of this section must only comply with the requirements of paragraph (q) of this section.

(3) *Definitions—"Buddy system"* means a system of organizing employees into work groups in such a manner that each employee of the work group is designated to be observed by at least one other employee in the work group. The purpose of the buddy system is to provide rapid assistance to employees in the event of an emergency.

"Clean-up operation" means an operation where hazardous substances are removed, contained, incinerated, neutralized, stabilized, cleared-up, or in any other manner processed or handled with the ultimate goal of making the site safer for people or the environment.

"Decontamination" means the removal of hazardous substances from employees and their equipment to the extent necessary to preclude the occurrence of foreseeable adverse health affects.

"Emergency response" or *"responding to emergencies"* means a response effort by employees from outside the

immediate release area or by other designated responders (i.e., mutual-aid groups, local fire departments, etc.) to an occurrence which results, or is likely to result, in an uncontrolled release of a hazardous substance. Responses to incidental releases of hazardous substances where the substance can be absorbed, neutralized, or otherwise controlled at the time of release by employees in the immediate release area, or by maintenance personnel are not considered to be emergency responses within the scope of this standard. Responses to releases of hazardous substances where there is no potential safety or health hazard (i.e., fire, explosion, or chemical exposure) are not considered to be emergency responses.

"Facility" means (A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any water-borne vessel.

(3) *"Hazardous materials response (HAZMAT) team"* means an organized group of employees, designated by the employer, who are expected to perform work to handle and control actual or potential leaks or spills of hazardous substances requiring possible close approach to the substance. The team members perform responses to releases or potential releases of hazardous substances for the purpose of control or stabilization of the incident. A HAZMAT team is not a fire brigade nor is a typical fire brigade a HAZMAT team. A HAZMAT team, however, may be a separate component of a fire brigade or fire department.

"Hazardous substance" means any substance designated or listed under paragraphs (A) through (D) of this definition, exposure to which results or may result in adverse affects on the health or safety of employees:

(A) Any substance defined under section 101(14) of CERCLA;

(B) Any biological agent and other disease-causing agent as defined in section 101(33) of CERCLA;

(C) Any substance listed by the U.S. Department of Transportation as hazardous materials under 49 CFR 172.101 and appendices; and

(D) Hazardous waste as herein defined.

"Hazardous waste" means—

(A) A waste or combination of wastes as defined in 40 CFR 261.3, or

(B) Those substances defined as hazardous wastes in 49 CFR 171.8.

"Hazardous waste operation" means any operation conducted within the scope of this standard.

"Hazardous waste site" or "Site" means any facility or location within the scope of this standard at which hazardous waste operations take place.

"Health hazard" means a chemical, mixture of chemicals or a pathogen for which there is statistically significant evidence based on at least one study conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed employees. The term "health hazard" includes chemicals which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, heptaotoxins, nephrotoxins, neurotoxins, agents which act on the hematopoietic system, and agents which damage the lungs, skin, eyes, or mucous membranes. It also includes stress due to temperature extremes. Further definition of the terms used above can be found in Appendix A to 29 CFR 1910.1200.

"IDLH" or *"Immediately dangerous to life or health"* means an atmospheric concentration of any toxic, corrosive or asphyxiant substance that poses an immediate threat to life or would cause irreversible or delayed adverse health effects or would interfere with an individual's ability to escape from a dangerous atmosphere.

"Oxygen deficiency" means that concentration of oxygen by volume below which atmosphere supplying respiratory protection must be provided. It exists in atmospheres where the percentage of oxygen by volume is less than 19.5 percent oxygen.

"Permissible exposure limit" means the exposure, inhalation or dermal permissible exposure limit specified in 29 CFR Part 1910, Subparts G and Z.

"Published exposure level" means the exposure limits published in "NIOSH Recommendations for Occupational Health Standards" dated 1986 incorporated by reference, or if none is specified, the exposure limits published in the standards specified by the American Conference of Governmental Industrial Hygienists in their publication "Threshold Limit Values and Biological Exposure Indices for 1987–88" dated 1987 incorporated by reference.

"Post emergency response" means that portion of an emergency response performed after the immediate threat of a release has been stabilized or eliminated and clean-up of the site has begun. If post emergency response is performed by an employer's own employees who were part of the initial emergency response, it is considered to be part of the initial response and not post emergency response. However, if a group of an employer's own employees, separate from the group providing initial response, performs the clean-up operation, then the separate group of employees would be considered to be performing post-emergency response and subject to paragraph (g)(11) of this section.

"Qualified person" means a person with specific training, knowledge and experience in the area for which the person has the responsibility and the authority to control.

"Site safety and health supervisor (or official)" means the individual located on a hazardous waste site who is responsible to the employer and has the authority and knowledge necessary to implement the site safety and health plan and verify compliance with applicable safety and health requirements.

"Small quantity generator" means a generator of hazardous wastes who in any calendar month generates no more than 1,000 kilograms (2,205 pounds) of hazardous waste in that month.

"Uncontrolled hazardous waste site" means an area where an accumulation of hazardous waste creates a threat to the health and safety of individuals or the environment or both. Some sites are found on public lands, such as those created by former municipal, county or state landfills where illegal or poorly managed waste disposal has taken place. Other sites are found on private property, often belonging to generators or former generators of hazardous waste. Examples of such sites include, but are not limited to, surface impoundments, landfills, dumps, and tank or drum farms. Normal operations at TSD sites are not covered by this definition.

(b) *Safety and health program.*

Note to (b): Safety and health programs developed and implemented to meet other Federal, state, or local regulations are considered acceptable in meeting this requirement if they cover or are modified to cover the topics required in this paragraph. An additional or separate safety and health program is not required by this paragraph.

(1) *General.* (i) Employers shall develop and implement a written safety and health program for their employees involved in hazardous waste operations. The program shall be designed to identify, evaluate, and control safety and health hazards, and provide for

emergency response for hazardous waste operations.

(ii) The written safety and health program shall incorporate the following:

(A) An organizational structure;

(B) A comprehensive workplan;

(C) A site-specific safety and health plan which need not repeat the employer's standard operating procedures required in paragraph (b)(1)(ii)(F) of this section;

(D) The safety and health training program;

(E) The medical surveillance program;

(F) The employer's standard operating procedures for safety and health; and

(G) Any necessary interface between general program and site specific activities.

(iii) *Site excavation.* Site excavations created during initial site preparation or during hazardous waste operations shall be shored or sloped as appropriate to prevent accidental collapse in accordance with Subpart P of 29 CFR Part 1926.

(iv) *Contractors and sub-contractors.* An employer who retains contractor or sub-contractor services for work in hazardous waste operations shall inform those contractors, sub-contractors, or their representatives of the site emergency response procedures and any potential fire, explosion, health, safety or other hazards of the hazardous waste operation that have been identified by the employer, including those identified in the employer's information program.

(v) *Program availability.* The written safety and health program shall be made available to any contractor or subcontractor or their representative who will be involved with the hazardous waste operation; to employees; to employee designated representatives; to OSHA personnel, and to personnel of other Federal, state, or local agencies with regulatory authority over the site.

(2) *Organizational structure part of the site program.*—(i) The organizationa1 structure part of the program shall establish the specific chain of command and specify the overall responsibilities of supervisors and employees. It shall include, at a minimum, the following elements:

(A) A general supervisor who has the responsibility and authority to direct all hazardous waste operations.

(B) A site safety and health supervisor who has the responsibility and authority to develop and implement the site safety and health plan and verify compliance.

(C) All other personnel needed for hazardous waste site operations and emergency response and their general functions and responsibilities.

(D) The lines of authority, responsibility, and communication.

(ii) The organizational structure shall be reviewed and updated as necessary to reflect the current status of waste site operations.

(3) *Comprehensive workplan part of the site program.* The comprehensive workplan part of the program shall address the tasks and objectives of the site operations and the logistics and resources required to reach those tasks and objectives.

(i) The comprehensive workplan shall address anticipated clean-up activities as well as normal operating procedures which need not repeat the employer's procedures available elsewhere.

(ii) The comprehensive workplan shall define work tasks and objectives and identify the methods for accomplishing those tasks and objectives.

(iii) The comprehensive workplan shall establish personnel requirements for implementing the plan.

(iv) The comprehensive workplan shall provide for the implementation of the training required in paragraph (e) of this section.

(v) The comprehensive workplan shall provide for the implementation of the required informational programs required in paragraph (i) of this section.

(vi) The comprehensive workplan shall provide for the implementation of the medical surveillance program described in paragraph (f) of this section.

(4) *Site-specific safety and health plan part of the program.*—(i) *General.* The site safety and health plan, which must be kept on site, shall address the safety and health hazards of each phase of site operation and include the requirements and procedures for employee protection.

(ii) *Elements.* The site safety and health plan, as a minimum, shall address the following:

(A) A safety and health risk or hazard analysis for each site task and operation found in the workplan.

(B) Employee training assignments to assure compliance with paragraph (e) of this section.

(C) Personal protective equipment to be used by employees for each of the site tasks and operations being conducted as required by the personal protective equipment program in paragraph (g)(5) of this section.

(D) Medical surveillance requirements in accordance with the program in paragraph (f) of this section.

(E) Frequency and types of air monitoring, personnel monitoring, and environmental sampling techniques and instrumentation to be used, including methods of maintenance and calibration of monitoring and sampling equipment to be used.

(F) Site control measures in accordance with the site control program required in paragraph (d) of this section.

(G) Decontamination procedures in accordance with paragraph (k) of this section.

(H) An emergency response plan meeting the requirements of paragraph (l) of this section for safe and effective responses to emergencies, including the necessary PPE and other equipment.

(I) Confined space entry procedures.

(J) A spill containment program meeting the requirements of paragraph (j) of this section.

(iii) *Pre-entry briefing.* The site specific safety and health plan shall provide for pre-entry briefings to be held prior to initiating any site activity, and at such other times as necessary to ensure that employees are apprised of the site safety and health plan and that this plan is being followed. The information and data obtained from site characterization and analysis work required in paragraph (c) of this section shall be used to prepare and update the site safety and health plan.

(iv) *Effectiveness of site safety and health plan.* Inspections shall be conducted by the site safety and health supervisor or, in the absence of that individual, another individual who is knowledgeable in occupational safety and health, acting on behalf of the employer as necessary to determine the effectiveness of the site safety and health plan. Any deficiencies in the effectiveness of the site safety and health plan shall be corrected by the employer.

(c) *Site characterization and analysis*—(1) *General.* Hazardous waste sites shall be evaluated in accordance with this paragraph to identify specific site hazards and to determine the appropriate safety and health control procedures needed to protect employees from the identified hazards.

(2) *Preliminary evaluation.* A preliminary evaluation of a site's characteristics shall be performed prior to site entry by a qualified person in order to aid in the selection of appropriate employee protection methods prior to site entry. Immediately after initial site entry, a more detailed evaluation of the site's specific characteristics shall be performed by a qualified person in order to further identify existing site hazards and to further aid in the selection of the appropriate engineering controls and personal protective equipment for the tasks to be performed.

(3) *Hazard identification.* All suspected conditions that may pose

inhalation or skin absorption hazards that are immediately dangerous to life or health (IDLH), or other conditions that may cause death or serious harm, shall be identified during the preliminary survey and evaluated during the detailed survey. Examples of such hazards include, but are not limited to, confined space entry, potentially explosive or flammable situations, visible vapor clouds, or areas where biological indicators such as dead animals or vegetation are located.

(4) *Required information.* The following information to the extent available shall be obtained by the employer prior to allowing employees to enter a site:

(i) Location and approximate size of the site.

(ii) Description of the response activity and/or the job task to be performed.

(iii) Duration of the planned employee activity.

(iv) Site topography and accessibility by air and roads.

(v) Safety and health hazards expected at the site.

(vi) Pathways for hazardous substance dispersion.

(vii) Present status and capabilities of emergency response teams that would provide assistance to hazardous waste clean-up site employees at the time of an emergency.

(viii) Hazardous substances and health hazards involved or expected at the site, and their chemical and physical properties.

(5) *Personal protective equipment.* Personal protective equipment (PPE) shall be provided and used during initial site entry in accordance with the following requirements:

(i) Based upon the results of the preliminary site evaluation, an ensemble of PPE shall be selected and used during initial site entry which will provide protection to a level of exposure below permissible exposure limits and published exposure levels for known or suspected hazardous substances and health hazards, and which will provide protection against other known and suspected hazards identified during the preliminary site evaluation. If there is no permissible exposure limit or published exposure level, the employer may use other published studies and information as a guide to appropriate personal protective equipment.

(ii) If positive-pressure self-contained breathing apparatus is not used as part of the entry ensemble, and if respiratory protection is warranted by the potential hazards identified during the preliminary site evaluation, an escape self-contained breathing apparatus of at least five minute's duration shall be carried by employees during initial site entry.

(iii) If the preliminary site evaluation does not produce sufficient information to identify the hazards or suspected hazards of the site, an ensemble providing protection equivalent to Level B PPE shall be provided as minimum protection, and direct reading instruments shall be used as appropriate for identifying IDLH conditions. (See Appendix B for a description of Level B hazards and the recommendations for Level B protective equipment.)

(iv) Once the hazards of the site have been identified, the appropriate PPE shall be selected and used in accordance with paragraph (g) of this section.

(6) *Monitoring.* The following monitoring shall be conducted during initial site entry when the site evaluation produces information that shows the potential for ionizing radiation or IDLH conditions, or when the site information is not sufficient reasonably to eliminate these possible conditions:

(i) Monitoring with direct reading instruments for hazardous levels of ionizing radiation.

(ii) Monitoring the air with appropriate direct reading test equipment (i.e., combustible gas meters, detector tubes) for IDLH and other conditions that may cause death or serious harm (combustible or explosive atmospheres, oxygen deficiency, toxic substances).

(iii) Visually observing for signs of actual or potential IDLH or other dangerous conditions.

(iv) An ongoing air monitoring program in accordance with paragraph (h) of this section shall be implemented after site characterization has determined the site is safe for the start-up of operations.

(7) *Risk identification.* Once the presence and concentrations of specific hazardous substances and health hazards have been established, the risks associated with these substances shall be identified. Employees who will be working on the site shall be informed of any risks that have been identified. In situations covered by the Hazard Communication Standard, 29 CFR 1910.1200, training required by that standard need not be duplicated.

Note to (c)(7).—Risks to consider include, but are not limited to:

(a) Exposures exceeding the permissible exposure limits and published exposure levels.

(b) IDLH concentrations.

(c) Potential skin absorption and irritation sources.

(d) Potential eye irritation sources.

(e) Explosion sensitivity and flammability ranges.

(f) Oxygen deficiency.

(8) *Employee notification.* Any information concerning the chemical, physical, and toxicologic properties of each substance known or expected to be present on site that is available to the employer and relevant to the duties an employee is expected to perform shall be made available to the affected employees prior to the commencement of their work activities. The employer may utilize information developed for the hazard communication standard for this purpose.

(d) *Site control*—(1) *General.* Appropriate site control procedures shall be implemented to control employee exposure to hazardous substances before clean-up work begins.

(2) *Site control program.* A site control program for protecting employees which is part of the employer's site safety and health program required in paragraph (b) of this section shall be developed during the planning stages of a hazardous waste clean-up operation and modified as necessary as new information becomes available.

(3) *Elements of the site control program.* The site control program shall, as a minimum, include: A site map; site work zones; the use of a "buddy system"; site communications including alerting means for emergencies; the standard operating procedures or safe work practices; and, identification of the nearest medical assistance. Where these requirements are covered elsewhere they need not be repeated.

(e) *Training*—(1) *General.* (i) All employees working on site (such as but not limited to equipment operators, general laborers and others) exposed to hazardous substances, health hazards, or safety hazards and their supervisors and management responsible for the site shall receive training meeting the requirements of this paragraph before they are permitted to engage in hazardous waste operations that could expose them to hazardous substances, safety, or health hazards, and they shall receive review training as specified in this paragraph.

(ii) Employees shall not be permitted to participate in or supervise field activities until they have been trained to a level required by their job function and responsibility.

(2) *Elements to be covered.* The training shall thoroughly cover the following:

(i) Names of personnel and alternates responsible for site safety and health;

(ii) Safety, health and other hazards present on the site;

(iii) Use of personal protective equipment;

(iv) Work practices by which the employee can minimize risks from hazards;

(v) Safe use of engineering controls and equipment on the site;

(vi) Medical surveillance requirements, including recognition of symptoms and signs which might indicate overexposure to hazards; and

(vii) The contents of paragraphs (G) through (J) of the site safety and health plan set forth in paragraph (b)(4)(ii) of this section.

(3) *Initial training.* (i) General site workers (such as equipment operators, general laborers and supervisory personnel) engaged in hazardous substance removal or other activities which expose or potentially expose workers to hazardous substances and health hazards shall receive a minimum of 40 hours of instruction off the site, and a minimum of three days actual field experience under the direct supervision of a trained, experienced supervisor.

(ii) Workers on site only occasionally for a specific limited task (such as, but not limited to, ground water monitoring, land surveying, or geo-physical surveying) and who are unlikely to be exposed over permissible exposure limits and published exposure limits shall receive a minimum of 24 hours of instruction off the site, and the minimum of one day actual field experience under the direct supervision of a trained, experienced supervisor.

(iii) Workers regularly on site who work in areas which have been monitored and fully characterized indicating that exposures are under permissible exposure limits and published exposure limits where respirators are not necessary, and the characterization indicates that there are no health hazards or the possibility of an emergency developing, shall receive a minimum of 24 hours of instruction off the site and the minimum of one day actual field experience under the direct supervision of a trained, experienced supervisor.

(iv) Workers with 24 hours of training who are covered by paragraphs (a)(3)(ii) and (a)(3)(iii) of this section, and who become general site workers or who are required to wear respirators, shall have the additional 16 hours and two days of training necessary to total the training specified in paragraph (e)(3)(i).

(4) *Management and supervisor training.* On-site management and supervisors directly responsible for, or who supervise employees engaged in, hazardous waste operations shall receive 40 hours initial training, and three days of supervised field experience (the training may be reduced to 24 hours and one day if the only area of their responsibility is employees covered by paragraphs (e)(3)(ii) and (e)(3)(iii)) and at least eight additional hours of specialized training at the time of job assignment on such topics as, but not limited to, the employer's safety and health program and the associated employee training program, personal protective equipment program, spill containment program, and health hazard monitoring procedure and techniques.

(5) *Qualifications for trainers.* Trainers shall be qualified to instruct employees about the subject matter that is being presented in training. Such trainers shall have satisfactorily completed a training program for teaching the subjects they are expected to teach, or they shall have the academic credentials and instructional experience necessary for teaching the subjects. Instructors shall demonstrate competent instructional skills and knowledge of the applicable subject matter.

(6) *Training certification.* Employees and supervisors that have received and successfully completed the training and field experience specified in paragraphs (e)(1) through (e)(4) of this section shall be certified by their instructor or the head instructor and trained supervisor as having successfully completed the necessary training. A written certificate shall be given to each person so certified. Any person who has not been so certified or who does not meet the requirements of paragraph (e)(9) of this section shall be prohibited from engaging in hazardous waste operations.

(7) *Emergency response.* Employees who are engaged in responding to hazardous emergency situations at hazardous waste clean-up sites that may expose them to hazardous substances shall be trained in how to respond to such expected emergencies.

(8) *Refresher training.* Employees specified in paragraph (e)(1) of this section, and managers and supervisors specified in paragraph (e)(4) of this section, shall receive eight hours of refresher training annually on the items specified in paragraph (e)(2) and/or (e)(4) of this section, any critique of incidents that have occurred in the past year that can serve as training examples of related work, and other relevant topics.

(9) *Equivalent training.* Employers who can show by documentation or certification that an employee's work experience and/or training has resulted in training equivalent to that training required in paragraphs (e)(1) through (e)(4) of this section shall not be required to provide the initial training requirements of those paragraphs to such employees. However, certified employees new to a site shall receive appropriate, site specific training before site entry and have appropriate supervised field experience at the new site. Equivalent training includes any academic training or the training that existing employees might have already received from actual hazardous waste site work experience.

(f) *Medical surveillance*–(1) *General.* Employers engaged in operations specified in paragraphs (a)(1)(i) through (a)(1)(iv) of this section and not covered by (a)(2)(iii) exceptions and employers of employees specified in paragraph (q)(9) shall institute a medical surveillance program in accordance with this paragraph.

(2) *Employees covered.* The medical surveillance program shall be instituted by the employer for the following employees:

(i) All employees who are or may be exposed to hazardous substances or health hazards at or above the permissible exposure limits or, if there is no permissible exposure limit, above the published exposure levels for these substances, without regard to the use of respirators, for 30 days or more a year;

(ii) All employees who wear a respirator for 30 days or more a year or as required by § 1910.134;

(iii) All employees who are injured due to overexposure from an emergency incident involving hazardous substances or health hazards; or

(iv) Members of HAZMAT teams.

(3) *Frequency of medical examinations and consultations.* Medical examinations and consultations shall be made available by the employer to each employee covered under paragraph (f)(2) of this section on the following schedules:

(i) For employees covered under paragraphs (f)(2)(i), (f)(2)(ii), and (f)(2)(iv):

(A) Prior to assignment;

(B) At least once every twelve months for each employee covered unless the attending physician believes a longer interval (not greater than biennially) is appropriate;

(C) At termination of employment or reassignment to an area where the employee would not be covered if the employee has not had an examination within the last six months;

(D) As soon as possible upon notification by an employee that the employee has developed signs or symptoms indicating possible

overexposure to hazardous substances or health hazards, or that the employee has been injured or exposed above the permissible exposure limits or published exposure levels in an emergency situation;

(E) At more frequent times, if the examining physician determines that an increased frequency of examination is medically necessary.

(ii) For employees covered under paragraph (f)(2)(iii) and for all employees including those of employers covered by paragraph (a)(1)(v) who may have been injured, received a health impairment, developed signs or symptoms which may have resulted from exposure to hazardous substances resulting from an emergency incident, or exposed during an emergency incident to hazardous substances at concentrations above the permissible exposure limits or the published exposure levels without the necessary personal protective equipment being used:

(A) As soon as possible following the emergency incident or development of signs or symptoms;

(B) At additional times, if the examining physician determines that follow-up examinations or consultations are medically necessary.

(4) *Content of medical examinations and consultations.* (i) Medical examinations required by paragraph (f)(3) of this section shall include a medical and work history (or updated history if one is in the employee's file) with special emphasis on symptoms related to the handling of hazardous substances and health hazards, and to fitness for duty including the ability to wear any required PPE under conditions (i.e., temperature extremes) that may be expected at the work site.

(ii) The content of medical examinations or consultations made available to employees pursuant to paragraph (f) shall be determined by the attending physician. The guidelines in the *Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities* (See Appendix D, Reference #10) should be consulted.

(5) *Examination by a physician and costs.* All medical examinations and procedures shall be performed by or under the supervision of a licensed physician, preferably one knowledgeable in occupational medicine, and shall be provided without cost to the employee, without loss of pay, and at a reasonable time and place.

(6) *Information provided to the physician.* The employer shall provide one copy of this standard and its appendices to the attending physician, and in addition the following for each employee:

(i) A description of the employee's duties as they relate to the employee's exposures.

(ii) The employee's exposure levels or anticipated exposure levels.

(iii) A description of any personal protective equipment used or to be used.

(iv) Information from previous medical examinations of the employee which is not readily available to the examining physician.

(v) Information required by § 1910.134.

(7) *Physician's written opinion.* (i) The employer shall obtain and furnish the employee with a copy of a written opinion from the attending physician containing the following:

(A) The physician's opinion as to whether the employee has any detected medical conditions which would place the employee at increased risk of material impairment of the employee's health from work in hazardous waste operations or emergency response, or from respirator use.

(B) The physician's recommended limitations upon the employee's assigned work.

(C) The results of the medical examination and tests if requested by the employee.

(D) A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions which require further examination or treatment.

(ii) The written opinion obtained by the employer shall not reveal specific findings or diagnoses unrelated to occupational exposures.

(8) *Recordkeeping.* (i) An accurate record of the medical surveillance required by paragraph (f) of this section shall be retained. This record shall be retained for the period specified and meet the criteria of 29 CFR 1910.20.

(ii) The record required in paragraph (f)(8)(i) of this section shall include at least the following information:

(A) The name and social security number of the employee;

(B) Physician's written opinions, recommended limitations, and results of examinations and tests;

(C) Any employee medical complaints related to exposure to hazardous substances;

(D) A copy of the information provided to the examining physician by the employer, with the exception of the standard and its appendices.

(g) *Engineering controls, work practices, and personal protective equipment for employee protection.* Engineering controls, work practices, personal protective equipment, or a combination of these shall be implemented in accordance with this paragraph to protect employees from exposure to hazardous substances and safety and health hazards.

(1) *Engineering controls, work practices and PPE for substances regulated in Subparts G and Z.* (i) Engineering controls and work practices shall be instituted to reduce and maintain employee exposure to or below the permissible exposure limits for substances regulated by 29 CFR Part 1910, to the extent required by Subpart Z, except to the extent that such controls and practices are not feasible.

Note to (g)(1)(i): Engineering controls which may be feasible include the use of pressurized cabs or control booths on equipment, and/or the use of remotely operated material handling equipment. Work practices which may be feasible are removing all non-essential employees from potential exposure during opening of drums, wetting down dusty operations and locating employees upwind of possible hazards.

(ii) Whenever engineering controls and work practices are not feasible, PPE shall be used to reduce and maintain employee exposures to or below the permissible exposure limits or dose limits for substances regulated by 29 CFR Part 1910, Subpart Z.

(iii) The employer shall not implement a schedule of employee rotation as a means of compliance with permissible exposure limits or dose limits except when there is no other feasible way of complying with the airborne or dermal dose limits for ionizing radiation.

(iv) The provisions of 29 CFR, Subpart G, shall be followed.

(2) *Engineering controls, work practices, and PPE for substances not regulated in Subparts G and Z.* An appropriate combination of engineering controls, work practices and personal protective equipment shall be used to reduce and maintain employee exposure to or below published exposure levels for hazardous substances and health hazards not regulated by 29 CFR Part 1910, Subparts G and Z. The employer may use the published literature and MSDS as a guide in making the employer's determination as to what level of protection the employer believes is appropriate for hazardous substances and health hazards for which there is no permissible exposure limit or published exposure limit.

(3) *Personal protective equipment selection.* (i) Personal protective equipment (PPE) shall be selected and used which will protect employees from the hazards and potential hazards they are likely to encounter as identified during the site characterization and analysis.

(ii) Personal protective equipment selection shall be based on an evaluation of the performance characteristics of the PPE relative to the requirements and limitations of the site, the task-specific conditions and duration, and the hazards and potential hazards identified at the site.

(iii) Positive pressure self-contained breathing apparatus, or positive pressure air-line respirators equipped with an escape air supply, shall be used when chemical exposure levels present will create a substantial possibility of immediate death, immediate serious illness or injury, or impair the ability to escape.

(iv) Totally-encapsulating chemical protective suits (protection equivalent to Level A protection as recommended in Appendix B) shall be used in conditions where skin absorption of a hazardous substance may result in a substantial possibility of immediate death, immediate serious illness or injury, or impair the ability to escape.

(v) The level of protection provided by PPE selection shall be increased when additional information on site conditions indicates that increased protection is necessary to reduce employee exposures below permissible exposure limits and published exposure levels for hazardous substances and health hazards. (See Appendix B for guidance on selecting PPE ensembles.)

Note to (g)(3): The level of employee protection provided may be decreased when additional information or site conditions show that decreased protection will not result in hazardous exposures to employees.

(vi) Personal protective equipment shall be selected and used to meet the requirements of 29 CFR Part 1910, Subpart I, and additional requirements specified in this section.

(4) *Totally-encapsulating chemical protective suits.* (i) Totally-encapsulating suits shall protect employees from the particular hazards which are identified during site characterization and analysis.

(ii) Totally-encapsulating suits shall be capable of maintaining positive air pressure. (See Appendix A for a test method which may be used to evaluate this requirement.)

(iii) Totally-encapsulating suits shall be capable of preventing inward test gas leakage of more than 0.5 percent. (See Appendix A for a test method which may be used to evaluate this requirement.)

(5) *Personal protective equipment (PPE) program.* A written personal protective equipment program, which is part of the employer's safety and health program required in paragraph (b) of this section or required in paragraph (p)(1) of this section and which is also a part of the site-specific safety and health plan shall be established. The PPE program shall address the elements listed below. When elements, such as donning and doffing procedures, are provided by the manufacturer of a piece of equipment and are attached to the plan, they need not be rewritten into the plan as long as they adequately address the procedure or element.

(i) PPE selection based upon site hazards,

(ii) PPE use and limitations of the equipment,

(iii) Work mission duration,

(iv) PPE maintenance and storage,

(v) PPE decontamination and disposal,

(vi) PPE training and proper fitting,

(vii) PPE donning and doffing procedures,

(viii) PPE inspection procedures prior to, during, and after use,

(ix) Evaluation of the effectiveness of the PPE program, and

(x) Limitations during temperature extremes, heat stress, and other appropriate medical considerations.

(h) *Monitoring*—(1) *General.* (i) Monitoring shall be performed in accordance with this paragraph where there may be a question of employee exposure to hazardous concentrations of hazardous substances in order to assure proper selection of engineering controls, work practices and personal protective equipment so that employees are not exposed to levels which exceed permissible exposure limits or published exposure levels for hazardous substances.

(ii) Air monitoring shall be used to identify and quantify airborne levels of hazardous substances and safety and health hazards in order to determine the appropriate level of employee protection needed on site.

(2) *Initial entry.* Upon initial entry, representative air monitoring shall be conducted to identify any IDLH condition, exposure over permissible exposure limits or published exposure levels, exposure over a radioactive material's dose limits or other dangerous condition such as the presence of flammable atmospheres or oxygen-deficient environments.

(3) *Periodic monitoring.* Periodic monitoring shall be conducted when the possibility of an IDLH condition or flammable atmosphere has developed or when there is indication that exposures may have risen over permissible exposure limits or published exposure levels since prior monitoring. Situations where it shall be considered whether the possibility that exposures have risen are as follows:

(i) When work begins on a different portion of the site.

(ii) When contaminants other than those previously identified are being handled.

(iii) When a different type of operation is initiated (e.g., drum opening as opposed to exploratory well drilling).

(iv) When employees are handling leaking drums or containers or working in areas with obvious liquid contamination (e.g., a spill or lagoon).

(4) *Monitoring of high-risk employees.* After the actual clean-up phase of any hazardous waste operation commences; for example, when soil, surface water or containers are moved or disturbed; the employer shall monitor those employees likely to have the highest exposures to hazardous substances and health hazards likely to be present above permissible exposure limits or published exposure levels by using personal sampling frequently enough to characterize employee exposures. If the employees likely to have the highest exposure are over permissible exposure limits or published exposure limits, then monitoring shall continue to determine all employees likely to be above those limits. The employer may utilize a representative sampling approach by documenting that the employees and chemicals chosen for monitoring are based on the criteria stated above.

Note to (h): It is not required to monitor employees engaged in site characterization operations covered by paragraph (c) of this section.

(i) *Informational programs.* Employers shall develop and implement a program, which is part of the employer's safety and health program required in paragraph (b) of this section, to inform employees, contractors, and subcontractors (or their representative) actually engaged in hazardous waste operations of the nature, level and degree of exposure likely as a result of participation in such hazardous waste operations. Employees, contractors and subcontractors working outside of the operations part of a site are not covered by this standard.

(j) *Handling drums and containers*—(1) *General.* (i) Hazardous substances and contaminated soils, liquids, and other residues shall be handled, transported, labeled, and disposed of in accordance with this paragraph.

(ii) Drums and containers used during the clean-up shall meet the appropriate DOT, OSHA, and EPA regulations for the wastes that they contain.

(iii) When practical, drums and containers shall be inspected and their integrity shall be assured prior to being

moved. Drums or containers that cannot be inspected before being moved because of storage conditions (i.e., buried beneath the earth, stacked behind other drums, stacked several tiers high in a pile, etc.) shall be moved to an accessible location and inspected prior to further handling.

(iv) Unlabelled drums and containers shall be considered to contain hazardous substances and handled accordingly until the contents are positively identified and labeled.

(v) Site operations shall be organized to minimize the amount of drum or container movement.

(vi) Prior to movement of drums or containers, all employees exposed to the transfer operation shall be warned of the potential hazards associated with the contents of the drums or containers.

(vii) U.S. Department of Transportation specified salvage drums or containers and suitable quantities of proper absorbent shall be kept available and used in areas where spills, leaks, or ruptures may occur.

(viii) Where major spills may occur, a spill containment program, which is part of the employer's safety and health program required in paragraph (b) of this section, shall be implemented to contain and isolate the entire volume of the hazardous substance being transferred.

(ix) Drums and containers that cannot be moved without rupture, leakage, or spillage shall be emptied into a sound container using a device classified for the material being transferred.

(x) A ground-penetrating system or other type of detection system or device shall be used to estimate the location and depth of buried drums or containers.

(xi) Soil or covering material shall be removed with caution to prevent drum or container rupture.

(xii) Fire extinguishing equipment meeting the requirements of 29 CFR Part 1910, Subpart L, shall be on hand and ready for use to control incipient fires.

(2) *Opening drums and containers.* The following procedures shall be followed in areas where drums or containers are being opened:

(i) Where an airline respirator system is used, connections to the source of air supply shall be protected from contamination and the entire system shall be protected from physical damage.

(ii) Employees not actually involved in opening drums or containers shall be kept a safe distance from the drums or containers being opened.

(iii) If employees must work near or adjacent to drums or containers being opened, a suitable shield that does not interfere with the work operation shall be placed between the employee and the drums or containers being opened to protect the employee in case of accidental explosion.

(iv) Controls for drum or container opening equipment, monitoring equipment, and fire suppression equipment shall be located behind the explosion-resistant barrier.

(v) When there is a reasonable possibility of flammable atmospheres being present, material handling equipment and hand tools shall be of the type to prevent sources of ignition.

(vi) Drums and containers shall be opened in such a manner that excess interior pressure will be safely relieved. If pressure can not be relieved from a remote location, appropriate shielding shall be placed between the employee and the drums or containers to reduce the risk of employee injury.

(vii) Employees shall not stand upon or work from drums or containers.

(3) *Material handling equipment.* Material handling equipment used to transfer drums and containers shall be selected, positioned and operated to minimize sources of ignition related to the equipment from igniting vapors released from ruptured drums or containers.

(4) *Radioactive wastes.* Drums and containers containing radioactive wastes shall not be handled until such time as their hazard to employees is properly assessed.

(5) *Shock sensitive wastes.* As a minimum, the following special precautions shall be taken when drums and containers containing or suspected of containing shock-sensitive wastes are handled:

(i) All non-essential employees shall be evacuated from the area of transfer.

(ii) Material handling equipment shall be provided with explosive containment devices or protective shields to protect equipment operators from exploding containers.

(iii) An employee alarm system capable of being perceived above surrounding light and noise conditions shall be used to signal the commencement and completion of explosive waste handling activities.

(iv) Continuous communications (i.e., portable radios, hand signals, telephones, as appropriate) shall be maintained between the employee-in-charge of the immediate handling area and both the site safety and health supervisor and the command post until such time as the handling operation is completed. Communication equipment or methods that could cause shock sensitive materials to explode shall not be used.

(v) Drums and containers under pressure, as evidenced by bulging or swelling, shall not be moved until such time as the cause for excess pressure is determined and appropriate containment procedures have been implemented to protect employees from explosive relief of the drum.

(vi) Drums and containers containing packaged laboratory wastes shall be considered to contain shock-sensitive or explosive materials until they have been characterized.

Caution: Shipping of shock sensitive wastes may be prohibited under U.S. Department of Transportation regulations. Employers and their shippers should refer to 49 CFR 173.21 and 173.50.

(6) *Laboratory waste packs.* In addition to the requirements of paragraph (j)(5) of this section, the following precautions shall be taken, as a minimum, in handling laboratory waste packs (lab packs):

(i) Lab packs shall be opened only when necessary and then only by an individual knowledgeable in the inspection, classification, and segregation of the containers within the pack according to the hazards of the wastes.

(ii) If crystalline material is noted on any container, the contents shall be handled as a shock-sensitive waste until the contents are identified.

(7) *Sampling of drum and container contents.* Sampling of containers and drums shall be done in accordance with a sampling procedure which is part of the site safety and health plan developed for and available to employees and others at the specific worksite.

(8) *Shipping and transport.* (i) Drums and containers shall be identified and classified prior to packaging for shipment.

(ii) Drum or container staging areas shall be kept to the minimum number necessary to identify and classify materials safely and prepare them for transport.

(iii) Staging areas shall be provided with adequate access and egress routes.

(iv) Bulking of hazardous wastes shall be permitted only after a thorough characterization of the materials has been completed.

(9) *Tank and vault procedures.* (i) Tanks and vaults containing hazardous substances shall be handled in a manner similar to that for drums and containers, taking into consideration the size of the tank or vault.

(ii) Appropriate tank or vault entry procedures as described in the employer's safety and health plan shall

be followed whenever employees must enter a tank or vault.

(k) *Decontamination*—(1) *General.* Procedures for all phases of decontamination shall be developed and implemented in accordance with this paragraph.

(2) *Decontamination procedures.* (i) A decontamination procedure shall be developed, communicated to employees and implemented before any employees or equipment may enter areas on site where potential for exposure to hazardous substances exists.

(ii) Standard operating procedures shall be developed to minimize employee contact with hazardous substances or with equipment that has contacted hazardous substances.

(iii) All employees leaving a contaminated area shall be appropriately decontaminated; all contaminated clothing and equipment leaving a contaminated area shall be appropriately disposed of or decontaminated.

(iv) Decontamination procedures shall be monitored by the site safety and health supervisor to determine their effectiveness. When such procedures are found to be ineffective, appropriate steps shall be taken to correct any deficiencies.

(3) *Location.* Decontamination shall be performed in geographical areas that will minimize the exposure of uncontaminated employees or equipment to contaminated employees or equipment.

(4) *Equipment and solvents.* All equipment and solvents used for decontamination shall be decontaminated or disposed of properly.

(5) *Personal protective clothing and equipment.* (i) Protective clothing and equipment shall be decontaminated, cleaned, laundered, maintained or replaced as needed to maintain their effectiveness.

(ii) Employees whose non-impermeable clothing becomes wetted with hazardous substances shall immediately remove that clothing and proceed to shower. The clothing shall be disposed of or decontaminated before it is removed from the work zone.

(6) *Unauthorized employees.* Unauthorized employees shall not remove protective clothing or equipment from change rooms.

(7) *Commercial laundries or cleaning establishments.* Commercial laundries or cleaning establishments that decontaminate protective clothing or equipment shall be informed of the potentially harmful effects of exposures to hazardous substances.

(8) *Showers and change rooms.* Where the decontamination procedure indicates a need for regular showers and change rooms outside of a contaminated area, they shall be provided and meet the requirements of 29 CFR 1910.141. If temperature conditions prevent the effective use of water, then other effective means for cleansing shall be provided and used.

(l) *Emergency response by employees at uncontrolled hazardous waste sites*—(1) *Emergency response plan.* (i) An emergency response plan shall be developed and implemented by all employers within the scope of this section to handle anticipated emergencies prior to the commencement of hazardous waste operations. The plan shall be in writing and available for inspection and copying by employees, their representatives, OSHA personnel and other governmental agencies with relevant responsibilities.

(ii) Employers who will evacuate their employees from the workplace when an emergency occurs, and who do not permit any of their employees to assist in handling the emergency, are exempt from the requirements of this paragraph if they provide an emergency action plan complying with section 1910.38(a) of this part.

(2) *Elements of an emergency response plan.* The employer shall develop an emergency response plan for emergencies which shall address, as a minimum, the following:

(i) Pre-emergency planning.

(ii) Personnel roles, lines of authority, and communication.

(iii) Emergency recognition and prevention.

(iv) Safe distances and places of refuge.

(v) Site security and control.

(vi) Evacuation routes and procedures.

(vii) Decontamination procedures which are not covered by the site safety and health plan.

(viii) Emergency medical treatment and first aid.

(ix) Emergency alerting and response procedures.

(x) Critique of response and follow-up.

(xi) PPE and emergency equipment.

(3) *Procedures for handling emergency incidents.* (i) In addition to the elements for the emergency response plan required in paragraph (1)(2) of this section, the following elements shall be included for emergency response plans:

(A) Site topography, layout, and prevailing weather conditions.

(B) Procedures for reporting incidents to local, state, and federal governmental agencies.

(ii) The emergency response plan shall be a separate section of the Site Safety and Health Plan.

(iii) The emergency response plan shall be compatible and integrated with the disaster, fire and/or emergency response plans of local, state, and federal agencies.

(iv) The emergency response plan shall be rehearsed regularly as part of the overall training program for site operations.

(v) The site emergency response plan shall be reviewed periodically and, as necessary, be amended to keep it current with new or changing site conditions or information.

(vi) An employee alarm system shall be installed in accordance with 29 CFR 1910.165 to notify employees of an emergency situation; to stop work activities if necessary; to lower background noise in order to speed communication; and to begin emergency procedures.

(vii) Based upon the information available at time of the emergency, the employer shall evaluate the incident and the site response capabilities and proceed with the appropriate steps to implement the site emergency response plan.

(m) *Illumination.* Areas accessible to employees shall be lighted to not less than the minimum illumination intensities listed in the following Table H–120.1 while any work is in progress:

TABLE H–120.1.—Minimum Illumination Intensities in Foot-Candles

Foot-candles	Area or operations
5	General site areas.
3	Excavation and waste areas, accessways, active storage areas, loading platforms, refueling, and field maintenance areas.
5	Indoors: Warehouses, corridors, hallways, and exitways.
5	Tunnels, shafts, and general underground work areas. (Exception: Minimum of 10 foot-candles is required at tunnel and shaft heading during drilling mucking, and scaling. Mine Safety and Health Administration approved cap lights shall be acceptable for use in the tunnel heading.)
10	General shops (e.g., mechanical and electrical equipment rooms, active storerooms, barracks or living quarters, locker or dressing rooms, dining areas, and indoor toilets and workrooms.)
30	First aid stations, infirmaries, and offices.

(n) *Sanitation at temporary workplaces.*—(1) *Potable water.* (i) An adequate supply of potable water shall be provided on the site.

(ii) Portable containers used to dispense drinking water shall be

capable of being tightly closed, and equipped with a tap. Water shall not be dipped from containers.

(iii) Any container used to distribute drinking water shall be clearly marked as to the nature of its contents and not used for any other purpose.

(iv) Where single service cups (to be used but once) are supplied, both a sanitary container for the unused cups and a receptacle for disposing of the used cups shall be provided.

(2) *Nonpotable water.* (i) Outlets for nonpotable water, such as water for firefighting purposes, shall be identified to indicate clearly that the water is unsafe and is not to be used for drinking, washing, or cooking purposes.

(ii) There shall be no cross-connection, open or potential, between a system furnishing potable water and a system furnishing nonpotable water.

(3) *Toilet facilities.* (i) Toilets shall be provided for employees according to the following Table H–120.2.

TABLE H–120.2.—TOILET FACILITIES

Number of employees	Minimum number of facilities
20 or fewer	One.
More than 20, fewer than 200.	One toilet seat and one urinal per 40 employees.
More than 200	One toilet seat and one urinal per 50 employees.

(ii) Under temporary field conditions, provisions shall be made to assure that at least one toilet facility is available.

(iii) Hazardous waste sites not provided with a sanitary sewer shall be provided with the following toilet facilities unless prohibited by local codes:

(A) Chemical toilets;

(B) Recirculating toilets;

(C) Combustion toilets; or

(D) Flush toilets.

(iv) The requirements of this paragraph for sanitation facilities shall not apply to mobile crews having transportation readily available to nearby toilet facilities.

(v) Doors entering toilet facilities shall be provided with entrance locks controlled from inside the facility.

(4) *Food handling.* All food service facilities and operations for employees shall meet the applicable laws, ordinances, and regulations of the jurisdictions in which they are located.

(5) *Temporary sleeping quarters.* When temporary sleeping quarters are provided, they shall be heated, ventilated, and lighted.

(6) *Washing facilities.* The employer shall provide adequate washing facilities for employees engaged in operations where hazardous substances may be harmful to employees. Such facilities shall be in near proximity to the worksite; in areas where exposures are below permissible exposure limits and published exposure levels and which are under the controls of the employer; and shall be so equipped as to enable employees to remove hazardous substances from themselves.

(7) *Showers and change rooms.* When hazardous waste clean-up or removal operations commence on a site and the duration of the work will require six months or greater time to complete, the employer shall provide showers and change rooms for all employees exposed to hazardous substances and health hazards involved in hazardous waste clean-up or removal operations.

(i) Showers shall be provided and shall meet the requirements of 29 CFR 1910.141(d)(3).

(ii) Change rooms shall be provided and shall meet the requirements of 29 CFR 1910.141(e). Change rooms shall consist of two separate change areas separated by the shower area required in paragraph (n)(7)(i) of this section. One change area, with an exit leading off the worksite, shall provide employees with a clean area where they can remove, store, and put on street clothing. The second area, with an exit to the worksite, shall provide employees with an area where they can put on, remove and store work clothing and personal protective equipment.

(iii) Showers and change rooms shall be located in areas where exposures are below the permissible exposure limits and published exposure levels. If this cannot be accomplished, then a ventilation system shall be provided that will supply air that is below the permissible exposure limits and published exposure levels.

(iv) Employers shall assure that employees shower at the end of their work shift and when leaving the hazardous waste site.

(o) *New technology programs.* (1) The employer shall develop and implement procedures for the introduction of effective new technologies and equipment developed for the improved protection of employees working with hazardous waste clean-up operations, and the same shall be implemented as part of the site safety and health program to assure that employee protection is being maintained.

(2) New technologies, equipment or control measures available to the industry, such as the use of foams, absorbents, adsorbents, neutralizers, or other means to suppress the level of air contaminates while excavating the site or for spill control, shall be evaluated by employers or their representatives. Such an evaluation shall be done to determine the effectiveness of the new methods, materials, or equipment before implementing their use on a large scale for enhancing employee protection. Information and data from manufacturers or suppliers may be used as part of the employer's evaluation effort. Such evaluations shall be made available to OSHA upon request.

(p) *Certain Operations Conducted Under the Resource Conservation and Recovery Act of 1976 (RCRA).* Employers conducting operations at treatment, storage, and disposal (TSD) facilities specified in paragraph (a)(1)(iv) of this section not exempted by paragraph (a)(2)(iii) of this section shall provide and implement the programs specified in this paragraph.

(1) *Safety and health program.* The employer shall develop and implement a written safety and health program for employees involved in hazardous waste operations that shall be available for inspection by employees, their representatives and OSHA personnel. The program shall be designed to identify, evaluate and control safety and health hazards in their facilities for the purpose of employee protection, to provide for emergency response meeting the requirements of paragraph (p)(8) of this section and to address as appropriate site analysis, engineering controls, maximum exposure limits, hazardous waste handling procedures and uses of new technologies.

(2) *Hazard communication program.* The employer shall implement a hazard communication program meeting the requirements of 29 CFR 1910.1200 as part of the employer's safety and program.

Note to 1910.120.—The exemption for hazardous waste provided in § 1910.1200 is applicable to this section.

(3) *Medical surveillance program.* The employer shall develop and implement a medical surveillance program meeting the requirements of paragraph (f) of this section.

(4) *Decontamination program.* The employer shall develop and implement a decontamination procedure meeting the requirements of paragraph (k) of this section.

(5) *New technology program.* The employer shall develop and implement procedures meeting the requirements of paragraph (o) of this section for introducing new and innovative equipment into the workplace.

(6) *Material handling program.* Where employees will be handling drums or containers, the employer shall develop

and implement procedures meeting the requirements of paragraphs (j)(1) (ii) through (viii) and (xi) of this section, as well as (j)(3) and (j)(8) of this section prior to starting such work.

(7) *Training program*—(i) *New employees.* The employer shall develop and implement a training program, which is part of the employer's safety and health program, for employees involved with hazardous waste operations to enable employees to perform their assigned duties and functions in a safe and healthful manner so as not to endanger themselves or other employees. The initial training shall be for 24 hours and refresher training shall be for eight hours annually. Employees who have received the initial training required by this paragraph shall be given a written certificate attesting that they have successfully completed the necessary training.

(ii) *Current employees.* Employers who can show by an employee's previous work experience and/or training that the employee has had training equivalent to the initial training required by this paragraph, shall be considered as meeting the initial training requirements of this paragraph as to that employee. Equivalent training includes the training that existing employees might have already received from actual site work experience. Current employees shall receive eight hours of refresher training annually.

(iii) *Trainers.* Trainers who teach initial training shall have satisfactorily completed a training course for teaching the subjects they are expected to teach or they shall have the academic credentials and instruction experience necessary to demonstrate a good command of the subject matter of the courses and competent instructional skills.

(8) *Emergency response program*—(i) *Emergency response plan.* An emergency response plan shall be developed and implemented by all employers. Such plans need not duplicate any of the subjects fully addressed in the employer's contingency planning required by permits, such as those issued by the U.S. Environmental Protection Agency, provided that the contingency plan is made part of the emergency response plan. The emergency response plan shall be a written portion of the employers safety and health program required in paragraph (p)(1) of this section. Employers who will evacuate their employees from the worksite location when an emergency occurs and who do not permit any of their employees to assist in handling the emergency are exempt from the requirements of paragraph (p)(8) if they provide an emergency action plan complying with § 1910.38(a) of this part.

(ii) *Elements of an emergency response plan.* The employer shall develop an emergency response plan for emergencies which shall address, as a minimum, the following areas to the extent that they are not addressed in any specific program required in this paragraph:

(A) Pre-emergency planning and coordination with outside parties.

(B) Personnel roles, lines of authority, and communication.

(C) Emergency recognition and prevention.

(D) Safe distances and places of refuge.

(E) Site security and control.

(F) Evacuation routes and procedures.

(G) Decontamination procedures.

(H) Emergency medical treatment and first aid.

(I) Emergency alerting and response procedures.

(J) Critique of response and follow-up.

(K) PPE and emergency equipment.

(iii) *Training.* (A) Training for emergency response employees shall be completed before they are called upon to perform in real emergencies. Such training shall include the elements of the emergency response plan, standard operating procedures the employer has established for the job, the personal protective equipment to be worn and procedures for handling emergency incidents.

Exception #1: An employer need not train all employees to the degree specified if the employer divides the work force in a manner such that a sufficient number of employees who have responsibility to control emergencies have the training specified, and all other employees, who may first respond to an emergency incident, have sufficient awareness training to recognize that an emergency response situation exists and that they are instructed in that case to summon the fully trained employees and not attempt control activities for which they are not trained.

Exception #2: An employer need not train all employees to the degree specified if arrangements have been made in advance for an outside fully-trained emergency response team to respond in a reasonable period and all employees, who may come to the incident first, have sufficient awareness training to recognize that an emergency response situation exists and they have been instructed to call the designated outside fully-trained emergency response team for assistance.

(B) Employee members of TSD facility emergency response organizations shall be trained to a level of competence in the recognition of health and safety hazards to protect themselves and other employees. This would include training in the methods used to minimize the risk from safety and health hazards; in the safe use of control equipment; in the selection and use of appropriate personal protective equipment; in the safe operating procedures to be used at the incident scene; in the techniques of coordination with other employees to minimize risks; in the appropriate response to over exposure from health hazards or injury to themselves and other employees; and in the recognition of subsequent symptoms which may result from over exposures.

(C) The employer shall certify that each covered employee has attended and successfully completed the training required in paragraph (p)(8)(iii) of this section, or shall certify the employee's competency at least yearly. The method used to demonstrate competency for certification of training shall be recorded and maintained by the employer.

(iv) *Procedures for handling emergency incidents.* (A) In addition to the elements for the emergency response plan required in paragraph (p)(8)(ii) of this section, the following elements shall be included for emergency response plans to the extent that they do not repeat any information already contained in the emergency response plan:

(*1*) Site topography, layout, and prevailing weather conditions.

(*2*) Procedures for reporting incidents to local, state, and federal governmental agencies.

(B) The emergency response plan shall be compatible and integrated with the disaster, fire and/or emergency response plans of local, state, and federal agencies.

(C) The emergency response plan shall be rehearsed regularly as part of the overall training program for site operations.

(D) The site emergency response plan shall be reviewed periodically and, as necessary, be amended to keep it current with new or changing site conditions or information.

(E) An employee alarm system shall be installed in accordance with 29 CFR 1910.165 to notify employees of an emergency situation; to stop work activities if necessary; to lower background noise in order to speed communication; and to begin emergency procedures.

(F) Based upon the information available at time of the emergency, the employer shall evaluate the incident and the site response capabilities and proceed with the appropriate steps to

implement the site emergency response plan.

(q) *Emergency response to hazardous substance releases.* This paragraph covers employers whose employees are engaged in emergency response no matter where it occurs except that it does not cover employees engaged in operations specified in paragraphs (a)(1)(i) through (a)(1)(iv) of this section. Those emergency response organizations who have developed and implemented programs equivalent to this paragraph for handling releases of hazardous substances pursuant to section 303 of the Superfund Amendments and Reauthorization Act of 1986 (Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11003) shall be deemed to have met the requirements of this paragraph.

(1) *Emergency response plan.* An emergency response plan shall be developed and implemented to handle anticipated emergencies prior to the commencement of emergency response operations. The plan shall be in writing and available for inspection and copying by employees, their representatives and OSHA personnel. Employers who will evacuate their employees from the workplace when an emergency occurs, and who do not permit any of their employees to assist in handling the emergency, are exempt from the requirements of this paragraph if they provide an emergency action plan in accordance with § 1910.38(a) of this part.

(2) *Elements of an emergency response plan.* The employer shall develop an emergency response plan for emergencies which shall address, as a minimum, the following to the extent that they are not addressed elsewhere:

(i) Pre-emergency planning and coordination with outside parties.

(ii) Personnel roles, lines of authority, training, and communication.

(iii) Emergency recognition and prevention.

(iv) Safe distances and places of refuge.

(v) Site security and control.

(vi) Evacuation routes and procedures.

(vii) Decontamination.

(viii) Emergency medical treatment and first aid.

(ix) Emergency alerting and response procedures.

(x) Critique of response and follow-up.

(xi) PPE and emergency equipment.

(xii) Emergency response organizations may use the local emergency response plan or the state emergency response plan or both, as part of their emergency response plan to avoid duplication. Those items of the emergency response plan that are being properly addressed by the SARA Title III plans may be substituted into their emergency plan or otherwise kept together for the employer and employee's use.

(3) *Procedures for handling emergency response.* (i) The senior emergency response official responding to an emergency shall become the individual in charge of a site-specific Incident Command System (ICS). All emergency responders and their communications shall be coordinated and controlled through the individual in charge of the ICS assisted by the senior official present for each employer.

Note to (q)(3)(i).—The "senior official" at an emergency response is the most senior official on the site who has the responsibility for controlling the operations at the site. Initially it is the senior officer on the first-due piece of responding emergency apparatus to arrive on the incident scene. As more senior officers arrive (i.e., battalion chief, fire chief, state law enforcement official, site coordinator, etc.) the position is passed up the line of authority which has been previously established.

(ii) The individual in charge of the ICS shall identify, to the extent possible, all hazardous substances or conditions present and shall address as appropriate site analysis, use of engineering controls, maximum exposure limits, hazardous substance handling procedures, and use of any new technologies.

(iii) Based on the hazardous substances and/or conditions present, the individual in charge of the ICS shall implement appropriate emergency operations, and assure that the personal protective equipment worn is appropriate for the hazards to be encountered. However, personal protective equipment shall meet, at a minimum, the criteria contained in 29 CFR 1910.156(e) when worn while performing fire fighting operations beyond the incipient stage for any incident or site.

(iv) Employees engaged in emergency response and exposed to hazardous substances presenting an inhalation hazard or potential inhalation hazard shall wear positive pressure self-contained breathing apparatus while engaged in emergency response, until such time that the individual in charge of the ICS determines through the use of air monitoring that a decreased level of respiratory protection will not result in hazardous exposures to employees.

(v) The individual in charge of the ICS shall limit the number of emergency response personnel at the emergency site, in those areas of potential or actual exposure to incident or site hazards, to those who are actively performing emergency operations. However, operations in hazardous areas shall be performed using the buddy system in groups of two or more.

(vi) Back-up personnel shall stand by with equipment ready to provide assistance or rescue. Advance first aid support personnel, as a minimum, shall also stand by with medical equipment and transportation capability.

(vii) The individual in charge of the ICS shall designate a safety official, who is knowledgable in the operations being implemented at the emergency response site, with specific responsibility to identify and evaluate hazards and to provide direction with respect to the safety of operations for the emergency at hand.

(viii) When activities are judged by the safety official to be an IDLH condition and/or to involve an imminent danger condition, the safety official shall have the authority to alter, suspend, or terminate those activities. The safety official shall immediately inform the individual in charge of the ICS of any actions needed to be taken to correct these hazards at an emergency scene.

(ix) After emergency operations have terminated, the individual in charge of the ICS shall implement appropriate decontamination procedures.

(x) When deemed necessary for meeting the tasks at hand, approved self-contained compressed air breathing apparatus may be used with approved cylinders from other approved self-contained compressed air breathing apparatus provided that such cylinders are of the same capacity and pressure rating. All compressed air cylinders used with self-contained breathing apparatus shall meet U.S. Department of Transportation and National Institute for Occupational Safety and Health criteria.

(4) *Skilled support personnel.* Personnel, not necessarily an employer's own employees, who are skilled in the operation of certain equipment, such as mechanized earth moving or digging equipment or crane and hoisting equipment, and who are needed temporarily to perform immediate emergency support work that cannot reasonably be performed in a timely fashion by an employer's own employees, and who will be or may be exposed to the hazards at an emergency response scene, are not required to meet the training required in this paragraph for the employer's regular employees. However, these personnel shall be given an initial briefing at the site prior to their participation in any emergency response. The initial briefing shall

include instruction in the wearing of appropriate personal protective equipment, what chemical hazards are involved, and what duties are to be performed. All other appropriate safety and health precautions provided to the employer's own employees shall be used to assure the safety and health of these personnel.

(5) *Specialist employees.* Employees who, in the course of their regular job duties, work with and are trained in the hazards of specific hazardous substances, and who will be called upon to provide technical advice or assistance at a hazardous substance release incident to the individual in charge, shall receive training or demonstrate competency in the area of their specialization annually.

(6) *Training.* Training shall be based on the duties and function to be performed by each responder of an emergency response organization. The skill and knowledge levels required for all new responders, those hired after the effective date of this standard, shall be conveyed to them through training before they are permitted to take part in actual emergency operations on an incident. Employees who participate, or are expected to participate, in emergency response, shall be given training in accordance with the following paragraphs:

(i) *First responder awareness level.* First responders at the awareness level are individuals who are likely to witness or discover a hazardous substance release and who have been trained to initiate an emergency response sequence by notifying the proper authorities of the release. They would take no further action beyond notifying the authorities of the release. First responders at the awareness level shall have sufficient training or have had sufficient experience to objectively demonstrate competency in the following areas:

(A) An understanding of what hazardous materials are, and the risks associated with them in an incident.

(B) An understanding of the potential outcomes associated with an emergency created when hazardous materials are present.

(C) The ability to recognize the presence of hazardous materials in an emergency.

(D) The ability to identify the hazardous materials, if possible.

(E) An understanding of the role of the first responder awareness individual in the employer's emergency response plan including site security and control and the U.S. Department of Transportation's Emergency Response Guidebook.

(F) The ability to realize the need for additional resources, and to make appropriate notifications to the communication center.

(ii) *First responder operations level.* First responders at the operations level are individuals who respond to releases or potential releases of hazardous substances as part of the initial response to the site for the purpose of protecting nearby persons, property, or the environment from the effects of the release. They are trained to respond in a defensive fashion without actually trying to stop the release. Their function is to contain the release from a safe distance, keep it from spreading, and prevent exposures. First responders at the operational level shall have received at least eight hours of training or have had sufficient experience to objectively demonstrate competency in the following areas in addition to those listed for the awareness level and the employer shall so certify:

(A) Knowledge of the basic hazard and risk assessment techniques.

(B) Know how to select and use proper personal protective equipment provided to the first responder operational level.

(C) An understanding of basic hazardous materials terms.

(D) Know how to perform basic control, containment and/or confinement operations within the capabilities of the resources and personal protective equipment available with their unit.

(E) Know how to implement basic decontamination procedures.

(F) An understanding of the relevant standard operating procedures and termination procedures.

(iii) *Hazardous materials technician.* Hazardous materials technicians are individuals who respond to releases or potential releases for the purpose of stopping the release. They assume a more aggressive role than a first responder at the operations level in that they will approach the point of release in order to plug, patch or otherwise stop the release of a hazardous substance. Hazardous materials technicians shall have received at least 24 hours of training equal to the first responder operations level and in addition have competency in the following areas and the employer shall so certify:

(A) Know how to implement the employer's emergency response plan.

(B) Know the classification, identification and verification of known and unknown materials by using field survey instruments and equipment.

(C) Be able to function within an assigned role in the Incident Command System.

(D) Know how to select and use proper specialized chemical personal protective equipment provided to the hazardous materials technician.

(E) Understand hazard and risk assessment techniques.

(F) Be able to perform advance control, containment, and/or confinement operations within the capabilities of the resources and personal protective equipment available with the unit.

(G) Understand and implement decontamination procedures.

(H) Understand termination procedures.

(I) Understand basic chemical and toxicological terminology and behavior.

(iv) *Hazardous materials specialist.* Hazardous materials specialists are individuals who respond with and provide support to hazardous materials technicians. Their duties parallel those of the hazardous materials technician, however, those duties require a more directed or specific knowledge of the various substances they may be called upon to contain. The hazardous materials specialist would also act as the site liaison with Federal, state, local and other government authorities in regards to site activities. Hazardous materials specialists shall have received at least 24 hours of training equal to the technician level and in addition have competency in the following areas and the employer shall so certify:

(A) Know how to implement the local emergency response plan.

(B) Understand classification, identification and verification of known and unknown materials by using advanced survey instruments and equipment.

(C) Know of the state emergency response plan.

(D) Be able to select and use proper specialized chemical personal protective equipment provided to the hazardous materials specialist.

(E) Understand in-depth hazard and risk techniques.

(F) Be able to perform specialized control, containment, and/or confinement operations within the capabilities of the resources and personal protective equipment available.

(G) Be able to determine and implement decontamination procedures.

(H) Have the ability to develop a site safety and control plan.

(I) Understand chemical, radiological and toxicological terminology and behavior.

(v) *On scene incident commander.* Incident commanders, who will assume control of the incident scene beyond the

first responder awareness level, shall receive at least 24 hours of training equal to the first responder operations level and in addition have competency in the following areas and the employer shall so certify:

(A) Know and be able to implement the employer's incident command system.

(B) Know how to implement the employer's emergency response plan.

(C) Know and understand the hazards and risks associated with employees working in chemical protective clothing.

(D) Know how to implement the local emergency response plan.

(E) Know of the state emergency response plan and of the Federal Regional Response Team.

(F) Know and understand the importance of decontamination procedures.

(7) *Trainers.* Trainers who teach any of the above training subjects shall have satisfactorily completed a training course for teaching the subjects they are expected to teach, such as the courses offered by the U.S. Fire Academy, or they shall have the training and/or academic credentials and instructional experience necessary to demonstrate competent instructional skills and a good command of the subject matter of the courses they are to teach.

(8) *Refresher training.* (i) Those employees who are trained in accordance with paragraph (q)(6) of this section shall receive annual refresher training of sufficient content and duration to maintain their competencies, or shall demonstrate competency in those areas at least yearly.

(ii) A statement shall be made of the training or competency, and if a statement of competency is made, the employer shall keep a record of the methodology used to demonstrate competency.

(9) *Medical surveillance and consultation.* (i) Members of an organized and designated HAZMAT team and hazardous materials specialists shall receive a baseline physical examination and be provided with medical surveillance as required in paragraph (f) of this section.

(ii) Any emergency response employees who exhibits signs or symptoms which may have resulted from exposure to hazardous substances during the course of an emergency incident, either immediately or subsequently, shall be provided with medical consultation as required in paragraph (f)(3)(ii) of this section.

(10) *Chemical protective clothing.* Chemical protective clothing and equipment to be used by organized and designated HAZMAT team members, or to be used by hazardous materials specialists, shall meet the requirements of paragraphs (g) (3) through (5) of this section.

(11) *Post-emergency response operations.* Upon completion of the emergency response, if it is determined that it is necessary to remove hazardous substances, health hazards, and materials contaminated with them (such as contaminated soil or other elements of the natural environment) from the site of the incident, the employer conducting the clean-up shall comply with one of the following:

(i) Meet all of the requirements of paragraphs (b) through (o) of this section; or

(ii) Where the clean-up is done on plant property using plant or workplace employees, such employees shall have completed the training requirements of the following: 29 CFR 1910.38(a); 1910.134; 1910.1200, and other appropriate safety and health training made necessary by the tasks that they are expected to be performed such as personal protective equipment and decontamination procedures. All equipment to be used in the performance of the clean-up work shall be in serviceable condition and shall have been inspected prior to use.

APPENDICES TO § 1910.120—HAZARDOUS WASTE OPERATIONS AND EMERGENCY RESPONSE

Note: The following appendices serve as non-mandatory guidelines to assist employees and employers in complying with the appropriate requirements of this section. However paragraph 1910.120(g) makes mandatory in certain circumstances the use of Level A and Level B PPE protection.

Appendix A—Personal Protective Equipment Test Methods

This appendix sets forth the non-mandatory examples of tests which may be used to evaluate compliance with § 1910.120 (g)(4) (ii) and (iii). Other tests and other challenge agents may be used to evaluate compliance.

A. Totally-encapsulating chemical protective suit pressure test

1.0—Scope

1.1 This practice measures the ability of a gas tight totally-encapsulating chemical protective suit material, seams, and closures to maintain a fixed positive pressure. The results of this practice allow the gas tight integrity of a totally-encapsulating chemical protective suit to be evaluated.

1.2 Resistance of the suit materials to permeation, penetration, and degradation by specific hazardous substances is not determined by this test method.

2.0—Definition of terms

2.1 *"Totally-encapsulated chemical protective suit (TECP suit)"* means a full body garment which is constructed of protective clothing materials; covers the wearer's torso, head, arms, legs and respirator; may cover the wearer's hands and feet with tightly attached gloves and boots; completely encloses the wearer and respirator by itself or in combination with the wearer's gloves and boots.

2.2 *"Protective clothing material"* means any material or combination of materials used in an item of clothing for the purpose of isolating parts of the body from direct contact with a potentially hazardous liquid or gaseous chemicals.

2.3 *"Gas tight"* means, for the purpose of this test method, the limited flow of a gas under pressure from the inside of a TECP suit to atmosphere at a prescribed pressure and time interval.

3.0—Summary of test method

3.1 The TECP suit is visually inspected and modified for the test. The test apparatus is attached to the suit to permit inflation to the pre-test suit expansion pressure for removal of suit wrinkles and creases. The pressure is lowered to the test pressure and monitored for three minutes. If the pressure drop is excessive, the TECP suit fails the test and is removed from service. The test is repeated after leak location and repair.

4.0—Required Supplies

4.1 Source of compressed air.

4.2 Test apparatus for suit testing, including a pressure measurement device with a sensitivity of at least ¼ inch water gauge.

4.3 Vent valve closure plugs or sealing tape.

4.4 Soapy water solution and soft brush.

4.5 Stop watch or appropriate timing device.

5.0—Safety Precautions

5.1 Care shall be taken to provide the correct pressure safety devices required for the source of compressed air used.

6.0—Test Procedure

6.1 Prior to each test, the tester shall perform a visual inspection of the suit. Check the suit for seam integrity by visually examining the seams and gently pulling on the seams. Ensure that all air supply lines, fittings, visor, zippers, and valves are secure and show no signs of deterioration.

6.1.1 Seal off the vent valves along with any other normal inlet or exhaust points (such as umbilical air line fittings or face piece opening) with tape or other appropriate means (caps, plugs, fixture, etc.). Care should be exercised in the sealing process not to damage any of the suit components.

6.1.2 Close all closure assemblies.

6.1.3 Prepare the suit for inflation by providing an improvised connection point on the suit for connecting an airline. Attach the pressure test apparatus to the suit to permit suit inflation from a compressed air source equipped with a pressure indicating regulator. The leak tightness of the pressure test apparatus should be tested before and after each test by closing off the end of the tubing attached to the suit and assuring a pressure of three inches water gauge for three minutes can be maintained. If a component is removed for the test, that component shall be replaced and a second test conducted with another component removed to permit a complete test of the ensemble.

6.1.4 The pre-test expansion pressure (A) and the suit test pressure (B) shall be supplied by the suit manufacturer, but in no

case shall they be less than: (A)=three inches water gauge; and (B)=two inches water gauge. The ending suit pressure (C) shall be no less than 80 percent of the test pressure (B); i.e., the pressure drop shall not exceed 20 percent of the test pressure (B).

6.1.5 Inflate the suit until the pressure inside is equal to pressure (A), the pre-test expansion suit pressure. Allow at least one minute to fill out the wrinkles in the suit. Release sufficient air to reduce the suit pressure to pressure (B), the suit test pressure. Begin timing. At the end of three minutes, record the suit pressure as pressure (C), the ending suit pressure. The difference between the suit test pressure and the ending suit test pressure (B–C) shall be defined as the suit pressure drop.

6.1.6 If the suit pressure drop is more than 20 percent of the suit test pressure (B) during the three-minute test period, the suit fails the test and shall be removed from service.

7.0—Retest Procedure

7.1 If the suit fails the test check for leaks by inflating the suit to pressure (A) and brushing or wiping the entire suit (including seams, closures, lens gaskets, glove-to-sleeve joints, etc.) with a mild soap and water solution. Observe the suit for the formation of soap bubbles, which is an indication of a leak. Repair all identified leaks.

7.2 Retest the TECP suit as outlined in Test procedure 6.0.

8.0—Report

8.1 Each TECP suit tested by this practice shall have the following information recorded:

8.1.1 Unique identification number, identifying brand name, date of purchase, material of construction, and unique fit features, e.g., special breathing apparatus.

8.1.2 The actual values for test pressures (A), (B), and (C) shall be recorded along with the specific observation times. If the ending pressure (C) is less than 80 percent of the test pressure (B), the suit shall be identified as failing the test. When possible, the specific leak location shall be identified in the test records. Retest pressure data shall be recorded as an additional test.

8.1.3 The source of the test apparatus used shall be identified and the sensitivity of the pressure gauge shall be recorded.

8.1.4 Records shall be kept for each pressure test even if repairs are being made at the test location.

Caution

Visually inspect all parts of the suit to be sure they are positioned correctly and secured tightly before putting the suit back into service. Special care should be taken to examine each exhaust valve to make sure it is not blocked.

Care should also be exercised to assure that the inside and outside of the suit is completely dry before it is put into storage.

B. Totally-encapsulating chemical protective suit qualitative leak test

1.0—Scope

1.1 This practice semi-qualitatively tests gas tight totally-encapsulating chemical protective suit integrity by detecting inward leakage of ammonia vapor. Since no modifications are made to the suit to carry out this test, the results from this practice provide a realistic test for the integrity of the entire suit.

1.2 Resistance of the suit materials to permeation, penetration, and degradation is not determined by this test method. ASTM test methods are available to test suit materials for these characteristics and the tests are usually conducted by the manufacturers of the suits.

2.0—Definition of terms

2.1 *"Totally-encapsulated chemical protective suit (TECP suit)* means a full body garment which is constructed of protective clothing materials; covers the wearer's torso, head, arms, legs and respirator; may cover the wearer's hands and feet with tightly attached gloves and boots; completely encloses the wearer and respirator by itself or in combination with the wearer's gloves, and boots.

2.2 *"Protective clothing material"* means any material or combination of materials used in an item of clothing for the purpose of isolating parts of the body from direct contact with a potentially hazardous liquid or gaseous chemicals.

2.3 *"Gas tight"* means, for the purpose of this test method, the limited flow of a gas under pressure from the inside of a TECP suit to atmosphere at a prescribed pressure and time interval.

2.4 *"Intrusion Coefficient"* means a number expressing the level of protection provided by a gas tight totally-encapsulating chemical protective suit. The intrusion coefficient is calculated by dividing the test room challenge agent concentration by the concentration of challenge agent found inside the suit. The accuracy of the intrusion coefficient is dependent on the challenge agent monitoring methods. The larger the intrusion coefficient the greater the protection provided by the TECP suit.

3.0—Summary of recommended practice

3.1 The volume of concentrated aqueous ammonia solution (ammonia hydroxide NH_4OH) required to generate the test atmosphere is determined using the directions outlined in 6.1. The suit is donned by a person wearing the appropriate respiratory equipment (either a positive pressure self-contained breathing apparatus or a positive pressure supplied air respirator) and worn inside the enclosed test room. The concentrated aqueous ammonia solution is taken by the suited individual into the test room and poured into an open plastic pan. A two-minute evaporation period is observed before the test room concentration is measured, using a high range ammonia length of stain detector tube. When the ammonia vapor reaches a concentration of between 1000 and 1200 ppm, the suited individual starts a standardized exercise protocol to stress and flex the suit. After this protocol is completed, the test room concentration is measured again. The suited individual exits the test room and his stand-by person measures the ammonia concentration inside the suit using a low range ammonia length of stain detector tube or other more sensitive ammonia detector. A stand-by person is required to observe the test individual during the test procedure; aid the person in donning and doffing the TECP suit; and monitor the suit interior. The intrusion coefficient of the suit can be calculated by dividing the average test area concentration by the interior suit concentration. A colorimetric ammonia indicator strip of bromophenol blue or equivalent is placed on the inside of the suit face piece lens so that the suited individual is able to detect a color change and know if the suit has a significant leak. If a color change is observed the individual shall leave the test room immediately.

4.0—Required supplies

4.1 A supply of concentrated aqueous (58 percent ammonium hydroxide by weight).

4.2 A supply of bromophenol/blue indicating paper or equivalent, sensitive to 5–10 ppm ammonia or greater over a two-minute period of exposure. [pH 3.0 (yellow) to pH 4.6 (blue)]

4.3 A supply of high range (0.5–10 volume percent) and low range (5–700 ppm) detector tubes for ammonia and the corresponding sampling pump. More sensitive ammonia detectors can be substituted for the low range detector tubes to improve the sensitivity of this practice.

4.4 A shallow plastic pan (PVC) at least 12":14":1" and a half pint plastic container (PVC) with tightly closing lid.

4.5 A graduated cylinder or other volumetric measuring device of at least 50 milliliters in volume with an accuracy of at least ± 1 milliliters.

5.0—Safety precautions

5.1 Concentrated aqueous ammonium hydroxide, NH_4OH, is a corrosive volatile liquid requiring eye, skin, and respiratory protection. The person conducting the test shall review the MSDS for aqueous ammonia.

5.2 Since the established permissible exposure limit for ammonia is 50 ppm, only persons wearing a positive pressure self-contained breathing apparatus or a positive pressure supplied air respirator shall be in the chamber. Normally only the person wearing the totally-encapsulating suit will be inside the chamber. A stand-by person shall have a positive pressure self-contained breathing apparatus, or a positive pressure supplied air respirator available to enter the test area should the suited individual need assistance.

5.3 A method to monitor the suited individual must be used during this test. Visual contact is the simplest but other methods using communication devices are acceptable.

5.4 The test room shall be large enough to allow the exercise protocol to be carried out and then to be ventilated to allow for easy exhaust of the ammonia test atmosphere after the test(s) are completed.

5.5 Individuals shall be medically screened for the use of respiratory protection and checked for allergies to ammonia before participating in this test procedure.

6.0—Test procedure

6.1.1 Measure the test area to the nearest foot and calculate its volume in cubic feet. Multiply the test area volume by 0.2 milliliters of concentrated aqueous ammonia solution per cubic foot of test area volume to determine the approximate volume of

concentrated aqueous ammonia required to generate 1000 ppm in the test area.

6.1.2 Measure this volume from the supply of concentrated aqueous ammonia and place it into a closed plastic container.

6.1.3 Place the container, several high range ammonia detector tubes, and the pump in the clean test pan and locate it near the test area entry door so that the suited individual has easy access to these supplies.

6.2.1 In a non-contaminated atmosphere, open a pre-sealed ammonia indicator strip and fasten one end of the strip to the inside of the suit face shield lens where it can be seen by the wearer. Moisten the indicator strip with distilled water. Care shall be taken not to contaminate the detector part of the indicator paper by touching it. A small piece of masking tape or equivalent should be used to attach the indicator strip to the interior of the suit face shield.

6.2.2 If problems are encountered with this method of attachment, the indicator strip can be attached to the outside of the respirator face piece lens being used during the test.

6.3 Don the respiratory protective device normally used with the suit, and then don the TECP suit to be tested. Check to be sure all openings which are intended to be sealed (zippers, gloves, etc.) are completely sealed. DO NOT, however, plug off any venting valves.

6.4 Step into the enclosed test room such as a closet, bathroom, or test booth, equipped with an exhaust fan. No air should be exhausted from the chamber during the test because this will dilute the ammonia challenge concentrations.

6.5 Open the container with the pre-measured volume of concentrated aqueous ammonia within the enclosed test room, and pour the liquid into the empty plastic test pan. Wait two minutes to allow for adequate volatilization of the concentrated aqueous ammonia. A small mixing fan can be used near the evaporation pan to increase the evaporation rate of the ammonia solution.

6.6 After two minutes a determination of the ammonia concentration within the chamber should be made using the high range colorimetric detector tube. A concentration of 1000 ppm ammonia or greater shall be generated before the exercises are started.

6.7 To test the integrity of the suit the following four minute exercise protocol should be followed:

6.7.1 Raising the arms above the head with at least 15 raising motions completed in one minute.

6.7.2 Walking in place for one minute with at least 15 raising motions of each leg in a one-minute period.

6.7.3 Touching the toes with a least 10 complete motions of the arms from above the head to touching of the toes in a one-minute period.

6.7.4 Knee bends with at least 10 complete standing and squatting motions in a one-minute period.

6.8 If at any time during the test the colorimetric indicating paper should change colors, the test should be stopped and section 6.10 and 6.12 initiated (See ¶4.2).

6.9 After completion of the test exercise, the test area concentration should be measured again using the high range colorimetric detector tube.

6.10 Exit the test area.

6.11 The opening created by the suit zipper or other appropriate suit penetration should be used to determine the ammonia concentration in the suit with the low range length of stain detector tube or other ammonia monitor. The internal TECP suit air should be sampled far enough from the enclosed test area to prevent a false ammonia reading.

6.12 After completion of the measurement of the suit interior ammonia concentration the test is concluded and the suit is doffed and the respirator removed.

6.13 The ventilating fan for the test room should be turned on and allowed to run for enough time to remove the ammonia gas. The fan shall be vented to the outside of the building.

6.14 Any detectable ammonia in the suit interior (five ppm ammonia (NH_3) or more for the length of stain detector tube) indicates that the suit has failed the test. When other ammonia detectors are used a lower level of detection is possible, and it should be specified as the pass/fail criteria.

6.15 By following this test method, an intrusion coefficient of approximately 200 or more can be measured with the suit in a completely operational condition. If the intrusion coefficient is 200 or more, then the suit is suitable for emergency response and field use.

7.0—Retest procedures

7.1 If the suit fails this test, check for leaks by following the pressure test in test A above.

7.2 Retest the TECP suit as outlined in the test procedure 6.0.

8.0—Report

8.1 Each gas tight totally-encapsulating chemical protective suit tested by this practice shall have the following information recorded.

8.1.1 Unique identification number, identifying brand name, date of purchase, material of construction, and unique suit features; e.g., special breathing apparatus.

8.1.2 General description of test room used for test.

8.1.3 Brand name and purchase date of ammonia detector strips and color change data.

8.1.4 Brand name, sampling range, and expiration date of the length of stain ammonia detector tubes. The brand name and model of the sampling pump should also be recorded. If another type of ammonia detector is used, it should be identified along with its minimum detection limit for ammonia.

8.1.5 Actual test results shall list the two test area concentrations, their average, the interior suit concentration, and the calculated intrusion coefficient. Retest data shall be recorded as an additional test.

8.2 The evaluation of the data shall be specified as "suit passed" or "suit failed," and the date of the test. Any detectable ammonia (five ppm or greater for the length of stain detector tube) in the suit interior indicates the suit has failed this test. When other ammonia detectors are used, a lower level of detection is possible and it should be specified as the pass fail criteria.

Caution

Visually inspect all parts of the suit to be sure they are positioned correctly and secured tightly before putting the suit back into service. Special care should be taken to examine each exhaust valve to make sure it is not blocked.

Care should also be exercised to assure that the inside and outside of the suit is completely dry before it is put into storage.

Appendix B—General Description and Discussion of the Levels of Protection and Protective Gear

This appendix sets forth information about personal protective equipment (PPE) protection levels which may be used to assist employers in complying with the PPE requirements of this section.

As required by the standard, PPE must be selected which will protect employees from the specific hazards which they are likely to encounter during their work on-site.

Selection of the appropriate PPE is a complex process which should take into consideration a variety of factors. Key factors involved in this process are identification of the hazards, or suspected hazards; their routes of potential hazard to employees (inhalation, skin absorption, ingestion, and eye or skin contact); and the performance of the PPE *materials* (and seams) in providing a barrier to these hazards. The amount of protection provided by PPE is material-hazard specific. That is, protective equipment materials will protect well against some hazardous substances and poorly, or not at all, against others. In many instances, protective equipment materials cannot be found which will provide continuous protection from the particular hazardous substance. In these cases the breakthrough time of the protective material should exceed the work durations, or the exposure after breakthrough may not pose a hazardous level.

Other factors in this selection process to be considered are matching the PPE to the employee's work requirements and task-specific conditions. The durability of PPE materials, such as tear strength and seam strength, should be considered in relation to the employee's tasks. The effects of PPE in relation to heat stress and task duration are a factor in selecting and using PPE. In some cases layers of PPE may be necessary to provide sufficient protection, or to protect expensive PPE inner garments, suits or equipment.

The more that is known about the hazards at the site, the easier the job of PPE selection becomes. As more information about the hazards and conditions at the site becomes available, the site supervisor can make decisions to up-grade or down-grade the level of PPE protection to match the tasks at hand.

The following are guidelines which an employer can use to begin the selection of the appropriate PPE. As noted above, the site information may suggest the use of combinations of PPE selected from the different protection levels (i.e., A, B, C, or D) as being more suitable to the hazards of the

work. It should be cautioned that the listing below does not fully address the performance of the specific PPE material in relation to the specific hazards at the job site, and that PPE selection, evaluation and re-selection is an ongoing process until sufficient information about the hazards and PPE performance is obtained.

Part A. Personal protective equipment is divided into four categories based on the degree of protection afforded. (See Part B of this appendix for further explanation of Levels A, B, C, and D hazards.)

I. *Level A*—To be selected when the greatest level of skin, respiratory, and eye protection is required.

The following constitute Level A equipment; it may be used as appropriate:

1. Positive pressure, full face-piece self-contained breathing apparatus (SCBA), or positive pressure supplied air respirator with escape SCBA, approved by the National Institute for Occupational Safety and Health (NIOSH).
2. Totally-encapsulating chemical-protective suit.
3. Coveralls.[1]
4. Long underwear.[1]
5. Gloves, outer, chemical-resistant.
6. Gloves, inner, chemical-resistant.
7. Boots, chemical-resistant, steel toe and shank.
8. Hard hat (under suit).[1]
9. Disposable protective suit, gloves and boots (depending on suit construction, may be worn over totally-encapsulating suit).

II. *Level B*—The highest level of respiratory protection is necessary but a lesser level of skin protection is needed.

The following constitute Level B equipment; it may be used as appropriate.

1. Positive pressure, full-facepiece self-contained breathing apparatus (SCBA), or positive pressure supplied air respirator with escape SCBA (NIOSH approved).
2. Hooded chemical-resistant clothing (overalls and long-sleeved jacket; coveralls; one or two-piece chemical-splash suit; disposable chemical-resistant overalls).
3. Coveralls.[1]
4. Gloves, outer, chemical-resistant.
5. Gloves, inner, chemical-resistant.
6. Boots, outer, chemical-resistant steel toe and shank.
7. Boot-covers, outer, chemical-resistant (disposable).[1]
8. Hard hat.[1]
9. [Reserved]
10. Face shield.[1]

III. *Level C*—The concentration(s) and type(s) of airborne substance(s) is known and the criteria for using air purifying respirators are met.

The following constitute Level C equipment; it may be used as appropriate.

1. Full-face or half-mask, air purifying respirators (NIOSH approved).
2. Hooded chemical-resistant clothing (overalls; two-piece chemical-splash suit; disposable chemical-resistant overalls).
3. Coveralls.[1]
4. Gloves, outer, chemical-resistant.
5. Gloves, inner, chemical-resistant.
6. Boots (outer), chemical-resistant steel toe and shank.[1]
7. Boot-covers, outer, chemical-resistant (disposable)[1].
8. Hard hat.[1]
9. Escape mask.[1]
10. Face shield.[1]

IV. *Level D*—A work uniform affording minimal protection, used for nuisance contamination only.

The following constitute Level D equipment; it may be used as appropriate:

1. Coveralls.
2. Gloves.[1]
3. Boots/shoes, chemical-resistant steel toe and shank.
4. Boots, outer, chemical-resistant (disposable).[1]
5. Safety glasses or chemical splash goggles*.
6. Hard hat.[1]
7. Escape mask.[1]
8. Face shield.[1]

Part B. The types of hazards for which levels A, B, C, and D protection are appropriate are described below:

I. *Level A*—Level A protection should be used when:

1. The hazardous substance has been identified and requires the highest level of protection for skin, eyes, and the respiratory system based on either the measured (or potential for) high concentration of atmospheric vapors, gases, or particulates; or the site operations and work functions involve a high potential for splash, immersion, or exposure to unexpected vapors, gases, or particulates of materials that are harmful to skin or capable of being absorbed through the skin;
2. Substances with a high degree of hazard to the skin are known or suspected to be present, and skin contact is possible; or
3. Operations are being conducted in confined, poorly ventilated areas, and the absence of conditions requiring Level A have not yet been determined.

II. *Level B*—Level B protection should be used when:

1. The type and atmospheric concentration of substances have been identified and require a high level of respiratory protection, but less skin protection;
2. The atmosphere contains less than 19.5 percent oxygen; or
3. The presence of incompletely identified vapors or gases is indicated by a direct-reading organic vapor detection instrument, but vapors and gases are not suspected of containing high levels of chemicals harmful to skin or capable of being absorbed through the skin.

Note: This involves atmospheres with IDLH concentrations of specific substances that present severe inhalation hazards and that do not represent a severe skin hazard; or that do not meet the criteria for use of air-purifying respirators.

III. *Level C*—Level C protection should be used when:

1. The atmospheric contaminants, liquid splashes, or other direct contact will not adversely affect or be absorbed through any exposed skin;
2. The types of air contaminants have been identified, concentrations measured, and an air-purifying respirator is available that can remove the contaminants; and
3. All criteria for the use of air-purifying respirators are met.

IV. *Level D*—Level D protection should be used when:

1. The atmosphere contains no known hazard; and
2. Work functions preclude splashes, immersion, or the potential for unexpected inhalation of or contact with hazardous levels of any chemicals.

Note: As stated before, combinations of personal protective equipment other than those described for Levels A, B, C, and D protection may be more appropriate and may be used to provide the proper level of protection.

As an aid in selecting suitable chemical protective clothing, it should be noted that the National Fire Protection Association is developing standards on chemical protective clothing. These standards are currently undergoing public review prior to adoption, including:

NFPA 1991—Standard on Vapor-Protective Suits for Hazardous Chemical Emergencies (EPA Level A Protective Clothing)

NFPA 1991—Standard on Liquid Splash-Protective Suits for Hazardous Chemical Emergencies (EPA Level B Protective Clothing)

NFPA 1993—Standard on Liquid Splash-Protective Suits for Non-emergency, Non-flammable Hazardous Chemical Situations (EPA Level B Protective Clothing)

These standards would apply documentation and performance requirements to the manufacture of chemical protective suits. Chemical protective suits meeting these requirements would be labelled as compliant with the appropriate standard. When these standards are adopted by the National Fire Protection Association, it is recommended that chemical protective suits which meet these standards be used.

Appendix C—Compliance Guidelines

1. *Occupational Safety and Health Program.* Each hazardous waste site clean-up effort will require an occupational safety and health program headed by the site coordinator or the employer's representative. The purpose of the program will be the protection of employees at the site and will be an extension of the employer's overall safety and health program. The program will need to be developed before work begins on the site and implemented as work proceeds as stated in paragraph (b). The program is to facilitate coordination and communication of safety and health issues among personnel responsible for the various activities which will take place at the site. It will provide the overall means for planning and implementing the needed safety and health training and job orientation of employees who will be working at the site. The program will provide the means for identifying and controlling worksite hazards and the means for

[1] Optional, as applicable.

monitoring program effectiveness. The program will need to cover the responsibilities and authority of the site coordinator or the employer's manager on the site for the safety and health of employees at the site, and the relationships with contractors or support services as to what each employer's safety and health responsibilities are for their employees on the site. Each contractor on the site needs to have its own safety and health program so structured that it will smoothly interface with the program of the site coordinator or principal contractor.

Also those employers involved with treating, storing or disposal of hazardous waste as covered in paragraph (p) must have implemented a safety and health program for their employees. This program is to include the hazard communication program required in paragraph (p)(1) and the training required in paragraphs (p)(7) and (p)(8) as parts of the employers comprehensive overall safety and health program. This program is to be in writing.

Each site or workplace safety and health program will need to include the following: (1) Policy statements of the line of authority and accountability for implementing the program, the objectives of the program and the role of the site safety and health supervisor or manager and staff; (2) means or methods for the development of procedures for identifying and controlling workplace hazards at the site; (3) means or methods for the development and communication to employees of the various plans, work rules, standard operating procedures and practices that pertain to individual employees and supervisors; (4) means for the training of supervisors and employees to develop the needed skills and knowledge to perform their work in a safe and healthful manner; (5) means to anticipate and prepare for emergency situations; and (6) means for obtaining information feedback to aid in evaluating the program and for improving the effectiveness of the program. The management and employees should be trying continually to improve the effectiveness of the program thereby enhancing the protection being afforded those working on the site.

Accidents on the site or workplace should be investigated to provide information on how such occurrences can be avoided in the future. When injuries or illnesses occur on the site or workplace, they will need to be investigated to determine what needs to be done to prevent this incident from occurring again. Such information will need to be used as feedback on the effectiveness of the program and the information turned into positive steps to prevent any reoccurrence. Receipt of employee suggestions or complaints relating to safety and health issues involved with site or workplace activities is also a feedback mechanism that can be used effectively to improve the program and may serve in part as an evaluative tool(s).

For the development and implementation of the program to be the most effective, professional safety and health personnel should be used. Certified Safety Professionals, Board Certified Industrial Hygienists or Registered Professional Safety Engineers are good examples of professional stature for safety and health managers who will administer the employer's program.

2. *Training.* The training programs for employees subject to the requirements of paragraph (e) of this standard should address: the safety and health hazards employees should expect to find on hazardous waste clean-up sites; what control measures or techniques are effective for those hazards; what monitoring procedures are effective in characterizing exposure levels; what makes an effective employer's safety and health program; what a site safety and health plan should include; hands on training with personal protective equipment and clothing they may be expected to use; the contents of the OSHA standard relevant to the employee's duties and function; and, employee's responsibilities under OSHA and other regulations. Supervisors will need training in their responsibilities under the safety and health program and its subject areas such as the spill containment program, the personal protective equipment program, the medical surveillance program, the emergency response plan and other areas.

The training programs for employees subject to the requirements of paragraph (p) of this standard should address: the employers safety and health program elements impacting employees; the hazard communication program; the medical surveillance program; the hazards and the controls for such hazards that employees need to know for their job duties and functions. All require annual refresher training.

The training programs for employees covered by the requirements of paragraph (q) of this standard should address those competencies required for the various levels of response such as: the hazards associated with hazardous substances; hazard identification and awareness; notification of appropriate persons; the need for and use of personal protective equipment including respirators; the decontamination procedures to be used; preplanning activities for hazardous substance incidents including the emergency reponse plan; company standard operating procedures for hazardous substance emergency responses; the use of the incident command system and other subjects. Hands-on training should be stressed whenever possible. Critiques done after an incident which include an evaluation of what worked and what did not and how could the incident be better handled the next time may be counted as training time.

For hazardous materials specialists (usually members of hazardous materials teams), the training should address the care, use and/or testing of chemical protective clothing including totally encapsulating suits, the medical surveillance program, the standard operating procedures for the hazardous materials team including the use of plugging and patching equipment and other subject areas.

Officers and leaders who may be expected to be in charge at an incident should be fully knowledgeable of their company's incident command system. They should know where and how to obtain additional assistance and be familiar with the local district's emergency response plan and the state emergency response plan.

Specialist employees such as technical experts, medical experts or environmental experts that work with hazardous materials in their regular jobs, who may be sent to the incident scene by the shipper, manufacturer or governmental agency to advise and assist the person in charge of the incident should have training on an annual basis. Their training should include the care and use of personal protective equipment including respirators; knowledge of the incident command system and how they are to relate to it; and those areas needed to keep them current in their respective field as it relates to safety and health involving specific hazardous substances.

Those skilled support personnel, such as employees who work for public works departments or equipment operators who operate bulldozers, sand trucks, backhoes, etc., who may be called to the incident scene to provide emergency support assistance, should have at least a safety and health briefing before entering the area of potential or actual exposure. These skilled support personnel, who have not been a part of the emergency response plan and do not meet the training requirements, should be made aware of the hazards they face and should be provided all necessary protective clothing and equipment required for their tasks.

3. *Decontamination.* Decontamination procedures should be tailored to the specific hazards of the site, and may vary in complexity and number of steps, depending on the level of hazard and the employee's exposure to the hazard. Decontamination procedures and PPE decontamination methods will vary depending upon the specific substance, since one procedure or method may not work for all substances. Evaluation of decontamination methods and procedures should be performed, as necessary, to assure that employees are not exposed to hazards by re-using PPE. References in Appendix F may be used for guidance in establishing an effective decontamination program. In addition, the U.S. Coast Guard's Manual, "Policy Guidance for Response to Hazardous Chemical Releases," U.S. Department of Transportation, Washington, DC (COMDTINST M16465.30) is a good reference for establishing an effective decontamination program.

4. *Emergency response plans.* States, along with designated districts within the states, will be developing or have developed local emergency response plans. These state and district plans should be utilized in the emergency response plans called for in the standard. Each employer should assure that its emergency response plan is compatible with the local plan. The major reference being used to aid in developing the state and local district plans is the *Hazardous Materials Emergency Planning Guide*, NRT–1. The current Emergency Response Guidebook from the U.S. Department of Transportation, CMA's CHEMTREC and the Fire Service Emergency Management Handbook may also be used as resources.

Employers involved with treatment, storage, and disposal facilities for hazardous waste, which have the required contingency plan called for by their permit, would not need to duplicate the same planning elements. Those items of the emergency response plan that are properly addressed in the contingency plan may be substituted into the emergency response plan required in 1910.120 or otherwise kept together for employer and employee use.

5. *Personal protective equipment programs.* The purpose of personal protective clothing and equipment (PPE) is to shield or isolate individuals from the chemical, physical, and biologic hazards that may be encountered at a hazardous substance site.

As discussed in Appendix B, no single combination of protective equipment and clothing is capable of protecting against all hazards. Thus PPE should be used in conjunction with other protective methods and its effectiveness evaluated periodically.

The use of PPE can itself create significant worker hazards, such as heat stress, physical and psychological stress, and impaired vision, mobility, and communication. For any given situation, equipment and clothing should be selected that provide an adequate level of protection. However, over-protection, as well as under-protection, can be hazardous and should be avoided where possible.

Two basic objectives of any PPE program should be to protect the wearer from safety and health hazards, and to prevent injury to the wearer from incorrect use and/or malfunction of the PPE. To accomplish these goals, a comprehensive PPE program should include hazard identification, medical monitoring, environmental surveillance, selection, use, maintenance, and decontamination of PPE and its associated training.

The written PPE program should include policy statements, procedures, and guidelines. Copies should be made available to all employees, and a reference copy should be made available at the worksite. Technical data on equipment, maintenance manuals, relevant regulations, and other essential information should also be collected and maintained.

6. *Incident command system (ICS).* Paragraph 1910.120(q)(3)(ii) requires the implementation of an ICS. The ICS is an organized approach to effectively control and *manage* operations at an emergency incident. The individual in charge of the ICS is the senior official responding to the incident. The ICS is not much different than the "command post" approach used for many years by the fire service. During large complex fires involving several companies and many pieces of apparatus, a command post would be established. This enabled *one* individual to be in charge of managing the incident, rather than having several officers from different companies making separate, and sometimes conflicting, decisions. The individual in charge of the command post would delegate responsibility for performing various tasks to subordinate officers. Additionally, all communications were routed through the command post to reduce the number of radio transmissions and eliminate confusion. However, strategy, tactics, and all decisions were made by one individual.

The ICS is a very similar system, except it is implemented for emergency response to all incidents, both large and small, that involve hazardous substances.

For a small incident, the individual in charge of the ICS may perform many tasks of the ICS. There may not be any, or little, delegation of tasks to subordinates. For example, in response to a small incident, the individual in charge of the ICS, in addition to normal command activities, may become the safety officer and may designate only one employee (with proper equipment) as a back-up to provide assistance if needed. OSHA does recommend, however, that at least two employees be designated as back-up personnel since the assistance needed may include rescue.

To illustrate the operation of the ICS, the following scenario might develop during a small incident, such as an overturned tank truck with a small leak of flammable liquid.

The first responding senior officer would implement and take command of the ICS. That person would size-up the incident and determine if additional personnel and apparatus were necessary; would determine what actions to take to control the leak; and, determine the proper level of personal protective equipment. If additional assistance is not needed, the individual in charge of the ICS would implement actions to stop and control the leak using the fewest number of personnel that can effectively accomplish the tasks. The individual in charge of the ICS then would designate himself as the safety officer and two other employees as a back-up in case rescue may become necessary. In this scenario, decontamination procedures would not be necessary.

A large complex incident may require many employees and difficult, time-consuming efforts to control. In these situations, the individual in charge of the ICS will want to delegate different tasks to subordinates in order to maintain a span of control that will keep the number of subordinates, that are reporting, to a manageable level.

Delegation of task at large incidents may be by location, where the incident scene is divided into sectors, and subordinate officers coordinate activities within the sector that they have been assigned.

Delegation of tasks can also be by function. Some of the functions that the individual in charge of the ICS may want to delegate at a large incident are: medical services; evacuation; water supply; resources (equipment, apparatus); media relations; safety; and, site control (integrate activities with police for crowd and traffic control). Also for a large incident, the individual in charge of the ICS will designate several employees as back-up personnel; and a number of safety officers to monitor conditions and recommend safety precautions.

Therefore, no matter what size or complexity an incident may be, by implementing an ICS there will be *one individual in charge* who makes the decisions and gives directions; and, all actions, and communications are coordinated through one central point of command. Such a system should reduce confusion, improve safety, organize and coordinate actions, and should facilitate effective management of the incident.

7. *Site Safety and Control Plans.* The safety and security of response personnel and others in the area of an emergeny response incident site should be of primary concern to the incident commander. The use of a site safety and control plan could greatly assist those in charge of assuring the safety and health of employees on the site.

A comprehensive site safety and control plan should include the following: summary analysis of hazards on the site and a risk analysis of those hazards; site map or sketch; site work zones (clean zone, transition or decontamination zone, work or hot zone); use of the buddy system; site communications; command post or command center; standard operating procedures and safe work practices; medical assistance and triage area; hazard monitoring plan (air contaminate monitoring, etc.); decontamination procedures and area; and other relevant areas. This plan should be a part of the employer's emergency response plan or an extension of it to the specific site.

8. *Medical surveillance programs.* Workers handling hazardous substances may be exposed to toxic chemicals, safety hazards, biologic hazards, and radiation. Therefore, a medical surveillance program is essential to assess and monitor workers' health and fitness for employment in hazardous waste operations and during the course of work; to provide emergency and other treatment as needed; and to keep accurate records for future reference.

The *Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities* developed by the National Institute for Occupational Safety and Health (NIOSH), the Occupational Safety and Health Administration (OSHA), the U.S. Coast Guard (USCG), and the Environmental Protection Agency (EPA); October 1985 provides an excellent example of the types of medical testing that should be done as part of a medical surveillance program.

Appendix D—References

The following references may be consulted for further information on the subject of this standard:

1. OSHA Instruction DFO CPL 2.70—January 29, 1986, *Special Emphasis Program: Hazardous Waste Sites.*

2. OSHA Instruction DFO CPL 2–2.37A—January 29, 1986, *Technical Assistance and Guidelines for Superfund and Other Hazardous Waste Site Activities.*

3. OSHA Instruction DTS CPL 2.74—January 29, 1986, *Hazardous Waste Activity Form, OSHA 175.*

4. *Hazardous Waste Inspections Reference Manual,* U.S. Department of Labor, Occupational Safety and Health Administration, 1986.

5. Memorandum of Understanding Among the National Institute for Occupational Safety and Health, the Occupational Safety and Health Administration, the United States Coast Guard, and the United States Environmental Protection Agency, *Guidance for Worker Protection During Hazardous*

Waste Site Investigations and Clean-up and Hazardous Substance Emergencies. December 18, 1980.

6. *National Priorities List,* 1st Edition, October 1984; U.S. Environmental Protection Agency, Revised periodically.

7. *The Decontamination of Response Personnel,* Field Standard Operating Procedures (F.S.O.P.) 7; U.S. Environmental Protection Agency, Office of Emergency and Remedial Response, Hazardous Response Support Division, December 1984.

8. *Preparation of a Site Safety Plan,* Field Standard Operating Procedures (F.S.O.P.) 9; U.S. Environmental Protection Agency, Office of Emergency and Remedial Response, Hazardous Response Support Division, April 1985.

9. *Standard Operating Safety Guidelines;* U.S. Environmental Protection Agency, Office of Emergency and Remedial Response, Hazardous Response Support Division, Environmental Response Team; November 1984.

10. *Occupational Safety and Health Guidance Manual for Hazardous Waste Site Activities,* National Institute for Occupational Safety and Health (NIOSH), Occupational Safety and Health Administration (OSHA), U.S. Coast Guard (USCG), and Environmental Protection Agency (EPA); October 1985.

11. *Protecting Health and Safety at Hazardous Waste Sites: An Overview,* U.S. Environmental Protection Agency, EPA/625/9–85/006; September 1985.

12. *Hazardous Waste Sites and Hazardous Substance Emergencies,* NIOSH Worker Bulletin, U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Institute for Occupational Safety and Health; December 1982.

13. *Personal Protective Equipment for Hazardous Materials Incidents: A Selection Guide;* U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Institute for Occupational Safety and Health; October 1984.

14. *Fire Service Emergency Management Handbook,* International Association of Fire Chiefs Foundation, 101 East Holly Avenue, Unit 10B, Sterling, VA 22170, January 1985.

15. *Emergency Response Guidebook,* U.S Department of Transportation, Washington, DC, 1987.

16. *Report to the Congress on Hazardous Materials Training, Planning and Preparedness,* Federal Emergency Management Agency, Washington, DC, July 1986.

17. *Workbook for Fire Command,* Alan V. Brunacini and J. David Beageron, National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, 1985.

18. *Fire Command,* Alan V. Brunacini, National Fire Protection, Batterymarch Park, Quincy, MA 02269, 1985.

19. *Incident Command System,* Fire Protection Publications, Oklahoma State University, Stillwater, OK 74078, 1983.

20. *Site Emergency Response Planning,* Chemical Manufacturers Association, Washington, DC 20037, 1986.

21. *Hazardous Materials Emergency Planning Guide,* NRT–1, Environmental Protection Agency, Washington, DC, March 1987.

22. *Community Teamwork: Working Together to Promote Hazardous Materials Transportation Safety.* U.S. Department of Transportation, Washington, DC, May 1983.

23. *Disaster Planning Guide for Business and Industry,* Federal Emergency Management Agency, Publication No. FEMA 141, August 1987.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 1218–0139)

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March 6, 1989

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 23, 91 and 135

Small Airplane Airworthiness Review Program Notice No. 5; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 23, 91, and 135

[Docket No. 25812; Notice No. 89-6]

Small Airplane Airworthiness Review Program Notice No. 5

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice is one of a series of notices that proposes to adopt new and amended airworthiness standards for small airplanes. It also proposes to amend the flight instrument requirements in the general operating rules and the operating rules for air taxi and commercial operators. This particular notice proposes amended design requirements for complex systems critical for safety in small airplanes, and to amend the requirements for locating certain instruments, including new technology electronic display indicators. It proposes to add a new airworthiness standard for electronic display instruments. It also includes related changes to the general and air taxi operating rules to allow a third attitude indicator in lieu of a rate-of-turn indicator. These proposals arise from the recognition, by both government and industry, that updated safety standards are needed for an acceptable level of safety in the design requirements for airplanes that are used in both private and commercial operations. The proposals of this notice, when adopted, will include design requirements applicable to advancements in technology being incorporated in current designs, and reduce the regulatory burden in showing compliance with some requirements while maintaining an acceptable level of safety.

DATE: Comments must be received on or before July 5, 1989.

ADDRESS: Comments on this notice may be mailed in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (AGC-10), Docket No. 25812, 800 Independence Avenue, SW., Washington, DC 20591, or delivered in triplicate to: Room 915-G, 800 Independence Avenue, SW., Washington, DC 20591. Comments delivered must be marked Docket No.25812. Comments may be inspected in Room 915-G between 8:30 a.m. and 5:00 p.m. on weekdays, except Federal holidays.

In addition, the FAA is maintaining an information docket of comments in the Office of Assistant Chief Counsel, ACE-7, Federal Aviation Administration, Central Region, 601 East 12th Street, Kansas City, Missouri 64106. Comments in the information docket may be inspected in the Office of Assistant Chief Counsel weekdays, except Federal holidays, between the hours of 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Earsa Tankesley, Standards Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals in this notice are invited. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action. Commenters wishing the FAA to acknowledge receipt of comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25812" The postcard will be date stamped and returned to the commenter. All comments received 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 substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center (APA-200), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The FAA announced the Small Airplane Airworthiness Review Program in Notice No. CE-83-1 (48 FR 4290; January 31, 1983) and invited all interested persons to submit proposals for consideration. The review program objective was to encourage public participation in improving and updating the airworthiness standards applicable to small airplanes.

The FAA issued Notice No. CE-83-1A in response to requests from interested persons, which reopened the proposal period for submission of proposals. This action (48 FR 26623; June 9, 1983) was based upon an FAA determination that it would be in the public interest to allow more time for the public and the aviation industry to submit their proposals.

By the close of the proposal period on May 3, 1984, the FAA had received approximately 560 proposals in response to Notice Nos. CE-83-1 and CE-83-1A. On July 25, 1984, the FAA issued Notice No. CE-84-1 (49 FR 30053; July 25, 1984) announcing the Availability of Agenda, Compilation of Proposals, and Announcement of the Small Airplane Airworthiness Review Program Conference to discuss the proposals. The conference was held on October 22-26, 1984, in St. Louis, Missouri. A copy of the transcript of all discussions held during the conference is filed in Docket No. 23494.

Since the conference, the FAA has received petitions for exemptions from the requirements of Parts 91 and 135 to allow the installation of a third attitude indicator in lieu of the required rate-of-turn indicator. Further, the FAA has received a significant number of applications for installation of complex instrument systems not envisioned in the current requirements of Part 23.

Notice No. 1 of the Small Airplane Airworthiness Review Program is directed toward improvement of crashworthiness. After a further review of the conference proposals and conference transcript, the FAA concluded that proposals planned for Notice No. 2 were next in priority. Notice No. 2 development did not progress as planned; therefore, the proposals to amend Part 23 in this notice were taken out of planned Notice No. 2 to expedite their issuance.

Current computer and instrumentation technology has resulted in systems and equipment being available for small airplanes that are novel and unusual relative to what was envisioned and considered when the current Part 23 requirements were promulgated.

Therefore, the FAA is finding it necessary to issue special conditions and expend significant resources to assure adequate airworthiness standards for these systems. To reduce the need for further processing of special conditions and exemptions and to allow concentration of FAA rulemaking resources on updating the airworthiness rules, the proposals in this notice are being given priority over the remaining Part 23 Airworthiness Review rulemaking actions.

Regulatory and Economic Evaluations

The proposals to amend Part 23 contained in this notice would upgrade airworthiness standards to include design requirements for complex systems critical for safety in Part 23 airplanes. These upgraded standards would apply to airplanes for which an application for a type certificate or change to type certificate under Part 23 is made after the effective date of the proposed rule. The proposals to amend Part 23 contained in this notice would require examination of systems and equipment for their criticality to the continued safe flight of the airplane, require reliability of such systems based on their criticality, define "essential loads", set forth power requirements for essential loads, and set forth standards for installation of instrument systems utilizing electronic display indicators.

The proposals to amend Parts 91 and 135 contained in this notice would allow the installation of a third attitude indicator in lieu of the required rate-of-turn indicator. The complex instrument systems now being proposed for installation may not include the rate-of-turn function. Allowing an additional attitude indicator with a dedicated power supply relieves the burden on the manufacturer and allows safer operations because of greater utility of the third attitude indicator.

These proposals impose no cost on the aviation community or other persons but rather include provisions which are currently being applied by special conditions.

Current computer and instrumentation technology has resulted in systems and equipment being available for airplanes that are novel and unusual relative to what was envisioned and considered when the current Part 23 requirements were promulgated. Therefore, the FAA finds it necessary to issue special conditions and expend significant resources to assure adequate airworthiness standards for these systems. These proposals are of a cost-relieving nature because they would eliminate the need for special conditions processing, which often involves costly and unnecessary delays. In addition, manufacturers are not being directed to incorporate the newest technology in their future models but are instead being afforded a set of regulations to observe should they choose the new equipment. Furthermore, it was determined that these three amendments involved fairly substantial quantifiable benefits over the 20-year study period (see Table 1). The benefits were estimated on the basis of two alternative assumptions of small airplane production. The conservative assumption projects a continuation of the depressed condition of this industry. A more optimistic assumption that the industry will regain its economic health was also used to estimate the benefits. These two assumptions were used to estimate a range for the expected benefits.

TABLE 1.— SUMMARY OF RANGE OF ESTIMATED BENEFITS (DISCOUNTED) AND COSTS

[Millions of dollars]

Proposed rule	Best estimate of benefits	Range	Costs
A. Based on a continuation of recent production trends:			
23.1309 Equipment, Systems	1.80	N/A	Relieving.
23.1311-23.1321 Instrument displays	0.33	0.14-0.43	Relieving.
Total	$2.13		
B. Based on assumption of a rebound in small airplane production:			
23.1309 Equipment, Systems	13.1	N/A	Relieving.
23.1311-23.1321 Instrument displays	2.0	1.0-3.1	Relieving.
Total	$15.1		

Trade Impact Analysis

The proposals in this notice would have little or no impact on trade for both U.S. firms doing business in foreign countries and foreign firms doing business in the U.S. In the U.S., foreign manufacturers would have to meet U.S. requirements, and thus they would gain no competitive advantage. In foreign countries, U.S. manufacturers would not be bound by Part 23 requirements and could, therefore, implement the proposal under study solely on the basis of competitive considerations.

Regulatory Flexibility Determination

The FAA has also determined that the proposed rule changes will not have a significant economic impact on a substantial number of small entities.

The FAA's criteria for a small airplane manufacturer is one employing less than 75 employees, a substantial number is a number which is not less than 11 and which is more than one-third of the small entities subject to the proposed rule, and a significant impact is one having an annual cost of more than $14,900 (in 1978 dollars) per manufacturer.

A review of domestic general aviation manufacturing companies indicates that only six companies meet the size threshold of 75 employees or less. The proposed amendments to 14 CFR Part 23 will therefore not affect a substantial number of small entities.

The majority of the small entities impacted by the proposals to amend the operating rules would represent operators of unscheduled aircraft for hire. The proposed changes to the operating rules provide alternatives to existing requirements and therefore do not impose any additional burden. These proposals, if enacted, would not have a significant economic impact on a substantial number of small entities.

Federalism Implications

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.

Conclusion

For reasons discussed earlier in the preamble, the FAA has determined that this document (1) involves a proposed regulation that is not major under the provisions of Executive Order 12291, (2) is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), and (3) in addition, I certify that under the criteria of the Regulatory Flexibility Act, this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. In addition, this proposal, if adopted, would have little or no impact on trade opportunities for U.S. firms doing business overseas, or on foreign firms doing business in the United States.

List of Subjects

14 CFR Part 23

Aircraft, Air transportation, Aviation safety, Safety.

14 CFR Part 91

Air carriers, Aircraft, Aircraft pilot, Airspace, Air transportation, Aviation safety, Pilots, Safety.

14 CFR Part 135

Air carriers, Aircraft, Airman, Airplanes, Airspace, Air taxi, Air transportation, Airworthiness, Aviation safety, Pilots, Safety.

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, AND ACROBATIC CATEGORY AIRPLANES

1. The authority citation for Part 23 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. Section 23.1309 is amended by revising it to read as follows:

§ 23.1309 Equipment, systems, and installations.

(a) Each item of equipment, each system, and each installation:

(1) When performing its intended function, may not adversely affect the response, operation, or accuracy of any—

(i) Equipment essential to safe operation, or

(ii) Other equipment unless there is a means to inform the pilot of the effect.

(2) Of a single-engine airplane must be designed to minimize hazards to the airplane in the event of a probable malfunction or failure.

(3) Of a multiengine airplane must be designed to prevent hazards to the airplane in the event of a probable malfunction or failure.

(b) The design of each item of equipment, each system, and each installation must be examined separately and in relationship to other airplane systems to determine if the airplane is dependent upon its function for continued safe flight and landing and, for airplanes not limited to VFR conditions, if its failure would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions. Each item of equipment, each system, and each installation 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 to comply with the following additional requirements:

(1) It must perform its intended function under any foreseeable operating condition.

(2) When systems and associated components are considered separately and in relation to other systems—

(i) The occurrence of any failure condition which would prevent the continued safe flight and landing of the airplane must be extremely improbable; and

(ii) The occurrence of any other failure condition which would significantly reduce the capability of the airplane or the ability of the crew to cope with adverse operating conditions must be 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 paragraph (b)(2) of this section may be shown by analysis and, where necessary, by appropriate ground, flight, or simulator tests. The analysis must consider—

(i) Modes of failure, including malfunctions and damage from external sources;

(ii) The probability of multiple failures, and undetected faults;

(iii) The resulting effects on the airplane and occupants, considering the stage of flight and operating conditions; and

(iv) The crew warning cues, corrective action required, and the capability of detecting faults.

(c) Each item of equipment, each system, and each installation whose functioning is required by this chapter and that requires a power supply is an "essential load" on the power supply. The power sources and the system must be able to supply the following power loads in probable operating combinations and for probable durations:

(1) Loads connected to the power distribution system with the system functioning normally.

(2) Essential loads after failure of—

(i) Any one engine on two-engine airplanes; or

(ii) Any two engines on three or more engine airplanes.

(iii) Any power converter, or energy storage device.

(3) Essential loads for which an alternate source of power is required by this chapter, after any failure or malfunction in any one power supply system, distribution system, or other utilization system.

(d) In determining compliance with paragraph (c)(2) of this section, the power loads may be assumed to be reduced under a monitoring procedure consistent with safety in the kinds of operation authorized. Loads not required in controlled flight need not be considered for the two-engine-inoperative condition on airplanes with three or more engines.

(e) In showing compliance with this section with regard to the electrical power system and to equipment design and installation, critical environmental and atmospheric conditions, such as radio frequency energy and the effects (both direct and indirect) of lightning strikes, must be considered. For electrical generation, distribution, and utilization equipment required by or used in complying with this chapter, the ability to provide continuous, safe service under foreseeable environmental conditions may be shown by environmental tests, design analysis, or reference to previous comparable service experience on other airplanes.

(f) As used in this section, "systems" refers to all pneumatic systems, fluid systems, electrical systems, mechanical systems, and powerplant systems included in the airplane design, except for the following:

(1) Powerplant systems provided as part of the certificated engine; and

(2) The flight structure (such as wing, empennage, control surfaces and their systems, the fuselage, engine mounting, and landing gear and their related primary attachments) whose requirements are specific in Subparts C and D of this part.

Explanation

Current Part 23 airplane airworthiness requirements are based on single-fault or fail-safe concepts and, when they were promulgated, the FAA did not envision use of complex, safety-critical systems in such airplanes. This proposal will require examination of systems and equipment for their criticality for continued safe flight and will permit the continued use of the existing reliability requirements of Part 23 for airplanes whose systems are not complex and do not perform safety-critical functions. For those cases where the manufacturer finds it necessary or desirable to include complex, safety-critical systems, the proposal includes requirements for identifying those systems and defines additional requirements needed for their certification. The proposed changes to § 23.1309 are summarized as follows:

Proposed paragraphs (a), (a)(1), (a)(2), and (a)(3) of § 23.1309 are derived from current paragraphs (a), (b), and (c) of § 23.1309. Under proposed § 23.1309(a)(1), the systems and installations, as well as the items of equipment, will be required to meet those requirements contained in current § 23.1309(a). Under proposed § 23.1309(a)(2), the systems and installations, as well as the items of equipment, for single-engine airplanes will be required to meet those requirements contained in current § 23.1309(c) and proposed § 23.1309(a)(3) will require these items on a multiengine airplane to meet the requirements contained in current § 23.1309(b).

(2) A new § 23.1309(b) is proposed which will require a detailed examination of each item of equipment, system, and installation. This examination is to determine whether a failure would affect the airplane's continued safe flight and landing. Each item of equipment, each system, and each installation identified by such an examination as being critical to the safe operation of the airplane would be required to meet additional requirements. This will permit the approval of more advanced systems, that were not envisioned when § 23.1309 was added to Part 23, without the need for special conditions.

A new § 23.1309(c) is proposed to require identification of loads which are "essential loads" and requires the airplane power sources for these loads to meet requirements consistent with other airplane airworthiness requirements. These requirements are substantially equivalent to section 59(c) of Appendix A to Part 135.

A new § 23.1309(d) is proposed to allow reduction of power loads when showing compliance with proposed § 23.1309(c)(2). This provision is substantially equivalent to section 59(c)(3) of Appendix A to Part 135.

A new § 23.1309(e) is proposed to require that the design of each electrical system, each item of equipment, and each installation take into account critical environmental conditions. Critical environmental and atmospheric conditions would include radio frequency energy and direct and indirect effects of lightning. Section 23.867 now requires the airplane structure to be protected from the effects of lightning and § 23.954 now requires the airplane fuel system to be protected from the effects of lightning.

A new § 23.1309(f) is proposed to provide a definition of the systems to which the requirements of this section are applicable and specifically identifies certain items to which they are not applicable.

Early in the development of minimum requirements for transport category airplanes, it was realized that more complex systems were being added to airplane designs and there was a need to include requirements which specifically addressed equipment, systems, and their installation. This was accomplished by the addition of § 4b.606 to Part 4b of the Civil Air Regulations (CAR). Amendment 4b–6, effective March 5, 1952, in part, accomplished this objective. The preamble to that amendment included the following in regard to that addition:

> An amendment clarifying the requirements for equipment, systems, and installations with regard to functioning and reliability is made in Subpart F. In addition, it specifies dual power supply for those installations the functioning of which is necessary to show compliance with the Civil Air Regulations.

This requirement, as adopted by that amendment, was retained in CAR Part 4b until that regulation was recodified to the Federal Aviation Regulations, Part 25, effective February 1, 1965. At that time, this requirement, substantially unchanged, was identified as § 25.1309. For many years the "single fault" or "fail safe" concept of this requirement, along with experience based on service-proven designs and engineering judgment, were used to successfully evaluate most airplane systems and equipment.

However, in the late 1960's there appeared a number of safety-critical systems that were utilizing new technical complexity to accomplish safety-critical functions. Due to the increasing complexity of the technology being used to develop these systems, it was becoming increasingly difficult to apply engineering judgment as the only means of determining the effects or likelihood of failure conditions. The increasing difficulty in evaluating these complex systems, along with the potential hazards to the airplane that could result from their failure made it necessary to provide duplicate and triplicate systems to assure an acceptable level of safety.

At about this same time, the development of rational methods for safety assessment of systems led to the conclusion that an inverse relationship should exist 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 it will occur.

The availability of this rational method for safety analysis of systems, along with the increasing difficulty in applying the then existing "single fault" or "fail safe" concept, prompted the FAA to propose an amendment to § 25.1309 which would permit the use of this rational method as an acceptable means of accomplishing safety analysis. That proposed revision to § 25.1309, which specified a level of safety in qualitative terms, and required assessments to be made, was adopted by Amendment 25–23 on April 1, 1970.

At that time, the FAA also realized that more complex systems were being utilized in small airplanes and that there was a need to add a reliability requirement to Part 23. Accordingly, rulemaking action was initiated which resulted in § 23.1309 being added to Part 23 by Amendment 23–14, effective December 20, 1973. The requirements of that new § 23.1309 were similar to those of § 25.1309 prior to Amendment 25–23 which were based on the "single fault" or "fail safe" concept. At that time, it was not envisioned that complex safety-critical systems, utilizing technology now available, would be used in the designs of small airplanes. Therefore, there was no identified need to include provisions for use of the rational method of analysis in Part 23, as had been done in Part 25 by Amendment 25–23.

Experience has shown that the envisioned rate of technical growth of systems used in small airplanes was inaccurate and that safety-critical systems are now being proposed for use on Part 23 airplanes. As with the earlier experience with Part 25, the FAA is finding that it is difficult to apply "single fault" concepts to these complex systems and to utilize the application of engineering judgment as the only means of determining the effects or likelihood of certain failure conditions. Accordingly, there is now a need to

revise the reliability requirements of Part 23 to allow the use of the latest available rational method for safety analysis of these complex safety-critical systems to assure continuation of the level of safety intended for airplanes certificated to Part 23. Such safety critical systems are currently being proposed for approval and there is an urgent need to accomplish this proposed rule change.

A recommendation for a complete change of § 23.1309 was submitted as a part of the Small Airplane Airworthiness Review Program. That recommendation, conference proposal number 434, was discussed during the October 22–26, 1984, Small Airplane Airworthiness Review Program conference held in St. Louis, Missouri. A copy of the transcript of all discussions held during the conference is filed in Docket No. 23494, and may be examined by interested persons.

At that conference a commenter on the recommendation noted that it dealt with failures that cause hazards which do not have catastrophic potential, but does not deal with hazards which are potentially catastrophic. As noted in the above discussion, in the development of requirements for small airplane systems it was originally recognized that failures of systems could produce hazards and the earlier requirements addressed protection from those failures, but did not address safety-critical systems whose failures could be potentially catastrophic or would be catastrophic. As proposed, § 23.1309 addresses all levels of hazards and the proposed requirements are based on the criticality of the system.

This would be accomplished by requiring all of the airplane's systems to be reviewed to determine (1) if the airplane is dependent upon a system function for continued safe flight and landing, and (2) if a failure of any system on the airplane, not limited to VFR conditions, would significantly reduce the ability of the crew to cope with the adverse operating conditions. For airplanes that do not include systems which perform either of these safety critical functions, the single-fault or fail-safe concept requirements would continue to be applicable as proposed in § 23.1309(a).

If the design of the airplane includes systems that perform a function that is needed for continued safe flight and landing of the airplane and, accordingly, whose failure could be catastrophic, the systems would be required to meet standards that establish that failures of the system must be extremely improbable. In addition, on airplanes designed for any type of operation other than VFR, the systems whose failure would significantly reduce the airplane's capability, or the ability of the crew to cope with the adverse operating conditions and, thereby, be potentially catastrophic would be required to meet standards that establish that failures of these systems are improbable. This standard is applicable if a system failure would reduce the capability of the airplane or the crew to cope with adverse operating conditions. It was recognized that any failure will reduce the airplane's or crew's capability by some degree, but that reduction may not be of the degree that will make operation of the airplane potentially catastrophic. The intent of this proposed standard, § 23.1309(b), is to have those systems whose failure would be catastrophic or potentially catastrophic be evaluated using the latest available techniques and, thereby, better assure that failures of such systems will not occur.

At the conference, a commenter expressed the opinion that the language of conference proposal 434 would require all system items to meet the analysis test and proof of compliance means. This commenter noted that simple and conventional systems can be assessed on the basis of service experience and engineering judgment and noted that low performance, simple designed airplanes should be able to use the existing method of determining compliance. The FAA agrees with this commenter and, as previously stated, proposed § 23.1309(a) is structured to allow the use of existing procedures for simple airplane system designs.

Another conference commenter expressed a concern over the applicability of Section XX.1309 of any of the airworthiness parts. To clarify the applicability of § 23.1309, a definition of "system" is included in proposed § 23.1309(f).

One commenter noted the difference in the way Part 23 and Part 25 airplanes are used and suggested different probability values for Part 23, but did not provide recommended values. In reviewing this comment, it should be noted that the probability terms do not have values assigned in these proposed requirements or other airworthiness parts. Extremely improbable failure conditions have been defined in FAA guidance material as those which are so unlikely that they are not expected to occur within the total operational life of all airplanes of one type. If such a definition were to be applied to items of structure, a failure that would cause the loss of a wing would be a type of catastrophic failure that would not be expected to occur in the life of all airplanes of one type. As cited, current requirements applicable to other portions of Part 23 airplanes, such as structures, establish a level of safety that does not permit the occurrence of catastrophic failures and, accordingly, there is no justification for allowing a lower level of safety for possible catastrophic system failures. Accordingly, the proposed language of this proposal uses the term "extremely improbable" to define this critical type of failure condition. Less critical failure condition terms used in airworthiness requirements for other categories of aircraft are also included in this proposal.

Other review conference comments, not limited to any one commenter, questioned the applicability of the rational method for analysis to two- to four-place airplanes. While this proposal allows the continued use of existing certification procedures for certification of simple airplane designs, it would, however, also require the use of rational procedures if the airplane's design includes systems for the accomplishment of safety-critical functions. Because the proposed additional requirements of this proposal are added in such a manner as to make their use dependent on the complexity of the affected design and because the degree of reliability required in a particular design will depend upon the criticality of the system function, there is no reason to limit these requirements to a size of airplane or to differentiate between single- or multiengine types of airplanes.

One review conference commenter questioned the power supply requirements of the conference proposal number 434. This commenter asked if this proposed requirement is related purely to electrical power, and if it is shouldn't it be located elsewhere in Part 23. During the discussion of this question, it was pointed out by FAA panel members that the proposed requirement does not specify an "electrical" power supply and, therefore, would be applicable to any form of power supply provided for a system that is required by this chapter. No additional language has been added to identify the types of power supply. The proposal language, which is similar to that used in other airworthiness parts, identifies requirements for power supplies used for each item of equipment, system, and installation required by this chapter. By its applicability, it is clear that the requirements are not limited to electrical power supplies.

Additional discussions at the conference suggested that current § 23.1309 was adequate and that the only need was an Advisory Circular (AC) to identify acceptable means of compliance. At that time, the FAA made it known that was not the case, and cited instances in which a complex safety-critical system had been used in the design of small airplanes that could not be properly evaluated under the existing "single fault" concept of § 23.1309. The FAA further noted that the number of occurrences where such a complex safety-critical system was being used in the design was increasing rapidly and noted the need to revise the requirements to keep them current with this rapid expansion of technology being applied to the design of small airplanes.

The FAA attempted to address some current issues relative to electronic flight instrument systems and autopilot monitors and limiters in advisory circulars. FAA reviews of resulting material in the draft advisory circulars determined that the contents were rulemaking in nature and not suitable in an advisory circular. The concern was relative to the complexity and criticality of such equipment. This proposal, when adopted, will provide a regulatory basis for determining the criticality level of such systems and require corresponding levels of reliability. Therefore, the FAA finds that there is a need to proceed and develop a proposal without further delay. Proposed § 23.1309 of this notice provides reliability requirements which are based on the criticality of the system's function and will provide the updated standards needed for the certification of complex safety-critical systems in small airplanes.

Reference: Conference proposal 434.

3. Part 23 is amended by adding a new § 23.1311 under the heading "General" to read as follows:

§ 23.1311 Electronic display instrument systems.

Unless an applicant requests evaluation for a more limited kind of operation pursuant to §§ 23.1525, 23.1559, and 23.1583(h), it is assumed that each airplane certificated to the requirements of this section is to be approved for operation in IFR conditions and the assessment of failures for compliance with § 23.1309 must consider these conditions. Electronic display indicators, including those incorporating more than one function, must comply with paragraph (a) or (b) as appropriate.

(a) Electronic display indicators may be grouped on the instrument panel and centered as nearly as practicable about the vertical plane of each required pilot's forward vision for compliance with § 23.1321—

(1) Provided the instruments required by § 23.1303 (a), (b), and (c) that are independent of the airplane's electrical power system, are installed in accordance with the requirements of § 23.1321(a), and

(2) The electronic display systems comply with paragraphs (c) and (d) of this section and other applicable sections of this part.

(3) This paragraph applies independently to each pilot station required for certification or by the applicable operating rules.

(b) Except for instruments required by § 23.1303 (a), (b), and (c), electronic display indicators may be installed in lieu of mechanical or electromechanical instruments provided the installations comply with paragraphs (c) and (d) of this section and other applicable sections of this part.

(c) Electronic display indicators, including those with features that make isolation and independence between powerplant instrument systems unfeasible, must—

(1) Be easily legible under all lighting conditions encountered in the cockpit, including direct sunlight, considering the expected electronic display brightness level at the end of the electronic display indicator's useful life. Specific limitations on display system useful life must be addressed in the Instructions for Continued Airworthiness requirements of § 23.1529.

(2) Not inhibit the primary display of attitude, airspeed, altitude, or powerplant parameters needed by any pilot to set power within established limitations, in any normal mode of operation.

(3) Not inhibit the primary display of engine parameters needed by any pilot to properly set or monitor powerplant limitations during the engine starting mode of operation.

(4) Have independent secondary attitude and rate of turn instruments that comply with § 23.1321(a) if the primary electronic display instrument system for a pilot presents this information. Instrument displays that are located in accordance with § 23.1321(d) are considered the primary displays.

(5) Incorporate sensory cues for the pilot that are equivalent to those in the instrument being replaced by the electronic display indicators, and

(6) Incorporate visual displays of instrument markings, required by §§ 23.1541 through 23.1553 or visual displays that alert the pilot to abnormal operational values, or approaches to established limitation values, of each parameter required to be displayed by this part.

(d) The electronic display indicators, including their systems and installations, and considering other airplane systems, must be designed so that one display of information essential for continued safe flight and landing will remain available to the crew, without need for immediate action by any pilot for continued safe operation, after any single failure or probable combination of failures.

(e) As used in this section, "instrument" includes devices that are physically contained in one unit, and devices that are composed of two or more physically separate units or components connected together (such as a remote indicating gyroscopic direction indicator that includes a magnetic sensing element, a gyroscopic unit, an amplifier, and an indicator connected together). As used in this section, "primary" display refers to the display of a parameter that is located in the instrument panel such that the pilot looks at it first when wanting to view that parameter.

Explanation

A significant number of electronic display systems have become available for installation in small airplanes. These systems include display of all parameters that are typically displayed on a small airplane instrument panel. Approval of these systems in small airplanes was addressed by several conference proposals that proposed to amend §§ 23.1303, 23.1305, 23.1321, 23.1323, and 23.1337.

Conference proposal 420 from the General Aviation Manufacturers' Association (GAMA) recommended removing the words "instrument" and "indicator" from § 23.1303 and require specific "data" be displayed rather than require specific "instruments". Conference proposal 428 recommended amending § 23.1305 by changing "powerplant instruments" to "powerplant displays" and "indicators" and "indicating" to "displays". Conference proposal 436 recommended amending § 23.1321 by changing "instrument" to "display" or "data on the flight displays". Conference proposal 439 recommended amending § 23.1323 by changing "instrument" and "indicator instrument" to "display". Conference proposal 450 recommended amending § 23.1337 by adding a new paragraph (e) to state "Displays other than individual indicators may be used if it is shown that adequate isolation is provided

between engines and engine parameters."

The basic justification given for all of the recommended changes is that the current requirements of Part 23 were written when the required data could only be supplied using individual instruments. New technology now allows this same data to be displayed in a different manner, possibly with all the data on a common display.

It is desirable to take advantage of available new technology. The benefits include safer (less prone to misreading) displays with less cockpit space and of equal or lower cost than the cluster of typical individual instruments. As technology advances, the amount of energy used for these displays and the cost can be further reduced.

The FAA agrees that when current requirements of Part 23 were written, only mechanical or electromechanical instruments that functioned independently for each parameter displayed were envisioned. The engine instruments and systems envisioned were isolated and independent. A single failure of any engine or any of its systems could not affect the operation of any other engine. The requirements were based on "single fault" or "fail safe" concepts and, when these current requirements were promulgated, the FAA did not envision use of complex, safety-critical systems in small airplanes. All envisioned instruments 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 indicator case.

Since the conference, the FAA has further studied the problems associated with installation of current technology indicators in small airplanes. As is discussed relative to amending § 23.1309, these current technology systems have potential for being critical for continued safe flight of the airplane. The potential for increased clarity in data display and the concentration of data displays in a single indicator increases the potential criticality of failures. It is anticipated that pilots using these new instrument systems will become increasingly dependent on the use of them because of the tasks they perform for the pilot. After a period of time, where these electronic indicators are located in the primary instrument panel locations, it is anticipated that pilots will find it more difficult to transition to back-up or secondary indicators when failure occurs, such as reverting to use of needle-ball and airspeed for airplane attitude control when the artificial horizon instrument system fails.

The electronic indicators are expected to have significantly different modes of failure where they go from performing perfectly to total failure, whereas the mechanical and electromechanical indicators typically deteriorated in performance over a period of time such that they were replaced before a total failure that prevented them from providing useful information to the pilot.

Current technology instrument systems with electronic indicators for small airplanes may vary considerably in functional capability, complexity, and cost. Due to the economic considerations, the most expensive, complex, and reliable electronic instrument systems will only be installed in airplanes fitting a like description.

The electronic instrument systems can readily provide digital indication of exact numbers, moving pointer on a scale, and various other formats and combinations of them all. The FAA is especially concerned that pilots be provided adequate sensory cues as to whether numbers displayed are increasing or decreasing and how fast they are changing. Also of concern is that digital indication may not show the normal operating range cues to direction or rate of change or operational limits.

As a result of these concerns and this further review of possible ways to address electronic instrument systems in Part 23, the FAA concluded that a new § 23.1311 for these systems is better than amending several sections, which may result in an unclear treatment of the issue.

Relative to identifying the indicating means of the electronic instrument system, the FAA has reviewed existing materials and functions to be performed and has concluded the proper identifier is "indicator" rather than "display" as recommended.

Sections 23.1303 (a), (b), and (c) require basic flight and navigational instruments for small airplane certification. These mechanical instruments have performed their intended function very well over the years and these basic instruments will remain necessary for safety even when the current technology systems are installed. Therefore, this proposal will allow displacement of these instruments from the primary location for such instruments for compliance with the requirements of § 23.1321, provided their location in a secondary location is such that they are usable and in compliance with § 23.1321(a) requirements. It is the FAA's intent that this will continue the requirements that airspeed, altitude, and magnetic compass information will remain available to the pilot after total failure of the airplane's electrical power system.

This proposal will allow electronic display indicators for engine parameters without isolation and independence of engine instruments as is now required. In developing this proposal, the FAA considered the operational characteristics of airplane engines, the proposed amendment to § 23.1309 in this notice for assessing failures and their consequences, and the cues available to the pilots for assuring an engine instrumentation failure would not create a condition where the pilot would encounter significant difficulty in operating the engines.

Due to the dependence pilots are expected to place on use of electronic indicators when the indicators include information essential to airplane attitude control, the FAA is proposing secondary attitude and rate-of-turn instrument systems that comply with § 23.1321(a) when the electronic indicators include display of attitude and rate-of-turn.

Electronic indicator legibility is expected to change as the cathode ray tubes (CRT) used in the electronic indicators age. Therefore, it is considered necessary that instructions for continued airworthiness relative to the useful life be addressed in compliance with § 23.1529.

Electronic indicator systems will have great potential for inhibiting information to maximize the effect of other information in various phases of flight. Attitude, airspeed, altitude, and powerplant parameters needed to set power within established limits are information the FAA has concluded must be displayed during all normal modes of operation and, therefore, may not be inhibited during normal modes of operation. Information that is considered essential to continued safe flight must remain available on indicators usable by the pilot after any single failure or combination of probable failures without need for immediate crew action. At a minimum, without considering specific characteristics of an airplane's design, attitude, airspeed, and altitude must remain available without any crew action after such a failure, whereas a failure that would remove other essential information from displays, without resulting in an immediate hazard, would be acceptable provided the essential information could be returned to a usable indicator in a safe elapsed time.

Reference: Conference proposals 420, 428, 436, 437, 439, and 450.

4. Section 23.1321 is amended by revising paragraph (a) and the

introductory text of paragraph (d); and by adding a new paragraph (d)(5) to read as follows:

§ 23.1321 Arrangement and visibility.

(a) Each flight, navigation, and powerplant instrument for use by any required pilot during takeoff, initial climb, final approach, and landing must be located so that any pilot when seated at the controls can monitor the airplane's flight path and these instruments with minimum head and eye movement. The powerplant instruments for these flight conditions are those needed to set power within powerplant limitations.

* * * * *

(d) For each airplane certificated for flight under instrument flight rules or of more than 6,000 pounds maximum weight, the flight instruments required by § 23.1303, and, as applicable, by the operating rules of this chapter, must be grouped on the instrument panel and centered as nearly as practicable about the vertical plane of each required pilot's forward vision. In addition:

* * * * *

(5) Electronic display indicators may be used for compliance with paragraphs (d)(1) through (d)(4) of this section when such displays comply with requirements in § 23.1311.

Explanation

This proposal would require those instruments used during certain maneuvers to be located such that minimum eye or head movement is needed to monitor the airplane's flight path and these instruments. Powerplant instruments for which the location requirements apply would be limited to those needed to set power within powerplant limitations. The proposed revision of paragraph (d) would extend the T-arrangement of flight instruments to include all small airplanes certificated for all flight under instrument flight rules. This revision also clarifies the rule relative to instrumentation that must be provided for each pilot required for type certification or by the applicable operating rules. If a pilot is required by any applicable requirement, then that pilot must be provided all instrumentation required for any operations for which the airplane is approved.

Airplanes certificated to Part 23, in most cases, are certificated with only one required pilot. However, many of such airplanes subsequently enter Part 135 operations where two pilots are required. A significant function of the second required pilot is to monitor the airplane's flight path regardless of whether or not this second pilot is controlling the flight path. Therefore, this second pilot must have flight instruments available that are installed in accordance with all of the criteria of Part 23 and the affected operating rules, with specific emphasis on the requirements of § 23.1321.

Conference proposal 436 recommended provisions for electronic displays to be included in § 23.1321. The current rules were written when electro-mechanical instruments were all that were available and the required data could only be supplied using individual instruments. Current technology now allows this same data to be displayed in a different manner, possibly with all the data on a common electronic display indicator. The benefits include safer (less prone to misreading) displays using less cockpit space with equal or lower cost than the cluster of individual instruments. As technology advances, the amount of energy used for these instrument systems and their cost can be reduced. As previously discussed relative to proposed § 23.1311, the FAA has determined that a new section on electronic indicators is the appropriate method of incorporating such requirements into Part 23, with a cross reference to that new section (§ 23.1311) in § 23.1321.

Conference proposal 437 recommended additional requirements relative to pilot sensory cues and digital displays. The digital displays that need sensory cues for the pilot are addressed in proposed § 23.1311. Further requirements relative to sensory cues in § 23.1321 are not considered necessary at this time.

Conference proposals 435 and 436 recommended changing paragraphs (d)(2) and (d)(3) of § 23.1321 to delete or replace the requirement for locating airspeed and attitude displays directly to the left and right respectively of the altitude display. The recommended replacement requirement for "directly" was "Its vertical orientation must be such that it easily fits into the pilot's cross check eye scan." These proposals were supported by commenters at the conference.

The FAA has encountered significant difficulty in administering requirements that are dependent on purely subjective evaluations. The FAA is also aware that the current requirements have been administered, in some cases but not all, such that the centers of airspeed, attitude, and altitude indicators must be on a straight horizontal line. Since the conference, the FAA has further evaluated these recommended changes and has determined that the requirement contains adequate flexibility for foreseeable designs and is not proposing the recommended change as part of this action. By not proposing a change, this requirement will remain consistent in Parts 23 and 25.

Reference: Conference proposals 435, 436, and 437.

PART 91—GENERAL OPERATING AND FLIGHT RULES

5. 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).

6. Section 91.33, paragraph (d)(3)(i), is amended by removing the word "Large", by capitalizing the following word to read "Airplanes", and by adding the words "the instrument requirements prescribed in" after the words "in accordance with".

Explanation:

The FAA proposes to remove the word "Large", which begins the sentence that states the alternative to the requirement for a gyroscopic rate-of-turn indicator in § 91.33 and add words to clarify that incorporating the requirements of § 121.305(j) by reference extends the criteria of § 121.305(j) to all airplanes operating under Part 91 regardless of size or propulsion means. The proposal, if adopted, would permit operation of small airplanes in accordance with the instrument and equipment requirements for instrument flight in the same manner as presently permitted for large airplanes by the installation of a third attitude indicating instrument system complying with the instrument and installation requirements of § 121.305(j).

The FAA fully recognizes that, for instrument flight, § 91.33 only requires, in part, a single gyroscopic bank-and-pitch indicator (artificial horizon/attitude indicating instrument system) in addition to a single gyroscopic rate-of-turn indicator, except on certain aircraft. The FAA does not consider it appropriate, nor in the interest of safety in those airplanes where only a single bank-and-pitch indicator is installed, to permit the substitution of a second bank-and-pitch indicator in lieu of the required gyroscopic rate-of-turn indicator. The bank-and-pitch indicator, being of a more complex design and, therefore, subject to additional failure

modes than a gyroscopic rate-of-turn indicator, could have a higher failure rate. In the case when one attitude instrument fails, the pilot is denied information as to which of only two installed attitude instruments is providing correct attitude reference. In contrast, installation of a third attitude instrument, in lieu of the gyroscopic rate-of-turn indicator, will provide an inherent voting system. Three independent attitude instruments allow the crew to select two attitude instruments which agree to be the correct attitude of the airplane.

This proposal would respond to issues raised in petitions for exemptions and type certificate applications for airplanes when electronic instrument systems are installed that do not include a gyroscopic rate-of-turn indicator and when the airplane design includes three attitude indicating instrument systems with at least one such system installed in accordance with § 121.305(j) instrument installation criteria. While not specifically discussed at the Small Airplane Airworthiness Review Conference, the FAA considers proposals herein addressing §§ 23.1309, 23.1311, and 23.1321 to be directly related to this proposed revision to § 91.33, and to the proposals to amend §§ 135.149 and 135.159 in proposals 5–8 and 5–9 of this notice.

The cited proposals to amend §§ 23.1309, 23.1311, and 23.1321 provide criteria applicable to approval of electronic flight instrument systems (EFIS) installations. Some EFIS do not incorporate a rate-of-turn indicator in the design. Other EFIS present the rate-of-turn indication in the normal mode of operation; however, in the approach mode, the indication normally presented as rate-of-turn becomes an indication of deviation from the localizer course. The FAA does not consider it necessary for safety or in the public interest to require a rate-of-turn indicator in a small airplane when three attitude indicating instrument systems are installed in accordance with the instrument installation criteria of § 121.305(j) as permitted for large airplanes.

Section 121.305(j), instrument installation criteria, has been applied to transport category airplanes successfully for many years. However, this proposed change to § 91.33 will extend these criteria such that they will be applied to small airplanes by persons who are not accustomed to evaluating an airplane's electrical system to determine whether the airplane is eligible to have a third attitude indicator installed. Therefore, the FAA plans to issue an advisory circular to provide guidance for installation of third attitude indicators in small airplanes.

This proposed change to § 91.33 does not change the FAA's intent relative to pilot certification and continued proficiency in the use of partial panel instrumentation. Airplanes that are not configured such that partial panel proficiency can be demonstrated will not be accepted for demonstration of instrument proficiency during initial IFR ratings or for demonstrations of recurrency.

The FAA has been considering rulemaking to relieve the regulatory burden imposed by the requirement for a rate-of-turn indication, regardless of other airplane design features that would provide the intended level of safety, since the Small Airplane Airworthiness Review Conference. In the FAA deliberations to formulate this proposed rule, a lesser requirement (than a third attitude instrument) was considered and rejected because it did not result in an acceptable level of safety after a single probable failure.

Recently, on May 5 and 20, 1987, Beech Aircraft Corporation petitioned for amendment of §§ 91.33(d)(3) and 135.159(a), respectively, to allow adding an additional attitude instrument in lieu of the required rate-of-turn instrument. The FAA agrees the rules should be amended relative to the rate-of-turn instrument, but does not agree that direct replacement of the rate-of-turn instrument with an attitude instrument will provide the necessary level of safety because many airplanes could then be equipped with two attitude instruments and no rate-of-turn instruments. The safety issues concerning aircraft with less than three attitude instruments and with no rate-of-turn instrument were previously discussed herein. Therefore, the FAA is addressing the issue, raised by Beech Aircraft Corporation in its petition, in this notice, but is not proposing the lesser requirement recommended by Beech.

Reference: No conference proposals addressed this proposed revision.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

Citation

7. The authority citation for Part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

8. Section 135.149 is amended by revising paragraph (c) to read as follows:

§ 135.149 Equipment requirements: General.

* * * * *

(c) For turbojet airplanes, in addition to two gyroscopic bank-and-pitch indicators (artificial horizons) for use at the pilot stations, a third indicator that is installed in accordance with the instrument requirements prescribed in § 121.305(j) of this chapter.

* * * * *

Explanation

The FAA is proposing a revision to this section to establish uniformity in the installation requirements of the various operating rules when a third attitude instrument system is required to be installed. The current requirements as set forth in § 135.149 (c)(1) through (c)(6) are substantially the same as set forth in § 121.305(j) and the requirements of § 91.33 reference § 121.305(j) as the applicable criteria for approval of the third attitude instrument system in lieu of the rate-of-turn indicator in large airplanes. Therefore, to preclude any misunderstanding of requirements that are to be identically applied, the FAA is proposing to incorporate the instrument requirements of § 121.305(j) into § 135.149 by reference.

Reference: No Conference proposals addressed this proposed revision.

9. Section 135.159 is amended by redesignating paragraphs (a)(1) and (a)(2) as (a)(2) and (a)(3) respectively; and by adding a new paragraph (a)(1) to read as follows:

§ 135.159 Equipment requirements: Carrying passengers under VFR at night or under VFR over-the-top conditions.

* * * * *

(a) * * *

(1) Airplanes with a third attitude instrument system usable through flight attitudes of 360 degrees of pitch-and-roll and installed in accordance with the instrument requirements prescribed in § 121.305(j) of this chapter.

* * * * *

Explanation

The FAA proposes an alternative requirement to the required gyroscopic rate-of-turn indicator in § 135.159 applicable to airplanes. The proposal, if adopted, would permit operation with any airplane used in Part 135 operations in substantially the same manner as airplanes similarly equipped and used in Part 121 operations.

The FAA fully recognizes that carrying passengers under VFR at night and under VFR over-the-top conditions requires, as a minimum, a single

gyroscopic bank-and-pitch indicator (artificial horizon/attitude indicating instrument system) in addition to a single gyroscopic rate-of-turn indicator. The FAA does not consider it appropriate nor in the interest of safety in those airplanes where only a single bank-and-pitch indicator is installed to permit the substitution of a second bank-and-pitch indicator in lieu of the required gyroscopic rate-of-turn indicator. The bank-and-pitch indicator, being of a more complex design and, therefore, subject to more failure modes than a gyroscopic rate-of-turn indicator, could have a higher failure rate. In the case where one attitude instrument fails, the pilot is denied information as to which of only two installed attitude instruments is providing correct attitude reference. In contrast, installation of a third attitude instrument, in lieu of the gyroscopic rate-of-turn indicator, will provide an inherent voting system. Three independent attitude instruments allow the crew to select the two attitude instruments which agree to be the correct attitude of the airplane.

Part 135 operators of turbojet-powered airplanes are required to have installed three bank-and-pitch instruments (§ 135.149(c)) and, at least one rate-of-turn indicator (§ 135.159(a)). In contrast, Part 121 operators of turbojet-powered airplanes are required to have installed three bank-and-pitch indicators but not a rate-of-turn indicator. The equipment requirements of §§ 135.149(c) and 135.159(a) impose more stringent instrument installation requirements upon operators of turbojet-powered airplanes under Part 135 than do the operating rules of Part 121. The FAA considers that, when taken together, the requirements of §§ 135.149(c) and 135.159(a) are an unnecessary regulatory burden and the proposed revisions are in the public interest.

Reference: There were no conference proposals addressing this proposed revision.

Issued in Washington, DC, on February 23, 1989.

M.C. Beard,

Director, Aircraft Certification Service.

[FR Doc. 89-4952 Filed 3-3-89; 8:45 am]

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federal register

Monday
March 6, 1989

Part V

Department of Labor

Employment and Training Administration

Job Training Partnership Act; Performance Standards for Programs Funded Under the Economic Dislocation and Worker Adjustment Assistance Act; and Annual Program Report and Quarterly Financial Report for Worker Adjustment Programs; Notices

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act; Performance Standards for Programs Funded Under the Economic Dislocation and Worker Adjustment Assistance Act

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of performance standards for the Economic Dislocation and Worker Adjustment Assistance Program for Program Year (PY) 1989.

SUMMARY: The Economic Dislocation and Worker Adjustment Assistance (EDWAA) Act (Title VI, Subtitle D, of the Omnibus Trade and Competitiveness Act of 1988) revised Title III of the Job Training Partnership Act (JTPA), necessitating the issuance of standards for the new worker adjustment program. As a transition strategy, the Department is issuing a single performance standard, the entered employment rate, for the worker adjustment program for Program Year (PY) 1989 (July 1, 1989–June 30, 1990) as well as an optional wage at placement goal. Additional measures will be implemented in the future as data become available. Governors are required to set an entered employment rate standard for each substate grantee and may adjust this standard to account for variations in participant characteristics, local economic conditions, and types of services provided.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Martha Muirhead. Telephone: (202) 535–0687.

SUPPLEMENTARY INFORMATION: On December 13, 1988, proposed performance standards for the Economic Dislocation and Worker Adjustment Assistance Act were published in the **Federal Register** at 53 FR 50134. Interested parties were invited to submit written comments through January 13, 1989.

A. Purpose of Performance Standards

Pursuant to section 106(g) of the JTPA, the Secretary of Labor shall prescribe performance standards for programs under Title III based on placement and retention in unsubsidized employment. These measures of performance reflect Congress' desire to emphasize program outcomes for individuals that assess how well the JTPA system is meeting its statutory goals of increased employment and earnings and reduced welfare dependency. Title III performance standards measure the effectiveness of worker adjustment programs to adequately prepare dislocated workers to reenter productive employment and to enable them to retain that employment over time. The new provisions contain a number of program features which emphasize the importance of quality training in ensuring the employability of dislocated workers. Other program objectives—increased coordination, timely service delivery to workers and communities undergoing economic change, and improved fiscal accountability—are designed to ensure that service and funding decisions will support the goals of the Act.

For PY 1989 the Secretary intends to set an entered employment rate standard and an optional wage at placement goal for Title III. To ensure systemwide accountability, substate areas and statewide programs will be subject to performance standards. Reporting for the worker adjustment program will begin to gather the data needed to set and adjust a postprogram employment, job retention, replacement wage, or other standard considered appropriate for dislocated worker programs for future implementation.

Prior to EDWAA, substate administration was not required for dislocated worker programs; therefore, substate client characteristics and program performance data were not collected. Because of limited data, adequate adjustment models for follow-up standards for Title III are not currently available. Data from an alternative national database—the JTPA Quarterly Survey—will enable the Department to issue initial adjustment models for Governors' use in setting substate entered employment rate standards and placement wage goals until substate data on EDWAA programs are available.

B. Authority To Issue Performance Standards

Section 106(g) of the JTPA directs the Secretary to establish performance standards for Title III dislocated worker programs.

C. Discussion of Comments

The Department of Labor (Department) received 41 written comments on the proposed issuance within the comment period. Most of the comments focused on the proposed EDWAA reporting requirements which were published for comment simultaneously. Only a few remarks were received on the proposed standards. The following summarizes the comments received and the Department's response.

- Overall, there was general agreement that the anticipated retention and wage replacement standards are appropriate measures of success for Title III programs. Substate performance standards and adjustment models were also viewed as necessary in setting reasonable performance expectations that account for local variations in clients, services and economic conditions.
- Several comments centered on whether States are required to establish monetary incentives to reward local program performance.

There was concern that creating a system of cash awards would be impractical and unproductive, because there are insufficient funds in EDWAA to make awards meaningful. There was also concern that cash awards would reduce State flexibility in creating meaningful alternative incentives. The Department concurs that there is no statutory requirement for *monetary* incentives. However, out of concern that performance standards would create disincentives to longer-term training, Congress required at section 311(a) that the State plans include incentives to provide training of greater duration for those who require it. Because program experience in Title II has shown monetary incentives to be a powerful motivation for achievement, the Department permitted States to use a portion of the 40 percent funds under section 302(c)(1) for rewarding substate area performance.

Another issue raised in the comments involved those employees who remain with their original employer in instances where a layoff is averted. Currently, the definition of the entered employment rate treats all participants who leave the program without obtaining a job as negative terminations. Because one goal of EDWAA is early intervention, it is possible that resources will be spent on participants who do not lose their jobs as a result of successful layoff aversion. To hold programs harmless for serving such participants, the calculation of the entered employment rate for EDWAA performance standards will exclude all participants who are called back or retained by their original employer.

D. Rationale for Substate Standards, Incentives, and Sanctions

Under the new provisions, funds are to flow to substate areas to provide services to dislocated workers. Section 106 of the JTPA requires the Secretary to establish standards for dislocated worker programs, and the Title III

amendments call for the Secretary to set parameters to guide Governors in adjusting substate area standards for varying local conditions. National standards are set with adjustments available for substate areas based on who is being served and what services are being provided.

The revised Title III provisions do not specifically set aside funds for incentives. However, a portion of the 40 percent funds reserved for State activities under section 302(c)(1) may be used for rewarding substate area performance, in particular those programs that provide lengthier, more substantive training to ensure the long-term employability of participants. Departmental regulations clarify that sanctions in section 106(h) apply to worker adjustment programs. Because the new Title III provisions enable Governors to redesignate substate areas every two years, the additional imposition of a reorganization plan will not be required. For the transition year (PY 1989), rewards and sanctions are not required; however, States should establish such policies for implementation by PY 1990.

E. Rationale for the Proposed Measure

The appropriateness of any performance standard should be judged by the extent to which it measures the goals of the program. The goals of the worker adjustment program are to adequately prepare workers for reemployment and to ensure their continued employability through a broad range of quality retraining, services and participant support. The measures defined in JTPA section 106(g) as appropriate for dislocated worker programs are placement and retention in unsubsidized employment.

As a transition strategy, the entered employment rate standard is proposed as the only measure against which performance will be assessed for PY 1989, continuing the standard set in PY 1988. The level may be updated in PY 1990 at the beginning of the next two-year cycle after the worker adjustment program is fully operational. The Department provided guidance on adjusting substate area standards in Training and Employment Information Notice No. 19–88, dated February 3, 1989. Additional measures will be adopted for this program in PY 1992 when sufficient substate data become available. Signed at Washington, DC this 27th day of February, 1989.

Roberts T. Jones,

Assistant Secretary For Employment and Training.

Training and Employment Guidance Letter No.

From: Roberts T. Jones, Assistant Secretary of Labor.

Subject: Secretary's Performance Standards for Programs Funded Under the Economic Dislocation and Worker Adjustment Assistance (EDWAA) Act for Program Year 1989.

1. Purpose

To transmit to the State Worker Adjustment Liaisons the Secretary's national numerical standards and implementing instructions for new programs serving dislocated workers for PY 1989.

2. Background

Section 106(g) of the Job Training Partnership Act (JTPA) directs the Secretary to establish performance standards for dislocated worker programs. The Secretary also issues instructions for implementing standards and parameter criteria for States to follow in adjusting the Secretary's standards for substate areas.

3. Performance Management Goals for Program Year 1989

Program Year 1989 marks the beginning of a new performance management system, while serving as a transition year between the former Title III program and the Economic Dislocation and Worker Adjustment Assistance (EDWAA) Act program. The objective of performance standards is to measure the effectiveness of worker adjustment programs in meeting the immediate goal of obtaining reemployment for dislocated workers and the long-term goal of their continued employment.

4. Performance Measures for PY 1989

One performance measure will be required for the worker adjustment transition year. This measure is the entered employment rate. An optional average wage at placement or other appropriate measures may also be adopted by Governors. The proposed reporting system will collect the data needed to set and adjust job retention, replacement wage, post-program and/or other standards appropriate for dislocated worker programs for future implementation.

5. Secretary's National Numerical Standards for PY 1989

The numerical standard is derived from the PY 1986 Title III performance data reported on the JTPA Annual Status Report (JASR).

An entered employment rate of 64 percent is the Secretary's national standard for PY 1989 and is the departure point for adjustments in the Department's optional adjustment model. Governors may also establish an average wage at placement goal, with the departure point left to the discretion of each Governor. The entered employment rate of 64 percent is set at a level that if worker adjustment programs continue to perform in the same manner as JTPA Title III in PY 1986, 75 percent of the system should exceed this standard.

6. Implementation Provisions

The following implementation requirements must be followed:

a. Required Standards. Governors are required to set for each substate area a numerical performance standard for entered employment.

b. Setting the Standards. The Governor may set the substate area standards by using the Secretary's numerical standard or by adjusting this standard. Such adjustments must conform to the Secretary's parameters described below: Procedures must be:

- Responsive to the intent of the Act;
- Consistently applied among substate areas;
- Objective and equitable throughout the State; and
- In conformance with widely accepted statistical criteria.

Source data must be:

- Of pubic use quality; and
- Available upon request.

Results must be:

- Documented; and
- Reproducible.

Adjustment factors must be limited to:

- Economic factors;
- Labor market conditions;
- Characteristics of the population to be served;
- Geographic factors; and
- Types of services to be provided.

The Department has developed an initial optional adjustment methodology for Governor's use in varying substate standards to account for participant characteristics and local economic conditions. Worksheets were included in Training and Employment Information Notice No. 19–88, dated February 3, 1989, for Governors to use at their discretion. The Department's methodology conforms to the parameter criteria cited above. Should the Governor choose to use an alternative methodology, or further adjust the Departmental model, it must conform to the parameter criteria and be documented in the State plan prior to the program year to which it applies. The State Job Training Coordinating Council must have an opportunity to consider adjustments to the Secretary's standard and to recommend variations.

c. Performance Standards Definitions. Governors must compute the performance of their substate areas according to the following definitins:

(1) Entered employment rate. Number of individuals who entered employment at termination excluding those who were recalled or retained by original employer after receipt of a layoff notice divided by total terminations excluding those who were recalled or retained by original employer after receipt of a layoff notice. The entered employment rate is computed from the Worker Adjustment Annual Program Report as follows:

(Column B) I.C.1.+I.C.2

(Column B) I.C.–I.C.3

(2) Average wage at placement. Average hourly wage for all persons who entered employment at the time of termination. (Line 26 of Worker Adjustment Annual Program Report)

7. Application of the Performance Standards

Performance standards are to be applied to the following programs funded under section 302: All of section 302(c)(1) State activities, sections 302(c)(2) and 302(d) substate area activities. Performance goals will be set for programs operated under section 302(a)(2) Secretary's National Reserve; however, standards will not apply.

8. State Action

States should ensure that all substate grantees are promptly informed of this planning and policy guidance.

9. Inquiries

Questions concerning this issuance may be directed to Martha Muirhead at (202) 535–0687.

[FR Doc. 89–5106 Filed 3–3–89; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Job Training Partnership Act: Annual Program Report and Quarterly Financial Report for Worker Adjustment Programs

AGENCY: Employment and Training Administration, Labor.

ACTION: Worker Adjustment Annual Program Report and Quarterly Financial Report for Program Year 1989.

SUMMARY: The Department of Labor is issuing new program and financial reporting requirements needed to implement the Economic Dislocation and Worker Adjustment Assistance (EDWAA) Act which amended Title III of the Job Training Partnership Act (JTPA). The new reporting system consists of an annual report of program outcomes and worker characteristics and a quarterly financial report of funding availability and expenditures. These reports are designed to collect information that will permit the Department (1) to set transitional substate performance standards and for future standards management; (2) to provide adjusted substate standards for varying types of retraining thus enabling States to award incentives for long-term training; (3) to calculate reallotments and provide for financial reconciliation; (4) to meet Federal responsibilities for program administration, management and oversight; and (5) to respond to public and Congressional requests for information on implementation of the new EDWAA program.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION, CONTACT: Karen Greene, Telephone (202) 535–0680.

SUPPLEMENTARY INFORMATION: On December 13, 1988, the Department published proposed new reporting requirements for the Economic Dislocation and Worker Adjustment Assistance (EDWAA) program in the Federal Register at 53 FR 50117. Interested parties were invited to submit written comments through January 13, 1989. At the same time, the proposed reporting requirements were forwarded to the Office of Management and Budget (OMB) for review pursuant to the Paperwork Reduction Act.

Based on comments received, the proposed reporting forms and instructions have been revised to streamline both the annual and quarterly reports, retaining the most critical data elements needed for performance standards, program management and Federal oversight. Further, to the extent possible, reporting requirements and definitions were revised to permit flexibility and to promote coordination of service delivery from multiple programs. The final report forms and instructions are being published in this Federal Register notice for implementation with the EDWAA program beginning in Program Year 1989.

A. Authority and Purpose of the Worker Adjustment Program Reporting Requirements

Periodic reporting of activity under EDWAA is necessary to comply with the provisions of JTPA cited below regarding the Secretary's responsibilities and authority for setting performance standards and for program management and Federal oversight.

- *Section 106—Performance standards.* This section directs the Secretary to prescribe standards for dislocated worker programs under Title III. New provisions amending paragraph (e) of this section direct the Secretary to establish parameters within which Governors may vary standards for substate grantees based on local economic factors, characteristics of the population to be served, and types of services to be provided. Section 106(g)(2) further requires an adjustment in performance standards to account for the difference in costs resulting from serving workers receiving needs-related payments.
- *Section 165—Reports, recordkeeping and investigations.* This section requires States and substate grantees to maintain records and report information regarding program performance and fiscal management as specified by the Secretary.
- *Section 169—Administrative provisions.* The Secretary is directed at paragraph (d)(1) to submit an annual report to Congress summarizing program achievements and problems in meeting statutory objectives and, where appropriate, suggest recommendations for program modifications or administrative action.
- *Section 303—Reallotment.* This section requires the Secretary to annually reallot an amount of funds equal to unexpended formula funds in excess of 20 percent of the State's prior year's formula allotment, plus all unexpended formula funds from the year before the prior year.
- *Section 311—Incentives under EDWAA.* Paragraph (a) of this section mandates that each State plan include incentives to provide training of greater duration for those who require it.
- *Section 315—Limitations on uses of funds.* This section describes requirements and limitations on expenditures for retraining activities, needs-related payments and supportive services, and administration in EDWAA programs.
- *Section 322—Federal oversight.* The Secretary is directed at paragraph (a)(4) to monitor performance and expenditures of Title III programs and annually certify compliance with standards prescribed by the Secretary under section 106(g).

These provisions require a new worker adjustment reporting system to conform to programmatic changes associated with the implementation of EDWAA. The new reports include (1) quarterly State financial reporting, and (2) expanded annual performance reporting for State, substate, and National Reserve programs. Justification of this new reporting system is based on the Federal responsibilities for implementation of the provisions of EDWAA, recognizing the fact that:

- Quarterly reporting of expenditures is necessary to comply with the new reallotment requirements, increased Federal oversight responsibility, and budget preparation. It is anticipated that more frequent monitoring will enable the Department and the States to identify financial management problems—especially those associated with the implementation of a new program during the first two years—and resolve them before year's end to minimize Federal reallotment actions.
- Data on program performance, participant characteristics, and types of services provided must be collected at the substate level in order to support the

establishment of substate standards and adjustments for varying these standards. Without substate data, objective and defensible local standards cannot be set because the effects on performance of varying significant local conditions cannot be systematically estimated.

• Federal reporting is the most cost effective method for collecting consistent financial, program activity, and performance information across State and substate areas in a timely manner to comply with management and oversight requirements of the Act.

B. Reasons for New Reporting Requirements

Existing reporting requirements for Title III have been determined to be inadequate for programs under EDWAA for several reasons:

• The Department anticipates adding new standards in the future—postprogram job retention, a measure of pre/postprogram wage, and separate placement levels for programs offering basic readjustment services only as compared to those providing retraining. Data collection must begin in Program Year 1989 for the Secretary and Governors to have adequate information to set and adjust these standards no later than PY 1992.

• Reporting of training duration and completions by major area of retraining specified in the Act will enable the Department to improve its adjustments to program outcomes by accounting for differences in program intervention and duration. These data will also enable States to establish and implement a system to provide incentives for training of longer duration, as required in the Act.

• New activities and priorities under EDWAA, including significant new State-level responsibilities for rapid response, must be monitored by the Department to ensure effective implementation, and will be the subject of public inquiry and Congressional review.

C. Discussion of Comments

In response to the request for comments included with the December 13 publication of proposed EDWAA reporting requirements, the Department received 34 letters from States, local areas, and public interest groups. The overriding concern expressed by a majority of the commenters centered on the magnitude of the effort necessary to implement the proposed reporting system when compared to the size of the program and the level of available resources.

The Department acknowledges the burden of establishing a new program, including the necessary management information and tracking systems. Although Title III provisions have mirrored Title II in the past, EDWAA seeks to focus on specific activities and outcomes for the dislocated worker. To reduce the impact of EDWAA implementation, the Department has streamlined the reporting requirements to capture the more critical data elements needed for EDWAA performance standards, program management and Federal oversight. Restructuring of both the annual and the quarterly report forms has reduced the total number of required reporting elements by one-third.

Specific comments regarding the proposed requirements for the annual and quarterly reports are addressed in the discussions below.

Worker Adjustment Annual Program Report (9019)

Certificates of Continuing Eligibility (CCEs)

The extent to which this new program feature is utilized by the substate grantees and its impact on the program will be of significant interest to the Department and to Congress. Most of the commenters focused on the burden of tracking CCEs to their ultimate disposition, as required in the interim-final regulations, especially if they are redeemed by another substate grantee. The EDWAA regulations are being clarified to require that records be kept on those CCEs issued and on those redeemed by the grantee, but the grantees do not have to track the certificates outside of the substate area. Since records must be maintained, the reporting burden is minimal and, therefore, these two line items have been retained.

Relocated Out of Area

The Department concurs with the commenters' observation that information on the number of placements from retraining who were relocated out of the area is only a subgroup of total relocations. The purpose of this report item, however, is to identify what may be a significant cost (i.e., actual relocation of a household) that will impact on the level of retraining expenditures. Placement in a new job that does not require the expenditure of retraining funds is not at issue. Therefore, this item has been retained as proposed.

Additional Termination Categories

Commenters were generally positive about collecting information on the nature of the services that resulted in placements, and information on the termination of participants who were not placed in unsubsidized employment. Some commenters sought additional clarification as to how these terminations will be treated in the calculation of the entered employment rate for performance standards purposes. The termination of participants who transfer was viewed by others as incompatible with coordination with other programs and the seamless delivery of services. The performance standards provisions have been revised to exclude from "total terminations" those participants who have been called back or remained with their employer. Provisions have been included in the reporting instructions that allow grantees the opportunity to continue to track participation through concurrent enrollment in other programs, such as under a case management-type system, if the services are consistent with an initially determined training objective. Final termination, and the outcome achieved as a result of concurrent participation in EDWAA-funded activities or any other program, is to be shown on each grantee's report (State, substate or National Reserve) at the conclusion of all activities. Separate reporting of transfers will be retained, however, to encourage coordination by those grantees which do not have a case management-type capability.

Economically Disadvantaged

Commenters took exception to this requirement, citing determination of economically disadvantaged status as excessively burdensome since it requires collection of information on income and family size, as well as calculation and comparison with published tables. Also, reporting of personal, confidential information was considered to be unjustifiable when not related to program eligibility. Therefore, this requirement has been deleted.

Dislocated Worker Eligibility Status

Commenters maintained that there is no identifiable connection between eligibility categories and performance outcomes due to varying definitions across States. Valuable performance standards adjustments such as "unemployed 15 out of 26 weeks" and "unemployment compensation claimant" appear redundant with the less objective eligibility categories. Finally, since EDWAA applicants may be eligible under more than one category, the resulting data may underestimate the numbers in each group. Although it is anticipated that

service levels to the different eligibility groups will be of considerable Congressional interest, these items have been removed from the final report form.

TRA Claimant

A number of commenters noted that since TRA benefits may not be available until after enrollment into EDWAA, this would entail the additional burden of tracking and updating participant characteristics after the initial eligibility determination. Because collection, and hence reliability of the data would be problematic, this line has been deleted from the report form.

Veterans

Although one commenter questioned collecting information on Veteran status, pursuant to the "Veterans Employment, Training, and Counseling Amendments of 1988," these items have been retained on the final report form.

Needs-Related Payments/Recipients

Commenters pointed out that while the Act requires taking into account the cost of needs-related payments when establishing performance standards, it is not clear that the number of participants who received such payments will affect the outcomes. Therefore, the line item for costs of needs-related payments has been retained, while the second line on number of recipients has been deleted.

Pre-Program Average Hourly Wage

The calculated average of wages received prior to EDWAA participation was included on the proposed form. While generally supporting the concept, commenters pointed out that:

- This is a complicated item, requiring multiple determinations and computations.
- The individual's wage within a specific time period may not be an appropriate indicator of the wage at the time of dislocation.
- A limited look back period for pre-program wage will increase the likelihood of a zero wage for long term unemployed.

This line item has been retained, but the instructions have been revised to allow for an open-ended look back period to more accurately reflect the dislocation wage, and reduce the chance of a zero pre-program wage.

Retraining Duration

Commenters took exception to tracking length of stay according to three different time periods because it is unnecessarily burdensome, particularly when very little EDWAA retraining activity will last more than 52 weeks. Tracking the duration of retraining will be very important as Governors establish incentives to provide longer term training for those who require it, as directed in the Act. However, to reduce the burden of tracking, only two categories—retraining less than 26 weeks and 26 weeks or more—are now required.

Types of Completed Retraining

Commenters noted that the types of retraining listed on the report do not capture the variety of possible services under retraining. Exclusive use of the term "classroom training" sends a signal that this type of formalized instruction is the preferred method over other alternatives. Finally, some argued that if acquiring a GED is separately identified, other achievements such as certificates or degrees should also be included. "Classroom training" has been deleted from the line item for occupational skills training to allow for the inclusion of customized training or other appropriate types of occupational retraining. The acquisition of a GED has been deleted as a separate category and has been included in the basic education category.

Section B—Rapid Response

The extent of rapid response activity under the Governor's Reserve, which is a significant part of the EDWAA program, will be of considerable interest to the Department and to Congress. Many commenters pointed out, however, that a report that focuses on participants and outcomes is an inappropriate vehicle for collection of non-participant based activity. Moreover, some objected to the conclusions that might be drawn from this information. The number of employees affected by a dislocation is no indicator of the quality or the intensity of a rapid response effort. Absence of a labor-management committee may be the result of many factors beyond the control of the State's dislocated worker unit. And, information on studies relating to a plant purchase will be of little value. Therefore, the number of WARN notices received and initial rapid response contacts made will be monitored on the quarterly report as the more appropriate instrument for reporting general levels of activity.

Section C—Secretary's National Reserve

A separate section was included on the annual report to show a breakout of expenditures under the Secretary's National Reserve programs. Comments on this section pointed out that similar types of expenditure information was already being requested on the quarterly report, and these items were inappropriate for a report that focused on participants and outcomes. Therefore, these items are added as an additional column to the revised financial report.

Worker Adjustment Quarterly Financial Report (9020)

Report Submission

The proposed reporting instructions required submission of financial reports within 30 days after the end of the report period. Commenters questioned why the Department was making an exception for this financial report when other JTPA reports are to be submitted within 45 days after the end of the report period. Some commenters suggested that 30 days was insufficient to collect accurate financial data, resulting in many more resubmissions of revised reports. The quarterly reporting instructions have been modified to allow a 45-day submission period. Further, changes to financial data do not require submission of revised first, second or third quarter reports.

Year of Fund Source

New provisions in EDWAA require reallotment of an amount equal to unexpended formula funds for the prior year in excess of 20 percent of the prior year allotment, plus any unexpended funds from the year before the prior year. Commenters pointed out that National Reserve funds are not subject to reallotment, and therefore availability and expenditures should not be reported according to the year in which the funds were made available. The final report package continues to include a breakout of National Reserve funds, however, because this will allow for the annual reconciliation of both formula and discretionary grants from this one report without the current necessity for a separate and additionally burdensome report.

Program Availability and Expenditures

The number of cost categories specified in the regulations has been reduced by combining needs-related payments and supportive services as a single category, reducing the reporting categories by one. Also, the reporting instructions have been rewritten and clarified with regard to funds reserved by the Governor for distribution to substate grantees in need, eliminating the need for proposed separate reporting elements.

Paperwork Reduction Act of 1980

The Appendix to this notice has been reviewed in accordance with the Paperwork Reduction Act of 1980 by the

Office of Management and Budget and approved for the period through December 31, 1992 (OMB No. 1205–0274).

Signed at Washington, DC, this 27 day of February, 1989.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

Appendix—Worker Adjustment Annual Program Report and Quarterly Financial Report

Combined Reporting Burden for the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA) Annual Program Report and Quarterly Financial Report

We estimate that it will take an average of 80 hours to complete this information collection including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information. If you have any comments regarding these estimates or any other aspect of this survey, including suggestions for reducing this burden, send them to the Office of Information Management, U.S. Department of Labor, Room N–1301, 200 Constitution Avenue NW., Washington, DC 20210; and to the Office of Management and Budget, Paperwork Reduction Project (1205–0274), Washington, DC 20503.

Worker Adjustment Program Annual Program Report (ETA 9019)

1. Purpose

The Economic Dislocation and Worker Adjustment Assistance Act (EDWAA) Annual Program Report (WAPR) displays cumulative data on participation, termination, performance measures and the socio-economic characteristics of all terminees on an annual basis. The information will be used to determine levels of program service and performance measures. Selected information will be aggregated to provide quantitative program accomplishments on a local, State, and national basis.

General instructions. The Governor will submit: (1) A separate WAPR for *each* designated Substate Area (SSA) (a Statewide summary of these SSA data need not be submitted); (2) a separate WAPR covering participants and terminees in statewide, regional or industrywide projects funded under section 302(c)(1)(B) of the Act; and (3) a separate WAPR covering participants and terminees in projects funded under Secretary's National Reserve Grants (section 302(a)(2)). Recipients may determine whether the reports are submitted on WAPR forms or as a computer printout, with data, including signature and title, date signed and telephone number, arrayed as indicated on the WAPR form. If revisions are made to the WAPR data after the reporting deadline, revised copies of the WAPR should be submitted to DOL as soon as possible according to the required reporting procedures. If these revisions affect data reported on the WQFR, then that revised document should also be submitted.

Note: For WAPR reporting purposes, EDWAA shall refer to: (1) Programs operated by Substate grantees with funds authorized under sections 302(c)(2) and 302(d) or otherwise distributed by the Governor under section 302(c)(1) (E) and (2) projects operated by the Governor with funds authorized under sections 302(c)(1) and 302(a)(2) of the Act.

The reporting period begins on the starting date of each Job Training Partnership Act (JTPA) program year, as stated in Section 161 of the JTPA. Reports are due in the National and Regional Offices no later than 45 days after the end of each program year. Two copies of the WAPR are to be provided to: U.S. Department of Labor, ETA, ATTN: TSVR—Room S–5306, 200 Constitution Avenue, NW., Washington, DC 20210.

At the same time an additional copy of the WAPR is to be provided to the appropriate Regional Administrator for Employment and Training in the DOL Regional Office that includes the State in which the JTPA recipient is located.

Note: The current JASR, ETA 8580 (June 1988), is to continue to be used for programs operating solely with PY88 and earlier year's Title III funds. The WAPR is to be used beginning July 1, 1989, for PY89 programs funded under EDWAA (including carrying funds used for EDWAA purposes, if any).

3. Facsimile of Form

See the following page.

4. Instructions for Completing the Worker Adjustment Program Annual Program Report (WAPR)

a. *State/substate area name and address.* On separate sections 302(c)(1) and 302(a)(2) reports, enter the name and address of the State agency that will administer the Statewide programs. For SSA reports, enter the name and address of the Substate grantee that will administer the SSA programs.

BILLING CODE 4510-30-M

OMB No. 1205-0274
Expires 12/31/92

U.S. DEPARTMENT OF LABOR Employment and Training Administration WORKER ADJUSTMENT PROGRAM Annual Program Report	a. STATE/SUBSTATE AREA NAME AND ADDRESS	b. REPORT TYPE ( ) SSA # _____ ( ) Gov Statewide ( ) Secy N/Resv	c. REPORT PERIOD FROM 7/1/19___	 TO 6/30/19___

I. PARTICIPATION AND TERMINATION SUMMARY	A. Concurrent Participants	B. All Participants
A. Issued Certificate of Continuing Eligibility (CCE)	//////////////	
B. TOTAL PARTICIPANTS		
1. All CCEs Redeemed for Retraining	//////////////	
C. TOTAL TERMINATIONS		
1. Entered Unsubsidized Employment From Retraining		
a. Relocated Out of Area	//////////////	
2. Entered Unsubsidized Employment From Basic Readjustment Services ONLY		
3. Called Back/Remained with the Layoff Employer	//////////////	
4. Transferred to Other JTPA Programs	//////////////	
5. Entered Non-JTPA Training	//////////////	
6. All Other Terminations	//////////////	

		II. TERMINEE CHARACTERISTICS AND PERFORMANCE MEASURES SUMMARY	All Terminees
1		Male	
2		Female	
3		29 and Under	
4		30 - 44	
5		45 - 54	
6		55 and over	
7		Less Than High School	
8		H.S. Graduate or Equivalent (No Post-High School)	
9		Post-High School Attendee	
10		College Graduate and Above	//////////////
11		Single Head of Household With Dependent(s) Under Age 18	
12		White (Not Hispanic)	
13		Black (Not Hispanic)	
14		Hispanic	
15		American Indian or Alaskan Native	
16		Asian or Pacific Islander	
17		Limited English Language Proficiency	
18		Handicapped	
19		Reading Skills Below 7th-Grade Level	

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d. SIGNATURE AND TITLE	e. DATE SIGNED	f. TELEPHONE NO.

ETA 9019 (March 1989)

a. STATE/SUBSTATE AREA NAME AND ADDRESS	REPORT PERIOD FROM	TO
	7/1/19___	6/30/19___

	II. TERMINEE CHARACTERISTICS AND PERFORMANCE MEASURES SUMMARY - CONTINUED		
20	U.C. Claimant		
21	Unemployed: 15 or More Weeks of Prior 26 Weeks		
22	Veteran (Total)		
23	Vietnam-Era		//////////////
24	Average Weeks Participated		
25	Average Hourly Wage -- Pre-Program		
26	Average Hourly Wage at Termination		
27	Total Program Costs (Federal Funds)		
28	Needs-Related Payments		//////////////
29	Total Available Federal Funds		
	III. FOLLOW-UP INFORMATION		
30	Employment Rate at Follow-up		
31	Average Hourly Wage at Follow-up		
32	Average Number of Weeks Worked in Follow-up Period		
33	Sample Size		
34	Response Rate		
	IV. RETRAINING/BASIC READJUSTMENT SERVICES		
35	Received Basic Readjustment Services ONLY		
36	Received ANY Retraining Activity		
37	Less than 26 Weeks		//////////////
38	26 or More Weeks		//////////////
39	Completed Classroom Training: Basic Education or Attained GED		
40	Completed On-the-Job Training		
41	Completed Other Occupational Skills Training		

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Remarks:

BILLING CODE 4510-30-C

b. *Report type.* Designate the type of report data provided on this WAPR. If this is an SSA report, also enter the ETA-assigned Substate Area Code number.

c. *Report period.* Enter in "From" the beginning date of the designated JTPA program year and enter in "To" the ending date of that program year.

d. *Signature and title* (at bottom of the page). The authorized official signs here and enters his/her title.

e. *Date signed.* Enter the date the report was signed by the authorized official.

f. *Telephone number.* Enter the area code and telephone number of the authorized official.

5. *General Information*

Unless otherwise indicated, data reported on characteristics of terminees should be based on information collected at the time of eligibility determination.

Characteristics Information Obtained on an Individual at the Time of Eligibility Determination for the Recipient's EDWAA Program Should Not Be Updated When the Individual Terminates From the EDWAA Program

Note: Recipients shall ensure that individuals are enrolled within 45 days of the date of application or a new application must be taken (20 CFR 629.1). This 45-day period for Certificate of Continuing Eligibility (CCE) holders should begin upon completion of a full participant record, usually at the time of CCE redemption, as this may be at a location other than where the CCE was issued and such information taken earlier to determine eligibility may not be readily available at the redemption site.

Section I—Participation and Termination Summary

Section I displays the EDWAA program's accomplishments in terms of the total cumulative number of participants in the program, the number and types of terminations from the program, and the number of CCEs issued/redeemed, as of the end of the reporting period.

In Section I, Column A., Item I.B., enter individuals who are concurrent participants and are receiving Basic Readjustment Services and/or Retraining under another EDWAA-funded grantee/program, JTPA title or have entered non-JTPA/EDWAA training for the completion of the initially determined training objective, prior to termination from their initial EDWAA program. Column A. is a sub-breakout of Column B. for this line item.

In Section I, Column A., Item I.C., enter terminees who have been concurrent participants and have received Basic Readjustment Services and/or Retraining under another EDWAA-funded grantee/program, JTPA title or have received non-JTPA/EDWAA training for the completion of the initially determined training objective, prior to termination from their initial EDWAA program. Also, distribute these terminees between Items I.C.1. and I.C.2., as appropriate, on the basis of the final type of termination from the EDWAA program of final participation. Column A. is a sub-breakout of Column B. for these line items.

Note: An individual included in a line item entry in Column A. also must be included in the entry for the same line item in Column B.

Entries for Items I.A, I.B. and I.C. are cumulative from the beginning of the program year through the end of the reporting period.

Item I.A. *Issued Certificate of Continuing Eligibility (CCE).* Enter the total number of applicants to whom a Certificate of Continuing Eligibility was issued during this program year, as provided in section 316(b) of the Act, by the Substate grantee through the end of the reporting period.

Note: Enter zero for this item on the Governor's Statewide report (section 302(c)(1)).

Item I.B. *Total participants.* Enter by column the total number of participants who are or were receiving employment, training or services (except post-termination services) through the end of the reporting period, including both those on board at the beginning of the designated program year and those who have entered during the program year.

"Participant" means any individual who has: (1) Been determined eligible for participation upon intake; and (2) started receiving employment, training, or services (except post-termination services) funded under the Act, following intake. Individuals who receive *only* outreach and/or intake and initial assessment services or postprogram follow-up are excluded.

Note: Also exclude individuals who receive *only* Rapid Response Assistance and information, per section 314(b), provided by the State's Dislocated Worker Unit.

If individuals receive concurrent employment, training and/or services under more than one title/program, they are to be considered participants in both titles/programs for purposes of recording actual number of weeks participated, dollars expended, and other pertinent data. Individuals who initially participate in EDWAA funded activity and subsequently participate in any other EDWAA (or non-EDWAA) funded activity, FOR THE COMPLETION OF THE INITIALLY DETERMINED TRAINING OBJECTIVE, may be considered to be concurrent participants in each program.

The sum of the entries (all SSAs in a State) in Item I.B., Total Participants, and in Item I.C., Total Terminations, of the WAPR should equal the entries for Substate Grantees in Column B., Lines 14 and 15, respectively, of the WQFR for the final quarter of the same program year for the same recipient.

The entries in Item I.B. and in Item I.C. of the Governor's Statewide WAPR should equal the entries for Governor's Reserve in Column A., Lines 14 and 15, respectively, of the WQFR for the final quarter of the same program year for the same recipient.

The entries in Item I.B. and in Item I.C. of the Secretary's National Reserve WAPR should equal the entries for the Secretary's National Reserve in Column C., Lines 14 and 15, respectively of the WQFR, for the final quarter of the same program year for the same recipient.

Item I.B.I. All CCES redeemed for retraining. Enter the total number of *unexpired* participant CCEs, regardless of year issued, redeemed for Retraining during this program year by the Substate grantee, through the end of the reporting period. Include all CCEs so redeemed that were issued by any Substate grantee for periods not to exceed 104 weeks prior to redemption. This item is a sub-breakout of Item I.B.

Item I.C. Total terminations. Enter by column the total number of participants who terminated (as defined below) from the program during the reporting period. Include all participants who received no Basic Readjustment Services (except supportive services and/or counseling) or Retraining for 90 days. *This item is the sum of Items I.C.1 through I.C.6.*

"Termination" means the separation of a participant from the program who is no longer receiving Basic Readjustment Services or Retraining under EDWAA. Individuals may be considered participants for up to 90 days after last receipt of Basic Readjustment Services or Retraining, during which time they may continue to receive supportive services, as provided for in sections 314 (c)(15) and 4(24) of the Act.

For purposes of calculating average weeks participated, this single period of up to 90 days between "last receipt of Basic Readjustment Services or Retraining under EDWAA" and actual date of termination is defined as "inactive status" and is not to be included in "Average Weeks Participated". Terminees may continue to receive counseling necessary to assist in the retention of employment, for not more than 6 months following last

receipt of Basic Readjustment Services (section 314(c)) or Retraining (section 314(d)).

Participants who have transferred from one title to another, or between programs of the same title, should be recorded as terminations from the title or program of initial participation and included as participants in the title or program into which they have transferred. If they are concurrent participants in more than one title or program, the type of termination determined for the final program should be recorded for all programs for these participants.

For purposes of calculating average weeks participated for such concurrent EDWAA program participants, the period between "last receipt of Basic Readjustment Services and Retraining funded under a given EDWAA program" (i.e., SSA, Governor's Reserve or Secretary's National Reserve) and actual date of termination from that EDWAA program is defined as "inactive status" and is not to be included in Line 24.

Item I.C.1. Entered unsubsidized employment from retraining. Enter by column the total number of participants who, at termination, entered full- or part-time unsubsidized employment from Retraining through the end of the reporting period. (These participants may or may not have received Basic Readjustment Services.) This item is a sub-breakout of Item I.C.

Item I.C.1.a. Relocated out of area. Enter the total number of participants who, at termination from other Retraining, entered unsubsidized employment after receiving relocation assistance and relocating outside the Substate Area which provided such relocation assistance, or within or outside of the State, if this assistance was provided by a Statewide SSA or by a program administered by the Governor. This item is a sub-breakout of Item I.C.1.

Item I.C.2. Entered unsubsidized employment from basic readjustment services ONLY. Enter by column the total number of participants who, at termination, entered full- or part-time unsubsidized employment from Basic Readjustment Services ONLY through the end of the reporting period. This item is a sub-breakout of Item I.C.

Item I.C.3. Called back/remained with the layoff employer. Enter the number of terminees from the EDWAA program who, after being laid off by an employer, were recalled by that employer to a permanent job at the same or another location. Also include EDWAA program terminees who remained in a permanent job with an employer after receipt of a layoff notice from that employer. This item is a sub-breakout of Item I.C.

NOTE: Do not include such terminees in the entry for Items I.C.1. or I.C.2., above.

Item I.C.4. Transferred to other JTPA programs. Enter the number of terminees who transferred to and entered programs funded under another JTPA title including Title III-Formula and Title III-National Reserve. Also include on this line terminees who transferred to and entered EDWAA programs operated by another Substate grantee, or who transferred to and entered EDWAA programs operated by the Governor (and conversely). This item is a sub-breakout of Item I.C.

Item I.C.5. Entered non-JTPA training. Enter the number of terminees who entered, during the program year, training not funded with JTPA monies. This item is a sub-breakout of Item I.C.

Item I.C.6. All other terminations. Enter by column the total number of participants who were terminated for reasons other than those in Items I.C.1. through I.C.5., successful or otherwise, through the end of the reporting period.

Section II—Terminee Performance Measures Information

Section II displays performance measures/parameters information. As indicated previously, data reported on characteristics of terminees should be based on information collected at time of eligibility determination unless otherwise indicated.

Governors may develop any participant record which meets the requirements of section 629.35 (c) and (d) of the JTPA regulations. The DOL/ETA *Technical Assistance Guide: The JTPA Participant Record,* dated May 1983, may be used as a reference.

Line Item Definitions and Instructions.

Sex

Line 1 Male
Line 2 Female

Distribute the terminees according to Sex. The sum of Lines 1 and 2 should equal Item I.C.

Age

Line 3 29 and Under
Line 4 30–44
Line 5 45–54
Line 6 55 and Over

Distribute the terminees according to Age. The sum of Lines 3 through 6 should equal Item I.C.

Education Status

Line 7 Less Than High School
Line 8 High School Graduate or Equivalent (No Post-High School)
Line 9 Post-High School Attendee
Line 10 College Graduate and Above

Distribute the terminees according to Education Status. The sum of Lines 7 through 9 should equal Item I.C.

Note.—Line 10 is a sub-breakout for a specific group included in Line 9.

Family Status

Line 11 Single Head of Household with Dependent(s) Under Age 18.

Enter the total number of terminees for whom the above Family Status classification applies.

Race/Ethnic Group

Line 12 White (Not Hispanic)
Line 13 Black (Not Hispanic)
Line 14 Hispanic
Line 15 American Indian or Alaskan Native
Line 16 Asian or Pacific Islander

Distribute the terminees according to the Race/Ethnic Groups listed above. For purposes of this report, Hawaiian Natives are to be recorded as "Asian or Pacific Islander". The sum of Lines 12 through 16 should equal Item I.C.

Other Barriers to Employment

Line 17 Limited English Language Proficiency
Line 18 Handicapped
Line 19 Reading Skills Below 7th Grade Level

Enter the total number of terminees for whom *each* of the above Other Barriers to Employment apply.

Benefits Status

Line 20 U.C. (Unemployment Compensation) Claimant

Enter the total number of terminees for whom each of the above benefits status classifications apply.

Labor Force Status

Line 21 Unemployed: 15 or More Weeks of Prior 26 Weeks

Enter the total number of terminees for whom the above Labor Force Status classification applies.

Veteran Status

Line 22 Veteran (Total)
Line 23 Vietnam Era

Enter the total number of terminees for whom *each* of the above Veteran classifications apply, as defined in section 4 (26)(A)(B) and (D) of the Act. Line 23 is a sub-breakout for a specific group included in Line 22.

Other Program Information

Line 24 Average Weeks Participated

Enter the average number of weeks of participation in the EDWAA program for all terminees. Weeks of participation include the period from the date an

individual becomes a participant in EDWAA through the date of a participant's last receipt of Basic Readjustment and/or Retraining. Exclude the single period of up to 90 days during which an individual may remain in an inactive status prior to termination. Time in inactive status for all terminees should not be counted toward the actual number of weeks participated. Inactive status is defined as that period between "last receipt of Basic Readjustment Services and/or Retraining under EDWAA" and actual date of termination. (See Item I.C.)

To calculate this entry: Count the number of days participated for each terminee, including weekends, from the start date of his/her participation in EDWAA until his/her last receipt of Basic Readjustment Services and/or Retraining under EDWAA. Divide this result by 7. This will give the number of weeks participated for that terminee. Sum all the terminees' weeks of participation and divide the result by the number of terminees, as entered in Item I.C. This entry should be reported to the nearest whole week.

Line 25 Average Hourly Wage—Pre-Program

Enter the average hourly pre-EDWAA wage of all terminees. In calculating this average, use the hourly wage from the job of dislocation. Those terminees who had no pre-EDWAA employment should be counted as "$0.00" hourly wage.

To calculate this entry: Sum the pre-program hourly wage for all terminees shown in Item I.C. Divide the result by the number of terminees shown in Item I.C.

Note.—For the calculation, use the hourly wage regardless of whether the individual was employed full- or part-time.

Line 26 Average Hourly Wage at Termination

Enter the average hourly wage at termination for the total number of terminees in Items I.C.1. through I.C.3.

To calculate this entry: Sum the hourly wage at termination for all the terminees shown in Items I.C.1. through I.C.3. Divide the result by the number of terminees shown in Items I.C.1. through I.C.3.

Hourly wage includes any bonuses, tips, gratuities and commissions earned.

Line 27 Total Program Costs (Federal Funds)

Enter the total accrued expenditures, through the end of the reporting period, of the funds allocated to the SSA under sections 302(c)(2) and 302(d) of the Act or otherwise distributed by the Governor to the SSAs under section 302(c)(1)(E). On the separate WAPRs: (1) Covering participants and terminees projects funded under section 302(c)(1); (2) or participants and terminees in Secretary's National Reserve Grants projects funded under section 302(a)(2) of the Act, enter the total expenditures for all participants and terminees served in such programs through the end of the reporting period. Include, as appropriate, accrued expenditures against JTPA Title III funds provided for PY88 and PY87 which were carried into EDWAA and used for EDWAA purposes, if any. Include expeditures of Federal funds only.

Note.—Entries will be made to the nearest dollar. Negative entries are not acceptable. The WAPR program cost data will be compiled on an accrual basis. If the recipient's accounting records are not normally maintained on an accrual basis, the accrual information should be developed through an analysis of the records on hand or on the basis of best estimates.

The sum of the entries for Line 27, Total Program Costs, of the WAPR (i.e., total for the State's SSAs under EDWAA) should equal the entry for Column B., Line 10, Total Accrued Expeditures (Substate Grantees) of the WQFR for the same recipient that includes the final quarter of the same program year.

Line 27 of the Statewide WAPR for the Governor's Reserve activity (section 302(c)(1)) should equal Column A., Line 10 of the WQFR for the same recipient that includes the final quarter of the same program year; and Line 27 on the WAPR for the Secretary's National Reserve Grants (section 302(a)(2)) to the State should equal Column B., Line 5 on that WQFR.

Line 28 Needs-Related Payments

Enter the total accrued expeditures for needs-related payments to eligible dislocated workers who do not qualify or have ceased to qualify for Unemployment Compensation, in order to enable such workers to participate in training or education programs under EDWAA (Section 314(e)). This is a sub-breakout of Line 27.

Line 29 Total Available Federal Funds

Enter the total Federal funds available for the EDWAA program described on this report including (1) unexpended funds carried over from previous program years, (2) funds allocated or awarded for this program year, and (3) any reallocation that *increased or decreased* the amount of funds available for expenditure through the end of this reporting period. Entries will be made to the nearest dollar.

The sum of the entries for Line 29, Total Available Federal Funds, of the WAPR (i.e., total for the State's SSAs under EDWAA) should equal the entry for Column B., Line 9, Total Federal Funds Available (Substate Grantees) of the WQFR for the same recipient that includes the final quarter of the same program year.

Line 29 of the Statewide WAPR for the Governor's Reserve activity (section 302(c)(1)) should equal Column A., Line 9 of the WQFR for the same recipient that includes the final quarter of the same program year; and Line 29 on the WAPR for the Secretary's National Reserve Grants (section 302(a)(2)) to the State should equal Column B., Line 1 on that WQFR.

Section III—Follow-up Information

Section III displays information based on follow-up data which must be collected through participant contact to determine an individual's labor force status and earnings, if any, during the 13th full calendar week after termination and the number of weeks s/he was employed during the 13-week period. Follow-up data should be collected from participants whose 13th full calendar week after termination ends during the program year (the follow-up group). Thus, follow-up will be conducted for individuals who terminate during the first three quarters of the program year and the last quarter of the previous program year.

For PY89 follow-up may be conducted for individuals who terminate during the first three quarters of the program year and postprogram data collection need not begin until October 1, 1989.

In order to ensure consistency of data collection and to guarantee the quality of the follow-up information, follow-up procedures must satisfy certain criteria. (See the Follow-up Guidelines included in these WAPR instructions, Appendix A.) Other procedures used to collect the follow-up data are at the discretion of the Governors.

Note.—Every precaution must be taken to prevent a "response bias" which could arise because it may be easier to contact participants who were employed at termination than those who were not and because those who entered employment at termination are more likely to be employed at follow-up. Special procedures have been developed by which SSAs and States can monitor response bias. If your response rates for those who were and were not employed at termination differ by more than 5 percentage points, the follow-up entries for the WAPR must be calculated using the "Worksheet for Adjusting Follow-up Performance Measures" in the Follow-up Technical Assistance Guide. *If the response rates differ by 5 percentage points or less,* the following instructions for completing Lines 30–34 may be used.

Line 30 Employment Rate at Follow-up

Enter the employment rate at follow-up.

Calculate the employment rate by dividing the total number of respondents who were employed (full-time or part-time) during the 13th full calendar week after termination by the total number of respondents (i.e., terminees who completed follow-up interviews). Then multiply the result by 100. This entry should be reported to the nearest one decimal (00.0).

Line 31 Average Hourly Wage at Follow-up

Enter the average hourly wage of those employed (full-time or part-time) at follow-up.

To calculate this entry: Sum the hourly wage (and, if appropriate, add tips, overtime, bonuses, etc.) of each respondent employed at follow-up. Divide the sum of hourly wage for all respondents employed during the 13th full calendar week after termination by the number of respondents employed at the time of follow-up. Respondents not employed at follow-up are not included in this average.

Include any wages, bonuses, tips, gratuities, commissions *and* overtime pay earned.

Line 32 Average Number of Weeks Worked in Follow-up Period

Enter the average number of weeks worked in follow-up period.

To calculate the average number of weeks worked (full-time or part-time), divide the sum of the number of weeks worked during the 13 full calendar weeks after termination for all respondents who worked, by the *total* number of all respondents, whether or not they worked any time during this 13-week follow-up period. This entry should be reported to the nearest one decimal (00.0).

Line 33 Sample Size

Enter by column the size of the actual sample selected to be contacted for follow-up.

Note: If oversampling was used, the sample size should include all those selected, not just the required minimum sample size. Those deceased or severely incapacitated to the point of being unable to respond at follow-up may be excluded from the sample size.

Line 34 Response Rate

Enter the overall response rate, i.e., the percentage of complete surveys obtained.

To calculate the overall response rate, divide the number of terminees with complete follow-up information by the total number of terminees included in the follow-up sample (Line 33) and multiply by 100. This entry should be reported to the nearest whole percent.

Note: Complete follow-up information consists of substantive answers to the required follow-up questions and may not include "don't know", "no answer" or "don't remember".

Section IV—Retraining/Basic Readjustment Services

Section IV displays information relevant to program activities funded under EDWAA.

Line 35 Received Basic Readjustment Services ONLY

Enter the total number of terminees, regardless of type of termination, who received Basic Readjustment Services ONLY, as indicated in section 314(c) of the Act. The sum of Lines 35 and 36 should equal Item I.C. NOTE: Individuals who receive only outreach and/or intake and initial assessment services or Rapid Response assistance are not participants/terminees.

Line 36 Received ANY Retraining Activity

Line 37 Less than 26 Weeks

Line 38 26 or More Weeks

Enter the total number of terminees, regardless of type of termination, who received ANY Retraining activity included in section 314(d) of the Act. Lines 37 and 38 are sub-breakouts of Line 36 and should be used to distribute terminees who received ANY Retraining activity by actual length of stay in all Retraining activities, *whether or not such Retraining was completed.* These terminees may or may not have received Basic Readjustment Services. The sum of Lines 37 and 38 should equal Line 36.

Note: Terminees who have received retraining activity funded under a cooperative agreement with: (1) Other JTPA monies (i.e. 3%, 8%, Title II etc.) or (2) other than JTPA funds may be counted in Lines 36–41, PROVIDED SUCH TRAINING WAS FOR THE COMPLETION OF THE INITIALLY DETERMINED TRAINING OBJECTIVE.

Line 39 Completed Classroom Training: Basic Education or Attained GED

Line 40 Completed On-the-Job Training

Line 41 Completed Other Occupational Skills Training

Enter the total number of terminees for which *each* of these Retraining completion/attainment classifications apply. A terminee should be included in *all* appropriate categories.

Note: Basic Education in Line 39 includes remedial reading, writing, mathematics and/or English for non-English speakers. Attainment of a GED or a high school diploma upon completion of any training also should be included. (A terminee may be counted only once in this line item, as appropriate.)

Appendix A—Follow-up Guidelines

To ensure consistent data collection and as accurate information as possible, procedures used to obtain follow-up information must satisfy the following criteria:

- Participant contact should be conducted by telephone or in person. Mail questionnaires may be used in those cases where an individual does not have a telephone or cannot be reached.
- Participant contact must occur as soon as possible after the 13th full calendar week after termination but no later than the 17th calendar week after termination.
- Data reported are to reflect the individual's labor force status and earnings during the 13th full calendar week after termination and the number of weeks s/he was employed throughout the 13-week period after termination.
- Interview questions developed by DOL (see following Exhibit) must be used to determine the follow-up information reported on the WAPR. Respondents must be told that responding is voluntary and that information provided by them will be kept confidential. Other questions may be included in the interview. Attitudinal questions may precede DOL questions, but questions related to employment and earnings must follow.
- Attempts must be made to contact *all* individuals unless terminee populations are large enough to use sampling.
- At least six attempts may need to be made to contact enough individuals in the follow-up group to obtain the required response rate.
- For each SSA and for Statewide and National Reserve reports (WAPR), minimum response rates of 70% are required for each of the following two groups of dislocated workers: those who entered employment at termination and those who did not enter employment at termination. The response rate is calculated as the number of terminees with complete follow-up information divided by the total number of terminees included in the group eligible for follow-up.

Exhibit—Minimum Postprogram Data Collection Questions

A. I want to ask you about the week starting on Sunday, ____, and ending on Saturday, ____, which was (last week/two/three/four weeks ago).

1. Did you do any work for pay during that week?

____ Yes [Go to 2]
____ No [Go to C]
2. How many hours did you work in that week?
____ Hours
3. How much did you get paid per hour in that week?
____ Dollars per hour
4. How much extra, if any, did you earn in that week from tips, overtime, bonuses, commissions, or any work you did on the side, before deductions?
____ Dollars
B. Now I want to ask you about the entire 13 weeks from Sunday, ____, to Saturday, ____.

5. Including the week we just talked about, how many weeks did you work at all for pay during the 13-week period?
____ Weeks [Go to end]

Alternative Questions

C. If answered "NO" to Question 1:
Now I want to ask you about the entire 13 weeks from Sunday, ____, to Saturday, ____.
6. Did you do any work for pay during that 13-week period?
____ Yes [Go to 7]
____ No [Go to end]
7. How many weeks did you do any work at all for pay during that 13-week period?

Terminee Populations for Follow-up

Each program (SSA, Governor's Reserve, Secretary's National Reserve) in EDWAA is responsible for conducting a follow-up of all or a sample of participants who have terminated from that program.

The "universe" of terminees for the follow-up includes all participants who terminated from a program. Those participants who may have been concurrent participants in more than one JTPA title/EDWAA program will be in the universe for each.

When selecting a sample from the universe, each title/program will be treated separately, so that an individual who had been a concurrent participant might be selected in one sample but not another. This, however, does not preclude the possibility that the participant might be selected in more than one sample. In the event that a concurrent participant has been selected in more than one sample, the responses collected from a single interview may be shared among the different titles/programs to avoid the necessity of multiple interviews with the same individual.

When an individual who has terminated from one title/program and subsequently becomes a participant in another program (i.e., not a concurrent participant) is selected in the sample for both titles/programs, separate interviews must be conducted. Further, if an individual is selected in one sample and is a participant in another title/program at the time of the interview, regular follow-up information should be determined and recorded.

Sampling Procedures

Where sampling is used to obtain participant contact information, it is necessary to have a system which ensures consistent random selection of sample participants from *all* terminees in the group requiring follow-up.

- No participant in the follow-up group may be arbitrarily excluded from the sample.
- Procedures used to select the sample must conform to generally accepted statistical practice, e.g., a table of random numbers or other random selection techniques must be used.
- The sample selected for contact must meet minimum sample size requirements indicated in Table 1.

TABLE 1.—MINIMUM SAMPLE SIZES FOR FOLLOW-UP

Number of terminees in follow-up population	Minimum sample size	Sampling percentages
1 to 137	All	100
138 to 149	137	94
150 to 159	143	92
160 to 169	149	89
170 to 179	154	87
180 to 189	159	85
190 to 199	164	84
200 to 224	175	82
225 to 249	185	78
250 to 274	194	74
275 to 299	202	71
300 to 349	217	67
350 to 399	229	62
400 to 449	240	57
450 to 499	250	53
550 to 599	265	50
600 to 749	282	44
750 to 999	302	38
1,000 to 1,499	325	30
1,500 to 1,999	338	22
2,000 to 2,999	352	17
3,000 to 4,999	364	12
5,000 or more	383	7.3

The use of sampling will depend on whether the terminee populations are large enough to provide estimates which meet minimum statistical standards. If the number of terminees for whom follow-up is required is less than 138, sampling cannot be used. In such cases attempts must be made to contact all the appropriate terminees.

Minimum Sample Sizes for Follow-up

To determine the minimum number of terminees to be included in the follow-up sample, refer to Table 1 in the following instructions. Find the row in the left-hand column that contains the planned number of dislocated worker terminees. The required minimum sample size is given in the middle column of that row. The last column gives sampling percentages that will assure that the minimum sample size is obtained.

Correcting for Differences in Response Rates

Different response rates for those terminees who entered employment at termination and those who did not are expected to bias the performance estimates because those who entered employment at termination are more likely to be employed at follow-up. It is assumed that those who were employed at termination are easier to locate than those who were unemployed because the interviewer has more contact sources (e.g., name of employer). The resulting response bias can artificially inflate performance results at follow-up.

To account for this problem, separate response rates should be calculated for those who were employed at termination and for those who were not.

If the response rates of those employed at termination and those not employed differ by more than 5 percentage points, then the "Worksheet for Adjusting Follow-up Performance Measures" in the Follow-up Technical Assistance Guide must be used to correct the follow-up measures.

Appendix B—Definition of Terms Necessary for Completion of Reports

Employment/Training Services

Assessment—services are designed to initially determine each participant's employability, aptitudes, abilities and interests, through interviews, testing and counseling to achieve the applicant's employment related goals.

Follow-up—is the collection of information on a terminee's employment situation at a specified period after termination from the program.

Intake—includes the screening of an applicant for eligibility and: (1) A determination of whether the program can benefit the individual; (2) an identification of the employment and training activities and services which would be appropriate for that individual; (3) a determination of the availability of an appropriate employment and training activity; (4) a decision on selection for participation and (5) the dissemination of information on the program.

Outreach—activity involves the collection, publication and dissemination of information on program services directed toward

economically disadvantaged and other individuals eligible to receive JTPA training and support services.

Education Status

Less Than High School—An adult or youth: (1) Who is not attending school full-time and has not received a high school diploma or a GED certificate; or (2) who has not received a high school diploma or GED certificate and is enrolled full-time in an elementary, secondary or postsecondary-level vocational, technical, or academic school or is between school terms and intends to return to school.

High School Graduate or equivalent (No Post-High School)—An adult or youth who has received a high school diploma or GED certificate, but who has not attended any postsecondary vocational, technical, or academic school.

Post High School Attendee—An adult or youth who has received a high school diploma or GED certificate and has attended (or is attending) any postsecondary-level vocational, technical, or academic school.

College Graduate—A terminee who has received a degree (usually a BA or BS) conferred by a four-year college, university or professional school or an advanced degree from one of these institutions.

Family Status

Single Head of Household—A single, abandoned, separated, divorced or widowed individual who has responsibility for one or more dependent children under age 18.

Race/Ethnic Group

White (not hispanic)—A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

Black (not hispanic)—A person having origins in any of the black racial groups of Africa.

Hispanic—A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin (including Spain), regardless of race.

Note: Among persons from Central and South American countries, only those who are of Spanish origin, descent, or culture should be included in the Hispanic category. Persons from Brazil, Guiana, and Trinidad, for example, would be classified according to their race, and would not necessarily be included in the Hispanic category. Also, the Portugese should be excluded from the Hispanic category and should be classified according to their race.

American Indian or Alaskan Native—A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

Asian or Pacific Islander—A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent (e.g., India, Pakistan, Bangladesh, Sri Lanka, Nepal, Sikkim, and Bhutan), or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa. Hawaiian natives are to be recorded as Asian or Pacific Islanders.

Other Barriers to Employment

Limited English language proficiency—Inability of an applicant, whose native language is not English, to communicate in English, resulting in a job handicap.

Handicapped individual—Any individual who has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment.

Note: This definition includes disabled veterans for reporting purposes.

Reading skills below 7th grade level—An adult or youth assessed as having English (except in Puerto Rico) reading skills below the 7th grade level on a generally accepted standardized test.

Note: The following other methods of determination may be used:

- A school record of reading level determined within the last 12 months.
- If an applicant is unable to read and therefore cannot complete a self-application for the JTPA/EDWAA program, s/he may be considered to have English reading skills below the 7th-grade level.
- Individuals with any of the following may be considered to have English reading skills above the 7th-grade level:

—A GED certificate received within the last year.

—A degree (usually a BA or BS) conferred by a 4-year college, university or professional school.

If there is any question regarding reading ability, a standardized test should be administered.

Benefits Status

Unemployment compensation claimant—Any individual who has filed a claim and has been determined monetarily eligible for benefit payments under one or more State or Federal unemployment compensation programs, and who has not exhausted benefit rights or whose benefit year has not ended.

Labor Force Status

Unemployed: 15 or More weeks of Prior 26 weeks—An individual who is unemployed at the time of eligibility determination and has been unemployed for any 15 or more of the 26 weeks immediately prior to such determination, has made specific efforts to find a job throughout the period of unemployment, and is not classified as "Not in Labor Force".

Veteran Status

Veteran—An individual who served in the active military, naval, or air service (of the U.S.), and who was discharged or released therefore under conditions other than dishonorable.

Note: The term "active" means full-time duty in the Armed Forces, other than duty for training in the reserves or National Guard. Any period of duty for training in the reserves or National Guard, including authorized travel, during which an individual was disabled from a disease or injury incurred or aggravated in the line of duty, is considered "active" duty.

Vietnam-Era Veteran—A veteran, any part of whose active military, naval, or air service occurred between August 5, 1964 and May 7, 1975.

Program Costs

Accrued expenditures—The allowable charges incurred during the program year to date requiring provision of funds for: (1) goods and other tangible property received; and (2) costs of services performed by employees, contractors, subrecipients, and other payees.

Note: These charges do not include "resources on order", i.e., amounts for contracts, purchase orders and other obligations for which goods and/or services have not been received.

Retraining Activity

Basic Education—Includes remedial reading, writing, mathematics and/or English for non-English speakers.

Occupational Skills Training—Includes vocational education which is designed to provide individuals with the technical skills and information required to perform a specific job or group of jobs. For reporting purposes excludes On-the-Job Training.

On-The-Job Training—Is training in the public or private sector given to an individual, who has been hired first by the employer, while s/he is engaged in productive work which provides knowledge or skills essential to the full and adequate performance of the job.

Worker Adjustment Program Quarterly Financial Report (ETA 9020)

1. Purpose

The Worker Adjustment Program Quarterly Financial Report (WQFR) for

the Economic Dislocation and Worker Adjustment Assistance (EDWAA) program displays cumulative data on fund availability and accrued expenditures, as well as total participants, total terminations, notices received under the Worker Adjustment and Retraining Notification (WARN) Act, and initial on-site rapid response visits on a quarterly basis. These data will be used to determine levels of program service and expenditures for State, substate and National Reserve programs. Selected information will be aggregated to provide quantitative program accomplishments on a State and national basis. Reallotment of formula funds, pursuant to Section 303 of EDWAA, and annual reconciliation of formula and National Reserve grants will be based on these expenditure reports.

2. General Instructions

A single WQFR for all EDWAA programs in the State will be submitted by the Governor each quarter. Entries are to be *cumulative* for the program year to date. Each report period begins on the start date of the program year, as stated in Section 161 of the Job Training Partnership Act. REPORTS ARE DUE IN THE NATIONAL OFFICE NO LATER THAN FORTY-FIVE (45) DAYS AFTER THE END OF EACH PROGRAM QUARTER (i.e., submitted no later than 11/15; 2/15; 5/15; and 8/15.

Two copies of *each* WQFR are to be provided to: U.S. Department of Labor, ETA, ATTN: TSVR—Room S–5306, 200 Constitution Avenue NW., Washington, DC 20210.

At the same time, an additional copy of *each* WQFR is to be provided to the appropriate Regional Administrator for Employment and Training in the DOL Regional Office that includes the State in which the JTPA recipient is located.

Recipients may determine whether the report is submitted on this form or as a computer printout, with data arrayed as indicated in this format, including identification and signature blocks. If revisions are made to the fourth quarter WQFR data after the reporting deadline, revised copies of the WQFR should be submitted to DOL as soon as possible according to the required reporting procedures. Revisions to WQFR data during the program year should be shown on subsequent reports; revised copies of first, second, or third quarter reports need not be submitted.

Note: The current JTPA Semiannual Status Report (JSSR, ETA 9009) is to continue to be used for Title III Formula and National Reserve funds allotted to States for Program Years (PYs) 1988 and earlier that are expended under regulations published in the **Federal Register** on February 12, 1988. The WQFR is to be used beginning July 1, 1989, for all funds expended under the EDWAA provisions, including any unexpended Title III Formula funds allotted for PY 1987 and PY 1988 that are used for EDWAA.

3. Facsimile of Form

See the following page.

BILLING CODE 4510-30-M

OMB No. 1205-0274
Expires 12/31/92

WORKER ADJUSTMENT PROGRAM
Quarterly Financial Report (WQFR)

a. State Name and Address	b. Governor/Secretary Agreement Number
	c. Report Period From: To:

SECTION I: FORMULA AND NATIONAL RESERVE FUNDS	A. Total Formula	B. National Reserve
1. Total Availability		
2. Current Year Allotment		
3. Unexpended Prior Year Funds		
4. Funds Unexpended from Year Before Prior Year		
5. Total Accrued Expenditures		
6. Current Year Allotment		
7. Prior Year Allotment		
8. Allotment for Year Before Prior Year		

SECTION II: PROGRAM FUNDS AVAILABLE/EXPENDITURES	A. Governor's Reserve	B. Substate Grantees	C. National Reserve
9. Total Federal Funds Available			\\\\\\\\\\\\\\\\
10. Total Accrued Expenditures			\\\\\\\\\\\\\\\\
11. Rapid Response		\\\\\\\\\\\\\\\\	
12. Basic Readjustment			
13. Retraining			
14. Needs-Related Payments & Supportive Services			
15. Administration			

SECTION III: PROGRAM ACTIVITY			
16. Total Participants			
17. Total Terminations			
18. WARN Notices Received		\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\	
19. Initial On-site Rapid Responses		\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\	

REMARKS

d. Signature and Title	e. Date Signed	f. Telephone No.

ADVANCE COPY
ADVANCE COPY

BILLING CODE 4510-30-C

ETA 9020 (March, 1989)

4. Instructions for Completing the Worker Adjustment Program Quarterly Financial Report (WQFR)

a. *State name and address.* Enter the name and address of the recipient.

b. *Governor/Secretary Agreement number.* Enter the recipient's Governor/Secretary Agreement number, as assigned by ETA in a separate issuance.

c. *Report period.* Enter in "From" the beginning date of the designated JTPA program year, and enter in "To" the ending date of the report period, as specified above.

d. *Signature and title* (at bottom of page). The authorized official of the Governor signs here and enters his or her title.

e. *Date signed.* Enter the date the report was signed by the authorized official.

f. *Telephone no.* Enter the area code and telephone number of the authorized official.

Special Note: All availability and expenditures entries on the WQFR will be made to the nearest dollar. Negative entries are not acceptable. Expenditures reported on the WQFR will be compiled on an accrual basis. Accrued expenditure information is to be completed *cumulatively* for the end of each program quarter from the beginning of the program year. If the recipient's accounting records are not normally maintained on an accrual basis, the accrual information should be developed through an analysis of the records on hand or on the basis of best estimates.

Section I—Formula And National Reserve Funds

This section provides a breakout of availability and expenditures of all funds allotted by formula and all National Reserve funds, according to the program year in which the funds were made available to the State. Entries are to be made under the appropriate column heading as follows:

A. Total Formula

All entries in this column refer to funds made available to the State under the EDWAA allotment formula, including (1) funds allotted for this program year pursuant to section 302(a)(1); (2) unexpended formula-allotted funds carried over from earlier program years that were available on July 1 (including Title III funds allotted by formula for PY 1987 and PY 1988 that are being made available for EDWAA); and (3) any reallotment that *increased or decreased* the amount of Formula funds available for expenditure through the end of the reporting period pursuant to Section 303.

B. National Reserve

All entries in this column refer to EDWAA funds made available to the State under National Reserve grants. Title III National Reserve funds for Program Year 1988 and earlier will not be shown on this report.

Line 1 *Total availability.* Enter the total Federal funds available for this program year. This includes all current year allotments, plus all unexpended funds from the prior year and the year before the prior year which were available for expenditure under EDWAA on July 1. Line 1. is the sum of Lines 2., 3., and 4.

Edit Check: The entry on Line 29 on the WAPR for the Secretary's National Reserve Grants to the State should equal the entry for Column B., Line 1 on the WQFR for the same recipient that includes the final quarter of the same program year.

Line 2 *Current year allotment.* Enter the total funds allotted for this program year. Any reallotment or National Reserve grant that affects the amount of funds available will be included in the quarter during which the change occurred and in all later quarters.

Line 3 *Unexpended prior year funds.* Enter the total unexpended funds, if any, from last year's allotments (including reallotted funds, if any) that were available for expenditure in the current program year. This amount should agree with the report submitted for the final quarter of the prior year. Any revision in this amount must be accompanied or preceded by a revised report for prior year(s), or an explanation in the "Remarks" section of the report. In PY 1989, only unexpended PY 1988 Formula funds made available for EDWAA will be reported on this line.

Line 4 *Funds unexpended from year before prior year.* Enter the total unexpended funds, if any, from the allotments (including any reallotted funds) for the year before last year (i.e., 2 years before this program year) that were available for expenditure in the current program year. Any revision in this amount must be accompanied or preceded by a revised report for prior year(s), or an explanation in the "Remarks" section of the report. In PY 1989, only unexpended PY 1987 Formula funds made available for EDWAA will be reported on this line. In PY 1990, only unexpended PY 1988 Formula funds made available for EDWAA will be reported on this line.

Line 5 *Total accrued expenditures.* Enter the total accrued expenditures for EDWAA programs during the reporting period. Line 5. is the sum of Lines 6., 7., and 8.

"Accrued Expenditures" are the allowable charges incurred during the program year to date requiring provision of funds for: (1) Goods and other tangible property received; and (2) costs of services performed by employees, contractors, subrecipients, and other payees. These charges do not include "resources on order" (i.e., amounts for contracts, purchase orders and other obligations for which the goods and/or services have not yet been received).

Edit Check: The entry on Line 27 on the WAPR for the Secretary's National Reserve Grants to the State should equal the entry for Column B., Line 5 on the WQFR for the same recipient that includes the final quarter of the same program year.

Line 6 *Current Year Allotment.*

Line 7 *Prior Year Allotment.*

Line 8 *Allotment for Year Before Prior Year.* Expenditures are to be distributed according to the year in which the funds, against which the expenditures are applied, were made available to the State. If the recipient's accounting system for Formula funds is maintained on a First-in, First-out (FIFO) basis, expenditures will be reported against the "oldest" available funds until all of those funds have been exhausted before expenditures are reported against the current year allotment.

Section II—Program Funds Available/Expenditures

This section provides a summary of the total Federal funds available and expenditures in programs supported with formula-allotted funds at the State and Substate levels and in National Reserve funded programs through the end of the reporting period. Entries are to be made under the appropriate column heading as follows:

A. Governor's Reserve

All entries in this column refer to activities and services administered by the Governor with funds available under section 302(c)(1) of the Act.

B. Substate Grantees

All entries in this column refer to activities and services administered by the Substate grantees with funds available under section 302(d) as well as sections 302(c)(1)(E) and 302(c)(2) of the Act.

C. National Reserve

All entries in this column refer to activities and services administered with funds available under section 302(a)(2) of the Act.

Line 9 *Total Federal funds available.* Enter the total Federal funds available for expenditure during the current program year. This includes the current year Formula allotment, reallotted Formula funds, and Formula funds reallocated within the State that are available for expenditure during the current year. National Reserve availability is shown in column B., Line 1. Funds reserved by the Governor for allocation to Substate grantees in need under section 302(c)(2) of the Act will be included in Column B. on this line only after they have been allocated to the Substate grantee(s). *For the reports for the third and fourth quarters,* the sum of the entries in Column A. and B. on this line should equal the entry in Column A., Line 1.

Edit Check: The sum of the entries for Line 29, Total Available Federal Funds on the WAPR (i.e., total for the State's Substate areas under EDWAA) should equal the entry for Column B., Line 9, Total Federal Funds Available (Substate Grantees) on the WQFR for the same recipient that includes the final quarter of the same program year.

The entry on Line 29 on the WAPR for the Governor's Reserve activity should equal the entry for Column A., Line 9 on the WQFR for the same recipient that includes the final quarter of the same program year.

Line 10 *Total accrued expenditures.* Enter the total actual accrued expenditures during the report period, without regard to the year the funds were allotted to the State or allocated to State or Substate grantees. Include, as appropriate, accrued expenditures against JTPA Title III Formula funds allotted for PY 1987 and PY 1988 which were used for EDWAA, if any. The sum of the entries in Columns A. and B. on Line 10 should be equal to the entry in Column A., Line 5. National Reserve total expenditures is shown in Column B., Line 5.

Edit Check: The sum of the entries for Line 27, Total Program Costs on the WAPR (i.e., total for the State's Substate areas under EDWAA) should equal the entry for Column B., Line 10, Total Accrued Expenditures (Substate Grantees) on the WQFR for the same recipient that includes the final quarter of the same program year.

The entry on Line 27 on the WAPR for the Governor's Reserve activity should equal the entry for Column A., Line 10 on the WQFR for the same recipient that includes the final quarter of the same program year.

Line 11 *Rapid response.* Enter the accrued expenditures allocable to the Rapid Response service cost category, as appropriate. This line is a sub-breakout of Line 10.

Line 12 *Basic Readjustment.* Enter the accrued expenditures allocable to the Basic Readjustment services cost category. This line is a sub-breakout of Line 10, and does not include amounts for supportive services reported on Line 14.

Line 13 *Retraining.* Enter the accrued expenditures allocable to the Retraining services cost category. This line is a sub-breakout of Line 10.

Line 14 *Needs-related payments and supportive services.* Enter the accrued expenditures allocable to the Needs-Related Payments and Supportive Services cost category. This line is a sub-breakout of Line 10.

Line 15 *Administration.* Enter the accrued expenditures allocable to the Administration cost category. This line is a sub-breakout of Line 10.

Section III—Program Activity

Line 16 *Total participants.* Enter by column the total number of participants who are or were receiving employment, training or services (except post-termination services) through the end of the reporting period, including both those on board at the beginning of the designated program year and those who have entered during the program year.

"Participant" means any individual who has: (1) Been determined eligible for participation upon intake; and (2) started receiving employment, training, or services (except post-termination services) funded under the Act, following intake. Individuals who receive *only* outreach and/or intake and initial assessment services or postprogram follow-up are excluded.

Note: Also exclude individuals who receive *only* Rapid Response Assistance and information, per Section 314(b), provided by the State's Dislocated Worker Unit.

If individuals receive concurrent employment, training and/or services under more than one title/program, they are to be considered participants in both titles/programs for purposes of recording actual number of weeks participated, dollars expended, and other pertinent data. Individuals who initially participate in EDWAA funded activity and subsequently participate in any other EDWAA (on non-EDWAA) funded activity, FOR THE COMPLETION OF THE INITIALLY DETERMINED TRAINING OBJECTIVE, may be considered to be concurrent participants in each program.

Line 17 *Total terminations.* Enter by column the total number of participants who terminated (as defined below) from the program during the reporting period. Include all participants who received no Basic Readjustment Services (except supportive services and/or counseling) or Retraining for 90 days.

"Termination" means the separation of a participant from the program who is no longer receiving Basic Readjustment Services or Retraining under EDWAA. Individuals may be considered participants for up to 90 days after last receipt of Basic Readjustment Services or Retraining, during which time they may continue to receive supportive services, as provided for in section 314(c)(15), and defined in section 4(24) of the Act.

Terminees may continue to receive counseling necessary to assist in the retention of employment for not more than 6 months following last receipt of Basic Readjustment Services or Retraining.

Participants who have transferred from one title to another, or between programs of the same title, should be recorded as terminations from the title or program of initial participation and included as participants in the title or program into which they have transferred. If they are concurrent participants in more than one title or program, the type of termination determined for the final program should be recorded for all programs for these participants.

Edit Check: The sum of the entries for all Substate areas in a State in Item I.B. (Column B.), Total Participants, and in Item I.C. (Column B.), Total Terminations of the WAPR should equal the entries for Substate Grantees in Column B., Lines 16 and 17, respectively, of the WQFR for the final quarter of the same program year for the same recipient.

The entries in Item I.B. (Column B.) and in Item I.C. (Column B.) of the Governor's Statewide WAPR should equal the entries for Governor's Reserve in Column A., Lines 16 and 17, respectively, of the WQFR for the final quarter of the same program year for the same recipient.

The entries in Item I.B. (Column B.) and in Item I.C. (Column B.) of the

Secretary's National Reserve WAPR should equal the entries for National Reserve in Column C., Lines 16 and 17, respectively, of the WQFR for the final quarter of the same program year for the same recipient.

Line 18 *WARN notices received.* Enter the number of notices received under the Worker Adjustment and Retraining Notification (WARN) Act by the State Dislocated Worker Unit from the beginning of the program year through the end of the reporting period.

Line 19 *Initial on-site rapid responses.* Enter the number of worker dislocation events responded to by representatives of the State's Dislocated Worker Unit. Responses include on-site contact with employer and/or employee representatives, preferably within 48 hours after becoming aware of a current or projected plant closure or substantial layoff. The purpose of such contacts are to 1) provide information on and facilitate access to available public programs and services, and 2) provide emergency assistance adapted to the particular closure or layoff. On-site rapid responses may be the considered result of WARN notices received, or of other information available to the State Dislocated Worker Unit. Therefore, the entries on Line 18 and Line 19 may be different.

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Part VI

Department of Agriculture

Food Safety and Inspection Service

9 CFR Parts 317 and 381

Net Weight Labeling of Meat and Poultry Products; Proposed Rule and Withdrawal

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 87-025P]

Net Weight Labeling of Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule and withdrawal.

SUMMARY: This proposal, if adopted, would amend the Federal meat and poultry products inspection regulations to provide uniform net weight labeling requirements including reasonable variations for label statements of net weight contents of containers of meat and poultry products. The proposal incorporates by reference the National Bureau of Standards (NBS) Handbook No. 133, Third Edition, 1988, for compliance testing of net weight contents statements on packaged meat and poultry products. The proposal also incorporates by reference the NBS Handbook No. 44, 1988 Edition, on specifications, tolerances and other technical requirements for commercial weighing and measuring devices in Federal establishments. The proposal is drafted to establish objective, numerical variations from the labeled net weight which are to be determined by prescribed procedures adopted by way of incorporation by reference of the NBS Handbook 133, Third Edition, 1988. The proposal is designed to enhance the ability of Federal, State and local agencies to enforce the industry-wide use of strict net weight standards at the packing, warehouse, and retail level and would establish greater uniformity with regulations for net weight compliance used by the Food and Drug Administration for other types of foods. Finally, this proposed change withdraws the 1980 proposed rule on Net Weight Labeling.

DATE: Comments must be received on or before May 5, 1989.

ADDRESS: Written requests should be addressed to: Ms. Linda Carey, FSIS Hearing Clerk, Room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also "comments" under Supplementary Information.)

FOR FURTHER INFORMATION CONTACT: Mr. Bill F. Dennis, Director, Processed Products Inspection Division, Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3840.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

USDA has determined that this proposed rule is not a "major rule" under Executive Order 12291. This proposed rule would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; or 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. The proposed rule would standardize weights and measures practices for the Federal Government and State and local governments for federally inspected meat and poultry products.

The proposed rule would not create a significant economic or administrative burden upon these regulatory agencies or upon the industry. The proposed change only standardizes already similar Federal, State and local government net weight compliance procedures. Federal, State and local weights and measures officials would be spending the same amount of time conducting their compliance activities as before.

Moreover, the changes would not alter the prices or practices of the meat and poultry industry. Industry will not need to spend much, if any, additional time or money to adjust to these procedures. In fact, they may save time and money because they only have one set of rules to follow instead of possibly several different ones. One additional requirement is having their weighing devices tested and certified annually. This only makes explicit a common practice of most firms. Many State and local governments already annually test and certify weighing devices in the Federal establishments for free. In some cases, weighing devices which do not meet NBS Handbook 44 specifications would need to be replaced. The total replacement costs of these weighing devices would be less than one million dollars.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601). The changes will not alter the prices or practices of the meat and poultry industry. Small firms will not be at a competitive disadvantage because the changes, as noted above, standardize weights and measures practices. Small firms, like large firms, may benefit by reducing the amount of time and effort they spend on adjusting their weights and measurement practices to suit different jurisdictions.

Paperwork Reduction Act

The proposed rule does not appreciably increase the burden of recordkeeping of meat and poultry plants. All in-plant weighing devices will need to display proof that the device's accuracy has been annually validated. Many meat and poultry plants have USDA net weight quality control programs in which tare and net weights data are automatically collected and maintained by production lot. In this way producers can properly monitor that they are neither under packing or over packing. Those plants without an FSIS Quality Control program may want to collect and maintain net weight and tare measurements on production lots in order to controvert a potential finding made outside of the plant. Under used tare testing, net weights found in the "gray area" are to be determined to be out of compliance if there are no plant records on the lot to dispute the findings in the field.

The paperwork requirements of the proposed rule were reviewed by FSIS and seen as covered by existing information collection procedures approved under OMB control number 0583-0015, § 317.20(b), *Packaging Materials.*

Comments

Interested persons are invited to submit written comments concerning this proposal. Written comments should be sent to the Policy Office and should refer to the docket number that appears in the heading of this document. Any person desiring an opportunity for oral presentation of views as provided under the Poultry Products Inspection Act must make such request to Mr. Dennis so that arrangements may be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in response to this action will be made available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Basis for Proposing New Regulations on Net Weight

Under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21

U.S.C. 451 *et seq.*), USDA must assure that meat and poultry products sold and distributed are properly marked, labeled, and packaged and not misbranded in any way. The Acts require an accurate statement of net quantity of contents, but allow the Secretary to establish reasonable variations by regulations (21 U.S.C. 451(h)(5), 601(n)(5)).

USDA's current net weight regulations for meat products (9 CFR 317.2(h)) and poultry products (9 CFR 381.121) stipulate that the labeled net weight shall not be false or misleading and shall express an accurate statement of the quantity of contents, exclusive of wrapping and packing substances. The regulations allow for reasonable variations from the labeled net weight caused by (1) moisture loss or gain during the course of good distribution practices or (2) unavoidable deviations during good manufacturing practices.

According to USDA studies, the regulations have been generally observed, but some consumer advocates and State and law enforcement officials have doubted their adequacy. The consumer advocates have charged that net weight labels are inaccurate and that consumers are being overcharged for the products they buy because the products contain too much water. The State law enforcement officials have argued that they are unable to protect consumers adequately because there are no numerical criteria for determining reasonable variations in net weight. The States and consumers have favored a "drained weight" or "wet tare" approach to net weight. That is, the moisture in the package is not included in the net weight determination. The different forms of net weight measurement are explained below.

When acting in their jurisdictions, some State officials have tried to measure products by "wet tare" standards. From time to time, they have brought to the attention of USDA problems involving suspected fraud or inaccurate net weight labeling. But some States have avoided acting on net weight problems involving meat and poultry products sold at retail because of uncertainty about the extent of Federal preemption. For its part, industry has sometimes responded to concerns about short-weighing by "overpacking" the product or deliberately understating the net weight on the label.

The National Conference on Weights and Measures (NCWM) has become the principal forum for building a consensus on how to determine the net weight of meat and poultry products. NCWM is an organization of State and local Weights and Measures officials that is supported by the National Institute of Standards and Technology (NIST—formerly the National Bureau of Standards). Since 1984, USDA, FDA, and meat and poultry industry and consumer representatives have been working through NCWM to resolve the net weight issue. The current proposal embodies the agreements worked out by the interested parties through NCWM.

The Proposal

1. *Establishing definitions of tare and alternative methods of compliance testing.* USDA is adopting the definitions of "tare," "unused tare," and "used tare" that are given in National Bureau of Standards (NBS) Handbook 133, "Checking The Contents of Packaged Goods," Washington, DC, U.S. Government Printing Office, September 1988, Third Edition, Appendix C, Glossary. The "tare weight" is "the weight of a container, wrapper, or other material that is deducted from the gross weight to obtain the net weight". With regard to the liquids absorbed by the packaging material and free flowing liquid (free liquid), USDA allows, under certain conditions, two alternative definitions, "unused tare" and "used tare."

"Unused tare," (or dry tare) is the weight of "all packaging materials (including glue, labels, ties, etc.) that contain or enclose a product, including prizes, gifts, coupons, or decorations that are not part of the product." The free-flowing liquid and moisture in the packaging materials is assumed to be product except for those few products which are packed in substances which are normally discarded before consumer preparation and/or serving such as vienna sausage packed in a gelatin and canned chorizos packed in lard. "Unused tare" is weighed before the product is introduced into the container. "Unused tare" measurement is used for all compliance testing within the Federal establishment. Also, USDA recommends "unused tare" compliance testing outside the Federal establishment.

"Used tare," is the weight of "all packaging materials that can be separated from the product, either readily (e.g., by shaking) or by washing, scraping, ambient air drying, or by other technique involving more than "normal" household recovery procedures, but not including laboratory procedures such as oven drying." Wet tare" is the same as used tare "when no effort is made to reconstruct unused tare wieght by drying out the absorbent portion (if any) of the tare." USDA does not allow "used tare" testing in the Federal establishment. "Used tare" testing uses "gray areas", defined below, in new weight determinations.

"Gray area," is the percentage variation below the labeled net weight within which no determination of net weight compliance can be made by net weight alone. The "gray area" is used only with "used tare" compliance testing procedures outside the Federal establishment.

If a product's net weight falls below the product's gray area percentage, the product fails the compliance test. If a product's net weight is at or above its labeled net weight, the product passes the compliance test. However, if the product's net weight falls within the gray area or "no decision area," further information is sought before a determination is made.

For example, a product has been designated as a "gray area product" type, with a 3 percent maximum allowable variation from the declared net weight of that packaged product. This product is compliance tested, and its actual weight falls short of the declared net weight by more than 3 percent. This product has failed to comply and is in violation of the proposed rule. Another package of the same designated "gray area product" type is compliance tested. Its actual weight exceeds the declared net weight on the package; therefore, it is in compliance with the proposed rule and it passes. Another package of the same designated "gray area product" type is compliance tested. Its actual weight falls short of the declared net weight by an amount less than 3 percent, but more than 0 percent of the declared net weight. It falls within a no decision area, as defined by the proposed rule, because its actual weight falls within the maximum allowable variation designated for that "gray area product" type.

The data on the specific lot in question may well substantiate that the lot complied with net weight requirements. On the other hand, if no such data exists, then the State or local Weights and Measures authority could take appropriate regulatory enforcement actions. This process appears to be the best means to use effectively the concurrent jurisdiction available to both the Federal government and State and local authorities and to meet the Federal standard of reasonable variation caused by unavoidable deviations in good manufacturing and distribution practices.

It is important to note that gray area percentages are used only with used tare testing on meat and poultry products. These gray area percentages

are calculated by product testing and have been approved by the NCWM's membership at their annual conference and published NBS Handbook 133, In § 3.18., "Meat and Poultry from Federally-Inspected Plants."

2. *Defining the currently permitted "reasonable variations" due to loss or gain of moisture during the course of good distribution practices or by unavoidable deviations in good manufacturing practices though numerical variations which appear to be reasonable when determined by specific procedures in the widely used and respected National Bureau of Standards (NBS) Handbook 133, "Checking The Contents of Packaged Goods," Washington, DC, U.S. Government Printing Office, September 1988, Third Edition.* These variations would be used and enforced at the time of production, during distribution, and at retail sale by Federal, State, and local regulatory officials within their respective authorities. There are two basic types of reasonable variations in the rule. The first are the gray area percentages for products in conducting used tare compliance testing. The second are the maximum allowable variations (MAV's) that individual packages can vary from the labeled weight.

Gray areas

The proposed regulations provide for specific moisture loss "gray areas" in net weight by product type to define the current "reasonable variation," for purposes of determining net weight compliance with only the used tare testing method. Such gray areas are currently being utilized by USDA. At this time, only five products have proposed gray area percentages. These are bacon, fresh sausage, and luncheon meats with a gray area of 0 (zero) percent, vacuum-packed frankfurters with one of 2½ percent and fresh poultry with one of 3 percent. These products with gray areas are listed in NBS Handbook 133, § 3.18.2., "Meat and Poultry from Federally-Inspected Plants: Types of Products."

MAV's

The proposed regulations incorporate USDA's current average and individual net weight requirements. That is, the average net weight of the lot must meet or exceed the labeled weight of the product, while individual reasonable variations are permitted for individual packages in accordance with Table 2–12, "U.S. Department of Agriculture, Meat and Poultry, Groups and Lower Limits for individual packages," NBS Handbook 133, page B–15. The table is included as shown below. The table provides limits for two classes of product, "Homogenous fluid when filled" and "All other products." "Homogenous fluid when filled" products are those which are of uniform consistency throughout. Baby food is homogenous; beef stew is not. "Fluid" at time of filling refers to liquids and solid products (like shortening) which are heated and filled as a liquid.

As can be seen the maximum allowable variations (MAV's) for individual package net weights from the labeled net weight generally becomes a decreasing percentage as the product's net weight increases. For example, a package with a labeled net weight of under 3 ounces (oz.) in Group A has a 10 percent of that packaged weight maximum allowable variation (MAV). That is, the package's weight must be accurate to within 10 percent of the labeled weight.

For the other groups, 1–5, the lower limits for a group are a specific amount for the whole range. For example, in group 1 the lower limit is either 7.1 grams, 0.25 ounce, 9/32 ounce, 1/16 ounce, 3/10 ounce, 3/8 ounce, or 1/4 ounce. The selection of the particular scale gradation depends on the characteristics of the packer's scale. Therefore, a group 1, 3-ounce package with an allowance of 0.25, assuming a digital scale, would have a percentage allowance of 8.3 percent, while a 16-ounce package with an allowance of 0.25 would have a percentage allowance of 1.6 percent.

The maximum allowable variation from the labeled net weight on a 10-pound, 1-ounce package using a scale with accuracy of 2-ounce gradations is 1.24 percent. The maximum allowable variation from the labeled net weight of the same 10-pound, 1-ounce package on a scale with the accuracy of 4-ounce gradations is 2.28 percent. The selection of a 2-ounce or 4-ounce allowance depends whether the packer has a 2-ounce or 4-ounce gradation on the scale. The 2-ounce gradation is to be used unless the packer has only a 4-ounce gradation scale.

Moreover, for any product over 10, 20, 30 or more pounds, the 2-ounce or 4-ounce allowance is still used. A 50-pound package with a 2-ounce allowance has a 0.25 percent allowance, while one with a 4-ounce allowance has a 0.50 percent allowance. Packers have claimed that this fixed amount for group 5, the 2-ounce or 4-ounce limit, is too restrictive. USDA would be interested in further public comments on this issue.

TABLE 2–12.—U.S. DEPARTMENT OF AGRICULTURE, MEAT AND POULTRY, GROUPS AND LOWER LIMITS FOR INDIVIDUAL PACKAGES.

Group name	Homogenous fluid filled	All other products	Lower limit for individual weights	Percent allowance for group range
A	Less than 3 ounces (oz.)	Less than 3 ounces (oz.)	10 percent of labeled weight	10 percent of labeled weight
1	3–16		7.1 grams, 0.25 oz., 9/32 oz., 1/16 oz., 3/10 oz., 3/8 oz., or 1/4 oz	8.3–1.6
2	Over 16	3–7	14.2 grams, 0.50 oz., 1 9/32 oz., 9/16 oz., 5/10 oz., 5/8 oz., or 3/4 oz	2.9–1.6
3		Over 7 to 48	28.3 grams, or 1 oz	12.5–2
4		Over 48 to 160	42.5 grams, 1.50 oz., 1 17/32 oz., 1 9/16 oz., 1 5/10 oz., 1 5/8 oz., or 1 3/4 oz	3.1–0.01
5		Over 160 ounces	2-oz. scale gradation or	1.24–0.63
			4-oz. scale gradation	2.48–1.26

3. *Using NCWM to determine gray area percentages for meat and poultry products.* In the first five product determinations described above, cooperating industry and trade groups worked together with USDA and State and local weights and measures officials to gather data on moisture loss characteristics of these products. The Laws and Regulations Committee of NCWM, composed of NCWM members as well as associated members such as USDA, FDA, the American Meat Institute, the National Broiler Council and others developed and agreed for each product, a percentage allowance which best captured the results of the data in this pilot study called, "Report of

the Task Force on Commodity Requirements to the Executive Committee." This report is Appendix E of the *National Conference of Weights and Measures: Program and Committee Reports for the 73rd Annual Meeting.* U.S. Department of Commerce: National Bureau of Standards, NCWM Publication 16, 1988. The report's recommendations were submitted to the NCWM's national conference for approval. The NCWM's recommendations were then sent to NIST for their incorporation in the third edition of Handbook 133. USDA believes that this same procedure should be followed for the next gray area determinations.

Industry or Trade groups are encouraged by USDA to request product gray area determinations by NCWM's Laws and Regulations Committee. The committee's address is: NCWM, Office of Weights and Measures, National Institute of Standards and Technology, Gaithersburg, MD 20899.

4. *Providing new regulations on weighing and measuring devices in Federal establishments which are described in National Bureau of Standards Handbook 44, "Specifications, Tolerances and other Technical Requirements for Measuring Devices", 1989 Edition, Washington, DC: U.S. Government Printing Office, 1988.* USDA officials and others who may test or certify the accuracy of these weighing and measuring devices, such as State and local weights and measures officials, would be using the same set of procedures. This NBS handbook is already widely known and used by many State and lcoal enforcement officials.

5. *Establishing specific sampling procedures to assure consistent weight measurement and compliance determinations by Federal, State and local regulatory personnel.* All testing within the Federal establishment shall be conducted according to Sampling Plan B, but outside the establishment, Sampling Plan A shall be used. Sampling Plan B is the more stringent plan because it is at the point of packing, the first point in the distribution system. Sampling Plan A is at the point of sale, in the retail level, to make sure the first line of enforcement is working properly. In such dual-testing situations the latter test is less stringent.

Both Plans are described in NBS Handbook 133. The current USDA Plan and the proposed one for in-plant compliance testing are statistically equivalent in terms of stringency. That is, they each afford the same degree of protection. In conducting net weight compliance activities, lots would be sampled according to Sampling Plan B of NBS handbook 133. In general, for up to and including 250 units or packages, the sample size would be 10. For over 250 the sample size would be 30. This method for determining sample sizes is very similar to current practice. Many States and localities are already familiar with Sampling Plan A.

6. *Establishing consistent limited labeling exemptions for meat and poultry products which meet the criteria for "small packages" and individual "random weight packages."* It has been the practice of USDA to require that the net weight labeling of these products be applied to the bulk package shipped from the official establishments. Individual package net weight labeling is applied at the retail level. This rule clarifies that requirement.

Purpose and Need for Action

A revised regulation would serve several purposes. It would: (1) Create standards that would be easily enforceable so that the net weight statement is as accurate as can be reasonably required for the consumer; (2) enable Federal, State and local regulatory agencies to enforce strict net weight standards at retail and other locations within their jurisdictions where meat and poultry products are sold; (3) provide clear and uniform notice to packers, wholesalers and retailers of net weight compliance procedures and requirements; and (4) establish net weight regulations that are generally uniform with those used by FDA for other food products.

Background

Introduction

This introduction provides an overview of the issues, definitions and organizations involved in this proposed amendment. Since 1973 there have been three net weight proposals submitted by USDA for regulatory change which were dropped from consideration because of substantial objections from either the meat and poultry industry, consumer groups, or State and local Weights and Measures officials.

Very generally, "net weight" is the weight of the product itself—not the product and its packaging. USDA regulations allow labeled or declared product net weight to be greater or slightly less than actual net weight. Variations between actual and declared net weight, which are due to unavoidable deviations in good manufacturing and good distribution practices, are acceptable and are known as "reasonable variations" so long as they are not "unreasonably large." How to define "reasonable variations" for practical purposes is the larger question that previous proposals have sought to resolve, since both the meat and poultry laws require Federal net weight standards to permit reasonable variations due to moisture loss, among other things.

Approaching a definition of "reasonable variations" has been complicated by the treatment of liquids that drain from the product. Should these liquids be treated as product or packaging? If they are considered as product, is the consumer actually paying for water? In either case, how can Federal, State, and local officials verify that labeled or declared net weight represents a reasonable variation from actual net weight?

USDA regards water or other liquids used in the manufacture of meat or poultry products as part of the product. Thus, USDA uses a net weight determination called "dry tare," "dried used tare," or "used dry tare." Under dry tare net weight, net weight is the gross weight less the dry or dried packaging. In the Federal establishment, products are weighed using dry tare to reflect their net weight on the package. Depending upon the product, the USDA has many regulations for the control of added water to products. In some cases, these controls are process controls that limit the water that a product may pick up during processing. In other cases, the controls are indirect measures of water that measure other product characteristics from which the amount of added water can be estimated. The package or wrapping weight is not included in the net weight determinations. However, moisture loss can occur in two basic ways with these acceptably prepared products as they move from Federal plants into retail stores.

First, the liquid may "bleed" or "weep" from the product, such as fresh chicken, and be absorbed into the packaging (including cardboard backing or absorbent pad, if used) or float freely in a vacuum sealed package. Secondly, moisture loss from products may occur by evaporation after the product has been shipped from the Federal establishment and travels through the distribution channels.

In the case of sausages in permeable casings or of the skinless variety, some moisture may evaporate from the product and cause net weight discrepancies. However, for meat and poultry products, evaporation is not a major source of moisture loss. In fact, moisture loss due to evaporation is either non-existent for most acceptably

prepared meat and poultry products or is so small that it is assumed to be zero. The weeping or bleeding of liquids from products causes much more net weight deviations than evaporation at different points in the distribution process. The concern of this proposal is the weeping.

From USDA's perspective, some moisture loss in certain meat and poultry products may be "unavoidable," even when the product is produced using good manufacturing or distribution practices. As long as the weight loss is not "unreasonably large," as dictated by the laws and the current regulations, reasonable variations of net weight between the declared dry tare net weight and the actual dry tare net weight are tolerated. USDA believes that moisture loss and possible product adulteration are limited by establishing limitations in the amount of liquid that may be added to or "picked up" by specific products in manufacturing. For example, there is a limit of added water in cooked frankfurters and up to 12 percent of the total product net weight water pick-up in the processing of chilled, consumer pack poultry.

The Wholesome Meat Act, 1967; Poultry Products Inspection Act, 1968

Before the enactment of the Wholesome Meat Act of 1967 and the Poultry Products Inspection Act (PPIA) in 1968, the Department had very limited responsibility for taking action against misbranded and adulterated meat and poultry products after they left the Federal establishment. These Acts, however, extended the Department's authority to cover federally inspected products in distribution channels between the official establishment and the retail level.

Weights and Measures officials of most States and municipalities are generally authorized to take action against all products including food products which fail to meet the label statement of net contents. Their authority, however, is limited when federally inspected meat or poultry products are involved. The States are enjoined from imposing requirements in addition to, or different from those made under the Acts with respect to marking or labeling of federally inspected products.

Litigation involving Rath Packing Company

During the period September 1971 to March 1972, California's Weights and Measures inspectors visited supermarkets in Los Angeles and Riverside Counties. They weighed packages of bacon from Rath Packing Company to determine compliance with the State statute and regulations concerning net weight labeling. Mr. M.H. Becker, Director, Weights and Measures of Los Angeles County, ordered approximately 84 lots of bacon taken off the shelves because they were said to be short weight. Mr. Joseph Jones, Director, Weights and Measures, Riverside County, ordered nearly 400 packages of Rath bacon off the shelf for the same reason.

On February 17, 1972, the Riverside County Counsel brought an injunction against Rath in the Superior Court. The complaint alleged that Rath had committed acts of unfair competition by distributing for sale short weight packages of bacon in Riverside County supermarkets, which Riverside County, California, Weights and Measures officials had verified. On March 1, 1972, the Los Angeles County Counsel filed a similar action against Rath in the Superior Court of Los Angeles County.

Rath removed both actions to Federal District Court. However, on March 20, 1972, the Federal Court remanded the actions to the State courts, finding that there was no substantial Federal question presented in the pleadings.

Meanwhile, on March 17, 1972, Rath filed two actions in Federal District Court, one against the Director, Weights and Measures of Los Angeles County, California, and the other against the Director, Weights and Measures of Riverside County, California. Rath claimed that the California statutes and regulations imposed net weight labeling requirements on its federally inspected bacon that are in addition to or different from the requirements imposed under the Federal Meat Inspection Act (FMIA), and that the State law was preempted under section 408 of the FMIA.

Rath also requested injunctions against the enforcement by Los Angeles and Riverside County's Weights and Measures Directors of labeling requirements in addition to or different from those in the FMIA and against the ordering "off-sale" or otherwise preventing the sale of Rath's federally inspected meat products. The two counties counterclaimed.

The Rath Case Decisions

In 1974, litigation continued in the case of Rath Packing Company and the California Weights and Measures authority. The central issue in this litigation was whether sections of the California statute and regulations were preempted by the FMIA. The Federal District Court held that the statistical variations allowed by California created a net weight labeling standard different from the Federal standard.

California officials claimed that this holding infringed on the legitimate interests of that State to protect its citizens from short weight meat products. The court held that the intent of Congress was to create a uniform national labeling standard, under the definitions set forth in the FMIA, including the definition of "misbranding."

Furthermore, the misbranding and mislabeling provisions of the Act were held to apply not only at the official establishment packing the product, but at all levels in the distribution chain, including the retail level. However, the U.S. District Court for the Central District of California also held that the Federal regulation allowing "reasonable variations" with respect to net weight (9 CFR 317.2(h)(2)) was void due to vagueness.

Appeal of the Rath District Court Decision to the Ninth Circuit Court

Rath appealed the decision to the State Court of Appeals, Ninth Circuit. The appeals court held that:

1. The District Court had jurisdiction over the subject matter of this case, personal jurisdiction being conceded.
2. District Court erred in invalidating 9 CFR 317.2(h)(2).
3. The FMIA and 9 CFR 317.2(h)(2) preempts California codes and that California authorities were properly enjoined from enforcing those sections.
4. State net weight labeling requirements which are not in addition to or different from the Federal net weight labeling requirement may be enforced by appropriate State procedures at the local level.

U.S. Supreme Court Ruling

The preemption issue was appealed by the State of California to the U.S. Supreme Court. A significant point in this appeal was that the Deputy Attorney General of California argued the case for 39 States urging reversal of the earlier decisions. Justice Marshall delivered the opinion of the Court, in which Justice Burger, Brennan, White, Blackmun, Powell, and Stevens joined. Justice Rehnquist filed an opinion concurring in part and dissenting in part, in which Justice Stewart joined on March 29, 1977. The court held that the California State Laws on net weight labeling of meat food products were preempted by the FMIA.

USDA's First Proposal to Amend the Net Weight Regulations, 1973

On December 3, 1973, USDA published in the **Federal Register** (38 FR 33308–33313) proposed reasonable

variations and procedures for enforcing net weight declarations on meat and poultry product labels. The proposal offered extensive revisions of the existing meat and poultry inspection regulations. It would have done the following:

1. Provide uniform sampling and acceptance procedures for determining net weights at the processing plant, and for checking compliance after the product leaves the plant, including that in retail stores;

2. Eliminate the allowance of an "acceptable" moisture loss from the net weight marked on the package in the processing plant;

3. Require processing plants to maintain quality control programs, approved by USDA, for checking consumer-sized packages, to be monitored by USDA inspectors as part of their inspection duties at official establishments;

4. Establish procedures whereby each lot of a product would have to be sampled and the "average" weight would have to conform to the net weight stamped on the label;

5. Provide an optional method for labeling bulk-packed meat and poultry products that are to be repacked and weighed before sale at retail stores; and

6. Define categories of products that are to be tested for net weight compliance using a dry tare or a wet tare method, and establish specific procedures for determining tare weights.

Interested persons were given until April 5, 1974, to offer comments on the proposal. The response to the 1973 proposal was overwhelmingly negative. On December 2, 1977, USDA withdrew the proposal by replacing it with a new one (42 FR 61279–61284).

Beginning in 1974, the Department sponsored a series of public hearings concerning net weight issues of meat and poultry products. The public hearings revealed widespread dissatisfaction on the proposal from consumers, industry representatives, and State and local weights and measures officials. The Department received over 1600 written comments essentially expressing the same dissatisfaction. Industry comments characterized the proposal as too intrusive and costly; consumers objected to the averaging concept of net weight compliance; and State and local governments objected to Federal preemption.

In view of this, USDA began discussions with the Food and Drug Administration (FDA), the Federal Trade Commission (FTC), and the National Bureau of Standards (NBS—renamed National Institute of Standards and Technology (NIST) in 1988) concerning net weight determination of amenable products.

USDA's Second Proposal to Amend the Net Weight Regulations, 1977

In 1977, the State of California's Department of Food and Agriculture submitted a petition to USDA, FTC, and FDA to issue specific reasonable variations and procedures on net weight labeling of food. For products subject to moisture loss, the petition recommended that compliance with the label declaration be determined at the point of sale rather than at the point of packaging. The petition was supported by:

—State officials from 48 of the 50 States
—American Farm Bureau Federation
—The National Grange
—National Farmers Organization
—National Farmers Union
—Consumer groups
—Food service organizations
—Scale manufacturers and repairers
—National Association of Attorney Generals
—National Association of State Departments of Agriculture
—Board of Directors of the Consumers Federation of America
—National Conference on Weights and Measures

Following this 1977 petition, on December 2, 1977, USDA published a second net weight proposal in the **Federal Register** (42 FR 61279–61284). Interested persons were given until June 2, 1978, to submit comments. This proposal would have provided that net weight declarations reflect the drained weight of products. Further, the proposal would have done the following:

1. Define specific limits by which individual containers could vary from the stated net weight on the label;

2. Require the marked net weight to be no less than the average drained weight at the point of sale;

3. Require official establishments to maintain USDA-approved quality control systems for net weight compliance;

4. Exempt small packages—less than ½ ounce—provided the shipping container complied with the net weight requirements; and

5. Bring shingle-packed bacon in line with the regulations concerning net weight for other meat products.

The free liquid in the package of meat products seemed to be the major issue. There was no provision for bulk-packed items. The proposal's comments showed that consumer groups supported the drained weight concept, industry groups totally opposed it, individuals either supported or opposed it, Weights and Measures organizations supported it, and the academic community was equally divided. There were over 3,000 public comments received by USDA with over two-thirds of the respondents opposing the second proposal.

The Consumer Federation of America (CFA) Study

As a result of the comments on the second proposal, USDA sought to answer certain questions about the economic costs and benefits of the proposal. CFA was awarded a contract to conduct such a study. The study was completed in October 1978. It observed that "Consumers cannot be expected to have different interpretations of labeled net weight depending on the particular food product being sold * * *" and that "Consumers are more hurt by shortweighing than they are benefited by overpack * * *."

In October 1978, the Department reopened the public comment period on its proposal to revise the net weight labeling regulations for meat and poultry products. This action was taken to provide interested persons until December 26, 1978, opportunity to submit comments on the consumer economic study prepared by the CFA.

Government Accounting Office (GAO) Net Weight Study, 1978

On December 20, 1978, GAO issued a report titled "Proposed Changes in Meat and Poultry Net Weight Labeling Regulations Based on Insufficient Data." In this report, GAO claimed USDA did not have sufficient data to:

1. Decide how to deal with moisture loss after a product has been packaged and shipped;

2. Consider the economic impact of the proposed changes; and

3. Comparatively evaluate the alternative net weight compliance systems.

The report stated that USDA should expand and extend its search for information concerning the best way to monitor net weight labeling for meat and poultry products.

USDA's Response to the GAP Report: The Economics, Statistics and Cooperative Service (ESCS) Study

As a result of the criticism of the GAO report, the Department initiated its own study to answer important questions about the effects and impacts of various policy changes in the proposed net weight regulation. On January 26, 1979, the Department released a statement saying it had asked the ESCS, now called the Economic Research Service

(ERS), to conduct further studies on accurate net weight labeling of meat and poultry. The ESCS study evaluated comments submitted to the Department by the meat and poultry industries and consumers. It also addressed questions raised by the CFA and GAO net weight reports.

In December 1979, ESCS released its report, "Assessment of Proposed Net Weight Labeling Regulations for Meat and Poultry Products" (Report No. 443). The ESCS study concluded that the 1977 proposal would achieve two objectives of USDA. First, consumers would be assured that the weight of usable meat and poultry in a package is equal to its labeled weight. Second, States would be able to enforce strict net weight standards at retail establishments. However, the study also concluded that the latter objective could probably be accomplished as effectively under a system that allows free liquid as part of the product's net weight.

Generally, the ESCS study found that the economic benefits from using a drained weight requirement were substantially less than many consumer groups had contended, but the costs of such a requirement were substantially less than the producer groups had suggested. The ESCS study said the effects of the proposed rule change has been misunderstood by both consumers and producers.

Consumers could not expect the reported price per pound of a product to remain unchanged if free liquids are excluded from labeled product weights. The price per pound could be expected to increase—and to increase most for those products with relatively more free liquid. However, the cost to consumers for usable product would remain unchanged. That is, the unit cost would be the same.

Actual costs to producers would not increase because of the change in the definition of tare. The amount of drained weight meat would not be affected by a labeling rule, and processing costs per drained weight pound would be unaffected. The processor is only adjusting the price slightly higher per pound and net weight slightly lower to cover for the product's estimated weepage.

There would be increased costs to producers if there was a mandatory quality control program. The study estimated it would increase industry costs from $59 million to $116 million. The impact on the smaller firms would be greater than on the larger firms, many of which already have quality control systems.

There would also be additional compliance costs for the Federal, State and local governments. The study refrained from making any quantitative estimates of these costs but concluded that, "The proposed changes would have a larger impact on State and local governments than on the Federal Government."

USDA's Third Proposal, 1980

On August 8, 1980, USDA published its third proposal on net weight in the **Federal Register** (45 FR 53002–53023). The significant features of the proposal included:

1. *"Reasonable variations" would be based on scientific procedures developed in consultation with the NBS.* These variations for moisture loss would be used and enforced from production to retail sale by Federal, State and local officials within their respective regulatory authorities.

2. *Establishing a definition of tare in which the net weight of product equals the package and contents minus the weight of the packaging materials.* With regard to liquids absorbed by the packaging materials, USDA developed two alternatives as to whether to include or exclude them in net weight determinations. In the first, the "dry tare" method, the free liquid, which has separated itself from the product but which has not been absorbed in the packaging materials, is included in the product weight. The exceptions to this definition are those few products which are packed in substances which consumers normally discard in preparation and/or serving. In the second alternative, the "wet tare" method, the net weight excludes the free liquid as well as the packaging. In this case, the numerical allowances would be used to determine compliance.

3. *Establishing specific sampling procedures to assure consistent weight measurement and compliance determinations by Federal, State and local regulatory personnel.* This includes the provision that the net weight of all the sample packages must meet or exceed the stated net weight.

4. *Making quality control programs voluntary for the producers.*

5. *Minimizing substantive differences between USDA and FDA net weight compliance procedures.*

6. *Establishing consistent limited labeling exemptions for meat and poultry products that meet criteria for "small packages" and "multi-unit packages."*

When the comment period closed on USDA's third proposal in January 1981, over 275 individuals, 35 trade organizations, five Federal agencies, 15 county and city governments, 25 universities, 135 pood producing establishments, and 30 State governments responded. These responses generally reflected differences in views between consumers, trade organizations, universities, industry, and State and local governments.

Consumer groups generally supported the idea of a wet tare alternative to the dry tare. Although they preferred a drained weight approach, they believed the wet tare approach was a reasonable compromise. However, the industry asserted that compliance was very good in this area and they believed there was no need for further regulation to change enforcement criteria. Industry preferred that USDA continue use of the dry tare approach, characterizing it as the most viable, efficient and uniformly controllable one. They favored the exemption of bulk packages from the net weight regulations.

State and local governments preferred using drained weight, but would accept the wet tare approach. They were concerned about the definition of a lot, their role in the enforcement and numerous other issues. NIST had some comments on defining lot size and generally encouraged the standardization of regulations and testing procedures for all governmental agencies.

Comparison of 1980 Proposal With Current Proposal

The new proposal is very similar to the 1980 one. Both proposals create a wet tare option to dry tare testing. In both, USDA is committed to using the dry tare, but will allow the wet tare under certain conditions. Both establish specific sampling procedures to assure consistent weight measurement. However, the current version specifically adopts NBS Handbooks 133 and 44 in these areas. The reasonable variations in both have been based on consultation with NIST. Moreover, the current one uses NCWM as the principal vehicle to establish the determination of those products suited to gray area percentage allowances.

In the current proposal, moisture loss allowances for several products have already been determined. For example, fresh poultry has 3 percent, vacuum packed frankfurters has 2½ percent, and bacon, fresh sausage, and luncheon meats have 0 percent gray area allowances. Also in both proposals, FDA and USDA coordinated their efforts to minimize their differences. Finally, in the current proposal the lot's average net weight must meet or exceed the labeled net weight, while in the 1980 proposal the minimum weight of each

package of the lot had to meet or exceed the labeled weight.

Withdrawal of 1980 Net Weight Proposal

The Net Weight Labeling proposed rule, published on August 8, 1980, in the **Federal Register** (45 FR 53002–53023) is hereby withdrawn so this proposed rule is the only USDA proposed net weight rule. The inability of USDA to gain sufficient industry, State and local government, and consumer support was the primary reason for not submitting a final net weight rule. Furthermore, industry strongly objected to the provision that labeled net weight is the minimum, not the average, that all samples must meet or exceed. Industry believed this would cause much more product overpacking. Under the new proposal, this provision is no longer applicable.

Increasingly Strained USDA-State and Local Government Relationship on Net Weights

In the 1980's the net weight issue has become an increasing problem as States and local governments have increased or decreased their regulatory efforts on federally inspected products. The lack of an agreed upon standard for determining net weight with products that incur moisture loss has strained relationships among the Federal, State, and local governments, confused the public and angered parts of the industry.

The National Conference on Weights and Measures (NCWM) Initiative

The NCWM is an important national organization representing State and local Weights and Measures officials which is supported by NIST. Its annual convention is attended by many State, country, and city Weights and Measures officials, and by representatives of the Federal government, business, and industry.

During the 69th NCWM Annual Meeting in August 1984, then Chairman Ezio Delfino established a Task Force on Commodity Requirements. He gave the Task Force the charge to resolve the "moisture loss" issue in the area of red meat, poultry and flour. He asked them to apply three criteria in any proposal they developed: That it be fair to the packers, verifiable by regulatory agencies, and useful to consumers making value comparisons. The task force added the following criteria: That it be fair to all retailers, large and small, and applicable to all products subject to moisture loss, not just red meat, poultry, and flour.

The membership of the task force included individuals from Federal, State, and local government, business, and consumer interests. Mr. Richard L. Thompson, Chief of Weights and Measures for Maryland, was chairman of the 12-person group. The government and industry representatives were Mr. John W. McCutcheon, Deputy Administrator for Technical Services, Food Safety and Inspection Service (FSIS), USDA; Mr. Howard Pippin, Director, Division of Regulatory Guidance, FDA; Dr. Carroll Brickenkamp, NIST; Dr. Mahlon Burnette, American Meat Institute (AMI), later replaced by Dr. George Wilson of AMI; Dr. Kenneth May of Holly Farms, later replaced by Mr. Stephen Pretanik, National Broiler Council; Mr. Tom Klevay, Millers' National Federation; and Mr. Charles Cavenaro, White House Consumer Affairs Office, later replaced by Ms. Peggy Adams, Director of Bucks County Department of Consumer Protection.

The other members of the group included Mr. Paul B. Engler, Director of Los Angeles Weights and Measures, representing the Western States Weights and Measures (W&M) Association, which is one of the regional groups of State and local weights and measures officials; Dr. Edward Heffron, Chief, Food Division of Michigan Department of Agriculture, representing the Northwestern (now Central) States W&M Association; Mr. Kenneth Butcher, Maryland Weights and Measures, representing the Southern W&M Association; and Mr. Allan Nelson, Chief, Weights and Measures, Connecticut Department of Consumer Protection, representing the Northeastern W&M Association.

The task force set out to formulate national guidelines in wet tare compliance testing. The basis of these guidelines already existed. NBS Handbook 133 provides sampling and test procedures for packagers and inspectors to ensure the accuracy of net weight declarations. The task force set out to see how these procedures could be operationally applied to the meat and poultry industry as well as the flour industry. It conducted tests to determine the moisture loss characteristics of these different commodities.

The task force developed a conceptual model of a "gray area" to assess compliance using a wet tare methodology. While the dry tare method is expected to be the primary system of measurement, the wet tare method is an alternative for further testing, if desired, or for States that historically have used wet tare and wish to continue to do so. Its model had a range of weights from greater to lesser than the labeled weight. In the middle of the scale was a "gray area." Products whose test weight was greater than labeled weight would be in compliance. Products that weighed below the gray area would be out of compliance. When a product fell within the gray area, further investigation would be necessary to determine its state of compliance.

The first step in seeking additional information to determine compliance would be to contact the USDA official associated with that plant to see if there is a USDA approved net weight quality control (QC) program operating in the plant. If there is such a program, the data from the QC program can be used to prove the lot was in or out of compliance. If the plant does not have a USDA approved QC program, the State or local government authority should declare the lot out of compliance.

Requirements for Implementing the Net Contents Procedures in NBS Handbook 133

There are three sets of sampling test procedures for determining net contents compliance. They are the unused tare test to be used within the Federal establishment for all meat and poultry products, the unused tare test to be used outside the Federal establishment for all meat and poultry products, and the used tare test to be used outside of the Federal establishment for those meat and poultry products with gray areas cited in NBS Handbook 133, § 3.18.2., "Types of Products." USDA uses and requires the unused tare testing method in Federal establishments. State and local government Weights and Measures officials have a choice between used and unused tare tests in their testing of products that have gray area determinations. They must use unused tare testing with products that do not have a gray area determination. State and local Weights and Measures officials conduct their testing outside the Federal establishment. Below are requirements for each test based on NBS Handbook 133.

A. Unused tare test of products to be used in Federal establishments

(1) Define and Select the *lot.* See NBS Handbook 133, Chapter 2, Section 2.3, "Definition of The Lot." and § 3.18.3.c., "Selection of Lots."

(2) Select the proper *sample size* from a lot. See NBS Handbook 133, Chapter 2, Section 2.8, "Sampling Plans In Category B" and Appendix B., Table 2–5, "Sampling Plans of Category B."

(3) Determine the *gross weight.* The weight of the package including contents, packaging material, labels, etc. See Appendix C., Glossary.

(4) Determine the *unused tare weight.* See NBS Handbook 133, Chapter 2, Section 2.11., "TARE.", Section "a."

(5) Determine the *net contents.* That quantity of packaged product remaining after all necessary deductions for tare (defined as unused tare in this case) have been made. See Appendix C, Glossary. Subtract the unused tare weight determined in (4) above from the gross weight determined in (3) above.

(6) Determine *individual package error.* See NBS Handbook 133, Section 2.8.1. "Decision Criterion: Individual Packages," Section 2.9. "Individual Packages." Also see NBS Handbook 133, Section 2.12, "MAV's," and Appendix B, Table 2–12, "U.S. Department of Agriculture, Meat and Poultry, Groups and Lower Limits for Individual Packages."

(7) Determine *average package error.* See NBS Handbook 133, Chapter 2, Section 2.8, "Sampling Plans In Category B," especially Section 2.8.2 "Decision Criterion: The Average Error."

B. Unused tare test of products to be used outside of the Federal establishment

(1) Define and Select the *lot.* See NBS Handbook 133, Section 2.3, "Definition Of The Lot." and § 3.18.3.c., "Selection of Lots."

(2) Select the proper *sample size* from a lot. See NBS Handbook 133, Chapter 2, Section 2.7, "Sampling Plans In Category A.;" § 3.18.3.d., "Sample Size" and Appendix B, Table 2–2, "Sampling Plans of Category A."

(3) Determine the *gross weight.* The weight of the package including contents, packaging material, labels, etc. See Appendix C, Glossary.

(4) Determine the *unused tare weight.* See NBS Handbook 133, Chapter 2, Section 2.11.a "TARE," and § 3.18.3.e(1), "Unused or Dried Used Tare."

(5) Determine the *net contents.* That quantity of packaged product remaining after all necessary deductions for tare (defined as unused tare in this case) have been made. See Appendix C, Glossary. Subtract the unused tare weight determined in (4) above from the gross weight determined in (3) above.

(6) Determine *individual package error.* See NBS Handbook 133, Chapter 2, Section 2.7., "Sampling Plans In Category A," especially Section 2.7.1 "Decision Criterion: Individual Packages," Section 2.12. "MAV's," and Appendix B, Table 2–12, "U.S. Department of Agriculture, Meat and Poultry, Groups and Lower Limits for Individual Packages." See NBS Handbook 133, § 3.18.3.g., "The Individual Package Requirement."

(7) Determine *average package error.* See NBS Handbook 133, Section 2.7., "Sampling Plans In Category A," especially Section 2.7.2., "Decision Criterion: The Average Error." See NBS Handbook 133, § 3.18.3.f(1), "The Average Requirement."

C. Used tare test of products to be used outside of the Federal establishment only with meat and poultry products that have been designated as gray areas types of products published in Handbook 133, Section 3.18.2, "Types of Products."

(1) Define and select the *lot.* See NBS Handbook 133, Section 2.3., "Definition Of The Lot.," and § 3.18.3.c., "Selection of Lots."

(2) Select the proper *sample size* from a lot. See NBS Handbook 133, Chapter 2, Section 2.7., "Sampling Plans In Category A.;" § 3.18.3.d., Sample Size; and Appendix B, Table 2–2, "Sampling Plans of Category A."

(3) Determine the *gross weight.* The weight of the package including contents, packaging material, labels, etc. See Appendix C, Glossary.

(4) Determine the *used tare weight.* See NBS Handbook 133, Chapter 2, Section 2.11.b "TARE," and § 3.18.3.e(2) "Wet Tare."

(5) Determine the *net contents.* That quantity of packaged product remaining after all necessary deductions for tare (defined as used tare in this case) have been made. See Appendix C, Glossary. Subtract the used tare weight determined in (4) above from the gross weight determined in (3) above.

(6) Determine *individual package error.* See NBS Handbook 133, Chapter 2, Section 2.7. "Sampling Plans In Category A," especially Section 2.7.1 "Decision Criterion: Individual Packages" and Section 2.12. "MAV's," and Appendix B, Table 2–12, "U.S. Department of Agriculture, Meat and Poultry, Groups and Lower Limits for individual packages." See NBS Handbook 133, § 3.18.3.g., "The Individual Package Requirement: Wet Tare" and § 3.18.3.h. "What to Do When the Lot Is in the Gray Area."

(7) Determine *average package error.* See NBS Handbook 133, Section 2.7. "Sampling Plans In Category A," especially Section 2.7.2., "Decision Criterion: The Average Error." See NBS Handbook 133, § 3.18.3.f(2), "The Average Requirement" and § 3.18.3.h., "What to Do When the Lot Is in the Gray Area."

Memorandum of Understanding Between USDA and The States and Local Government Authorities

One of the principal products of the Task Force was the development of a model Memorandum of Understanding (MOU) between USDA and a State or local government. This MOU concerns administrative procedures for USDA and the State and local governments to use in implementing this proposed regulation of meat and poultry products net weight compliance. This MOU would describe in concrete administrative procedures the State and local government concurrent jurisdiction authority with USDA for net weight enforcement activities outside the federally inspected establishment and the requirements for State and local officials when they enter a federally inspected establishment.

Under the MOU, the USDA would assist State and local officials by establishing procedures for making its records of net weights available at any federally inspected establishment, maintaining a system for evaluating tare weights, maintaining its role as exclusive authority for net content labeling at Federal establishments, reviewing records and decisions in the event of a disagreement with State and local officials, defining sampling procedures, and cooperating fully with State and local authorities through liaison officers.

In turn, State and local officials would assist USDA by instructing its officials in how to apply the testing methods, using proper protocol for entering Federal establishments, and taking disagreements between Federal inspectors and local officials to the FSIS Regional Director for action. Any disagreements at the regional level could be appealed to the Administrator of FSIS.

A draft of the MOU is printed in Appendix E of the *National Conference on Weights and Measures: Program and Committee Reports,* U.S. Department of Commerce: National Bureau of Standards, 1988.

Progress of the NBS Task Force on Commodity Requirements, 1987–88

In October 1987, FSIS, in cooperation with the National Broiler Council and the National Conference on Weights and Measures began a study on product moisture loss. The study group collected data regarding the moisture loss in fresh poultry during plant packing and shipping operations. This study was conducted in six cooperating poultry plants using over 400 retail labeled

packages of poultry to determine moisture loss within the plant.

The study indicated that about a 2 percent moisture loss occurs within the plant. Previously, data on moisture loss from frankfurters collected by the American Meat Institute indicated that frankfurters incurred an initial rapid moisture loss then continued to lose moisture slowly during storage and merchandising.

The moisture loss studies provide the basis for a "gray area" for States that might use wet tare methods to determine compliance without being in conflict with Federal requirements. While the Federal Government prefers to use a dry tare system, the regulation would allow States to use the wet tare approach. The Department would be providing all enforcement officials a standard and uniform measure by which to determine net weight compliance for either dry or wet tare tests.

During the task force meeting on November 23 and 24, 1987, in Rockville, Maryland, the task force members discussed these moisture loss studies. After much deliberation, an agreement was reached by the Task Force concerning the gray area size for fresh poultry, which was 3 percent, and frankfurters, which was 2½ percent. Also, bacon, fresh sausage, and luncheon meats were determined to have a gray area of 0 percent. This means that these products and only these products have approved gray areas for wet tare testing. All other meat and poultry testing must undergo dry tare testing. NCWM has agreed to continue its work in establishing gray areas for meat and poultry products. In this manner, gray areas can be established for most, if not all, meat and poultry products.

These gray area agreements, representing the last major task of the group, were presented to the Executive Committee of NCWM for their consideration on January 15, 1988. They decided to put the task force's net weight proposal on NCWM's July 1988, convention agenda. On July 22, 1988, the conference participants approved the proposal, thus incorporating these changes in the next edition of NBS Handbook 133, the third edition. USDA intends to incorporate by reference NBS Handbook 133 third edition (1988), and NBS Handbook 44, 1989 Edition, in the present regulatory change. These materials and other pertinent reports are located in the Office of the Hearing Clerk, FSIS, USDA, Room 3871, South Building, 14th and Independence Avenue, SW., Washington, DC 20250. These materials are cited below:

"Analysis of Proposed Regulations on Net Weight Labeling," Washington, DC: Consumer Federation of America, 1978.

ESCS. "Assessment of Proposed Net Weight Labeling Regulations for Meat and Poultry Products," Washington, DC: USDA, January 1979.

National Bureau of Standards Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices," 1989 Edition, Washington, DC: U.S. Government Printing Office, September 1988.

National Bureau of Standards' (NBS) Handbook 133, "Checking The Contents of Packaged Goods," Washington, DC: U.S. Government Printing Office, September 1988, Third Edition.

National Conference on Weights and Measures: Progam and Committee Reports, U.S. Department of Commerce: National Bureau of Standards, 1988.

"Proposed Changes in Meat and Poultry Net Weight Labeling Regulations Based on Insufficient Data," Washington, DC: U.S. General Accounting Office, December 1978.

Issues

As the discussion above indicates, the development of a workable, enforceable net weight standard has proven to be a difficult and controversial task. The following discussion is provided to clarify USDA's position on a number of issues which had to be considered in the development of this proposal.

Equity

Consumers and State and local officials: This change would enable consumers and State and local law enforcement officials to know that there is a specific measurable amount of moisture loss that may be acceptable. The amount of acceptable moisture loss is determined by the particular product's characteristics by an objective and professional organization, the NCWM. While the proposal would not mandate a drained weight concept, it does move in that direction by providing for the optional use of a used tare method of assessment, which the consumers and State and local Weights and Measures officials should support.

Both unused tare (dry tare) and used tare (wet tare without oven drying) are seen as legitimate methods of determining net weight by the National Institute of Standards and Technology (NIST), the Federal agency concerned with this issue. International organizations also recognize unused tare as a fair and accurate method of determining net weight. In fact, NBS officials claim unused tare is often the method of choice because of the following advantages:

1. It is one professionally approved method to recognize moisture loss;
2. It is the most efficient and fastest way to test product weight; and
3. It is non-destructive testing.

However, poor distribution practices, such as lack of temperature controls, may cause more liquid to be purged from the product. This is a problem, but trying to forecast the drained weight at the point of packing is a guessing game. Certainly, new technology has reduced the margin of error for a packer in estimating the amount of purge from a product. USDA wanted to recognize used tare as an alternative to unused tare. It did so by making explicit the provision for used tare determinations in order that jurisdictions that want to use regularly used tare might do so. Also dry tare jurisdictions may use the used tare process to verify that the distribution practices are reasonable.

On the other hand, some consumers will probably register objections to this change because it does not go far enough toward a drained weight concept. They object to "paying for water, blood, etc." While the proposed changes may reduce problems between the regulators and the industry, the consumers will still be faced with a labeled net weight statement which includes some liquid as the product. However, moisture loss is a natural process from many water-added products. Products bleed or weep into their packaging, after they have been weighed in the plant. Some consumers think that no liquid or moisture should be included in the net weight calculations; however, the laws governing meat and poultry products require that reasonable variations be permitted for moisture loss.

Moreover, the marked net weight, on even products that do not suffer moisture loss, is not the weight of that individual package but of the average of all the identical product by type and weight in the lot. This means a given package could be slightly underweight while the overall weight of the lot average would be the same as the marked net weight. To achieve the marked net weight on every package the packer would have to overpack to account for normal variance in industrial production. Again, many consumers think that every package weighs at or above its declared net weight.

By the 1960's, the average weight had become the industry standard recognized by Weights and Measures authorities internationally, as well as by

our Federal, State, and local governments. This is because companies that used a minimum standard were at a competitive disadvantage to those using an average. The very influential National Bureau of Standards' Handbooks 133 and 67 use the average weight concept as a correct means to determine accurate weight. In fact the California Code of Regulation, Title IV, Chapter 8, Subchapter 2, Article 5, like all other U.S. Weights and Measures authorities, uses the average weight.

The regulations under the FMIA and PPIA provide for reasonable variation in net weight declarations due to good manufacturing and/or distribution practices. The marked or labeled net weight is not necessarily the weight of that individual package but of the average of all the identical product by type and weight in the lot. This means a given package could be slightly underweight or slightly overweight, while the overall weight of the lot average would be the same as the marked net weight. Also, as noted before, USDA has maximum allowable variations by which individual packages can vary from the labeled net weight to ensure that the individual variations are "reasonable variations." To achieve the marked net weight on every package the packer would have to overpack to account for normal variance in industrial production. In practice, packers tend to slightly overpack so as to minimize short weight problems.

Industry

The new proposal would standardize what the Federal government recognizes as acceptable procedures for the State and local compliance procedures that industry faces at the retail level. The coordination of Federal and State action through this proposed regulation and the MOU should virtually eliminate the burden on industry of State and local net weight officials using different compliance criteria on federally inspected product by establishing a national, specific net weight standard with procedures for cooperative enforcement by the Federal and State and local governments.

Ease of Enforcement

One of the strongest features of this change is that it would greatly strengthen the enforcement of net weight at the Federal, State and local levels. The use of specific, numeric moisture loss allowances will eliminate much confusion in assessing compliance. The NBS Handbooks, 133 and 44, should provide well respected and reliable procedures.

The MOU would create a working relationship between the Federal Government and the State and local governments in the net weight labeling area. The sharing of responsibilities through effective concurrent jurisdiction should create a unified system to enforce net weight labeling for meat and poultry products.

Compatibility with FDA

This proposal is being developed in tandem with FDA to assure the maximum possible compatibility with FDA's new proposal. FDA has already told the MCWM that the use of Handbook 133 is not in conflict with their procedures. Like FSIS, FDA's proposal will provide for more explicit, quantifiable moisture loss allowances in net weight determinations.

Economic Impacts

Consumers

The proposed changes are largely technical changes in conducting net weight compliance checks on products. These should have little impact on consumers, since the industry's compliance is already high. The additional improvements would be small, as noted in ESCS, "Assessment of Proposed Net Weight Labeling Regulations for Meat and Poultry Products," Washington, DC: USDA, December 1979. We believe these findings are still valid because no changes in the regulatory system have been introduced since the study was done.

Industry

For producers, the regulations should have little impact on their operations. The FSIS net weight product sampling checks, through NBS Sampling Plan B, will be comparable to the current plan. The standardization of State and local enforcement efforts with the MOU and the use of NBS Sampling Plan A should reduce industry's problems by creating a known and verifiable standard for compliance checks.

Regulatory Agencies

There should be no real impact on FSIS to implement the changes. Inspectors in the field would have to follow new sampling plans and scale calibration procedures. The work and amount of time needed to accomplish these activities should be about the same as is currently needed. The inspection force would need some training to do the new sampling procedures, but this should not be a difficult or time-consuming task. States and localities would assist FSIS in examining scales for their accuracy using NBS Handbook 44 specifications. Generally, they already monitor the weighing devices in federally inspected plants in their areas.

With the MOU, State and local Weights and Measures officials would be able to do a much more effective and efficient job. The numerical definitions on acceptable moisture loss would make it easier to determine compliance, and fine and prosecute industrial wrongdoing. Some authorities may increase their activities and some reduce them with the MOU. In any case, there would probably not be much of a change in the cost of their inspection activities because of the proposal.

Summary

In summary, USDA believes that the proposed rule, if updated, would be an important change in standardizing weights and measures practices which benefit industry, enhance the role of the State and local governments, and provide greater protection for the consumers without creating much, if any, additional direct or indirect expenses for the meat and poultry industry.

List of Subjects

9 CFR Part 317

Meat inspection, Net weight.

9 CFR Part 381

Poultry products inspection, Net weight.

For reasons set out in the preamble Parts 317 and 381 of the Federal meat and poultry products inspection regulations would be amended as follows:

PART 317—[AMENDED]

1. The authority citation for Part 317 continues to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*, 33 U.S.C. 1254.

2. Section 317.2 (9 CFR 317.2) would be amended by revising paragraphs (h)(1) and (h)(2), adding a new sentence to the end of paragraph (h)(5), revising paragraphs (h)(9) (i) and (ii), redesignating (h)(9) (iii) and (iv) as (h)(9) (iv) and (v), respectively, adding a new (h)(9)(iii) and revising (h)(11). These changes will read as follows:

§ 317.2 Labels: Definition; required features.

* * * * *

(h)(1) The statement of net quantity of contents shall appear on the principal display panel of all containers to be sold

at retail intact, in conspicuous and easily legible boldface print or type in distinct contrast to other matter on the container, and shall be declared in accordance with the provisions of this paragraph (h).

(2) The statement as it is shown on a label shall not be false or misleading and shall express an accurate statement of the quantity of contents of the container. Reasonable variations caused by loss or gain of moisture during the course of good distribution practices or by unavoidable deviations in good manufacturing practice will be recognized. Variations from stated quantity of contents shall be as provided in § 317.19. The statement shall not include any term qualifying a unit of weight, measure, or count such as "jumbo quart," "full gallon," "giant quart," "when packed," "minimum," or words of similar importance.

* * * * *

(5) * * * Paragraph (9) of this paragraph (h) permits certain exceptions from the provisions of this paragraph for margarine packages, random weight consumer size packages, and packages of less than ½ ounce net weight. Paragraph (12) of this paragraph (h) permits certain exceptions from the provision of this paragraph for multi-unit packages.

* * * * *

(9) * * * (i) Individually wrapped random weight consumer size packages (as specified in subparagraph (11)) and meat products that are subject to shrinkage through moisture loss during good distribution practices and are designated as gray area type of products as defined in Handbook 133, § 3.18.2, need not bear a net weight statement when shipped from an official establishment provided a net weight shipping statement which meets the requirements of paragraph (h)(2) is applied to their shipping container prior to shipping it from the official establishment. Net weight statements so applied are exempt from the type size, dual declaration, and placement requirements of this paragraph (h), if an accurate statement of net weight is shown conspicuously on the principal display panel of the container.

(ii) Individually wrapped and labeled packages of less than ½ ounce net weight and random weight consumer size packages shall be exempt from the requirements of this paragraph (h) if they are in a shipping container and the statement of net quantity of contents on the shipping container meets the requirements of paragraph (h)(2);

(iii) Individually wrapped and labeled packages of less than ½ ounce net weight bearing labels declaring net weight, price per pound, and total price, shall be exempt from the type size, dual declaration, and placement requirements of this paragraph (h), if an accurate statement of net weight is shown conspicuously on the principal display panel of the package.

* * * * *

(11) As used in this section, a "random weight consumer size package" is one which is one of a lot, shipment or delivery of packages of the same product with varying weights and with no fixed weight pattern.

* * * * *

3. Sections 317.19 and 317.20 (9 CFR 317.19 and 317.20) would be redesignated as §§ 317.23 and 317.24 respectively (9 CFR 317.23 and 317.24) and new §§ 317.18 through 317.22 (9 CFR 317.18 through 317.22) would be added to Part 317, and the Table of Contents would be amended accordingly, to read as follows:

Sec.

* * * * *

317.18 Quantity of contents labeling.
317.19 Definitions and procedures for determining net weight compliance.
317.20 Scale requirements for accurate weights, repairs, adjustments, and replacement after inspection.
317.21 Scales: testing of.
317.22 Handling of failed product.
317.23 Jar Closure requirements.
317.24 Packaging materials.

§ 317.18 Quantity of contents labeling.

Sections 317.18 through 317.22 of this Part prescribe the procedures to be followed for determining net weight compliance and prescribe the reasonable variations from the declared net weight on the labels of immediate containers of products in accordance with § 317.2(h) of this Part.

§ 317.19 Definitions and procedures for determining net weight compliance.

(a) For the purpose of §§ 317.18 through 317.22 of this Part, the reasonable variations allowed, definitions, and procedures to be used in determining net weight and net weight compliance are described in the National Bureau of Standards' (NBS) Handbook 133, "Checking The Contents of Packaged Goods," Washington, DC: U.S. Government Printing Office, September 1988, third edition, which is incorporated by reference, with the exception of the Handbook 133 requirements listed in paragraph (b) below. Those provisions incorporated by reference herein, are considered mandatory requirements. (These materials are incorporated as they exist on the date of approval. Copies may be purchased for under $20.00 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is also available for inspection at the office of the Federal Register Information Center, Room 8401, 1100 L Street NW., Washington, DC 20408 or the FSIS Hearing Clerk, Room 3171, South Building, Food Safety and Inspection Service, USDA, 14th Street and Independence Avenue, SW., Washington, DC 20250).

(b) The following Handbook 133 requirements are not incorporated by reference.

Chapter 2 General Considerations

2.13.1 Polyethylene Sheeting and Film
2.13.2 Textiles
2.13.3 Mulch

Chapter 3 Methods of Test for Packages Labeled by Weight

3.11. Aerosol Packages
3.14. Glazed Raw Seafood and Fish
3.15. Canned Coffee
3.16. Borax
3.17. Flour

Chapter 4 Methods of Test for Packages Labeled by Volume

4.7. Milk
4.8. Mayonnaise and Salad Dressing
4.9. Paint, Varnish, and Lacquers—Nonaerosol
4.11. Peat Moss
4.12. Bark Mulch
4.15. Ice Cream Novelties

Chapter 5 Methods of Test for Packages Labeled by Count, Length, Area, Thickness, or Combinations of Quantities

5.4. Polyethylene Sheeting
5.5. Paper Plates
5.6. Sanitary Paper Products
5.7. Pressed and Blown Glass Tumblers and Stemware

Appendix D: Package Net Contents Regulations

D.1.1. U.S. Department of Health and Human Services, Food and Drug Administration
D.1.3. Federal Trade Commission
D.1.4. Environmental Protection Agency
D.1.5. U.S. Department of the Treasury, Bureau of Acohol, Tobacco, and Firearms

§ 317.20 Scale requirements for accurate weights, repairs, adjustments, and replacement after inspection.

(a) All scales used in federally inspected meat establishments used for weighing of meat and poultry products shall be installed, maintained and operated to insure accurate weights. Such scales shall meet the applicable requirements contained in National Bureau of Standards' Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices," 1989 Edition,

Washington, DC: U.S. Government Printing Office, published September 1988, which is incorporated by reference. (These materials are incorporated as they exist on the date of approval. Copies may be purchased for under $20.00 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is also available for inspection at the Office of the Federal Register Information Center, Room 8401, 1100 L Street NW., Washington, DC 20408 or the FSIS Hearing Clerk, Room 3171, South Building, Food Safety and Inspection Service, USDA, 14th Street and Independence Avenue, SW., Washington, DC 20250).

(b) All scales used to weigh meat products sold or otherwise distributed in commerce or in States designated under section 301(c) of the Federal Meat Inspection Act, shall be of sufficient capacity to weigh the entire unit and/or package.

(c) No scale shall be used at a federally inspected establishment to weigh meat products, unless it has been found upon test and inspection, as specified in NBS Handbook 44, to provide accurate weight. If a scale is inspected or tested and found to be inaccurate, or if any repairs, adjustments or replacements are made to a scale, it shall not be used until it has been inspected and tested by a USDA official and it must meet all accuracy requirements as specified in NBS Handbook 44.

§ 317.21 Scales: testing of.

(a) The operator of each official establishment that weighs meat food products shall cause such scales to be tested for accuracy in accordance with the technical requirements of NBS Handbook 44, at least once during the calendar year. In cases where the scales are found not to maintain accuracy between tests, more frequent tests may be required and monitored by an appropriate USDA program official.

(b) The operator of each official establishment shall display on or near each scale a valid certification of the scale's accuracy from a State or local government's Weights and Measures authority or shall have a USDA approved net weight program under a Total Quality Control System or Partial Quality Control Program in accordance with § 318.4 of this subchapter.

§ 317.22 Handling of failed product.

Any lot of product which is found to be out of compliance with net weight requirements upon testing in accordance with § 317.19 shall be handled as follows:

(a) A lot tested in an official establishment and found not to comply with net weight requirements may be reprocessed and must be reweighed and remarked to satisfy the net weight requirements of this section and be reinspected, in accordance with the requirements of this Part.

(b) A lot tested outside of an official establishment and found not to comply with net weight requirements must be reweighed and remarked with a proper net weight statement, provided that such reweighing and remarking shall not deface, cover, or destroy any other marking or labeling required under this subchapter and the net quantity of contents is shown with the same prominence as the most conspicuous feature of a label.

PART 381—[AMENDED]

4. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*)

5. Section 381.121 (9 CFR 381.121) would be amended by revising the first sentence of paragraph (a), revising paragraph (b), adding a new sentence to the end of paragraph (c)(1), adding a new sentence to the end of paragraph (c)(5), revising paragraphs (c)(6) and (c)(9), and adding new paragraph (c)(10). These changes will read as follows:

§ 381.121 Quantity of contents.

(a) The label shall bear a statement of the quantity of contents in terms of weight or measures as provided in paragraph (c)(5) of this section. * * *

(b) When a poultry product and a nonpoultry product are separately wrapped and are placed in a single immediate container bearing the same name of both products, the net weight on such immediate container may be the total net weight of the products, or such immediate container may show the net weights of the poultry product and the nonpoultry product separately. Notwithstanding the other provisions of this paragraph, the label on consumer size retail packages of stuffed poultry and other stuffed poultry products must show the total net weight of the poultry product, and in close proximity thereto, a statement specifying the minimum weight of the poultry in the product.

(c)(1) * * * An unused tare weight, as defined in § 381.121b, may be printed adjacent to the statement of net quantity of contents when the product is packaged totally with impervious packaging material and is packed with a usable medium.

* * * * *

(5) * * * Paragraphs (c) (8) and (9) of this section permit certain exceptions of this paragraph (c)(5) for multi-unit packages, and random weight and small packages (less than ½ ounce), respectively.

(6) The statement as it is shown on a label shall not be false or misleading and shall express an accurate statement of the quantity of contents of the container. Reasonable variations caused by loss or gain of moisture during the course of good distribution practices or by unavoidable deviations in good manufacturing practice will be recognized. Variations from stated quantity of contents shall be as provided in § 381.121b. The statement shall not include any term qualifying a unit of weight, measure, or count such as "jumbo quart," "full gallon," "giant quart," "when packed," "minimum," or words of similar importance except as provided in paragraph (b) of this section.

* * * * *

(9) The following exemptions from the requirements contained in this section are hereby established:

(i) Individually wrapped random weight consumer size packages of poultry products (as specified in subparagraph (10)) and poultry products that are subject to shrinkage through moisture loss during good distribution practices and are designated as gray area type of products as defined in NBS Handbook 133, § 3.18.2, need not bear a net weight statement when shipped from an official establishment provided a net weight shipping statement which meets the requirements of paragraph (c)(6) is applied to the shipping container prior to shipping it from the official establishment. Net weight statements so applied are exempt from the type, dual declaration, and placement requirements of this paragraph (c), if an accurate statement of net weight is shown conspicuously on the principal display panel of the container;

(ii) Individually wrapped and labeled packages of less than ½ ounce net weight and random weight consumer size packages shall be exempt from the requirements of this paragraph (c) if they are in a shipping container and the statement of net quantity of contents on the shipping container meets the requirements of this paragraph (c)(6);

(iii) Individually wrapped and labeled packages of less than ½ ounce net weight bearing labels declaring net weight, price per pound, and total price, shall be exempt from the type size, dual declaration, and placement requirements of this paragraph (c), if an accurate statement of net weight is

shown conspicuously on the principal display panel of the package.

(10) As used in this section a "random weight consumer size package" is one which is one of a lot, shipment or delivery of packages of the same product, with varying weights and with no fixed weight pattern.

6. New §§ 381.121a–381.121e (9 CFR 381.121a–381.121e) would be added to Part 381, and the Table of Contents would be amended accordingly, to read as follows:

Sec.
381.121a Quantity of contents labeling.
381.121b Definitions and procedures for determining net weight compliance.
381.121c Scale requirements for accurate weights, repairs, adjustments, and replacement after inspection.
381.121d Scales: Testing of.
381.121e Handling of failed product.

§ 381.121a Quantity of contents labeling.

Sections 381.121a through 381.121e of this Part prescribe the procedures to be followed for determining net weight compliance and prescribe the reasonable variations from the declared net weight on the labels of immediate containers of products in accordance with § 381.121 of this Part.

§ 381.121b Definitions and procedures for determining net weight compliance.

(a) For the purpose of §§ 381.121b of this Part, the reasonable variations allowed, definitions, and procedures to be used in determining net weight and net weight compliance are described in the National Bureau of Standards' (NBS) Handbook 133, "Checking The Contents of Packaged Goods," Washington, DC: U.S. Government Printing Office, published September 1988, third edition, which is incorporated by reference, with the exception of the Handbook 133 requirements listed in paragraph (b) below. Those provisions incorporated by reference herein, are considered mandatory requirements. (These materials are incorporated as they exist on the date of approval. Copies may be purchased for under $20.00 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is also available for inspection at the Office of the Federal Register Information Center, Room 8401, 1100 L Street NW., Washington, DC 20408.).

(b) The following Handbook 133 requirements are not incorporated by reference.

Chapter 2 General Considerations

2.13.1 Polyethylene Sheeting and Film
2.13.2 Textiles
2.13.3 Mulch

Chapter 3 Methods of Test for Packages Labeled by Weight

3.11. Aerosol Packages
3.14. Glazed Raw Seafood and Fish
3.15. Canned Coffee
3.16. Borax
3.17. Flour

Chapter 4 Methods of Test for Packages Labeled by Volume

4.7. Milk
4.8. Mayonnaise and Salad Dressing
4.9. Paint, Varnish, and Lacquers—Nonaerosol
4.11. Peat Moss
4.12. Bark Mulch
4.15. Ice Cream Novelties

Chapter 5 Methods of Test for Packages Labeled by Count, Length, Area, Thickness, or Combinations of Quantities

5.4. Polyethylene Sheeting
5.5. Paper Plates
5.6. Sanitary Paper Products
5.7. Pressed and Blown Glass Tumblers and Stemware

Appendix D: Package Net Contents Regulations

D.1.1 U.S. Department of Health and Human Services, Food and Drug Administration
D.1.3. Federal Trade Commission
D.1.4. Environmental Protection Agency
D.1.5. U.S. Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms

§ 381.121c Scale requirements for accurate weights, repairs, adjustments, and replacement after inspection.

(a) All scales used in federally inspected poultry plants used for weighing of meat and poultry products shall be installed, maintained, and operated to insure accurate weights. Such scales shall meet the applicable requirements contained in National Bureau of Standards Handbook 44, "Specifications, Tolerances and Other Technical Requirements for Weighing and Measuring Devices," 1989 Edition, Washington, DC: U.S. Government Printing Office, published September 1988, which is incorporated by reference. (These materials are incorporated as they exist on the date of approval. A notice of any change in the Handbook cited herein will be published in the **Federal Register.** Copies may be purchased for under $20.00 from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is also available for inspection at the Office of the Federal Register Information Center, Room 8401, 1100 L Street NW., Washington, DC 20408 or the FSIS Hearing Clerk, Room 3171, South Building, Food Safety and Inspection Service, USDA, 14th Street and Independence Avenue SW., Washington, DC 20250.)

(b) All scales used to weigh poultry products sold or otherwise distributed in commerce or in States designated under section 5(c) of the Poultry Products Inspection Act, shall be of sufficient capacity to weigh the entire unit and/or package.

(c) No scale shall be used at a federally inspected establishment to weigh poultry products, unless it has been found upon test and inspection, as specified in NBS Handbook 44, to provide accurate weight. If a scale is inspected or tested and found to be inaccurate, or if any repairs, adjustments, or replacements are made to a scale, it shall not be used until it has been inspected and tested by a USDA official and it must meet all accuracy requirements, as specified in NBS Handbook 44.

§ 381.121d Scales: Testing of.

(a) The operator of each official establishment that weighs poultry products shall cause such scales to be tested for accuracy in accordance with the technical requirements of NBS Handbook 44, at least once during the calendar year. In cases where the scales are found not to maintain accuracy between tests, more frequent tests may be required and monitored by an appropriate USDA program official.

(b) The operator of each official establishment shall display on or near each scale, a valid certification of the scale's accuracy from a State or local government's weights and measures authority or shall have a USDA approved net weight program under a Total Quality Control System or Partial Quality Control Program in accordance with § 381.145 of this subchapter.

§ 381.121e Handling of failed product.

Any lot of product which is found to be out of compliance with net weight requirements upon testing in accordance with § 381.121b shall be handled as follows:

(a) A lot tested in an official establishment and found not to comply with net weight requirements may be reprocessed and must be reweighed and remarked to satisfy the net weight

requirements of this section and be reinspected, in accordance with the requirements of this Part.

(b) A lot tested outside of an official establishment and found not to comply with net weight requirements must be reweighed and remarked with a proper net weight statement, provided that such reweighing and remarking shall not deface, cover, or destroy any other marking or labeling required under this subchapter and the net quantity of contents is shown with the same prominence as the most conspicuous feature of a label.

Done at Washington, DC, on: January 12, 1989.

Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 89-5085 Filed 3-3-89; 8:45 am]

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Monday
March 6, 1989

Part VII

Environmental Protection Agency

Proposed Amendments to the Guidelines for the Health Assessment of Suspect Developmental Toxicants; Request for Comments; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3532-9]

Proposed Amendments to the Guidelines for the Health Assessment of Suspect Developmental Toxicants

AGENCY: U.S. Environmental Protection Agency.

ACTION: Request for comments on the Proposed Amendments to the Guidelines for the Health Assessment of Suspect Developmental Toxicants.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is today proposing amendments to the Guidelines for the Health Assessment of Suspect Developmental Toxicants that were issued on September 24, 1986 (51 FR 34028–34040) (hereafter "current guidelines").

These proposed amendments are intended to expand Agency guidance on the analysis of developmental toxicity data in accordance with appropriate scientific standards and with the policies and procedures established in the statutes administered by the EPA. The proposed amendments were developed as part of an interoffice guidelines development program under the auspices of the Agency's Risk Assessment Forum. The proposed amendments are based, in part, on recommendations developed in scientific workshops.

The public is invited to comment and public comments will be considered in final Agency decisions on amending the current guidelines. Commentors are asked to focus on several special issues, particularly, (1) a proposed new weight-of-evidence scheme and its use, and (2) the advantages and disadvantages of using this scheme only for hazard identification versus using it in conjunction with dose-response and exposure assessment information. Also, comments are invited on the use of the special term "reference dose for developmental toxicity (RfD_{DT})." The term RfD_{DT} is used to distinguish the time-limited reference dose for exposure during development from the reference dose (RfD), which generally refers to chronic exposure situations.

The proposed amendments are individually identified and explained in the Supplementary Information section of this notice. The full text of the proposed guidelines is published in the following section. As used in this notice, the term "proposed guidelines" refers to the current guidelines as modified by the proposed amendments. The request for comment applies only to the proposed amendments, but EPA will also consider any important new scientific information bearing on the proposed guidelines as a whole.

EPA's Science Advisory Board (SAB) also will review the proposed amendments at a meeting to be announced in a future FEDERAL REGISTER. Agency staff will prepare summaries of the public and SAB comments, analyses of major issues presented by commentors, and Agency responses to those comments. Appropriate comments will be incorporated, and the amended guidelines will be submitted to the Risk Assessment Forum and the Risk Assessment Council for review. The Risk Assessment Council will consider comments from the public, the SAB, and the Risk Assessment Forum in its recommendations to the EPA Administrator.

DATE: Public comments must be postmarked by June 5, 1989.

ADDRESS: Comments may be mailed or delivered to: Dr. Carole A. Kimmel, Reproductive and Developmental Toxicology Branch, Human Health Assessment Group, Office of Health and Environmental Assessment (RD–689), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Dr. Carole A. Kimmel, Telephone: 202–382–7331.

Inspection and Copies: This notice, references, supporting documents, and other relevant materials are available for inspection and copying at the Public Information Reference Unit, (202) 382–5926, EPA Headquarters Library, 401 M Street, SW., Washington, DC, between the hours of 8:00 a.m. and 4:30 p.m.

SUPPLEMENTARY INFORMATION: In 1984–85, the Agency proposed risk assessment guidelines for carcinogenicity, exposure assessment, mutagenicity, developmental toxicity (49 FR 46294–46331), and chemical mixtures (50 FR 1170–1176). Following extensive scientific and public review, final guidelines were issued on September 24, 1986 (51 FR 33992–34054). Each of the guidelines set forth principles and procedures to guide EPA scientists in the conduct of Agency risk assessments, to help promote high scientific quality and Agency-wide consistency, and to inform Agency decision makers and the public about these scientific procedures.

In publishing this guidance, EPA emphasized that one purpose of its risk assessment guidelines was to "encourage research and analysis that will lead to new risk assessment methods and data," which in turn would be used to revise and improve the guidelines, and better guide Agency risk assessors. Thus, each of the 1986 risk assessment guidelines was developed and published with the understanding that risk assessment is an evolving science and that continued study could lead to changes.

As expected, Agency experience with the current Guidelines for the Health Assessment of Suspect Developmental Toxicants suggests that additional or alternate approaches should be considered for certain aspects of these guidelines. Proposals to amend the current guidelines were considered soon after their publication in September 1986 because of new reviews or re-evaluations that focused on some of the issues identified for research in the guidelines. These included several workshops and symposia cited in the Introduction to the current guidelines. In addition, much experience has been gained in using these guidelines and in instructing others in their use. Based on this experience, the proposed amendments are designed to clarify certain aspects of the current guidelines, and the terminology has been updated to be consistent with that used in other Agency guidance.

As outlined below, some of the changes involve substantive revisions to the current guidelines, while others simply clarify or reorganize current provisions. The remainder of the notice publishes the full text of the proposed guidelines, that is, the current guidelines as modified by the proposed amendments.

Overview of Proposed Amendments

The major proposed amendments include stronger statements concerning guidance on evaluating maternal and developmental toxicity based on EPA's 1987 workshop on this topic, particularly about the inter-relationship between these end points (see Reference 3 in Section VII of the proposed guidelines). A major innovation for the proposed guidelines is a weight-of-evidence scheme for developmental toxicants (Section III.D) which was developed in a 1987 EPA workshop by experts from within and outside the Agency.

Lesser changes in the proposed guidelines include a change in the title from "Guidelines for the Health Assessment of Suspect Developmental Toxicants" to "Proposed Guidelines for Developmental Toxicity Risk Assessment." In addition, three other sections have been revised: the Human Studies section (Section III.B) was reoriented more towards risk assessment than study design; and the Dose-Response and Risk

Characterization sections (Sections IV and VI) were reorganized so that information on the NOAEL/uncertainty factor approach and low-dose extrapolation are contained in the Dose-Response section (Section IV), and the margin of exposure (MOE) approach is contained in the Risk Characterization section (Section VI).

One other proposed change is the introduction of the term RfD_{DT} for the reference dose for developmental toxicity derived from dividing the NOAEL by an uncertainty factor. This is to distinguish the developmental toxicity reference dose (RfD_{DT}), which is based on a short-term exposure as occurs in most developmental toxicity studies, from the RfD, which the Agency derives based on a chronic or sometimes a subchronic exposure scenario. These and other proposed changes are discussed further by section.

Section I. Introduction

This section gives the general background information on developmental toxicity risk assessment and the magnitude of the potential for developmental toxicity problems in the general population. In the current guidelines, EPA provides the general basis for the use of data from animal studies in estimating human risk, but does not describe the assumptions generally made in this process.

The primary proposed amendment in this section is a statement of the basic assumptions made in the risk assessment process for developmental toxicity, e.g., an agent that produces an adverse developmental effect in experimental animal studies is assumed to pose a potential hazard to humans, and all four possible manifestations of developmental toxicity (i.e., death, structural abnormality, growth alteration, functional deficit) are of concern for risk assessment. The assumption of a threshold is stated, although this assumption is currently being discussed in the literature, as indicated in the proposed amendments. These assumptions help to more clearly identify the basis for the Agency's approach to risk assessment described in the proposed guidelines. In addition, some background information and references have been revised.

Section II. Definitions and Terminology

This section sets forth the definitions of particular terms that are widely used in the field of developmental toxicology. These include special terms such as "developmental toxicity," "altered growth," "malformations," and "variations."

The only proposed amendment in this section is the deletion of the terms "embryotoxicity" and "fetotoxicity." Because ambiguities in these terms have led to confusion and misuse, they are not used in the proposed guidelines. Thus, use of the term "developmental toxicity," which is a broader term, is encouraged and ambiguities are eliminated.

Section III. Hazard Identification of Developmental Toxicants

This section describes the study designs used in animal studies and the evaluation and interpretation of end points. In the current guidelines the title of this section includes the term "qualitative assessment." Also, this section recommends that other EPA risk assessment guidelines be used when carcinogenic or mutagenic effects from developmental exposures are of concern.

The proposed heading for this section no longer includes the term "qualitative assessment," since hazard identification for developmental toxicity also includes some evaluation of the dose-response nature of an effect. This change is proposed because the distinction in the current guidelines between qualitative and quantitative assessment has proved to be unsatisfactory and is not made in actual practice when using the guidelines to assess developmental toxicity data.

The discussion of potential carcinogenic effects following development exposure is proposed to be expanded somewhat, as are the statements on potential mutational events. These changes would emphasize the importance of considering potential carcinogenic and mutagenic effects resulting from developmental exposures. More extensive information on conducting risk assessments for these types of effects is provided in the Guidelines for Carcinogen Risk Assessment (51 FR 33992) or the Guidelines for Mutagenicity Risk Assessment (51 FR 34006).

A. Laboratory Animal Studies of Developmental Toxicity: End Points and Their Interpretation

This section provides general information on the protocols typically used to assess developmental toxicity.

There are no proposed amendments to this section.

A.1. End Points of Maternal Toxicity.

This section describes the types of maternal end points evaluated in developmental toxicity studies and provides guidance for the hazard assessment.

The proposed amendments to this section include the addition of support from adverse histopathology findings to the use of alterations in organ weights as a sign of maternal toxicity. This change would indicate more clearly the basis fof the use of maternal organ changes as signs of maternal toxicity.

A.2. End Points of Developmental Toxicity.

This section describes the types of developmental end points evaluated in developmental toxicity studies and provides guidance for the hazard assessment.

There are no proposed amendments to this section.

A.3. Functional Developmental Toxicology.

This section provides information on the state-of-the-art in the evaluation of functional effects resulting from developmental exposures. Developmental neurotoxicity is briefly reviewed, along with other areas of functional evaluation. Since the publication of the current guidelines in 1986, specific testing in this area has been proposed or required by the Agency for certain agents.

The proposed amendments to this section reflect the current regulatory status for developmental neurotoxicity testing in the Agency. The Office of Toxic Substances (OTS) recently proposed developmental neurotoxicity testing guidelines and finalized at least one test rule requiring such testing (see Reference 28 in Section VII of the proposed guidelines). In addition, the Science Advisory Panel for the Office of Pesticide Programs (OPP) has approved the development of testing guidelines for developmental neurotoxicity. The proposed amendments note these activities and identify the proposed bases for OPP and OTS requirements for such testing.

A.4. Overall Evaluation of Maternal and Developmental Toxicity.

This section discusses the relationship of maternal and developmental toxicity and the evaluation of developmental toxicity data in the presence of maternal toxicity. In the current guidelines, the statement is made that developmental effects at maternally toxic doses should not be discounted as being secondary to maternal toxicity.

A stronger statement is proposed in this section concerning the finding of developmental toxicity in the presence of maternal toxicity, i.e., when adverse developmental effects are produced only at maternally toxic doses, they are still considered to represent developmental toxicity and should not be discounted as being secondary to maternal toxicity.

Also, it is proposed that information be added on the importance of evaluating both maternal and developmental toxicity for the final characterization of risk as suggested by participants at the EPA-sponsored workshop on "The Evaluation of Maternal and Developmental Toxicity." This would indicate that maternal toxicity (even in the absence of developmental toxicity) is an important end point to evaluate in the context of all available toxicity data.

A.5. Short-Term Testing in Developmental Toxicity.

This section summarizes in vivo and in vitro approaches to short-term testing for developmental toxicity. In the current guidelines, the Chernoff/Kavlock assay is described, but more recent work, including a NIOSH-sponsored conference on this testing procedure, has appeared in the literature.

The proposed amendment would update the section to include recent information on the Chernoff/Kavlock assay, in particular, that from the NIOSH-sponsored workshop on "Evaluation of the Chernoff/Kavlock Test for Developmental Toxicity."

A.6. Statistical Considerations.

This section describes approaches to the statistical evaluation of data from animal developmental toxicity studies and includes important issues of study design that affect interpretation of data.

There are no proposed amendments to this section.

B. Human Studies

This section describes the evaluation of human data for developmental toxic effects. In the current guidelines, this section discusses important considerations of study design and evaluation, but does not provide much guidance to the risk assessor on the relative importance of various types of human data.

The proposed amendments would reorganize and modify this section to give more specific information concerning the use of human data in risk assessment (e.g., greatest weight should be given to carefully designed epidemiologic studies with more precise measures of exposure; studies with a low probability of biased data should carry more weight in a risk assessment). These revisions would make this section consistent with similar sections in the Proposed Guidelines for Assessing Male Reproductive Risk and Female Reproductive Risk.

C. Other Considerations

This section discusses the importance of pharmacokinetic data and structure-activity considerations, if available, in the risk assessment of developmental toxicants.

There are no proposed amendments to this section.

D. Weight-of-Evidence Determination

This section describes the important considerations in determining the relative weight of various kinds of experimental and/or human evidence in estimating the risk of development toxicity in humans. In the current guidelines, various factors are listed as being important, but there is no systematic procedure for categorizing the level of confidence in the available data.

A weight-of-evidence scheme is proposed that defines three levels of confidence for data used to identify developmental hazards and to assess the risk of human developmental toxicity. The language used in the scheme is intentionally broad to allow for scientific judgment in classifying data using this scheme, and classification of agents using this scheme would require experience with developmental toxicity data. The intent of the discussion is that the scheme would not be used in isolation, but would be the first step that must be combined with information on dose-response and exposure for the final characterization of risk.

IV. Dose-Response Assessment

This section describes the evaluation of the dose-response data from developmental toxicity studies. In the current guidelines, certain terminology (e.g., NOEL, LOEL) is used in a way that is no longer consistent with its usage in other Agency guidance. In addition, certain topics (e.g., the margin of safety, now termed the margin of exposure) that are discussed as dose-response issues in the current guidelines are treated as risk characterization issues in other Agency guidance.

The proposed heading for this section no longer includes the term "quantitative assessment," since a sharp separation between qualitative and quantitative assessment in the current guidelines is not made in practice. Dose-Response Assessment is Section IV.A. in the current guidelines.

The proposed amendments to this section incorporate terminology (e.g., NOAEL, LOAEL, RfD) that would make the proposed guidelines consistent with other Agency guidance. The section discusses the identification of the NOAEL/LOAEL, the factors used in establishing the appropriate uncertainty factor, and the calculation of the RfD_{DT}. These proposed changes would also be consistent with the way in which chronic RfDs are calculated. However, in the proposed guidelines, the term RfD_{DT}, based on short-term exposure, is introduced to distinguish it from the general RfD. An updated discussion of the status of mathematical approaches for dose-response modeling and low-dose extrapolation for developmental toxicity is also included.

V. Exposure Assessment

This section describes the issues of concern for developmental toxicity in the estimation of the human exposure levels. In the current guidelines, this section includes information related to human exposure-effect relationships that is actually more closely related to determining dose-effect relationship in humans.

The proposed amendments to this section, Section IV.B. in the current guidelines, include transferring some guidance from the section on determining human exposure-effect relationships to Section IV (Dose-Response Assessment) since this discussion is more involved with dose-response assessment in humans. The remaining information in this section focuses primarily on the special considerations concerning exposure assessment for developmental toxicity. Another proposed change in this section would more clearly indicate that since a single exposure at the critical time in development is sufficient to produce an adverse developmental effect, the human exposure estimate used to calculate the margin of exposure is usually based on a single dose that is not adjusted for duration of exposure, and the number of exposures is not considered important unless there is evidence for a cumulative effect.

VI. Risk Characterization

This section describes the summarization of all the toxicology and exposure data in the final stage of the risk assessment process. In the current guidelines, this section also includes a discussion of mathematical approaches to quantitative risk assessment.

The proposed amendments to the risk characterization section, Section IV.C. in the current guidelines, include a discussion of the Margin of Exposure approach. The discussion of dose-response models and risk extrapolation procedures has been moved to Section IV, Dose-Response Assessment in the proposed guidelines.

VII. References

This section includes a full list of references for the proposed guidelines and is Section V in the current

guidelines. Appropriate reference changes and additions have been made to conform to the proposed amendments.

Date: February 23, 1989.

John A. Moore,

Chairman, Risk Assessment Council.

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Proposed Guidelines for Developmental Toxicity Risk Assessment

I. Introduction

A. General

These Proposed Guidelines for Developmental Toxicity Risk Assessment (hereafter Guidelines) describe the procedures that the U.S. Environmental Protection Agency (EPA) will follow in evaluating potential developmental toxicity associated with human exposure to environmental toxicants. The Agency has sponsored or participated in several conferences that addressed issues related to such evaluations and that provided some of the scientific basis for these risk assessment Guidelines (1–6). The Agency's authority to regulate substances that have the potential to interfere adversely with human development is derived from a number of statutes that are implemented through multiple offices within the EPA. The procedures described herein are intended to promote consistency across program offices within the Agency in the assessment of developmental toxic effects.

The developmental toxicity assessments prepared pursuant to these Guidelines will be used with the requirements and constraints of the applicable statutes to arrive at regulatory decisions concerning developmental toxicity. These Guidelines provide a general format for analyzing and organizing the available data for conducting risk assessments. The Agency previously has issued testing guidelines (7, 8) that provide protocols designed to determine the potential of a test substance to induce structural and/or other adverse effects in the developing conceptus. These risk assessment Guidelines do not change any statutory or regulatory prescribed standards for the type of data necessary for regulatory action, but rather provide guidance for the interpretation of studies that follow the testing guidelines, and in addition, provide limited information for the interpretation of other studies (e.g., epidemiologic data, functional developmental toxicity studies, and short-term tests) that are not routinely required, but may be encountered when reviewing data on particular agents.

The National Research Council (9) has defined risk assessment as being comprised of some or all of the following components: hazard identification, dose-response assessment, exposure assessment, and risk characterization. In general, the process of assessing the risk of human developmental toxicity may be adapted to this format. However, the components of this format should not be considered in isolation. Instead, an appreciation of the potential for risk and the consequences of exposure can come only from consideration of the integration of all four components. Each component contributes to the final assessment of risk.

Hazard identification involves the evaluation of all available experimental animal and human data to determine if an agent is likely to cause developmental toxicity. In considering developmental toxicity, these Guidelines will address not only structural abnormalities, but also fetal and neonatal death, growth alteration, and functional abnormalities that may result from developmental exposure to environmental agents.

The dose-response assessment defines the relationship of the dose of an agent to the occurrence of developmentally toxic effects. According to the National Research Council (9), this component would usually include extrapolation from high to low doses and from experimental animals to humans. Since at present there are no mathematical extrapolation models that are generally accepted for developmental toxicity, uncertainty factors are applied to the no observed adverse effect level (NOAEL) to derive a reference dose for developmental toxicity (RfD_{DT}). The RfD_{DT} is based on a short duration of exposure as is typically used in developmental toxicity studies in experimental animals. The use of the term RfD_{DT} distinguishes it from the reference dose (RfD) which refers to chronic exposure situations (10). This approach is discussed further in these Guidelines (Section IV). Potential mathematical models are being evaluated by the Agency for application to data in this area (5).

The exposure assessment identifies populations exposed to an agent, describes their composition and size, and presents the types, magnitudes, frequencies, and durations of exposure to the agent. The exposure assessment provides an estimate of human exposure levels from all potential sources.

In risk characterization, the exposure assessment and the hazard identification and dose-response assessment are combined to estimate some measure of the risk of developmental toxicity. Here the NOAEL and the estimated human exposure levels may be compared to provide a margin of exposure (MOE). As part of risk characterization, a summary of the strengths and weaknesses in each component of the risk assessment are presented along with major assumptions, scientific judgments, and, to the extent possible, qualitative and quantitative estimates of the uncertainties. The weight-of-evidence determination should always be presented in conjunction with information on dose-response and, if available, the human exposure estimate.

Risk assessment is just one component of the regulatory process and defines the adverse health consequences of exposure to a toxic agent. The other component, risk management, combines the risk assessment with the directives of the enabling regulatory legislation, together with socioeconomic, technical, political, and other considerations, to reach a decision as to whether to control future exposure to the suspected toxic agent and, if so, the level of control. The acceptability of the uncertainty factor or the margin of exposure and risk management decisions, but the scientific bases for establishing these values are discussed here.

B. Background

The background incidence of developmental defects in the human population is quite large. For example, Hertig (11) estimated that approximately 50% of human conceptuses fail to reach term; Wilcox (12), using biochemical techniques for detecting pregnancy as early as 9 days postconception, observed that 35% of pregnancies ended in an embryonic or fetal loss. Approximately 3% of newborn children are found to have one or more significant congenital malformations at birth, and by the end of the first postnatal year, about 3% more are found to have serious developmental defects (13). Of these, it is estimated that 20% are of known genetic transmission, 10% are attributable to known environmental factors, and the remainder result from unknown causes (14). Also, approximately 7.4% of children are reduced in weight at birth (i.e., below 2500 g) (15).

Close to one-half of the children in hospital wards are there because of prenatally acquired malformations (16). The Centers for Disease Control recently evaluated the enormity of the problem of developmental disabilities in the United States. Among all races, congenital anomalies, sudden infant death syndrome, and prematurity combined account for more than 50% of infant mortality in the United States (17). In addition, among the leading causes of estimated years of potential life lost (YPLL) before the age of 65, congenital anomalies ranks fifth, prematurity ranks sixth, and sudden infant death syndrome ranks seventh (18). The YPLL estimates may actually underestimate the public health impact of congenital anomalies because statistics on the following may not be represented (19): (1) Anomalies in infants who die shortly after birth may not be diagnosed and death may not be attributed to congenital anomalies; (2) YPLL estimates are based only on live births and therefore do not take into account the number of fetuses with anomalies that were spontaneously aborted or infants that were stillborn; (3) with prenatal diagnoses of chromosomal abnormalities and neural tube defects, pregnancies may be terminated and thus these statistics are not represented in the YPLL estimates.

Exposure to agents affecting development can result in any one or more of four possible manifestations (death, structural abnormality, growth alteration, and/or functional deficit). Therefore, assessment efforts should encompass a wide array of adverse developmental end points, such as spontaneous abortions, stillbirths, malformations, early postnatal mortality, reduced birth weight, and other adverse functional or physical changes that are manifested postnatally.

Numerous agents have been shown to be developmental toxicants in animal test systems (16). Several of them have also been shown to be the cause of adverse developmental effects in humans, including alcohol, aminopterin, busulfan, chlorobiphenyls, diethylstilbestrol, isotretinoin, lead, organic mercury, thalidomide, and valproic acid (13, 20, 21). Although a number of agents found to be developmental toxicants in experimental animal studies have not shown clear evidence of hazard in humans, the available human data are inadequate to determine a cause and effect relationship. Comparisons of human and experimental animal data have been made for a limited number of agents that are human developmental toxicants (22–24). In these comparisons, there was almost always qualitative concordance of effects between humans and at least one species tested; also, the minimally effective dose (MED) for the most sensitive animal species was approximately 0.5 to 100 times the human MED, not accounting for differences in the incidence of effect at the MED. Thus, there is some basis for estimating the risk of exposure to human development based on data from animal studies.

However, there are a number of unknowns in the extrapolation of data from animal studies to humans. Therefore, a number of assumptions must be made which are generally applied. These assumptions are the bases for the approaches taken to risk assessment in these Guidelines.

First, an agent that produces an adverse developmental effect in experimental animal studies is assumed to pose a potential hazard to humans following exposure during development. This assumption is based on the comparisons of data for known human developmental toxicants (22–24). In almost all cases, the experimental animal data would have predicted a developmental effect in humans.

It is assumed that all of the four manifestations of developmental toxicity (death, structural abnormalities, growth alterations, and functional deficits) are of concern. In the past, there has been a tendency to consider only malformations or malformations and death as end points of concern. From the data on agents that are known human developmental toxicants (22–24), there is usually at least one experimental species that mimics the types of effects seen in humans, but in other species tested, the type of developmental perturbation may be different. Thus, the appearance of any of the four manifestations is considered indicative of an agent's potential for disrupting development and producing a developmental hazard.

It is assumed that the types of developmental effects seen in animal studies are not necessarily the same as those that may be produced in humans. This assumption is made because it is impossible to determine which will be the most appropriate species in terms of predicting the specific types of effects seen in humans. The fact that every species may not react in the same way is probably due to species—specific differences in critical periods, metabolism, developmental patterns, or mechanisms of action.

It is assumed that the most sensitive species should be used to estimate human risk. When data are available (e.g., pharmacokinetic, metabolic) to suggest the most appropriate species, that species will be used for extrapolation. In the absence of such data, the most sensitive species is used, based on the fact that for the majority of known human developmental toxicants, humans are as sensitive or more so than the most sensitive animal species (22–24).

In general, a threshold is assumed for the dose-response curve for most developmental toxicants. This is based on the known capacity of the developing organism to compensate for or to repair a certain amount of damage at the cellular, tissue, or organ level. In addition, because of the multipotency of cells at certain stages of development, multiple insults at the molecular or cellular level may be required to produce an effect on the whole organism. There are uncertainties concerning this assumption that are being discussed currently in the literature (25, 26).

II. Definitions and Terminology

The Agency recognizes that there are differences in the use of terms in the field of developmental toxicology. For the purposes of these Guidelines the following definitions and terminology will be used.

Developmental toxicology. The study of adverse effects on the developing organism that may result from exposure prior to conception (either parent), during prenatal development, or postnatally to the time of sexual maturation. Adverse developmental effects may be detected at any point in

the life span of the organism. The major manifestations of developmental toxicity include: (1) Death of the developing organism, (2) structural abnormality, (3) altered growth, and (4) functional deficiency.

Altered Growth. An alteration in offspring organ or body weight or size. Changes in one end point may or may not be accompanied by other signs of altered growth (e.g., changes in body weight may or may not be accompanied by changes in crown-rump length and/or skeletal ossification). Altered growth can be induced at any stage of development, may be reversible, or may result in a permanent change.

Functional Developmental Toxicology. The study of alterations or delays in functional competence of the organism or organ system following exposure to an agent during critical periods of development pre- and/or postnatally.

Malformations and Variations. A malformation is usually defined as a permanent structural change that may adversely affect survival, development, or function. The term teratogenicity, which is used to describe these types of structural abnormalities, will be used in these Guidelines to refer only to structural defects. A variation is used to indicate a divergence beyond the usual range of structural constitution that may not adversely affect survival or health. Distinguishing between variations and malformations is difficult since there exists a continuum of responses from the normal to the extreme deviant. There is no generally accepted classification of malformations and variations. Other terminology that is often used, but no better defined, includes anomalies, deformations, and aberrations.

III. Hazard Identification of Developmental Toxicants

Developmental toxicity is expressed as one or more of a number of possible end points that may be used for evaluating the potential of an agent to cause abnormal development. The four types of effects on the conceptus that may be produced by developmental exposure to toxicants include death, structural abnormality, altered growth, and functional deficits. Of these, all four types of effects have been evaluated in human studies, but only the first three are traditionally measured in laboratory animals using the conventional developmental toxicity (also called teratogenicity or Segment II) testing protocol as well as in other study protocols, such as the multigeneration study. Although functional deficits have been shown to occur subsequent to developmental exposures in humans, such effects seldom have been evaluated in routine testing studies in experimental animals. However, functional evaluations are beginning to be examined under certain regulatory situations (27, 28).

Carcinogenic effects of developmental exposures have occurred in humans resulting from the use of diethylstilbestrol for the maintenance of pregnancy (29). Several agents have been shown to cause cancer following developmental exposures in experimental animals, and it appears from the data collected thus far that agents which are capable of causing cancer in adults may also cause transplacental or neonatal carcinogenesis (30). There is no way to predict whether adults or developing animals will be more sensitive to the carcinogenic effects of an agent. At present, testing for carcinogenesis following developmental exposure is not routinely required. However, if this type of effect is reported for an agent, it is considered appropriate to use the Guidelines for Carcinogen Risk Assessment (31) for assessing human risk. Mutational events also may occur as a result of exposure to developmental toxicants but may be difficult to discriminate from other possible mechanisms in standard studies of developmental toxicity. When mutational events are suspected from further experiments, the Guidelines for Mutagenicity Risk Assessment (32) should be consulted; however, these guidelines specifically address heritable and not somatic mutational risk.

A. Laboratory Animal Studies of Developmental Toxicity: End Points and Their Interpretation

This section will discuss the end points examined in routinely-used protocols as well as the use of other types of studies, including functional studies and short-term tests.

The most commonly used protocol for assessing developmental toxicity in laboratory animals involves the administration of a test substance to pregnant animals (usually mice, rats, or rabbits) during the period of major organogenesis, evaluation of maternal responses throughout pregnancy, and examination of the dam and the uterine contents just prior to term (7, 8, 33–35). Other protocols may use exposures of one to a few days to investigate periods of particular sensitivity for induction of anomalies in specific organs or organ systems (36). In addition, developmental toxicity may be evaluated in studies involving exposure of one or both parents prior to conception, of the conceptus during pregnancy and over several generations, or of offspring during the late prenatal and early postnatal periods (7, 8, 27, 28, 33–35, 37). These Guidelines are intended to provide information for interpreting developmental effects related to any of these types of exposure. Since many of the end points evaluated also are related to effects on the parental reproductive systems, these Guidelines should be used in conjunction with those published on assessing male and female reproductive risk (38, 39).

Study designs should include, at a minimum, a high dose, a low dose, and one intermediate dose. The high dose should produce some maternal or adult toxicity (i.e., a level which at the least produces marginal but significantly reduced body weight, weight gain, or specific organ toxicity, and at the most produces no more than 10% mortality). The low dose should demonstrate a NOAEL for adult and offspring effects. A concurrent control group treated with the vehicle used for agent administration should be included. The route of exposure is usually oral, although data from other routes may sometimes be useful, especially if supported by pharmacokinetic information. Test animals should be selected based on considerations of species, strain, age, weight, and health status, and should be randomized to dose groups in order to reduce bias and provide a basis for performing valid statistical tests.

The next three sections discuss individual end points of maternal and developmental toxicity as measured in the conventional developmental toxicity study and the multigeneration study, and, on occasion, in postnatal studies. Other end points specifically related to reproductive toxicity are covered in the relevant risk assessment guidelines (38, 39). The fourth section deals with the integrated evaluation of all data, including the relative effects of exposure on maternal animals and their offspring, which is important in assessing the level of concern about a particular agent. It should be noted that appropriate historical control data can be helpful in the interpretation of end points of maternal and developmental toxicity.

1. *End Points of Maternal Toxicity.* A number of end points that may be observed as possible indicators of maternal toxicity are listed in Table 1. Maternal mortality is an obvious end point of toxicity; however, a number of other end points can be observed which may give an indication of the subtle effects of an agent. For example, in well-conducted studies, the fertility and gestation indices provide information on

the general fertility rate of the animal stock used and are important indicators of toxic effects to adults if treatment begins prior to mating or implantation. Changes in gestation length may indicate effects on the process of parturition.

Table 1. End Points of Maternal Toxicity

Mortality
Fertility Index (no. with seminal plugs or sperm/no. mated)
Gestation Index (no. with implants/no. with seminal plugs or sperm)
Gestation Length (when allowed to deliver pups)
Body Weight
Day 0
During gestation
Sacrifice day
Body Weight Change
Throughout gestation
During treatment (including increments of time within treatment period)
Post-treatment of sacrifice
Corrected maternal (body weight change throughout gestation minus gravid uterine weight or litter weight at sacrifice)
Organ Weights (in cases of suspected specific organ toxicity and when supported by adverse histopathology findings)
Absolute
Relative to body weight
Food and Water Consumption (where relevant)
Clinical Evaluations
Types, incidence and duration of clinical signs
Enzyme markers
Clinical chemistries
Gross Necropsy and Histopathology

Body weight and the change in body weight are viewed collectively as indicators of maternal toxicity for most species, althought these end points may not be as useful in rabbits, because body weight changes in some strains of rabbits are not good indicators of pregnancy status. Body weight changes may provide more information than a daily body weight measured during treatment or during gestation. Changes in weight gain during treatment could occur that would not be reflected in the total weight change throughout gestation, because of compensatory weight gain that may occur following treatment but before sacrifice. For this reason, changes in weight gain during treatment can be examined as another indicator or maternal toxicity.

Changes in maternal body weight corrected for gravid uterine weight at sacrifice may indicate whether the effect is primarily maternal or fetal. For example, there may be a significant reduction in weight gain throughout gestation and in gravid uterine weight, but no change in corrected maternal weight gain which would generally indicate an intrauterine effect. Conversely, a change in corrected weight gain and no change in gravid uterine weight generally suggests maternal toxicity and little or not intrauterine effect. An alternate estimate of maternal weight change during gestation can be obtained by subtracting the sum of the weights of the fetuses. However, this weight does not include the uterine tissue, placental tissue, or the amniotic fluid.

Changes in other end points may also be important. For example, changes in relative and absolute organ weights may be signs of a maternal effect when an agent is suspected or causing specific organ toxicity and when such findings are supported by adverse histopathologic findings in those organs. Food and water consumption data are useful, especially if the agent is administered in the diet or drinking water. The amount ingested (total and relative to body weight) and the dose of the agent (relative to body weight) can then be calculated, and changes in food and water consumption related to treatment can be evaluated along with changes in body weight and body weight gain. Data on food and water consumption are also useful when an agent is suspected of affecting appetite, water intake, or excretory function. Clinical evaluations of toxicity may also be used as indicators of maternal toxicity. Daily clinical observations may be useful describing the profile or maternal toxicity. Enzyme markers and clinical chemistries may be useful indicators of exposure but must be interpreted carefully as to whether or not a change constitutes toxicity. Gross necropsy and histopathology data (when specified in the protocol) may aid in determining toxic dose levels. The minimum amount of information/data considered useful for evaluating maternal toxicity [as noted in the Proceedings of the Workshop on the Evaluation of Maternal and Developmental Toxicity (3)], includes: morbidity or mortality; maternal body weight and body weight gain; clinical signs of toxicity; food (and water, if dosing is via drinking water) consumption; and necropsy for gross evidence of organ toxicity. Maternal toxicity should be determined in the pregnant and/or lactating animal over an appropriate part of gestation and/or the neonatal period, and should not be assumed or extrapolated from other adult toxicity studies.

2. *End Points of Developmental Toxicity.* Because the maternal animal, and not the conceptus, is the individual treated during gestation, data generally should be calculated as incidence per litter or as number and percent of litters with particular end points. Table 2 indicates the way in which offspring and litter end points may be expressed.

Table 2. End Points of Developmental Toxicity

Litters with implants
No. implantation sites/dam
No. corpora lutea (CL)/dam [a]
Percent preimplantation loss (CL−implantations) × 100 [a]/CL
No. and percent live offspring [b]/litter
No. and percent resorptions/litter
No. and percent litters with resorptions
No. and percent late fetal deaths/litter
No. and percent nonlive (late fetal deaths + resorptions) implants/litter
No. and percent liters with nonlive implants
No. and percent affected (nonlive + malformed) implants/litter
No. and percent litters with affected implants
No. and percent litters with total resorptions
No. and percent stillbirths/litter
Litters with live offspring
No. and percent litters with live offspring
No. and percent live offspring/litter
Viability of offspring [c]
Sex ratio/litter
Mean offspring body weight/litter [c]
Mean male body weight/litter [c]
Mean female body weight/litter [c]
No. and percent externally malformed offspring/litter
No. and percent viscerally malformed offspring/litter
No. and percent skeletally malformed offspring/litter
No. and percent malformed offspring/litter
No. and percent litters with malformed offspring
No. and percent malformed males/litter
No. and percent malformed females/litter
No. and percent offspring with variations/litter
No. and percent litters having offspring with variations
Types and incidence of individual malformations
Types and incidence of individual variations

Individual offspring and their malformations and variations (grouped according to litter and dose)
Clinical signs
Gross necropsy and histopathology

[a] Important when treatment begins prior to implantation. May be difficult to assess in mice.

[b] Offspring refers both to fetuses observed prior to term or to pups following birth. The end points examined depend on the protocol used for each study.

[c] Measured at selected intervals until termination of the study.

When treatment begins prior to implantation, an increase in preimplantation loss could indicate an adverse effect on the fertilization process, ovum transport, uterine toxicity, the developing blastocyst, or on the process of implantation itself. If treatment begins around the time of implantation (i.e., day 6 of gestation in the mouse, rat, or rabbit), an increase in preimplantation loss probably reflects normal variability in the animals being used, but the data should be examined carefully to determine whether or not the effect is dose related. If preimplantation loss is related to dose in either case, further studies would be necessary to determine the mechanism and extent of such effects.

The number and percent of live offspring per litter, based on all litters, may include litters that have no live implants. Resorptions and late fetal deaths give some indication of when the conceptus died, and the number and percent nonlive implants per litter (post-implantation loss) is a combination of resorptions and late fetal deaths. The number and percent of litters showing an increased incidence for these end points is generally useful but may be less useful than incidence per litter because, in the former case, a litter is counted whether it has one or all resorbed, dead, or nonlive implants.

If a significant increase in postimplantation loss is found after exposure to an agent, the data may be compared not only with concurrent controls, but also with recent historical control data, since there is considerable interlitter variability in the incidence of post-implantation loss (40). If a given study control group exhibits an unusually high or low incidence of postimplantation loss compared to historical controls, then scientific judgment must be used to determine the adequacy of the study for risk assessment purposes.

The end point for affected implants (i.e., the combination of nonlive and malformed conceptuses) gives an indication of the total intrauterine response to an agent and sometimes reflects a better dose-response relationship than does the incidence of nonlive or malformed offspring taken individually. This is especially true at the high end of the dose-response curve in cases when the incidence of nonlive implants per litter is greatly increased. In such cases, the malformation rate may appear to decrease because only unaffected offspring have survived. If the incidence of prenatal death or malformation is unchanged, then the incidence of affected implants will not provide any additional dose-response information. In studies where maternal animals are allowed to deliver pups normally, the number of stillbirths per litter should also be noted.

The number of live offspring per litter, based on those litters that have one or more live offspring, may be unchanged even though the incidence of nonlive in all litters is increased. This could occur either because of an increase in the number of litters with no live offspring, or an increase in the number of implants per litter. A decrease in the number of live offspring per litter should be accompanied by an increase in the incidence of nonlive implants per litter unless the implant numbers differ among dose groups. In postnatal studies, the viability of live born offspring should be determined at selected intervals until termination of the study.

The sex ratio per litter, as well as the body weights of males and females, can be examined to determine whether or not one sex is preferentially affected by the agent. However, this is an annual occurrence.

A change in offspring body weight is a sensitive indicator of developmental toxicity, in part because it is a continuous variable. In some cases, offspring weight reduction may be the only indicator of developmental toxicity. While there is always a question remaining as to whether weight reduction is a permanent or transitory effect, little is known about the long-term consequences of short-term fetal or neonatal weight changes. Therefore, weight reduction should be used to establish the NOAEL. There are other factors that should be considered in the evaluation of fetal or neonatal weight changes. For example, in polytocous animals, fetal and neonatal weights are usually inversely correlated with litter size, and the upper end of the dose-response curve may be confounded by smaller litters and increased fetal or neonatal weight. Additionally, the average body weight of males is greater than that of females in the more commonly used laboratory animals.

Live offspring should be examined for external, visceral, and skeletal malformations. If only a portion of the litter is examined, then it is preferable that those examined be randomly selected from each litter. An increase in the incidence of malformed offspring may be indicated by a change in one or more of the following end points: the incidence of malformed offspring per litter, the number and percent of litters with malformed offspring, or the number of offspring or litters with a particular malformation that appears to increase with dose (as indicated by the incidence of individual types of malformations).

Other ways of examining the data include the incidence of external, visceral, and skeletal malformations which may indicate the general systems affected. A listing of individual offspring with their malformations and variations may give an indication of the pattern of developmental deviations. All of these methods of expressing and examining the data are valid for determining the effects of an agent on structural development. However, care must be taken to avoid counting offspring more than once in evaluating any single end point based on number or percent of offspring or litters. The incidence of individual types of malformations and variations should be examined for significant changes which may be masked if the data on all malformations and variations are pooled. Appropriate historical control data are helpful in the interpretation of malformations and variations, especially those that normally occur at a low incidence and may or may not be related to dose in an individual study. Although a dose-related increase in malformations is interpreted as an adverse developmental effect of exposure to an agent, the significance of anatomical variations is more difficult to determine, and must take into account what is known about developmental stage (e.g., with skeletal ossification), background incidence of certain variations (e.g., 12 or 13 pairs of ribs in rabbits), or other strain- or species-specific factors. However, if variations are significantly increased in a dose-related manner, these should also be evaluated as a possible indication of developmental toxicity. The Interagency Regulatory Liaison Group noted that dose-related increases in defects that may occur spontaneously are as relevant as dose-related increases in any other developmental toxicity end points (41).

3. *Functional Developmental Toxicology.* Developmental effects that

are induced by exogenous agents are not limited to death, structural abnormalities, and altered growth. Rather, it has been demonstrated in a number of instances that subtle alterations in the functional competence of an organ or a variety of organ systems may result from exposure during critical developmental periods that may occur between conception and sexual maturation. Often, these functional defects are observed at dose levels below those at which gross malformations are evident (42). Such testing has not been routinely required in the United States, but studies are beginning to be required when other information indicates the potential for adverse functional effects (27, 28). Data from postnatal studies, when available, are considered very useful for the assessment of the relative importance and severity of findings in the fetus and neonate. Often, the long-term consequences of adverse developmental outcomes noted at birth are unknown, and further data on postnatal development and function are needed to determine the full spectrum of potential developmental effects. In some cases, useful data can be derived from well-executed multigeneration studies.

Much of the early work in functional developmental toxicology was related to behavioral evaluations, and the term "behavioral teratology" became prominent in the mid 1970s. Recent advances in this area have been reviewed in several publications (43, 44). Several expert groups have focused on the functions that should be included in a behavioral testing battery (45–47), and these include: sensory systems, neuromotor development, locomotor activity, learning and memory, reactivity and/or habituation, and reproductive behavior. No testing battery has adequately addressed all of these functions, but it is important to include as many as possible. Several testing batteries have been developed and evaluated (46, 48, 49). The U.S. EPA Office of Toxic Substances (OTS) has developed a guideline for developmental neurotoxicity testing (28) that includes some evaluation of all the categories listed above except for reproductive behavior, and also includes requirements for brain weights and neuropathology. Several criteria for selecting agents for developmental neurotoxicity testing have been suggested (46), including: agents that cause central nervous system malformations, pyschoactive drugs and chemicals, adult neurotoxicants, hormonally-active agents, and chemicals that are structurally related to other developmental neurotoxicants. Data from developmental neurotoxicity studies should be evaluated in light of the data that may have triggered such testing as well as all other toxicity data available.

Less work has been done on other developing functional systems, but data have accumulated to indicate that the cardiopulmonary, immune, endocrine, digestive, and urinary systems, as well as the central nervous system are subject to alterations in functional competence (50, 51) following exposure during development. Currently, there are no standard testing procedures for these functional systems. However, when data are encountered on a chemical under review, they are considered and evaluated in the risk assessment process.

Extrapolation of functional developmental effects to humans is limited by the lack of knowledge about underlying toxicological mechanisms and their significance as is true for other end points of developmental toxicity. In comparisons made on a limited number of agents known to cause developmental neurotoxic effects in humans (52), these agents also have been shown to produce developmental neurotoxic effects in animal species. As for other end points of developmental toxicity, the assumption is made that functional effects in animal studies indicate the potential for altered development in humans. When data from functional developmental toxicity studies are encountered for particular agents, they should be evaluated and included in the risk assessment process.

Some guidance is provided here concerning important general concepts of study design and evaluation for functional developmental toxicity studies.

- Several aspects of study design are similar to those important in standard developmental toxicity studies (e.g., a dose-response approach with the highest dose producing minimal overt maternal or perinatal toxicity, number of litters large enough for adequate statistical power, randomization of animals to dose groups and test groups, litter generally considered the statistical unit, etc.).
- A replicate study design provides added confidence in the interpretation of data.
- Use of a pharmacological challenge may be valuable in evaluating function and "unmasking" effects not othewise detectable, particularly in the case of organ systems that are endowed with a reasonable degree of functional reserve capacity.
- Use of functional tests with a moderate degree of background variability may be more sensitive to the effects of an agent than are tests with low variability that may be impossible to disrupt without being life-threatening. Butcher et al. (53) discussed this with relation to behavioral end points.
- A battery of functional tests, in contrast to a single test, usually provides a more thorough evaluation of the functioanl competence of an animal; tests conducted at several ages may provide more information about maturational changes and their persistence.
- Critical periods for the disruption of functional competence include both the prenatal and the postnatal periods to the time of sexual maturation, and the effect is likely to vary depending on the time and degree of exposure.

Although interpretation of functional data may be limited at present, it is clear that functional effects must be evaluated in light of other toxicity data, including other forms of developmental toxicity (e.g., structural abnormalities, perinatal death, and growth retardation). The level of confidence in an adverse effect may be more important than the type of change seen, and confidence may be increased by such factors as replicability of the effect either in another study of the same function or by convergence of data from tests that purport to measure similar functions. A dose-response relationship is considered an important measure of chemical effect; in the case of functional effects, both monotonic and biphasic dose-response curves are likely, and both may be appropriate depending on the function being tested. Finally, there are at least three general ways in which the data from these studies may be useful for risk assessment purposes: (1) To help elucidate the long-term consequences of fetal and neonatal findings; (2) to indicate the potential for an agent to cause functional alterations and the effective doses relative to those that produce other forms of toxicity; and (3) for existing environmental agents, to suggest organ systems to be evaluated in exposed human populations.

4. *Overall Evaluation of Maternal and Developmental Toxicity.*

As discussed previously, individual end points of maternal and developmental toxicity are evaluated in developmental toxicity studies. In order to interpret the data fully, an integrated evaluation must be performed considering all maternal and developmental end points.

Those agents that produce developmental toxicity at a dose that is

not toxic to the maternal animal are of greatest concern because the developing organism appears to be more sensitive than the adult. However, when adverse developmental effects are produced only at minimal maternally toxic doses, they are still considered to represent developmental toxicity and should not be discounted as being secondary to maternal toxicity. Current information is inadequate to assume that developmental effects at maternally toxic doses result only from maternal toxicity; rather, when the lowest observed adverse effect level (LOAEL) is the same for the adult and developing organisms, it may simply indicate that both are sensitive to that dose level. Moreover, the maternal effects may be reversible while effects on the offspring may be permanent. These are important considerations for agents to which humans may be exposed at minimally toxic levels either voluntarily or in the workplace, since several agents are known to produce adverse developmental effects at minimally toxic doses in adult humans (e.g., smoking, alcohol).

Since the final risk assessment not only takes into account the potential hazard of an agent, but also the nature of the dose-response relationship, it is important that the relationship of maternal and developmental toxicity be evaluated and described. Then, information from the exposure assessment is used to determine the likelihood of exposure to levels near the maternally toxic dose for each agent and the risk for developmental toxicity in humans.

If, on the other hand, maternal toxicity is seen in the absence of or at dose levels lower than those producing developmental toxicity, and if the effect level is lower than that in evaluations of other types of adult toxicity, this implies that the pregnant female is likely to be more sensitive than the nonpregnant female and the data from the pregnant female should be used to assess risk. Although the evaluation of developmental toxicity is the primary objective of standard studies within this area, maternal effects seen within the context of developmental toxicity studies should be evaluated as part of the overall toxicity profile for a given chemical.

Approaches for ranking agents according to their relative maternal and developmental toxicity have been proposed; Schardein (20) has reviewed several of these. Several approaches involve the calculation of ratios relating an adult toxic dose to a developmentally toxic dose (54–57). Such ratios may describe in a qualitative and roughly quantitative fashion the relationship of maternal (adult) and developmental toxicity. However, at the U.S. EPA Sponsored Workshop on the Evaluation of Maternal and Developmental Toxicity (3), there was no agreement as to the validity or utility of these approaches in other aspects of the risk assessment process. This is in part due to uncertainty about factors that can affect the ratios. For example, the number and spacing of dose levels, differences in study design (e.g., route an/or timing of exposure), and species differences in response (3, 58), can influence the maternal and developmental effects and the resulting ratios. Also, the end points used in the ratios need to be better defined to permit cross-species comparison. Until such information is available, the applicability of these approaches in risk assessment is not justified.

5. *Short-term Testing in Developmental Toxicity.* The need for short-term tests for developmental toxicity has arisen from the need to establish testing priorities for the large number of agents in or entering the environment, the interest in reducing the number of animals used for routine testing, and the expense of testing. Two approaches are considered here in terms of their contribution to the overall testing process: 1) an in vivo mammalian screen, and 2) a variety of in vitro systems. Currently, neither approach is considered as a replacement for routine in vivo development toxicity testing in experimental animals, and should not be used to make the final decision as to an agent's developmental toxicity. Rather, such tests may be useful in making preliminary evaluations of developmental toxicity, for evaluating structure-activity relationships, and for assigning priorities for further, more extensive testing. Although such short-term tests are not routinely required, data sometimes are encountered in the review of chemicals; the comments are provided here for guidance in the evaluation of such data.

a. In vivo mamalian developmental toxicity screen. The most widely studied in vivo short-term approach is that developed by Chernoff and Kavlock (59). This approach is based on the hypothesis that a prenatal injury, which results in altered development, will be manifested postnatally as reduced viability and/or impaired growth. When originally proposed, the test substance was administered to mice over the period of major organogenesis at a single dose level that would elicit some degree of maternal toxicity. At the NIOSH Workshop on the Evaluation of the Chernoff/Kavlock Test for Developmental Toxicity (4), use of a second lower dose level was encouraged to potentially reduce the chances of false positive results, and the recording of implantation sites was recommended to provide a more precise estimate of postimplantation loss (60).

In this approach, the pups are counted and weighed shortly after birth, and again after 3–4 days. End points that are considered in the evaluation include: general maternal toxicity (including survival and weight gain), litter size, and viability, weight, and gross malformations in the offspring. Basic priority-setting categories for more extensive testing have been suggested: 1) agents that induce perinatal death should receive highest priority, 2) agents that induce perinatal weight changes should be ranked lower in priority, and 3) agents that induce no effect should receive the lowest priority (59). Another scheme that has been proposed applies a numerical ranking to the results as a means of prioritizing agents for further testing (61, 62).

The mouse was chosen originally for this test because of its low cost, but the procedure has been applied to the rat as well (63). The test will predict the potential for developmental toxicity of an agent in the species used while extrapolation of risk to other species, including humans, has the same limitations as for other testing protocols. The EPA Office of Toxic Substances has developed testing guidelines for this procedure (64). Although the testing guidelines are available, such procedures are required on a case-by-case basis. Application of this procedure in the risk assessment process within the Office of Toxic Substances has been described (65), and the experiences of a number of laboratories are detailed in the proceedings of the NIOSH workshop (4).

b. In vitro developmental toxicity screens. Test systems that fall under the general heading of "in vitro" developmental toxicity screens include any system that employs a test subject other than the intact pregnant mammal. Examples of such systems include: Isolated whole mammalian embryos in culture, tissue/organ culture, cell culture, and developing nonmammalian organisms. These systems have long been used to assess events associated with normal and abnormal development, but only recently have they been considered for this potential as screens in testing (66–68). Many of these systems are now being evaluated for their ability to predict the developmental toxicity of

various agents in intact mammalian systems. This validation process requires certain considerations in study design, including defined end points for toxicity and an understanding of the system's ability to handle various test agents (67, 69–71).

6. *Statistical Considerations.* In the assessment of developmental toxicity data, statistical considerations require special attention. Since the litter is generally considered the experimental unit in most developmental toxicity studies, the statistical analyses should be designed to analyze the relevant data based on incidence per litter or on the number of litters with a particular end point. The analytical procedures used and the results, as well as an indication of the variance in each end point, should be clearly indicated in the presentation of data. Analysis of variance (ANOVA) techniques, with litter nested within dose in the model, take the litter variable into account while allowing use of individual offspring data and an evaluation of both within and between litter variance as well as dose effects. Nonparametric and categorical procedures have also been widely used for binomial or incidence data. In addition, tests for dose-response trends can be applied. Although a single statistical approach has not been agreed upon, a number of factors important in the analysis of developmental toxicity data have been discussed (41, 72).

Studies that employ a replicate experimental design (e.g., two or three replicates with 10 litters per dose per replicate rather than a single experiment with 20 to 30 litters per dose group) allow for broader interpretation of study results since the variability between replicates can be accounted for using ANOVA techniques. Replication of effects due to a given agent within a study, as well as among studies or laboratories, provides added strength in the use of data for the estimation of risk.

An important factor to determine in evaluating data is the power of a study (i.e., the probability that a study will demonstrate a true effect), which is limited by the sample size used in the study, the background incidence of the end point observed, the variability in the incidence of the end point, and the analysis method. As an example, Nelson and Holson (73) have shown that the number of litters needed to detect a 5% or 10% change was dramatically lower for fetal weight (a continuous variable with low variability) than for resorptions (a binomial response with high variability). With the current recommendation in testing protocols being 20 rodents per dose group (7, 8), it is possible to detect an increased incidence of malformations in the range of 5 to 12 times above control levels, an increase of 3 to 6 times the in utero death rate, and a decrease of 0.15 to 0.25 times the fetal weight. Thus, even within the same study, the ability to detect a change in fetal weight is much greater than for the other end points measured. Consequently, for statistical reasons only, changes in fetal weight are often observable at doses below those producing other signs of developmental toxicity. Any risk assessment should present the detection sensitivity for the study design used and for the end point(s) evaluated.

Although statistical analyses are important in determining the effects of a particular agent, the biological significance of data should not be overlooked. For example, with the number of end points that can be observed in developmental toxicity studies, a few statistically significant differences may occur by chance. On the other hand, apparent trends with dose may be biologically relevant even though statistical analyses do not indicate a significant effect. This may be true especially for the incidence of malformations or in utero death where a relatively large difference is required to be statistically significant. It should be apparent from this discussion that a great deal of scientific judgment, based on experience with developmental toxicity data and with principles of experimental design and statistical analysis, may be required to adequately evaluate such data.

B. Human Studies

The category of "human studies" includes both epidemiologic studies and other reports of individual cases or clusters of events. Reports of individual cases or clusters of events may generate hypotheses of exposure-outcome associations, but require further confirmation with well-designed epidemiologic or laboratory studies. These reports of cases or clusters may give added support to associations suggested by other human or animal data, but cannot stand by themselves in risk assessments. Greatest weight should be given to carefully-designed epidemiologic studies with more precise measures of exposure, since they can best evaluate exposure-response relationships (see section IV). Epidemiologic studies in which exposure is presumed based on occupational title or residence (e.g., some case-control and all ecologic studies) may contribute data to qualitative risk assessments, but are of limited use for quantitative risk assessments because of the generally broad categorical groupings. Risk assessors should seek the assistance of professionals trained in epidemiology when conducting a detailed analysis.

1. *Examination of Clusters, Case Reports, or Case Series.* The identification of cases or clusters of adverse developmental effects is generally limited to those identified by the women involved, or clinically by their physicians. Examples of outcomes more easily identified include fetal loss in mid to late pregnancy or congenital malformations. Identification of other effects, such as embryonic loss may be difficult to separate from subfertility/infertility. Identification of such "non-events" (e.g., lack of pregnancies or children) are much harder to recognize than are developmental effects such as malformations resulting from in utero exposure. While case reports may have importance in the recognition of developmental toxicants, they may be of greatest use in suggesting topics for further investigation (74).

2. *Epidemiologic Studies.* Good epidemiologic studies provide the most relevant information for assessing human risk. As there are many different designs for epidemiologic studies, simple rules for their evalution do not exist. The following is a discussion of factors that affect the relative weight assigned a particular study in a risk assessment.

a. General design considerations. Factors that affect a study's usefulness for risk assessment include the power of the study, potential bias in data collection, control of potential risk factors, effect modifiers and confounders, and statistical factors (41, 75–80):

(1) The power of the study: The power, or ability of a study to detect a true effect, is dependent on the size of the study group, the frequency of the outcome in the general population, and the level of excess risk to be identified. In a cohort study, common outcomes, such as recognized embryo/fetal loss, require hundreds of pregnancies in order to have a high probability of detecting a modest increase in risk (e.g., 133 in both exposed and unexposed groups to detect a twofold increase; alpha <0.05, power $= 80\%$), while less common outcomes, such as the total of all malformations recognized at birth, require thousands of pregnancies to have the same probability (e.g., more than 1200 in both exposed and unexposed groups) (15, 75, 76, 81, 82). In case-control studies, study sizes are dependent upon the frequency of exposure within the source population.

A posteriori determination of power of the actual study is useful in evaluating negative findings. Negative findings in a study of low power would be given considerably less weight than either a positive study, or a negative study with high power.

(2) Potential bias in data collection: Sources of bias may include selection bias and information bias (83). Selection bias may occur when an individual's willingness to participate varies with certain characteristics relating to the exposure status or health status of that individual. In addition, selection bias may operate in the identification of subjects for study. For example, for studies of very early loss, use of hospital records to identify embryonic or early fetal loss will underascertain events, because women are not always hospitalized for these outcomes. More weight would be given in a risk assessment to a study in which a more complete list of pregnancies is obtained by, for example, either interviewing the women in the study or, in a prospective study, collecting biological data (e.g., human chorionic gonadotropin measurements) of pregnancy status from study members. A second example of different levels of ascertainment of events is the use of hospital records to study congenital malformations. Hospital records contain more complete data on malformations than do birth certificates. Thus, a study using hospital records to identify congenital malformations would be given more weight in a risk assessment.

Information bias may result from misclassification of characteristics of individuals or events identified for study. Recall bias, one type of information bias, may occur when respondents with specific exposures or outcomes recall information differently than those without the exposures or outcomes. Interview bias may result when the interviewer knows *a priori* the category of exposure (for cohort studies) or outcome (for case-control studies) in which the respondent belongs. Use of highly structured questionnaires and/or "blinding" of the interviewer will reduce the likelihood of such bias. Studies with lower likelihood of such types of bias should carry more weight in a risk assessment.

When data are collected by interview or questionnaire, the appropriate respondent depends upon the type of data or study. For example, a comparison of husband-wife interviews on reproduction found the wives' responses to questions on pregnancy-related events to be considerably more complete and valid than those of the husbands (78). Studies based on interview data from the appropriate respondent (e.g., the woman when examining her pregnancy history) would carry more weight than those from proxy respondents (e.g., the man when examining his partner's pregnancy history).

Data from any source may be prone to errors or bias. Validation with an independent data source (e.g., vital or hospital records), or use of biomarkers of exposure or outcome, where possible, may indicate the presence or absence of bias and increase confidence in the results of the study. Those studies with a low probability of biased data should carry more weight (81, 84).

(3) Control of potential risk factors, effect modifiers, and confounders: Potential risk factors may include smoking, alcohol consumption, drug use, past reproductive history, and environmental and occupational exposure. Such characteristics should be examined, where appropriate, for the outcome under study, and should be controlled for in the study design and/or analysis.

The potential for characteristics of the subjects to be effect modifiers and/or confounders should also be considered. An effect modifier is a factor that produces different exposure-response relationships at different levels of the effect modifier. For example, maternal age would be an effect modifier if the risk associated with a given exposure increased with the mother's age. A confounder is associated with both the exposure and outcome, and these interrelationships could distort both the magnitude and direction of the measure of association between the exposure of interest and the outcome. For example, smoking might be a confounder in a study of the association of socioeconomic status and low birth weight, since smoking has been associated with both.

Both effect modifiers and confounders need to be controlled in the analysis to improve the estimate of the effects of exposure (85). A more in-depth discussion may be found elsewhere (83, 86). The statistical techniques used to control for these factors require careful consideration in their application and interpretation (83, 85). Studies that fail to account for these important factors should be given less weight in a risk assessment.

(4) Statistical factors: As in animal studies, pregnancies experienced by the same woman are not independent events. In animal studies, the litter is generally used as the unit of measure to deal with nonindependence of events. This approach is difficult in humans since the pregnancies are sequential, with the risk factors changing for different pregnancies (15, 41, 81, 86). If more than one pregnancy per woman is included, as is often necessary due to small study groups, the use of nonindependent observations overestimates the true size of the population at risk and artificially increases the significance level (87). Some approaches to deal with these issues have been suggested (81, 88). At this point in time, a generally accepted solution to this problem has not been developed.

b. Selection of outcomes for study. As already discussed, a number of end points can be considered in the evaluation of adverse developmental effects. However, some of the outcomes are not easily observed in humans. These include early embryonic loss and reproductive capacity of the offspring. Currently, the most feasible end points for epidemiologic studies are reproductive history studies of some pregnancy outcomes (e.g., embryo/fetal loss, birth weight, sex ratio, congenital malformations, postnatal function, and neonatal growth and survival) and measures of subfertility/infertility which in some cases might be evidence of very early embryonic loss. Factors requiring control in the design or analysis (such as other risk factors, effect modifiers, and confounders) may vary depending on the specific outcomes selected for study.

The developmental outcomes available for epidemiologic examination are limited by a number of factors, including the relative magnitude of the exposure since differing spectra of outcomes may occur at different exposure levels, the size and demographic characteristics of the population, and the ability to observe the reproductive outcome in humans. Improved methods for identifying some outcomes such as embryonic or very early fetal loss using new human chorionic gonadotropin (hCG) assays may change the spectrum of outcomes available for study (12).

Demographic characteristics of the population, such as marital stutus, age distribution, education, and prior reproductive history are associated with the probability of whether couples will attempt to have children. There may also be differences in the use of birth control, which would affect the number of outcomes available for study. Additionally, workers may move in and out of areas with differing levels and types of exposures, affecting the number of exposed and comparison pregnancies for study. Larger populations are usually

necessary in environmental settings, since the exposures in environmental settings are generally much lower than in occupational settings.

c. Reproductive history studies.

(1) Pregnancy outcomes: Pregnancy outcomes examined in human studies of parental exposures may include embryo/fetal loss, congenital malformations, birth weight, sex ratio at birth, and possibly postnatal survival, growth, and function. Epidemiologic studies that focus on only one type of pregnancy outcome may miss a true effect of exposure. As mentioned above, some reproductive end points can be thought of as a continuum of adverse effects; for example, a malformed stillbirth would not be included in a study of defects observed at live birth, even though the etiology could be identical (75, 89). Studies that examine multiple end points could yield more information, but the results may be difficult to interpret. Evidence of a dose-response relationship is usually an inportant criterion in the assessment of a toxic exposure. However, traditional dose-response relationships may not always be observed for some end points. For example, with increasing dose, a pregnancy might end in an embryo/fetal loss, rather than a live birth with malformations. A shift in the patterns of outcomes could result from differences either in level of exposure or in timing (90, 91). Therefore, a risk assessment should, when possible, attempt to look at the interrelationship of different reproductive end points and patterns of exposure.

(2) Measures of fertility: Normally, studies of subfertility/infertility would not be included in an evaluation of developmental effects. However, in humans it is difficult to identify very early embryonic loss, and to distinguish it from subfertility/infertility. Thus, studies that examine subfertility or infertility indirectly examine loss very early in the gestational period. Studies of subfertility may be thought of as the study of non-events: a couple is unable to have children within a specific time frame. Therefore, the epidemiologic measurement of reduced fertility is typically indirect, and is accomplished by comparing birth rates or time intervals between births or pregnancies. In these evaluations, the couple's joint ability to procreate is estimated. One method, the Standardized Birth Ratio (SBR; also referred to as the Standardized Fertility Ratio), compares the number of births observed to those expected based on the person-years of observation stratified by factors such as time period, age, race, marital status, parity, contraceptive use, etc. (92–94). The SBR is analogous to the Standardized Mortality Ratio (SMR), a measure frequently used in studies of occupational cohorts, and has similar limitations in interpretation (87, 95) and in usefulness for risk assessment.

Analysis of the time period between recognized pregnancies or live births has been suggested as another indirect measure of fertility (96). Because the time interval between births increases with increasing parity (97), comparisons within birth order (parity) are more appropriate. A statistical method (Cox regression) can stratify by birth or pregnancy order to help control for nonindependence of these events in the same woman.

Fertility may also be affected by alterations in sexual behavior. However, limited data are available linking toxic exposures to these alterations in humans. Moreover, such data are not easily obtained in epidemiology studies. More information on this subject is available in the Proposed Guidelines for Assessing Male Reproductive Risk (38) and the Proposed Guidelines for Assessing Female Reproductive Risk (39).

d. Community studies/surveillance programs. Epidemiologic studies may also be based upon broad populations such as a community, a nationwide probability sample, or surveillance programs (such as birth defects registries). A number of case-control studies have examined the relationship between broad classes of parental occupation in certain communities or countries, and embryo/fetal loss (98), birth defects (99–101), and childhood cancer (100, 102–104). In these reports, jobs are typically classified into broad categories based on the probability of exposure to certain classes or levels of exposure (e.g., 100). Such studies are most helpful in the identification of topics for additional study. However, because of the broad groupings of types of levels of exposure, such studies are not typically useful for risk assessment of a particular agent.

Surveillance programs may also exist in occupational settings. In this case, reproductive histories and/or clinical evaluation could monitor for reproductive effects of exposures. Both could yield very useful data for risk assessment; however, a clinical evaluation program would be costly to maintain.

C. Other Considerations

1. *Pharmacokinetics.* Extrapolation of toxicity data between species can be aided considerably by the availability of data on the pharmacokinetics of a particular agent in the species tested and, when available, in humans. Information on absorption, half-life, placental metabolism and transfer, comparative metabolism, and concentrations of the parent compound and metabolites in the maternal animal and conceptus may be useful in predicting risk for developmental toxicity. Such data may also be helpful in defining the dose-response curve, developing a more accurate comparison of species sensitivity, including that of humans (105, 106), determining dosimetry at target sites, and comparing pharmacokinetic profiles for various dosing regimens or routes of exposure. Pharmacokinetic studies in developmental toxicology are most useful if conducted in pregnant animals at the stage when developmental insults occur. The correlation of pharmacokinetic parameters and developmental toxicity data may be useful in determining the contribution of specific pharmacokinetic parameters to the effects observed (107).

2. *Comparisons of Molecular Structure.* Comparisons of the chemical or physical properties of an agent with those of known developmental toxicants may provide some indication of a potential for developmental toxicity. Such information may be helpful in setting priorities for testing of agents or for evaluation of potential toxicity when only minimal data are available. Structure/activity relationships have not been well studied in developmental toxicology, although data are available that suggest structure-activity relationships for certain classes of chemicals (e.g., glycol ethers, steroids, retinoids). Under certain circumstances (e.g., in the case of new chemicals), this is one of several procedures used to evaluate the potential for toxicity when little or no data are available.

D. Weight-of-Evidence Determination

Information from all available studies, whether indicative of potential concern or not, must be evaluated and factored into a weight-of-evidence judgment as to the likelihood that an agent may pose a risk for developmental toxicity in humans. The primary considerations are the human data (which are seldom available) and the experimental animal data. The qualitative assessment for developmental toxicity should consider quality of the data, resolving power of the studies, number and types of end points examined, relevance of route and timing of exposure, appropriateness of the dose selection, replication of effects, number of species examined, and availability of human case reports or

series, and/or epidemiologic study data. In addition, pharmacokinetic data and structure-activity considerations, as well as other factors that may affect the strength of the evidence, should be taken into account. Therefore, all data pertinent to developmental toxicity should be examined in the evaluation of a chemical's potential to cause developmental toxicity in humans, and sound scientific judgment should be exercised in interpreting the data in terms of the risk for adverse human developmental health effects.

A categorization scheme for the weight of evidence has been developed. It contains several broad categories that reflect the accumulated data base on agents and serves as an indicator of whether exposure to the substance may cause developmental toxicity in humans. It represents one important step in the evaluation of agents. However, the risk of any given exposure to an agent can only be derived from an appreciation of its intrinsic biological activity and the nature of the anticipated exposure conditions. These important aspects are developed in subsequent sections of this Guideline.

Placing an agent in a particular weight-of-evidence category such as "adequate evidence for human developmental toxicity" does not mean that it will be a developmental toxicant at every dose (because of the assumption of a threshold) or in every situation (e.g., hazard may vary significantly depending on route and timing of exposure). Thus, in the final characterization of risk, the weight-of-evidence determination should always be presented in conjunction with information on dose-response (NOAEL and/or LOAEL), and, if available, with the human exposure estimate.

The weight-of-evidence scheme (outlined in Table 3) defines three levels of confidence for data used to identify developmental hazards and to assess the risk of human developmental toxicity: definitive evidence, adequate evidence, and inadequate evidence. Within the definitive evidence and adequate evidence categories, there are subcategories for evidence indicating adverse effects and for evidence indicating no apparent effects. In both categories, the evidence required to classify an agent as demonstrating no adverse effects is greater than that required to demonstrate an adverse effect and must include evaluations of a variety of potential manifestations of developmental toxicity. Greater evidence is required because it is much more difficult both biologically and statistically to support a finding of no apparent adverse effect than one of an adverse effect. Most agents meeting current testing requirements would be expected to fall within the adequate evidence category, while many for which little or no information is available would be classified in the inadequate category. Few agents would be expected to fall into the definitive evidence category because the human data necessary to meet the criteria for this category would be difficult to obtain.

TABLE 3. WEIGHT OF EVIDENCE SCHEME FOR DEVELOPMENTAL TOXICITY

Definitive Evidence for:
—Human Developmental Toxicity
—No Apparent Human Developmental Toxicity
Adequate Evidence for:
—Potential Human Developmental Toxicity
—No Apparent Potential Human Developmental Toxicity
Inadequate Evidence for Determining Potential Human Developmental Toxicity

Because a complex interrelationship exists among study design, statistical analysis and biological significance of the data, a great deal of scientific judgment, based on experience with developmental toxicity data and with the principles of experimental design and statistical analysis, may be required to adequately evaluate the data base. To allow for this, the language used in the scheme is intentionally broad.

Definitive Evidence for

—Human Developmental Toxicity

This category includes agents for which there is sufficient evidence from epidemiologic studies for the scientific community to judge that a cause and effect relationship exists. Case reports in conjunction with other supporting evidence may also be used.

—No Apparent Human Developmental Toxicity

Agents in this category have not been associated with developmental toxicity in well-executed epidemiologic studies (e.g., case control and cohort) with adequate power. A variety of potential manifestations of developmental toxicity have been studied. Supporting animal data may or may not be available.

Adequate Evidence for

—Potential Human Developmental Toxicity

This category includes agents for which sufficient evidence exists for them to be considered potential human developmental toxicants. The minimum evidence necessary for considering an agent a potential human developmental toxicant would include data from an appropriate, well-executed study in a single experimental animal species that demonstrates developmental toxicity, and/or strong suggestive evidence from adequate clinical/epidemiologic studies. Evidence may be modified by further data, such as studies in additional species or by other routes of exposure, and replication of the findings. Development of pharmacokinetic or mechanistic information may reduce uncertainties in extrapolation to the human. The strength of the evidence increases as it approaches the definition for definitive human developmental toxicity.

—No Apparent Potential Human Developmental Toxicity

This category includes agents with data from appropriate well-executed studies in several species (at least two) which evaluated a variety of the potential manifestations of developmental toxicity and showed no developmental effects at doses that were minimally toxic to the adult animal. In addition, there may be human data from adequate studies supportive of no adverse effects.

Inadequate Evidence for Determining Potential Human Developmental Toxicity

This category includes agents for which there is less than the minimum sufficient evidence necessary for assessing human risk. However, data on agents that fall into this category may be used to determine the need for additional testing or information that would then, if adequate, move the agent into the adequate evidence category.

This category includes a variety of types of information such as the lack of any data on the developmental toxicity potential of an agent, data from an appropriate well-executed study in a single species showing no developmental toxicity, data from poorly-conducted studies in animals (e.g., small numbers of animals, inappropriate dose selection, other confounding factors) or inadequate data in humans. Additionally, data on structure/activity relationships, short-term test data, pharmacokinetic data, or data on metabolic precursors of the agent of interest could be used to call for further testing but would be considered insufficient by themselves to assess human risk.

IV. Dose-Response Assessment

When quantitative human dose-effect data are available and with sufficient range of exposure, dose-response relationships may be examined. Data on

exposure from human studies are usually qualitative, such as employment or residence histories; quantitative or dose data are frequently not available. In human studies, especially retrospective ones, linking of specific time periods and specific exposures, even on a qualitative level, may be difficult due to errors of recall or recordkeeping (where records are available). The appropriate exposure depends on the outcome(s) studied, the biologic mechanism affected by exposure, and the half-life of the exposure. The probability of misclassification of exposure status may affect the ability of a study to recognize a true effect (15, 41, 76, 108, 109).

Since data on human dose-effect relationships are rarely available, the dose-response assessment is usually based on the evaluation of tests performed in laboratory animals. Evidence for a dose-response relationship is an important criterion in the assessment of developmental toxicity, although this may be based on limited data from standard studies using three dose groups and a control group. Most human developmental toxicants that have been studied alter development at doses within a narrow range near the lowest maternally toxic dose (22). Therefore, for most chemicals, the exposure situations of concern will be those that are potentially within this range. For those few chemicals where developmental effects occur at much lower levels than maternal effects, the potential for exposing the conceptus to damaging doses is much greater. As mentioned previously (section III.A.2.), however, traditional dose-response relationships may not always be observed for some end points. For example, as the exposure level rises, embryo/fetolethal levels may be reached, resulting in an observed decrease in malformations with increasing dose (81, 90). The potential for this response pattern indicates that dose-response relationships of individual end points as well as combinations of end points (e.g., dead and malformed combined) must be carefully examined and interpreted.

Identification of a NOAEL and/or LOAEL is based on the lowest dose at which an adverse effect is detected from any adequate developmental toxicity study. Adequacy of the data to be used for determination must be judged using the weight-of-evidence approach discussed in section III.D. NOAELs and applied uncertainty factors may be used to determine a reference dose for developmental toxicity (RfD_{DT}) that is assumed to be below the threshold for an increase in adverse developmental effects. The RfD_{DT} is based on a short duration of exposure as is typically used in developmental toxicity studies. The term RfD_{DT} is used to distinguish from the RfD which refers to chronic exposure situations (10). Uncertainty factors for developmental toxicity generally include a 10-fold factor for interspecies variation and a 10-fold factor for intraspecies variation. In general, an additional uncertainty factor is not applied to account for duration of exposure. Additional factors may be applied due to a variety of uncertainties that exist in the data base. For example, the standard study design for a developmental toxicity study calls for a low dose that demonstrates a NOAEL, but there may be circumstances where a risk assessment must be based on the results of a study in which a NOAEL for developmental toxicity was not identified. Rather, the lowest dose administered caused significant effect(s) and was identified as the LOAEL. In circumstances where only a LOAEL is available, questions relative to the sensitivity of end points reported, adequacy of dose levels tested, or confidence in the LOAEL reported may require the use of an additional uncertainty factor of 10 (10). The total uncertainty factor selected is then divided into the NOAEL/LOAEL for the most sensitive end point from the most appropriate and/or sensitive mammalian species to determine the RfD_{DT}.

Although the Agency currently uses the NOAEL/uncertainty factor approach to establish an RfD_{DT}, discussions of risk extrapolation procedures have noted that improved mathematical tools are needed for developing estimates of potential human developmental risk (45, 110). Gaylor (111) suggested an approach for estimating risk that combines the use of mathematical models for low-dose estimation of risk with the application of an uncertainty factor based on a preselected level of risk. This approach is similar to approaches proposed for carcinogenesis, but does not preclude the possibility of a threshold, and may provide a more quantitative approach to estimating risk. Another approach proposed by Rai and Van Ryzin (112) and recently applied by Faustman et al. (113), uses a simple two-component developmental model in which the first component represents a dose-related risk to the litter environment and the second component expresses the risk to an individual offspring conditional upon a predisposing risk to the litter. These approaches and others have been summarized recently (5). In addition, other methods for expressing risk are being sought and will be applied, if considered appropriate.

The development of biologically-based dose-response models in developmental toxicology is limited by a number of factors, including a lack of understanding of the biological mechanisms underlying developmental toxicity, intra/interspecies differences in the types of developmental events, and the influence of maternal effects on the dose-response curve. A biological threshold is assumed for most developmental effects based on known homeostatic, compensatory, or adaptive mechanisms that must be overcome before a toxic end point is manifested, and on the rationale that the embryo is known to have some capacity for repair of damage or insult (90). In addition, most developmental deviations are probably multifactorial in nature (114). Although a threshold is assumed for developmental effects, the existence of a NOAEL in an animal study does not prove or disprove the existence or level of a true threshold; it only defines the highest level of exposure under the conditions of the study that is not associated with a significant increase in effect. The uncertainties concerning this assumption are being discussed currently in the literature (25, 26).

In conclusion, dose-response findings in developmental toxicity studies are used as part of the risk characterization. This use is dependent upon scientific judgment as to the accuracy and adequacy of the data. In addition, the slope of the dose-response curve should be considered in conjunction with a determination as to the adequacy of the exposure levels tested, the sensitivity of the end points reported, and the appropriateness of the experimental design to determine a level of confidence in the data and the resultant confidence in the LOAEL, NOAEL, and the uncertainty factors applied to obtain the RfD_{DT}.

V. Exposure Assessment

In order to obtain a quantitative estimate of risk for the human population, an estimate of human exposure is required. The Guidelines for Estimating Exposures have been published separately (115) and will not be discussed in detail here. In general, the exposure assessment describes the magnitude, duration, schedule, and route of exposure. This information is developed from monitoring data and from estimates based on modeling of environmental exposures. Unique considerations for developmental

toxicity are duration and period of exposure as related to stage of development (i.e., critical periods), and the possibility that a single exposure may be sufficient to produce adverse developmental effects (i.e., repeated exposure is not a necessary prerequisite for developmental toxicity to be manifested). For these reasons, it is assumed that a single exposure at the critical time in development is sufficient to produce an adverse developmental effect. Therefore, the human exposure estimate used to calculate the margin of exposure is usually based on a single dose that is not adjusted for duration of exposure, and the number of exposures is not considered important unless there is evidence for a cumulative effect. It should be recognized also that exposure of almost any segment of the human population (i.e., fertile men and women, the conceptus, and the child up to the age of sexual maturation) may lead to risk to the developing organism.

VI. Risk Characterization

Many uncertainties described in these Guidelines are associated with the toxicological and exposure components of risk assessments in developmental toxicology. In the past, these uncertainties have often not been readily apparent or consistently presented. The presentation of any risk assessment for developmental toxicity should be accompanied by statements concerning the weight of the evidence, dose-response relationships and assumptions underlying the estimation of the RfD_{DT}, estimates of human exposure, and any factors that affect the quality and precision of the assessment. The risk characterization of an agent should be based on data from the most appropriate species, or, if such information is not available, on the most sensitive species tested. It should also be based on the most sensitive indicator of toxicity, whether maternal, paternal, or developmental, and should be considered in relationship to other forms of toxicity.

In the risk characterization, the dose-response and the human exposure estimate may be combined either by comparing the RfD_{DT} and the human exposure estimate or by calculating the margin of exposure (MOE). The MOE is the ratio of the NOAEL from the most appropriate or sensitive species to the estimated human exposure level from all potential sources (53). If a NOAEL is not available, a LOAEL may be used in the calculation of the MOE. In this case, the NOAEL may be estimated from the LOAEL by applying an uncertainty factor (10-fold) to assess the impact on the MOE (53). The MOE is presented along with a discussion of the weight of evidence, including the nature and quality of the hazard and exposure data, the number of species affected, and the dose-response information.

The RfD_{DT} comparison with the human exposure estimate and the calculation of the MOE are conceptually similar but are used in different regulatory situations. The choice of approach is dependent upon several factors, including the statute involved, the situation being addressed, the data base used, and the needs of the decision maker. The RfD_{DT} and/or the MOE are considered along with other risk assessment and risk management issues in making risk management decisions, but the scientific issues that must be taken into account in establishing them have been addressed here.

These Guidelines summarize the procedures that the U.S. Environmental Protection Agency will follow in evaluating the potential for agents to cause developmental toxicity. While these are the first amendments to the developmental toxicity guidelines issued in 1986, further revisions and updates will be made as advances occur in the field. Further studies that: (1) Delineate the mechanisms of developmental toxicity and pathogenesis, (2) provide comparative pharmacokinetic data, and (3) elucidate the functional modalities that may be altered by exposure to toxic agents, will aid in the interpretation of data and interspecies extrapolation. These types of studies, along with further evaluation of the relationship between maternal and developmental toxicity and the concept of a threshold, will provide for the development of improved mathematical models to more precisely assess risk.

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Monday
March 6, 1989

Part VIII

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Establishment of an Airport Radar Service Area; San Jose, CA; Final Rule; Request for Comments

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-AWA-3]

Establishment of an Airport Radar Service Area; San Jose, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action designates an Airport Radar Service Area (ARSA) at the San Jose International Airport, CA. The location is a public airport with an operating control tower served by a Level V Radar Approach Control Facility and a Level III Limited Terminal Radar Approach Control in a Tower Cab (TRACAB). Establishment of this ARSA will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at this location will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

DATES: Effective date—0901 u.t.c., April 6, 1989. Comments must be received on or before June 6, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-204], Airspace Docket No. 88-AWA-3, 800 Independence Avenue SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue SW., Washington, DC.

The informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on this rule. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of this rule. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this rule must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AWA-3." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking further action on this rule. The design contained in this rule may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and the procedural aspects of the ATC system. The FAA published NAR Recommendation 1-2.2.1, "Replace the Terminal Radar Service Areas (TRSA) with Model B Airspace and Service (Airport Radar Service Areas)," in Notice 83-9 (48 FR 34286, July 28, 1983) proposing the establishment of ARSA's at Columbus, OH, and Austin, TX. Those locations were designated ARSA's by SFAR No. 45 (48 FR 50038, October 28, 1983) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis. The original expiration dates for SFAR 45, December 22, 1984, (Austin, TX) and January 19, 1985, (Columbus, OH) were extended to June 20, 1985 (49 FR 47176, November 30, 1984).

On March 6, 1985, the FAA adopted the NAR recommendation and amended Parts 71, 91, 103 and 105 of the Federal Aviation Regulations (14 CFR Parts 71, 91, 103 and 105) to establish the general definition and operating rules for an ARSA (50 FR 9252), and designated the Austin and Columbus airports as ARSA's, as well as the Baltimore/Washington International Airport, Baltimore, MD (50 FR 9250). Thus far, the FAA has designated 126 ARSA's as published in the **Federal Register** in the implementation of this NAR recommendation.

On December 30, 1988, the FAA proposed to designate an ARSA at San Jose International Airport, CA (53 FR 53272). Interested parties were invited to participate in this rulemaking proceeding by submitting comments on the proposal to the FAA. Additionally, the FAA has held informal airspace meetings on the establishment of the San Jose, CA, ARSA. Section 71.501 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D, dated January 4, 1988.

Discussion of Comments

Fifty-two comments were received concerning this proposal. The FAA has considered these comments and amended the final configuration as contained in this rule. The FAA considers that the final design contained herein best meets ATC requirements, and promotes the safe and efficient use of airspace.

Some comments were received that were outside the scope of this rulemaking action and, therefore, will not be addressed. Those subject areas included controller staffing, ATC equipment, rules enforcement and pilot education.

Several commenters wrote requesting that the 5- to 7-mile area in the outer core, east of the 341° bearing from the San Jose International Airport, be deleted from the ARSA design or altered to align with U.S. Highway 880. These commenters are concerned that pilots flying visual flight rules (VFR), who do not wish to transit ARSA airspace or are unable to contact ATC, will be forced too close to each other and too close to mountainous terrain.

Through aerial observation, it was observed that a sufficient amount of airspace exists for aircraft choosing to circumnavigate the ARSA, east of U.S. Highway 680. The FAA finds this portion of airspace is vital for protecting the ALTAM, LOUPE, and SUNOL Standard Instrument Department (SID) procedures. Also, this area is used as an arrival path for the left base leg when executing a visual approach, and a left base leg for both VOR and ILS Runway 12 approaches.

Some commenters noted that the proposed ARSA altitude is too low for pilots to navigate successfully in the southwest corner because of terrain restraints. The FAA concurs and has redefined this boundary by deleting 2

nautical miles beginning at the 160° radial. In addition, the floor in this area has been raised from 2,000 feet to 2,500 feet MSL.

Some commenters suggested that the ARSA design be defined with more visual landmarks. Selection of distinct landmarks to define the boundaries of the San Jose ARSA was considered during the design stages. In order to provide the greatest amount of airspace protection and meet operational needs, it was not possible to place the boundaries along specific features. The FAA agrees that, where available, prominent visual landmarks aid pilots in detecting ARSA boundaries; therefore, the eastern portion of the inner core has been redefined as Interstate 680 and U.S. Highway 101.

Some commenters suggested raising the ceiling of the ARSA to 5,000 feet to protect aircraft climbing through the ceiling of the ARSA. In adopting the ARSA rule, the FAA concurred with the NAR task group that a 4,000-foot cap would afford sufficient airspace protection for aircraft executing instrument approaches. An instrument approach is assumed to be a critical phase of flight where pilots must devote considerable attention to their instruments. The FAA finds no merits in raising the entire ARSA to 5,000 feet MSL.

One area of concern expressed by commenters was that an ARSA does not provide a safer environment. The FAA finds that the ARSA program has several safety features which improve safety. First, ATC has knowledge of all aircraft operating in an ARSA because communication is mandatory. Second, target separation is a method of providing separation within an ARSA. Third, the ARSA program has surpassed expectations in most locations by reducing the potential for midair collisions without unnecessarily penalizing or unduly delaying aircraft in ARSA airspace.

Some commenters were concerned that implementing an ARSA would create a noise management problem. The establishment of an ARSA at the San Jose International Airport will not change the flow of traffic in the area. Consequently, no significant change to the present noise pattern will result and the present noise management practices will not be adversely affected.

Several commenters wrote requesting that the ARSA extend to 15 nautical miles with a floor of 2,500 feet MSL extending upward to 6,000 feet MSL in the southeastern corner. The rationale for this recommendation was that this extension of airspace would significantly reduce the likelihood of conflicts between aircraft approaching and departing the San Jose International Airport and other aircraft transiting this area.

The FAA concurs and has extended the southeast corner between 10 and 15 nautical miles west of the Oakland VOR 142° radial and east of a line 2.5 nautical miles west of and paralled to the San Jose International Airport Runway 30 localizer extending upward from 3,000 feet MSL to and including 6,000 feet MSL. Due to the mountainous terrain located on both sides of the Santa Clara Valley, a natural flyway exists. This extension of airspace will protect this corridor created by north/southbound traffic which cross the extended centerline of the San Jose International Airport runways. In the extension area, the ceiling was increased to 6,000 feet MSL, rather than the standard ARSA ceiling of 4,000 feet above airport elevation. This increase was adopted in order to include the airspace 10 to 15 miles from the San Jose International Airport that is used by approaching and departing aircraft. Comments are requested on the lateral limits and altitude of this extension area (Area B).

Several commenters wrote recommending the "consensus" ARSA design that was developed with input from local user groups in the San Jose area. This committee consisted of Chapters 62 and 338 of the Experimental Aircraft Association (EAA), Reid-Hillview Pilots Association, Sana Clara County Airman's Association, the Santa Clara Chapters of the Aircraft Owners & Pilots Association and the 99'ers.

Basically, the "consensus" ARSA differed from the FAA proposal in five areas: (1) The "consensus" ARSA boundaries were delineated by visual landmarks; (2) the outer core area, east of the 341° bearing from the San Jose International Airport, was reduced in the "consensus" design; (3) the inner core eastern boundary of the "consensus" ARSA was reduced to align with railroad tracks; (4) the outer area in the southwest corner of the "consensus" design was reduced to align with Highway 85 (presently under construction), direct to the Guadalupe Reservoir; and (5) the "consensus" ARSA depicted an extension between 10 and 15 miles in the southeast corner extending upward from 3,000 feet MSL up to and including, 4,000 feet MSL. The FAA altered the proposed ARSA design, incorporating as much of the "consensus" design as was operationally feasible.

The airspace configuration established by this action has taken into consideration all aspects of air traffic in the terminal area. This configuration is consistent with the fundamental safety objectives of the ARSA program. The FAA is mandated to analyze all ARSA operations one year after the effective date. At that time, any future alterations will be considered that would accommodate users and enhance safety.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) designates an ARSA at the San Jose International Airport, CA. The location designated is a public airport with an operating control tower served by a Level V Radar Approach Control Facility and a Level III Limited Terminal Radar Approach Control in a tower cab (TRACAB). Establishment of this ARSA will require that pilots maintain two-way radio communication with ATC while in the ARSA. Implementation of ARSA procedures at this location will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

Section 91.88 of the Federal Aviation Regulations (14 CFR Part 91) defines an ARSA and prescribes operating rules for aircraft, ultralight vehicles, and parachute jump operations in airspace designated as an ARSA. The ARSA rule provides in part that, prior to entering the ARSA, any aircraft arriving at any airport in an ARSA or flying through an ARSA must: (1) Establish two-way radio communications with the ATC facility having jurisdiction over the area; and (2) while in the ARSA, maintain two-way radio communications with that ATC facility. For aircraft departing from the primary airport within the ARSA, two-way radio communications must be maintained with the ATC facility having jurisdiction over the area. For aircraft departing a satellite airport within the ARSA, two-way radio communications must be established with the ATC facility having jurisdiction over the area as soon as practicable after takeoff and thereafter maintained while operating within the ARSA.

All aircraft operating within an ARSA are required to comply with all ATC clearances and instructions and any FAA arrival or departure traffic pattern for the airport of intended operation. However, the rule permits ATC to authorize appropriate deviations from any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained through such deviations. Ultralight vehicle operations and parachute jumps in an ARSA may only be conducted under the terms of an ATC authorization.

The FAA adopted the NAR task group recommendation that each ARSA be of the same airspace configuration insofar as is practicable. The standard ARSA consists of airspace within 5 nautical miles of the primary airport extending from the surface to an altitude of 4,000 feet above that airport's elevation, and that airspace between 5 and 10 nautical miles from the primary airport, from 1,200 feet above the surface to an altitude of 4,000 feet above that airport's elevation. Proposed deviation from the standard has been necessary at some airports due to adjacent regulatory airspace, international boundaries, topography, or unusual operational requirements.

Definitions, operating requirements, and specific airspace designations applicable to ARSA's may be found in Federal Aviation Regulations § 71.14 and § 71.501 (14 CFR Part 71), and § 91.1 and § 91.88 (14 CFR Part 91).

Request for Comments

The ARSA adopted differs from the proposed rule in that it contains a southeast extension to 15 miles from the San Jose International Airport, to an altitude of 6,00 feet MSL (Area B of the ARSA). The final rule is within the subject matter of the notice of proposed rulemaking, which proposed the ARSA and requested comments on the configuration of the ARSA airspace to be adopted. The final rule reflects comments received in the public docket, many of which requested a southeast extension and some of which specifically requested the configuration adopted. The incorporation of the ARSA extension beyond 10 nautical miles from the primary airport is an exception to conventional agency policy, which has been to limit ARSA lateral boundaries to a 10-nautical-mile radius are centered on the airport. To promote the fullest public participation in this rulemaking and to provide input on future agency policy, the FAA requests comments on two particular aspects of the rule adopted: (1) The ARSA extension described as "Area B" of the San Jose ARSA; and (2) the revision of agency policy to consider extension of ARSA airspace beyond 10 nautical miles from the primary airport and above 4,000-feet above airport elevation, on a very limited basis, where there would be a clear safety benefit.

Regulatory Evaluation Summary

The FAA has conducted a Regulatory Evaluation of this final rule to establish this additional ARSA site. The major findings of that evaluation are summarized below, and a copy of the detailed regulatory evaluation is available in the regulatory docket.

a. *Costs*

Costs which could potentially result from the establishment of additional ARSA sites fall into the following categories:

(1) Air traffic controller staffing, controller training, and facility equipment costs incurred by the FAA.

(2) Costs associated with the revision of charts, notification of the public, and pilot education.

(3) Additional operating costs for circumnavigating or flying over the ARSA.

(4) Potential delay costs resulting from operations within an ARSA.

(5) The need for some operators to purchase radio transceivers.

(6) Miscellaneous costs.

It has been the FAA's experience, however, that these potential costs do not materialize to any appreciable degree, and when they do occur, they are transitional, relatively low in magnitude, or attributable to specific implementation problems that have been experienced at a very small minority of ARSA sites. The reasons for these conclusions are presented below.

The FAA expects that because of the current high level of traffic, the San Jose International ARSA can be implemented without requiring additional controller personnel above currently authorized staffing levels. Moreover, the reduced separation standards permitted in ARSA's will allow controllers to absorb the slight increase in participating traffic by handling all traffic much more efficiently. Further, since controller training will be conducted during normal working hours, and existing facilities already operate the necessary radar equipment, the FAA does not expect to incur any appreciable implementation costs. Essentially, the FAA will modify its terminal radar procedures at the proposed ARSA sites in a manner that will make more efficient use of existing resources.

No additional costs are expected to be incurred because of the need to revise sectional charts to incorporate the new ARSA airspace boundaries. Changes of this nature are routinely made during charting cycles, and the planned effective dates for newly established ARSA's are scheduled to coincide with the regular 6-month chart publication intervals.

This rulemaking proceeding and process will satisfy most of the need to notify the public and educate pilots about ARSA operations. The informal public meeting being held at each location where an ARSA is being proposed provides pilots with the best opportunity to learn both how an ARSA works and how it will affect their local operations. The expenses associated with these public meetings are considered costs attributable to the rulemaking process; however, any public information costs following establishment of a new ARSA are strictly attributable to the ARSA. The FAA expects to distribute a Letter to Airmen to all pilots residing within 50 miles of each ARSA site, explaining the operation and configuration of the ARSA finally adopted. The FAA also has issued an Advisory Circular on ARSA's. The combined Letter to Airmen and prorated Advisory Circular costs have been estimated to be approximately $500 for each ARSA site. This cost is incurred only once upon the initial establishment of an ARSA.

Information on ARSA's, following the establishment of additional sites, will also be disseminated at aviation safety seminars conducted throughout the country by various district offices. These seminars are provided regularly by the FAA to discuss a variety of aviation safety issues and, therefore, will not involve additional costs strictly as a result of the ARSA program. Additionally, no significant costs are expected to be incurred as a result of the follow-on user meetings that will be held at each site following implementation of the ARSA. These meetings will allow users to provide feedback to the FAA on local ARSA operations. These meetings are being held at public facilities or at other locations which are being provided free of charge or at nominal cost. Further, because these meetings are being conducted by local FAA facility personnel, no travel, per diem, or overtime costs will be incurred by regional or headquarters personnel.

The FAA anticipates that some pilots who currently transit without establishing radio communications or participating in radar services may choose to circumnavigate the mandatory participation airspace of an ARSA rather than participate. Some minor delay costs will be incurred by these pilots because of the additional aircraft variable operating cost and lost crew and passenger time resulting from the deviation. Other pilots may elect to overfly the ARSA or transit below the 1,200 feet above ground level (AGL) floor between the 5- and 10-nautical-mile rings. Although this will not result in any appreciable delay, a small additional fuel burn will result from the climb portion of the altitude adjustment, which will be offset somewhat by the descent.

The FAA recognizes that the potential exists for delay to develop at some locations following the establishment of an ARSA. The additional traffic that the radar facilities will be handling as a result of the participation requirement may, in some instances, result in minor delays to aircraft operations. The FAA does not expect such delay to be appreciable. The FAA expects that the greater flexibility afforded controllers in handling traffic as a result of the reduced separation standards will keep delay problems to a minimum. Those delays that do occur will be transitional in nature, diminishing as facilities gain operating experience with ARSA's and learn how to tailor procedures and allocate resources to take fullest advantage of the increased efficiencies. This has been the experience at most of the locations where ARSA's have been in effect for the longest period of time and is the recurring trend at the locations that have been designated more recently.

The FAA does not expect that any operator will find it necessary to install radio transceivers as a result of establishing the ARSA in this rule. Aircraft operating to and from primary airports are already required to have two-way radio communications capability because of existing airport traffic areas and, therefore, will not incur any additional costs as a result of the new ARSA. Further, the FAA has made an effort to minimize these potential costs throughout the ARSA program by providing airspace exclusions, or cutouts, for satellite airports located within 5 nautical miles of the ARSA center where the ARSA would have otherwise extended down to the surface. Procedural agreements between the local ATC facility and the affected airports have also been used to avoid radio installation costs.

At some new ARSA locations, special situations might exist where the establishment of an ARSA could impose certain costs on users of that airspace. However, exclusions, cutouts, and special procedures have been used extensively throughout the ARSA program to alleviate adverse impacts on local fixed-base operators and other airport operators. Similarly, the FAA has eliminated the potential adverse impacts on existing flight-training practice areas, as well as on soaring, ballooning, parachuting, and ultralight and banner towing activities through special procedures. These procedures accommodate such activities through local agreements between ATC facilities and affected organizations. For these reasons, the FAA does not expect that any adverse impact due to such user costs will occur at the ARSA site in this rule.

b. *Benefits*

Most of the benefit that will result from ARSA's is nonquantifiable and attributable to simplification and standardization of ARSA configurations. Further, once experience is gained in ARSA operations, air traffic controllers will obtain greater flexibility in handling traffic within an ARSA, which will enable them to move traffic more efficiently. These expected savings may or may not offset the delay that some sites may experience after the initial establishment of an ARSA. Such savings are expected, however, to eventually provide overall time savings to all traffic, instrument flight rules (IFR) as well as VFR, as both pilots and controllers become more familiar with ARSA operating procedures.

Some of the benefits of the ARSA cannot be specifically attributed to individual candidate airports, but rather result from the overall improvements in terminal area ATC procedures realized as ARSA's are implemented throughout the country. ARSA's have the potential of reducing both near and actual midair collisions at the airports where they are established. Based upon the experience at the Austin and Columbus ARSA confirmation sites, the FAA estimates that near midair collisions may be reduced by approximately 35 to 40 percent. Further, the FAA estimates that the national implementation of the ARSA program may prevent approximately one midair collision every 1 to 2 years throughout the United States. The quantifiable benefits of preventing a midair collision can range from less than $100,000, due to the prevention of a minor, nonfatal accident between general aviation aircraft, to $300 million or more, due to the prevention of a midair collision involving a large air carrier aircraft and the numerous fatalities associated with such an incident. Establishment of an ARSA at the site in this final rule will contribute to these improvements in safety.

c. *Comparison of Costs and Benefits*

A direct comparison of the costs and benefits of this rule is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, and it is difficult to specifically attribute the standardization benefits, as well as the safety benefits, to individual candidate ARSA sites.

The FAA expects any adjustment problems that may be experienced at the ARSA location established in this rule will be only temporary, and that once established, the ARSA will result in an overall improvement in efficiency in terminal area operations. This has been the experience at a vast majority of the ARSA sites that have already been implemented. In addition to these operational efficiency improvements, establishment of this ARSA site will contribute to a reduction in near and actual midair collisions. For these reasons, the FAA expects that the establishment of this ARSA site will produce long term, ongoing benefits that will far exceed costs, which are essentially transitional in nature.

International Trade Impact Analysis

This final rule will only affect terminal airspace operating procedures at selected airports within the United States. As such, it will have no effect on the sale of foreign aviation products or services in the United States, nor will it affect the sale of United States aviation products or services in foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. Small entities are independently owned and operated small businesses and small not-for-profit organizations. The RFA requires agencies to review rules that may have a significant economic impact on a substantial number of small entities.

The small entities that could be potentially affected by implementation of the ARSA program include fixed-base operators, flight schools, agricultural operators, and other small aviation businesses located at satellite airports within 5 nautical miles of the ARSA center. If the participation requirement were to extend down to the surface at these airports, where under current regulations radio communication with ATC is voluntary, operations at these airports might be altered, and some business could be lost to airports outside of the ARSA core. The FAA intends to exclude many satellite airports, located within 5 nautical miles of the primary airport at candidate ARSA sites, to avoid any adverse impact on their operations and to simplify the coordination of ATC responsibilities between primary and satellite airports.

In some cases, the same purposes will be achieved through Letters of Agreement between ATC and the affected airports, which will establish special procedures for operating to and from these airports. In this manner, the FAA expects to eliminate any adverse impact on small satellite airport operations that could result from the ARSA program. Similarly, the FAA expects to eliminate potentially adverse impacts on existing flight training practice areas, as well as on soaring, ballooning, parachuting, and ultralight and banner towing activities through special procedures. These procedures will accommodate such activities through local agreements between ATC facilities and affected organizations. The FAA has utilized such arrangements extensively in implementing the ARSA's that have been established to date.

Further, because the FAA expects that any delay problems that may initially develop following implementation of an ARSA will be transitory, and because the airports that will be affected by the ARSA program represent only a small proportion of all the public-use airports in operation within the United States, no small entities of any type using aircraft in the course of business will be adversely impacted.

For these reasons, the FAA has determined that this rulemaking action is not expected to affect a substantial number of small entities. Therefore, the FAA certifies that this regulatory action will not result in a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Federalism Implications

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 will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

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

§ 71.501 [Amended]

2. Section 71.501 is amended as follows:

San Jose, CA [New]

Area A. That airspace extending upward from the surface to and including 4,000 feet MSL within a 5-mile radius of the San Jose International Airport (lat. 37°21' 41" N., long. 121°55' 38" W.), excluding that airspace east of Interstate 680 and east of U.S. Highway 101 south of the intersection of U.S. Highway 101 and Interstate 680; and that airspace within 10 miles of the San Jose International Airport extending upward from 1,500 feet MSL to and including 4,000 feet MSL from the 142.5° bearing from the Oakland VOR clockwise to the 160° bearing from the San Jose International Airport, and that airspace within 10 miles of the San Jose International Airport from the 160° bearing from the San Jose International Airport clockwise to the 303° bearing from the San Jose International Airport extending upward from 2,500 feet MSL to and including 4,000 feet MSL, excluding that airspace west of the 161° bearing from the Oakland VOR, and excluding that airspace beyond 8 miles from the San Jose International Airport between the 160° bearing from San Jose International Airport clockwise to the 230° bearing from San Jose International Airport, and that airspace within a 10-mile radius of the San Jose International Airport from the 303° bearing from the San Jose International Airport clockwise to Interstate 680 extending upward from 1,500 feet MSL to and including 4,000 feet MSL, excluding that airspace beyond 7 miles between the 341° bearing from the San Jose International Airport extending clockwise until Interstate 680.

Area B. That airspace between 10 miles and 15 miles from the San Jose International Airport west of the 142.5° bearing from the Oakland VOR and east of a line 2.5 miles west of and parallel to the San Jose International Airport Runway 30 localizer extending upward from 3,000 feet MSL to and including 6,000 feet MSL.

This airport radar service area is effective during the specific days and hours of operation of the San Jose Tower and Bay Terminal Radar Approach Control Facility as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Issued in Washington, DC, on March 1, 1989.

Richard Huff,

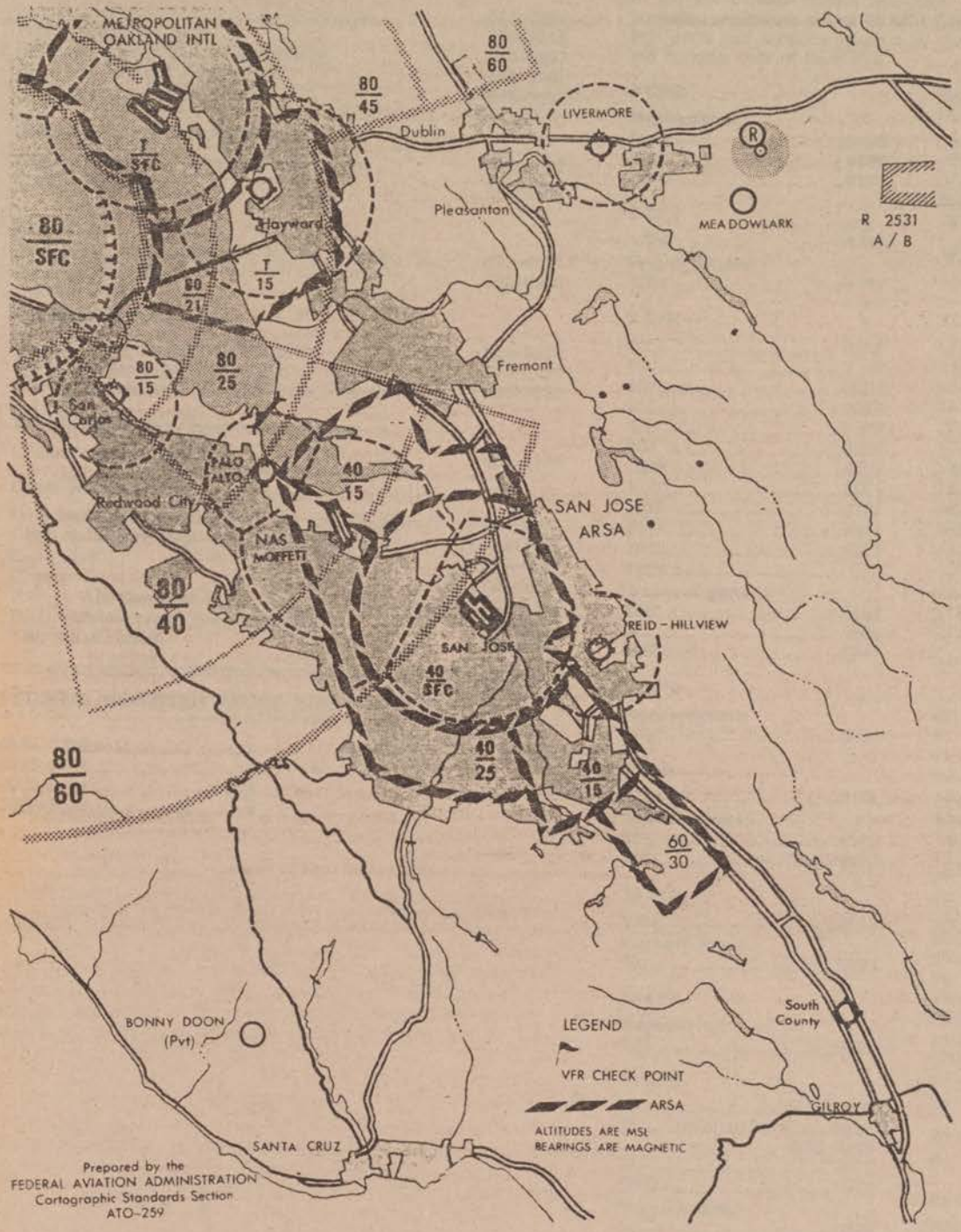
Manager, Airspace—Rules and Aeronautical Information Division.

BILLING CODE 4910-13-M

AIRPORT RADAR SERVICE AREA

(NOT TO BE USED FOR NAVIGATION)

SAN JOSE, CALIFORNIA
SAN JOSE INTERNATIONAL AIRPORT
FIELD ELEV. 56' MSL



[FR Doc. 89-5137 Filed 3-3-89; 8:45 am]

BILLING CODE 4910-13-C

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At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Price	Revision Date
1, 2 (2 Reserved)	$10.00	Jan. 1, 1988
3 (1987 Compilation and Parts 100 and 101)	11.00	[1] Jan. 1, 1988
4	14.00	Jan. 1, 1988
5 Parts:		
1-699	14.00	Jan. 1, 1988
700-1199	15.00	Jan. 1, 1988
1200-End, 6 (6 Reserved)	11.00	Jan. 1, 1988
7 Parts:		
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210-299	22.00	Jan. 1, 1988
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700-899	22.00	Jan. 1, 1988
900-999	26.00	Jan. 1, 1988
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1060-1119	12.00	Jan. 1, 1988
1120-1199	11.00	Jan. 1, 1988
1200-1499	17.00	Jan. 1, 1988
1500-1899	9.50	Jan. 1, 1988
1900-1939	11.00	Jan. 1, 1988
1940-1949	21.00	Jan. 1, 1988
1950-1999	18.00	Jan. 1, 1988
2000-End	6.50	Jan. 1, 1988
8	11.00	Jan. 1, 1988
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10 Parts:		
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Jan.1, 1988 to Dec.31, 1988. The CFR volume issued January 1, 1988, should be retained.

[3] No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1988. The CFR volume issued January 1, 1987, should be retained.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

[7] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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